

RESOLUTION NO. XX-XX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL DENYING THE APPEALS SUBMITTED BY MORGAN HILL RESIDENTS FOR RESPONSIBLE DEVELOPMENT AND MORGAN HILL RESPONSIBLE GROWTH COALITION FOR SD2020-0011 AND SR2020-0029 THROUGH SR2020-0033: DE PAUL-TC MORGAN HILL VENTURE AND REAFFIRMING THE APPROVAL OF THE VESTING TENTATIVE PARCEL MAP AND DESIGN PERMITS FOR THE REDWOOD TECH AT 101 PROJECT ON PROPERTY LOCATED ON THE NORTHERN INTERSECTION OF CONDIT ROAD AND HALF ROAD (APNS 728-30-006 AND 728-30-0009)

WHEREAS, such request was considered by the Planning Commission at its regular meeting of May 25, 2021, at which time the Planning Commission approved Vesting Tentative Parcel SD2020-0011 and Design Permits SR2020-0029 through SR2020-0033: De Paul-TC Morgan Hill Venture (Redwood Tech at 101); and

WHEREAS, testimony received at a duly noticed public hearing, along with exhibits and drawings and other materials have been considered in the review process; and

WHEREAS, Morgan Hill Residents for Responsible Development and Morgan Hill Responsible Growth Coalition, both filed an appeal of the Planning Commission's decision on the Application to the City Council pursuant to the applicable provisions of the Morgan Hill Municipal Code; and

WHEREAS, at the time and place noticed for a hearing on the appeal, the City Council of the City of Morgan Hill conducted a *de novo* appeal hearing on the Application, provided all interested persons an opportunity to be heard, and received, reviewed, and considered all testimony and other evidence provided regarding the subject of this appeal.

NOW, THEREFORE, BASED UPON ALL OF THE INFORMATION SUBMITTED TO THE CITY COUNCIL FOR THE APPEAL AT THE PUBLIC HEARING CONDUCTED FOR THE APPEAL, THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY RESOLVE AS FOLLOWS:

SECTION 1. Following are the relevant facts in connection with Application:

- A. The approved Vesting Tentative Parcel Map and Design Permits are consistent with the Zoning Ordinance and the General Plan.

- B. At their meeting of May 25, 2021, the Planning Commission found that the approved Vesting Tentative Parcel Map and Design Permits would be consistent with the criteria for Vesting Tentative Parcel Map and Design Permits approval contained within the Zoning Code. The basis and findings were set forth in the staff report for May 25, 2021.

SECTION 2. Based upon the above facts, the City Council finds as follows:

- A. The project is consistent with the Zoning Ordinance, and General Plan.
- B. The Design Review has been found consistent with the criteria for Design Review permit approval contained in Section 18.108.040 of the Morgan Hill Municipal Code. The proposed project is in compliance with all applicable design standards and guidelines contained in the Design Review Handbook.

SECTION 3. Based upon the above facts and findings the City Council determines as follows:

- A. The approval of the Vesting Tentative Parcel Map and Design Permits granted by the Planning Commission on May 25, 2021, were made consistent with the Morgan Hill Municipal Code. Therefore, the appeal submitted regarding the Vesting Tentative Parcel Map and Design Permits approval should not be approved.
- B. The Planning Commission approval as set forth in Planning Commission Resolution No. 21-04 and Resolution No. 21-05, attached hereto as Exhibit A and incorporated herein by this reference, is hereby reaffirmed, and approved.

SECTION 4. For the reasons set forth above, the appeal is **DENIED**.

PASSED AND ADOPTED THIS 23rd DAY OF JUNE 2021, AT A MEETING OF THE CITY COUNCIL BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST:

APPROVED:

MICHELE BIGELOW, City Clerk

RICHARD CONSTANTINE, Mayor

CERTIFICATE OF THE CITY CLERK

I, MICHELLE BIGELOW, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Resolution No. _____, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the ____ day of _____, 2021.

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

DATE: _____

MICHELE BIGELOW, City Clerk

EXHIBIT A

Planning Commission Resolution No. 21-04 and Resolution No. 21-05

RESOLUTION NO. 21-04

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MORGAN HILL APPROVING A DESIGN PERMIT TO ALLOW FOR THE CONSTRUCTION OF THE REDWOOD TECH AT 101 PROJECT - A FIVE BUILDING INDUSTRIAL PARK LOCATED ON THE NORTHERN INTERSECTION OF CONDIT ROAD AND HALF ROAD (DE PAUL – TC MORGAN HILL VENTURE (REDWOOD TECH AT 101)) (APNS 728-30-006 AND 728-30-009)

WHEREAS, the developer Trammell Crow applied for a Design Permit to construct an industrial park containing five (5) industrial buildings ranging in size from 73,668 to 138,698 square feet. (SR2020-0029 through -033: De Paul – TC Morgan Hill Venture (Redwood Tech at 101)); and

WHEREAS, such request was considered by the Planning Commission at its meeting of May 25, 2021; and

WHEREAS, this project is consistent with the development projections analyzed in the Morgan Hill 2035 General Plan program EIR for the project site. The project also is designed to be consistent with the development standards in the General Plan and Zoning Code. No further environmental assessment is required; and

WHEREAS, testimony received at a duly-noticed public hearing, along with exhibits and drawings and other materials have been considered in the review process.

**NOW, THEREFORE, THE MORGAN HILL PLANNING COMMISSION DOES
RESOLVE AS FOLLOWS:**

SECTION 1. The project is consistent with the Zoning Ordinance, and General Plan.

SECTION 2. The Design Review has been found consistent with the criteria for Design Review permit approval contained in Section 18.108.040 of the Morgan Hill Municipal Code. The proposed project is in compliance with all applicable design standards and guidelines contained in the Design Review Handbook.

SECTION 3. The Planning Commission approves SR2020-0029 through -0033: De Paul – TC Morgan Hill Venture (Redwood Tech at 101). The design shall be expressly conditioned in conformance with conditions incorporated herein and as attached as Exhibit “A”. Minor deviations to the site review permit may be approved by the Community Development Director when consistent with the overall intent of the project.

SECTION 4. Notice is hereby given that, pursuant to the Mitigation Fee Act, the City of Morgan Hill charges certain fees (as such term is defined in Government Code Section 66000) in connection with approval of your use for the purpose of defraying all or a portion of the cost of public facilities related to your development project (Mitigation Fee Act Fees). These fees do not include fees for processing applications for governmental regulatory actions or approvals, or fees collected (a) under development agreements, (b) pursuant to agreements with the Morgan Hill Redevelopment Agency or (c) as a part of your application for development allocations under the City's Residential Development Control System. The Mitigation Fee Act Fees applying to your project are listed in the schedule of fees provide. Notice is also hereby given that you have the opportunity to protest the imposition of the Mitigation Fee Act Fees within 90 days of the approval of the approval or conditional approval of your development project and that the 90-day approval period in which you may protest has begun. This right to protest does not apply to voluntary Residential Development Control System fees.

PASSED AND ADOPTED THIS 25th DAY OF MAY 2021, AT A REGULAR MEETING OF THE PLANNING COMMISSION BY THE FOLLOWING VOTE:

AYES:	COMMISSIONERS:	HABIB, KUMAR, TANDA, GONZALEZ-ESCOTO, DOWNEY, MUNOZ- MORRIS
NOES:	COMMISSIONERS:	MUELLER
ABSTAIN:	COMMISSIONERS:	NONE
ABSENT:	COMMISSIONERS:	NONE

ATTEST:


JENNA LUNA, Deputy City Clerk

APPROVED:


MOHAMMAD HABIB, Chair

EXHIBIT "A" STANDARD CONDITIONS

APPLICATION NO: SR2020-0029 through -0033

THE FOLLOWING APPROVAL REQUIREMENTS AND ANY SPECIAL CONDITIONS SHALL BE APPLIED THROUGH THE DEVELOPMENT APPROVAL PROCESS.

Legend

MHMC= Morgan Hill Municipal Code

MHARH= Morgan Hill Architectural Review Handbook

CMH= City of Morgan Hill

CFC= California Fire Code

I. PROJECT DESCRIPTION

This project proposes approximately 501,000 square feet of flexible industrial space spread across 5 separate concrete tilt-up buildings on four separate lots. As with all other development, this project requires a Design Permit. The Community Development Director has elevated this project to the Planning Commission for consideration. All five buildings are designed to be divisible into two or three tenant spaces with a maximum exterior height of 43 feet.

The project shall comply with all requirements of related project approvals granted by the City, including all of the following:

II. PROJECT CONDITIONS OF APPROVAL

This Design Permit approval is limited to the plan set dated December 11, 2020 on file (File Number SR2020-0029 through -0033: De Paul – TC Morgan Hill Venture (Redwood Tech at 101)) with the Development Services Department. The approved building plans and landscape plans must be in substantial conformance with the Design Review plans as determined by the Development Services Director. These documents show the location and dimensions of all buildings and elevations with colors and materials, amenities and square footage for all common areas, and vehicle and pedestrian circulation ways (ingress/egress), common areas, and other easement areas.

It shall be the responsibility of the Owner to ensure that any changes or modifications to the Project or any Unit are in compliance with the original City Conditions of Approval of the Project, which are incorporated herein.

PLANNING COMMISSION

Buildings shall have a consistent design on all elevations viewable from public streets. The Development Services Director shall work with the applicant to ensure colors and materials are included on all elevations that limit the amount of blank wall space.

PLANNING DIVISION

DEFENSE AND INDEMNITY

- A. As part of, and in connection, with this application to the City of Morgan Hill, Applicant agrees to defend, indemnify, and hold harmless the City of Morgan Hill, its officers, agents, employees, officials and representatives (Indemnitees) from and against any and all claims, actions, or proceedings arising from any suit for damages or for equitable or injunctive relief which is filed against City to attack, set aside, void or annul its approval of this application or any related decision, or the adoption of any environmental documents which relates to said approval. The City shall promptly notify the Applicant of any such claim, action or proceeding and the City shall cooperate fully in the defense thereof. In the event that Applicant is required to defend Indemnitees in connection with the proceeding, Indemnitees shall retain the right to approve (a) the counsel to so defend Indemnitees; (b) all significant decisions concerning the manner in which the defense is conducted; and (c) any and all settlements, which approval shall not be unreasonably withheld. This indemnification shall include, but is not limited to, (a) all pre-tender litigation costs incurred on behalf of the City, including City's attorney's fees and all other litigation costs and expenses, including expert witnesses, required to defend against any lawsuit brought as a result of City's approval or approvals; (b) reasonable internal City administrative costs, including but not limited to staff time and expense spent on the litigation, after tender is accepted; and (c) all damages, costs, expenses, attorney fees or expert witness fees that may be awarded to the prevailing party arising out of or in connection with the approval of the application or related decision. City may, in its sole discretion, participate in the defense of such action; but such participation shall not relieve Applicant of its obligations under this condition. The undersigned hereby represents that they are the Applicant or are fully empowered by the Applicant as their agent to agree to provide the indemnification, defense and hold harmless obligations, and the signature below represents the unconditional agreement by Applicant to be bound by such conditions.

TIME LIMITS

- A. **Term:** The Design Review approval granted pursuant to this Resolution shall remain in effect for two years to May 25, 2023. Failure to obtain building permits within this term shall result in termination of approval unless an extension of time is granted with a showing of just cause prior to expiration date. **(MHMC 18.108.040)**

SITE DEVELOPMENT

- A. **Final Site Development Plans:** Final site development plans shall be reviewed for conformance with Design Permit SR2020-0029 through -0033: De Paul – TC Morgan Hill Venture (Redwood Tech at 101) and in accordance with Morgan Hill Municipal Code Section 18.108.040 (Design Permit) and approved by the Development Services Department prior to issuance of a building permit. All such plans shall include:

1. Detail depicting all concrete curbs as full formed.
2. Exterior lighting of the building and site shall be designed so that lighting is not directed onto adjacent properties and light source is shielded from direct off-site viewing.
3. Ramps, special parking spaces, signing and other physical features for the disabled, shall be provided throughout the site for all publicly used facilities.
4. All mechanical equipment, including electrical and gas meters, post indicator valve, backflow prevention devices, etc., shall be architecturally screened from view or located interior to the building. All ground mounted utility appurtenances such as transformers shall not be visible from any public right-of-way and shall be adequately screened through the use or combination of concrete or masonry walls, berming, and landscaping. **(MHARH p.20, 45, 79)** For additional screening, backflow preventers shall be painted dark green, except the fire connection which shall be painted yellow.
5. All existing on-site overhead utilities shall be placed underground in an approved conduit from the service connection at the street or at the property line to the service connection at the building as detailed in engineering conditions within this document.
6. Adequate bicycle trails and amenities (e.g. bike racks, bike fix-it station) and pedestrian connections throughout the site, including connections to De Paul Drive, and a sidewalk along the De Paul Drive frontage.

7. To the extent acceptable to end users, implement good faith Transportation Demand Management Plan measures to promote alternate means of transportation and reduce single occupancy vehicle trips to and from the Project.
- B. **Building Coverage:** In accordance with Morgan Hill Municipal Code Section 18.26.030 (Development Standards) and approved by the Development Services Director prior to issuance of a building permit, Building B shall be reduced in size to have a maximum building coverage of 50%.
- C. **Trash Enclosures:** All trash enclosures shall include a solid noncombustible roof structure consistent in design, materials and colors as the primary buildings and shall be reviewed and approved by the Development Services Director prior to issuance of a building permit.
- D. **Pedestrian Access:** The Project shall provide pedestrian walkways in compliance with ADA requirements and with Section 18.72.060.H of the Morgan Hill Municipal Code, which states the following:
1. Parking lots with more than thirty parking spaces shall include a pedestrian walkway in compliance with ADA requirements.
 2. The design of the pedestrian walkway shall be clearly visible and distinguished from parking and circulation areas through striping, contrasting paving material, or other similar method as approved by the Development Services Director.
- E. **Bicycle parking.** The project shall provide short-term and long-term bicycle parking spaces in conformance with Section 18.72.080 of the Morgan Hill Municipal Code:
1. **Short-Term/Class II Bicycle Parking Standards.** Short-term bicycle parking shall be located within one hundred feet of the primary entrance of the structure or use it is intended to serve.
 2. **Long-Term Bicycle Parking Standards.** The following standards apply to long-term bicycle parking:
 - a. Location. Long-term bicycle parking shall be located on or within seven hundred fifty feet of the use that it is intended to serve.
 - b. Security. Long-term bicycle parking spaces shall be secured. Spaces are considered secured if they are:

- i. In a locked room or area enclosed by a fence with a locked gate;
 - ii. Within view or within one hundred feet of an attendant or security guard;
 - iii. In an area that is monitored by a security camera; or iv. Visible from employee work areas.
- 3. **Parking Space Dimensions.**
 - a. Minimum dimensions of two feet by six feet shall be provided for each bicycle parking space.
 - b. An aisle of at least five feet shall be provided behind all bicycle parking to allow room for maneuvering.
 - c. 2 feet of clearance shall be provided between bicycle parking spaces and adjacent walls, polls, landscaping, pedestrian paths, and other similar features.
 - d. Four feet of clearance shall be provided between bicycle parking spaces and adjacent automobile parking spaces and drive aisles.
- 4. **Rack Design.** Bicycle racks must be capable of locking both the wheels and the frame of the bicycle and of supporting bicycles in an upright position.
- 5. **Cover.** Required cover for bicycle parking spaces shall be permanent, designed to protect the bicycle from rainfall, and at least seven feet above the floor or ground.

The location of all bicycle parking spaces shall be identified prior to issuance of a building permit.

- D. **Electric Vehicle Charging Stations:** The Project shall provide electric vehicle charging stations in compliance with Section 18.72.040.C of the Morgan Hill Municipal Code. The project is required to provide two charging stations, plus one for each additional fifty parking spaces. The developer shall provide location of each charging station prior to issuance of building permit.
- E. **Prohibition of Natural Gas Infrastructure in New Buildings.** In accordance with Chapter 15.63 of the Municipal Code, future tenants will be required to demonstrate the need for gas service for manufacturing and other business uses. Natural gas shall not be used for heating and cooling of the building.

BUILDING DESIGN

- A. **Roof Mounted Mechanical Equipment:** All roof mounted mechanical equipment shall be placed within a screened roof top enclosure depicted on the elevation drawings or located below the parapet level and shall not be visible from the ground at any distance from the building. Cross section roof drawings shall be provided at the building permit stage indicating the relative height of the screen wall or parapet. Minimum screen height or parapet depth shall be 5 feet or greater to match the height of any proposed equipment. **(MHARH p.48, 65, 87, 106)**
- B. **Building Mounted Lighting:** Lighting fixtures shall not project above the fascia or roofline of the building. Any ground mounted lighting projecting onto the building or site shall be subject to the review and approval of the Development Services Director. Adjustment to the lighting intensity may be required after the commencement of the use. **(MHARH p. 67, 109)**

PARKING, VEHICULAR ACCESS AND LANDSCAPING

- A. **Parking Lot Landscaping:** All landscaping within parking lots shall comply with the requirements of Chapter 18.72 (Landscaping) in addition to the standards within this section.
 - 1. **Interior Landscaping.** All areas within a parking lot not utilized for parking spaces or access/circulation shall be landscaped. For parking lots with more than fifteen spaces, the minimum amount of interior landscaping is specified in Table 18.72-6. Interior landscaping is defined as any landscaped area surrounded on at least two sides by parking spaces or drive aisles, and excluding areas around the perimeter of the parcel or development site.
 - 2. **Shade Trees.**
 - a. One shade tree shall be provided for every five parking spaces in a parking lot.
 - b. Shade trees shall be a minimum twenty-four-inch box in size and shall provide a minimum thirty-foot canopy at maturity.
 - c. Shade trees shall be of a type that can reach maturity within fifteen years of planting and shall be selected from a city-recommended list of canopy tree species.
 - d. Shade trees shall be arranged in a parking lot to provide maximum shade coverage (based on a thirty-foot canopy) on August 21. The arrangement should approximate nearly fifty percent shade coverage.

3. **Concrete Curbs.**
 - a. All landscape areas shall be separated from parking spaces, drive aisles and driveways by a continuous, raised concrete curb. Raised concrete curbs shall be a minimum of six inches high by four inches deep.
 - b. The city may approve alternatives to raised concrete curbs as needed to comply with any mandatory stormwater drainage standards.
 4. **Parking Space Landscaping.** A maximum of two feet at the front end of a parking space may be landscaped with low shrubs or ground cover in which a vehicle could extend over in lieu of paving surface. This landscaping may not count toward minimum required parking lot landscaped area.
 5. **Timing.** Adjacent parking lot landscaping shall be installed prior to the city's authorization to occupy any buildings served by the parking area, or prior to the final inspection for the parking lot.
 6. **Green Parking Exemptions.** Parking lots that incorporate solar panels, bioswales, and other similar green features not otherwise required by post construction stormwater requirements are eligible for reduced parking lot landscaping requirements with the approval of a conditional use permit.
 7. **Exterior Parking Lot Lighting:** For projects with more than six parking spaces, detailed lighting information is provided in compliance with Section 18.72.060.G of the Morgan Hill Municipal Code. Lights shall use cut-off shields and be downward directed and shall not overlap with landscaping which will block and reduce the effectiveness and purpose of the lighting.
- B. **Planting and Irrigation Working Drawings:** Detailed landscape planting and irrigation working drawings shall be submitted to the Development Services Director for approval prior to issuance of building permits. Landscape plans for streets and landscape easements shall be part of the improvement plan submittal.
- C. **Lighting:** Walkways and pedestrian pathways in landscaped areas or common areas not considered building entrances or a part of parking lot areas shall be illuminated with a minimum of one (1) foot-candle to ensure safe nighttime conditions. **(MHARH p.30, 67, 108)**

- D. **Trash Enclosures:** Trash enclosures shall be separated from adjacent parking stalls with a minimum three (3) foot wide planter and a 12-inch-wide paved surface behind the curb (consistent with planter island standards). Trash enclosures shall be screened with landscape materials subject to the review and approval of the Development Services Director.
- E. **Maintenance of Landscaping:** The landscaping installed and accepted with this project shall be maintained on the site as stated within the approved plans. Any alteration or modification to the landscaping shall not be permitted unless otherwise approved by the Development Services Director.
- F. **Water Conserving Landscaping Ordinance:** The landscape plans shall be in conformance with the City's Water Conserving Landscape Ordinance that was developed in accordance with California law. This Ordinance restricts landscaping turf to certain areas, specifies plant selection, requires certain types of irrigation equipment, and calls for the development of comprehensive water use calculations as an aspect of the submitted landscape plans. **(MHMC 18.64)**

SIGNS

- A. **Separate Application Required for Sign Approval:** Signs proposed for this development shall be designed in conformance with the Sign Ordinance and shall require separate application and approval by the Planning Division prior to installation of any signs.

HABITAT PLAN

- A. **Fees:** The approved project is covered pursuant to the Santa Clara Valley Habitat Plan (Habitat Plan) and subject to fees and conditions contained in the Habitat Plan.
- B. **Application Package:** Prior to issuance of a grading permit, the project shall complete and submit a Habitat Plan Application Package. All fees shall be paid prior to issuance of a grading permit. **(MHMC 18.132)**
- C. **Conditions:** Any additional conditions or mitigations required by the Habitat Plan shall be clearly stated on all plans that involve any ground disturbing activity (i.e. grading plans, improvement plans, paving plans, demolition plans or other plans for site clearing or temporary stockpile of dirt). **(MHMC 18.132)**

AIR QUALITY

- A. **Dust, Noise, Vibration and Materials Management Plan:** A management plan detailing strategies for control of noise, dust and vibration, and storage of hazardous materials during construction of the project shall be submitted for review prior issuance of a grading permit and requirements shall be included on all site development and grading plans. The intent of this condition is to minimize construction related disturbance of residents of the nearby or adjacent properties. **(MHMC 18.76)**
1. All exposed surfaces shall be watered at a frequency adequate to maintain minimum soil moisture of 12 percent. Moisture content can be verified by lab samples or moisture probe.
 2. All excavation, grading, and/or demolition activities shall be suspended when average wind speeds exceed 20 mph.
 3. Wind breaks (e.g., trees, fences) shall be installed on the windward side(s) of actively disturbed areas of construction. Wind breaks should have at maximum 50 percent air porosity.
 4. Vegetative ground cover (e.g., fast-germinating native grass seed) shall be planted in disturbed areas as soon as possible and watered appropriately until vegetation is established.
 5. The simultaneous occurrence of excavation, grading, and ground disturbing construction activities on the same area at any one time shall be limited. Activities shall be phased to reduce the amount of disturbed surfaces at any one time.
 6. All trucks and equipment, including their tires, shall be washed off prior to leaving the site.
 7. Site accesses to a distance of 100 feet from the paved road shall be treated with a 6 to 12-inch compacted layer of wood chips, mulch, or gravel.
 8. Sandbags or other erosion control measures shall be installed to prevent silt runoff to public roadways from sites with a slope greater than one percent.
 9. Minimizing the idling time of diesel-powered construction equipment to two minutes.

10. The project shall develop a plan demonstrating that the off-road equipment (more than 50 horsepower) to be used in the construction project (i.e., owned, leased, and subcontractor vehicles) would achieve a project wide fleet-average 20 percent NOX reduction and 45 percent PM reduction compared to the most recent ARB fleet average. Acceptable options for reducing emissions include the use of late model engines, low emission diesel products, alternative fuels, engine retrofit technology, after-treatment products, add-on devices such as particulate filters, and/or other options as such become available.
11. Use low VOC (i.e., ROG) coatings beyond the local requirements (i.e., Regulation 8, Rule 3: Architectural Coatings).
12. Requiring that all construction equipment, diesel trucks, and generators be equipped with Best Available Control Technology for emission reductions of NOx and PM.
13. Requiring all contractors use equipment that meets CARB's most recent certification standard for off-road heavy-duty diesel engines.

CULTURAL RESOURCES

Significant Historic or Archaeological Materials: This project has been determined not to be in a site identified as archaeologically sensitive by the City's adopted archaeological sensitivity map, but nonetheless could adversely impact undocumented human remains or unintentionally discover significant historic or archaeological materials. The following policies and procedures for treatment and disposition of inadvertently discovered human remains or archaeological materials shall apply and should be provided as standard conditions on the building permit, grading permit, or improvement plans. If human remains are discovered, it is probable they are the remains of Native Americans.

1. If human remains are encountered they shall be treated with dignity and respect as due to them. Discovery of Native American remains is a very sensitive issue and serious concern. Information about such a discovery shall be held in confidence by all project personnel on a need to know basis. The rights of Native Americans to practice ceremonial observances on sites, in labs and around artifacts shall be upheld. Remains should not be held by human hands. Surgical gloves should be worn if remains need to be handled. Surgical mask should also be worn to prevent exposure to pathogens that may be associated with the remains.

2. In the event that known or suspected Native American remains are encountered or significant historic or archaeological materials are discovered, ground-disturbing activities shall be immediately stopped. Examples of significant historic or archaeological materials include, but are not limited to, concentrations of historic artifacts (e.g., bottles, ceramics) or prehistoric artifacts (chipped chert or obsidian, arrow points, groundstone mortars and pestles), culturally altered ash-stained midden soils associated with pre-contact Native American habitation sites, concentrations of fire-altered rock and/or burned or charred organic materials, and historic structure remains such as stone-lined building foundations, wells or privy pits. Ground-disturbing project activities may continue in other areas that are outside the discovery locale.
3. An “exclusion zone” where unauthorized equipment and personnel are not permitted shall be established (e.g., taped off) around the discovery area plus a reasonable buffer zone by the Contractor Foreman or authorized representative, or party who made the discovery and initiated these protocols, or if on-site at the time of discovery, by the Monitoring Archaeologist (typically 25-50ft for single burial or archaeological find).
4. The discovery locale shall be secured (e.g., 24-hour surveillance) as directed by the City or County if considered prudent to avoid further disturbances.
5. The Contractor Foreman or authorized representative, or party who made the discovery and initiated these protocols shall be responsible for immediately contacting by telephone the parties listed below to report the find and initiate the consultation process for treatment and disposition:
 - The City of Morgan Hill Development Services Director (408) 779-7247
 - The Contractor’s Point(s) of Contact
 - The Coroner of the County of Santa Clara (if human remains found) (408) 793-1900
 - The Native American Heritage Commission (NAHC) in Sacramento (916) 653-4082
 - The Amah Mutsun Tribal Band (916) 481-5785 (H) or (916) 743-5833 (C)
6. The Coroner has two working days to examine the remains after being notified of the discovery. If the remains are Native American the Coroner has 24 hours to notify the NAHC.

7. The NAHC is responsible for identifying and immediately notifying the Most Likely Descendant (MLD) from the Amah Mutsun Tribal Band. (Note: NAHC policy holds that the Native American Monitor will not be designated the MLD.)
8. Within 24 hours of their notification by the NAHC, the MLD will be granted permission to inspect the discovery site if they so choose.
9. Within 24 hours of their notification by the NAHC, the MLD may recommend to the City's Development Services Director the recommended means for treating or disposing, with appropriate dignity, the human remains and any associated grave goods. The recommendation may include the scientific removal and non-destructive or destructive analysis of human remains and items associated with Native American burials. Only those osteological analyses or DNA analyses recommended by the Amah Mutsun Tribal Band may be considered and carried out.
10. If the MLD recommendation is rejected by the City of Morgan Hill the parties will attempt to mediate the disagreement with the NAHC. If mediation fails then the remains and all associated grave offerings shall be reburied with appropriate dignity on the property in a location not subject to further subsurface disturbance.

GENERAL

- A. Mitigation Fee Act:** Notice is hereby given that, pursuant to the Mitigation Fee Act, the City of Morgan Hill charges certain fees (as such term is defined in Government Code Section 66000) in connection with approval of this development project for the purpose of defraying all or a portion of the cost of public facilities related to this development project (Mitigation Fee Act Fees). These fees do not include fees for processing applications for governmental regulatory actions or approvals, fees collected as part of development agreements, or as a part of the application for the City's Residential Development Control System. The Mitigation Fee Act Fees applying to this project are listed in the schedule of fees to be provided at building permit stage. Notice is also hereby given that the Developer has an opportunity to protest the imposition of the Mitigation Fee Act Fees within 90 days of the approval or conditional approval of this development project and that the 90-day protest period has begun.

- B. **Signed Copies of Resolution with Conditions:** Submit two (2) signed copies of the resolution with conditions to the Planning Division prior to issuance of a building permit.
- C. **Traffic Analysis:** A traffic analysis shall be performed prior to each tenant occupying a building. Recommendations made in the traffic analysis to improve on-site or off-site conditions shall be incorporated as reviewed and approved by the Development Services Director and City Engineer prior to the tenant occupying the building.

ENGINEERING DIVISION

I. PROJECT SPECIFIC

- A. Street and Utility Improvements:
 - 1. Coordination with Adjacent Residential Project: The developer shall coordinate the De Paul Drive improvements and sanitary sewer improvements with the project known as "The Crosswinds Project" located on the east side of De Paul Drive (APNs: 728-30-001, -002, -003, & -004) and owned by Dividend Homes.
 - i. Prior to parcel map approval, the developer shall obtain the necessary right-of-way on De Paul Drive (and construction easement, if required) from Dividend Homes' Crosswinds Project.
 - 2. De Paul Drive: Construct De Paul Drive to comply with the City's half street (2/3 street) standards along the west side of De Paul Drive from Cochrane Road to the proposed cul-de-sac next to Half Road (includes the frontage along the Lands of Lee with APN: 728-30-008) to the satisfaction of the City Engineer.
 - i. Install and dedicate the required street improvements at De Paul Drive to have a straight road alignment with a minimum 46' right-of-way width and a minimum 36' pavement width from face of curb along the unimproved section of De Paul Drive to the new cul-de-sac next to Half Road.
 - ii. The City will quitclaim approximately 19' of right-of-way along the De Paul Drive frontage of APN: 728-30-009.
 - iii. The developer shall dedicate 36' right-of-way width in fee to the City for public street purposes along the De Paul Drive frontage of APN: 728-31-014 and dedicate a 10' wide Public Service Easement (PSE) behind the proposed property line.
 - iv. The project's right-of-way dedication and quitclaim shall be shown on the parcel map.

- v. The street improvements shall include, but are not limited to, curb and gutter, sidewalk, landscaping, full cul-de-sac at the southerly end of De Paul Drive next to Half Road, street paving, utilities, undergrounding, stormwater post-construction facilities, and street lighting.
 - vi. The project shall construct City standard sidewalk along the west side of De Paul Drive from Cochrane Road to the proposed cul-de-sac next to Half Road to provide a continuous pedestrian connection from the project site to Cochrane Road.
 - 1) The project has an option to construct a temporary asphalt sidewalk along the frontages of the future Phase 2 Project and the Lands of Lee (APN: 728-30-008)
 - vii. The project's two northerly driveways at De Paul Drive are proposed to have widths that exceed the City standard maximum industrial driveway width of 36' to allow truck access/maneuvering.
 - 1) At improvement plan/building permit stage, submit an additional truck turning template using the ultimate street width of De Paul Drive for City Engineer review.
 - viii. At improvement plan/building permit stage, revise the De Paul Drive street cross-sections to match the 2/3 street width.
3. Half Road: The developer shall construct Half Road to comply with City standards along the north side of the project's Half Road frontage to the satisfaction of the City Engineer.
- i. Install and dedicate the required street improvements at Half Road. The street improvements shall include, but are not limited to, curb and gutter, sidewalk, landscaping, street paving, utilities, stormwater post-construction facilities, and street lighting.
 - ii. The developer shall dedicate right-of-way in fee to the City for public street purposes at a width of 36' from centerline along the Half Road frontage of APN: 728-30-009 and dedicate a 10' wide PSE behind the proposed property line.
 - iii. Extend the new sidewalk along the project's Half Road frontage westerly up to the Madrone Channel/Trail entrance. The design of the sidewalk and compliance with Valley Water's access requirements to Madrone Channel will be reviewed at improvement plan/building permit stage.
4. Cochrane Road: Construct the ultimate width of Cochrane Road along the project's frontage to comply with the City's arterial street standards to the satisfaction of the City Engineer.
- i. Install and dedicate the required street improvements at Cochrane Road. The street improvements shall include, but are not limited to, curb and gutter, sidewalk, dedicated right-turn pocket along eastbound Cochrane Road, landscaping, street paving, utilities, stormwater post-construction facilities, and street lighting.

- ii. The developer shall dedicate a minimum of 60' of right-of-way from the centerline of Cochrane Road for public street purposes along the Cochrane Road frontage of APN: 728-31-014 and dedicate a 10' wide PSE behind the proposed property line.
 - iii. At improvement plan//building permit stage, revise plans to show the number of streetlights and spacing along Cochrane Road to comply with City standards. Per City standards, streetlight spacing for arterials is 160' to 180' and streetlight location shall be directly opposite the existing streetlight on the north side of Cochrane Road.
 - iv. At improvement plan//building permit stage, submit a traffic signal modification plan for the Cochrane Road/De Paul Drive intersection. The plan shall include the relocation or replacement of the two existing traffic signal poles on the southwest corner of the intersection, signal phasing, and the proposed striping plans.
5. Utilities: The City's Water System Master Plan, Storm Drainage System Master Plan, and Sewer System Master Plan identified proposed improvements along De Paul Drive and Half Road.
- i. Storm Improvements:
 - 1) The project shall construct a 48" to 54" storm main along the project's Half Road frontage per the City's Storm Master Plan.
 - 2) Provide a minimum 20' wide additional PSE centered over the portion of the proposed storm drain main located west of Condit Road. The PSE shall be reviewed at parcel map stage.
 - 3) The developer shall continue to work with the City and Valley Water to review the design conditions of the PL-566 project and shall revise the on-site drainage plans at improvement plan stage, as needed, to the satisfaction of the City Engineer.
 - 4) Per the notes on the project's Vesting Tentative Parcel Map, the site is in Flood Zone "X- Shaded" and Flood Zone "AE" as shown on the FEMA Flood Insurance Rate Maps. Depending on the results of Valley Water's updated hydrology model, the project may be required to submit a Letter of Map Revision (LOMR) to FEMA or other appropriate documentation to update the flood zone for the site and designate the entire site to be entirely within Flood Zone "X- Shaded", an area defined as outside the 100-year floodplain.
 - 5) A segment of the proposed 24" storm main along De Paul Drive shows a manhole spacing that exceeds the City standard maximum spacing of 400' for 15" to 30" storm pipe diameters. At improvement plan/building permit stage, revise storm manhole spacing to comply with City standards.
 - 6) At improvement plan/building permit stage, revise the pipe size of the following to the minimum size of 15-inch diameter per City standard:

- a) Proposed 12" storm main segment at De Paul Drive, between Sta. 16+00 and Sta. 18+00.
 - b) Proposed 12" storm lateral at Half Road, near Sta. 5+40.
 - c) Proposed 12" storm laterals at De Paul Drive.
- ii. Water Improvements: At improvement plan/building permit stage, revise the plans to comply with the following:
- 1) Extend the existing 12" public water main from the southerly terminus of De Paul Drive to Half Road per the City's Water System Master Plan. The water main extension shall be public.
 - 2) At improvement plan/building permit stage, show each of the five buildings with a dedicated domestic, irrigation and fire services connected to a public water main.
 - 3) The Utility Plans show the domestic water service for two parcels (Parcels C & D) crossing other parcels. Service for Parcel D crosses Parcel A and service for Parcel C crosses Parcel B. At parcel map review stage, add private utility easements for the water services on Parcels A and B.
 - 4) Detailed review of the water service configurations, water lateral, meter and backflow preventer locations will be performed at improvement plan/building permit stage and will be subject to City Engineer approval.
- iii. Sanitary Sewer Improvements: Based on the proposed amendment to the City's Sewer Master Plan, a sewer flow re-route into the Condit Road Sewer Trunk will be a required sewer master plan improvement for the project.
- 1) Install a 10" sanitary sewer gravity main beginning at De Paul Drive, approximately 540' south of Cochrane Road; then continue in a southbound direction to Half Road; then west along Half Road up to Condit Road; then follow Condit Road and end at a connection to the existing 10" sewer main at Main Avenue.
 - 2) At improvement plan/building permit stage, revise the plans to comply with the following:
 - a) On Sheet 6.5 (Preliminary Street Improvement Sections - Sections G & H), show the new 10" sanitary sewer main at Half Road to be constructed by the project.
 - b) Show a minimum horizontal clearance of 10' from the existing Valley Water groundwater recharge line.
 - 3) Prior to parcel map approval/building permit issuance, the project shall enter into a Private Sanitary Sewer Maintenance Agreement with the City for maintenance of all private sanitary sewer facilities

which includes the private sewer mains, sewer laterals, force main and lift station.

- 4) A sanitary sewer test manhole shall be provided for each of the five buildings and shall be accessible to the Pretreatment Inspector. The sanitary sewer test manholes shall be located within private property but adjacent to the street right-of-way or as approved by the City Engineer in conjunction with Pretreatment Inspector review.

6. Reimbursement Agreement: Prior to parcel map approval, the developer shall enter into a Reimbursement Agreement with the City for the reimbursement of the applicable portions of the cost to construct the following improvements that are beyond the developer's responsibility as determined by the City Engineer:
 - i. De Paul Drive and Half Road street improvements
 - ii. Traffic signal improvements at the intersection of Cochrane Road & De Paul Drive
 - iii. Storm improvements at Half Road per City's Storm Master Plan including the proposed outfall to Madrone Channel. The developer will be reimbursed for the cost to upsize the storm main above 24" per the City's Storm Master Plan.
 - iv. Sanitary sewer improvements per the City's Sewer Master Plan with the cost based on a sewer cost allocation to be agreed upon by the City, project developer and by Dividend Homes for the Crosswinds Project. The developer will be reimbursed for the cost to upsize the sewer main from 8" (developer's responsibility) to 10" per the proposed amendment to City's Sewer Master Plan.
7. Permits/Approvals from Other Agencies:
 - i. At improvement plan/building permit stage, the developer shall submit the improvement plans to Valley Water for review and approval of the following work:
 - 1) Proposed improvements along Half Road due to the proximity of the work to the existing Valley Water groundwater recharge pipeline
 - 2) Proposed storm outfall to Madrone Channel
 - 3) Any required or proposed modifications to an existing storm outfall
 - 4) Proposed Madrone Channel access
 - ii. Prior to start of sanitary sewer construction at Half Road/Condit Road, the developer shall obtain an encroachment permit from County Roads & Airports for the installation of the sanitary sewer main extension along Condit Road.

- B. Stormwater Management: The project's Preliminary Stormwater and Hydrology Report dated January 29, 2021 was submitted for City review. At improvement

plan/building permit stage, submit the Final Stormwater and Hydrology Report that addresses all of the stormwater comments included in Land Development Engineering's supplemental comment letter dated February 26, 2021.

1. The developer/owner(s) of each of the five parcels will be required to enter into a formal written Stormwater BMP Operation and Maintenance Agreement with the City prior to building permit issuance. The draft agreement will be provided at improvement plan/building permit stage.
2. At improvement plan/building permit stage, the project shall revise the plans to meet the following design criteria for all loading/unloading dock areas:
 - i. Cover loading dock areas or design drainage to minimize run-on and runoff of stormwater.
 - ii. Direct connections to storm drains from depressed loading docks (truck wells) are prohibited.

C. Grading:

1. At improvement plan/building permit stage, address the following grading comments:
 - i. The Section Details on Sheets C3.1, 3.2, & 3.3 include high points, such as the location of the proposed landscape screening in Section Detail A. Provide spot grades on the grading and drainage plans at these locations and label as high points.
 - ii. Revise the callouts or the section details to match.
 - iii. Sheet C2.2 calls out a 6' clearance between curb and building E while the clearance shown in Section N on Sheet C3.4 is 8'. Revise to match.

D. Landscaping:

1. At improvement plan/building permit stage, revise the proposed street tree species to comply with the list of Zone 1 street tree species in the City's Master Street Tree Plan.
2. The project shall comply with the City's adopted Santa Clara Valley Water Resource Protection Collaborative's "Guidelines and Standards for Land Use Near Streams. A copy of the guidelines and standards can be found at <https://www.valleywater.org/contractors/doing-businesses-with-the-district/permits-for-working-on-district-land-or-easement/guidelines-and-standards-for-land-use-near-streams>."
 - i. Verify that the proposed landscaping along the project's westerly property line, adjacent to Madrone Channel, complies with the Guidelines and Standards (See Chapters 3 & 4).
3. There is a small, unimproved area behind the new cul-de-sac, next to Half Road, with no improvement proposed. At improvement plan/building permit

stage, add a note stating the temporary or permanent landscaping or hardscape proposed for this area.

ENGINEERING STANDARD CONDITIONS

I. GENERAL

- A. The applicant shall cause the construction of all public and private improvements in accordance with the latest City Standard Drawings and Specifications. **(MHMC 12.02.090 A; 17.32.010 A)**
- B. The applicant shall submit as part of the improvement drawings for the project, profiles of all improvements in the project and typical cross-sections of all streets and details of curbs, gutters, and sidewalks, to be accomplished to the satisfaction of the City Engineer prior to submittal of Parcel Map. **(MHMC Sec 17.32.060 B; 17.32.070; 17.32.080 A)**
- C. Obtain necessary encroachment permits from:
 - ☒ City of Morgan Hill
 - ☒ County of Santa Clara Roads & Airports
 - ☒ Santa Clara Valley Water District (Valley Water)and provide guarantee covering off-site improvements. **(MHMC 12.08.040 A; 12.08.090)**
- D. Improvement plans are to show water lines, sanitary sewer, storm drain system, pavement widths, curve radius, and existing utilities.
- E. Enter into a Subdivision Improvement Agreement (SIA) with the City of Morgan Hill to cover required improvements. **(MHMC 12.02.150; 17.32.010 B; 17.32.160)**
- F. Reciprocal access easements and maintenance agreements ensuring access to all parcels and joint maintenance of all common roads, drives or parking areas shall be provided by CC&R's and by deed and shall be recorded concurrent with the map, or prior to issuance of building permit where no map is involved. **(MHMC 17.20.350 H)**
- G. **Impact Fees:** The City of Morgan Hill, pursuant to City Code Chapter 3.56 has established impact fees to finance the cost of improvements required by new development. City Code Chapter 3.56.050 provides for automatic annual (July 1st) adjustment of those fees in existence utilizing the Engineering News Record Index for the preceding twelve months. The City maintains historical records on the Engineering News Record Index. These records are available

for inspection during normal business hours. **(MHMC 3.56.010; 3.56.030; 3.56.050)**

II. STREET IMPROVEMENTS

- A. **Public and Private Streets:** The applicant shall cause the design and construction of all new public and private streets serving the project. The design of all new public and private streets shall be consistent with the General Plan Land Use and Circulation Element as well as the Street Standard Details as contained within the Public Works Standards Details. The construction of the streets shall be undertaken to the lines and grades and in a manner satisfactory to the City Engineer. All street improvements shall be constructed to the satisfaction of the City Engineer. The timing of the improvements will be determined by the City. **(MHMC 12.02.010; 12.02.090; 17.32.060 B; CMH General Plan; CMH Design Standards and Standard Details for Construction)**
- B. **Installation and Dedication of Streets:** The project shall install and dedicate street improvement including, but not limited to, curb and gutter, sidewalk, compaction, street paving, oiling, storm drainage facilities, sewer and water, fire protection, undergrounding of utilities and street lighting in conformance with City of Morgan Hill requirements. **(MHMC 12.02.010; 12.02.50; 12.02.080; 12.02.100; 17.28.010; 17.32.060)**
- C. **Underground existing utilities:** All existing overhead utilities adjacent to any site boundary or along any street frontage of site shall be placed underground in accordance with City standards and affected utility company guidelines. **(MHMC 12.02.090 B; 17.32.020 E.1)**

III. SANITARY SEWER SYSTEM

- A. **Design of Sewer Improvements:** The applicant shall cause to be undertaken the design and construction of sanitary sewer improvements including, but not limited to installation of sewer line extension on the proposed public street(s) or private street(s)/drive aisle(s). The sanitary collection system shall include, but not be limited to manholes with manhole frames and covers, cleanouts, wye-branches and laterals, and separate sewer taps to each parcel. These are to be installed by the developer. **(MHMC 13.20.355; 17.32.020 C; CMH Sewer System Master Plan; CMH Design Standards and Standard Details for Construction)**
- B. All existing and future sewer lines shall be tied into the City's system and existing septic systems shall be abandoned in accordance with City requirements. **(MHMC 13.24.060; 17.32.20 C)**

IV. STORM DRAIN SYSTEM

- A. **Storm Drainage Study:** A complete storm drainage study of the proposed development must be submitted showing amount of run-off, and existing and proposed drainage structure capacities. This study shall be subject to review and approval by the City Engineer. All needed improvements will be made by the applicant. No overloading of the existing system will be permitted. **(MHMC 17.32.020 B; 17.32.090; CMH Design Standards and Standard Details for Construction)**
- B. **Storm Drainage Design:** The applicant shall cause the design and construction to be undertaken for a storm drainage collection system shown on the Tentative Map/Design Review plans. All storm drain improvements shall be constructed to the satisfaction of the City Engineer. **(MHMC 17.32.020 A & B)**
- C. **Storm Drainage Capacity:** Collection system shall be designed to be capable of handling a 10-year storm without local flooding. On-site detention facilities shall be designed to a 25-year storm capacity. Streets shall be designed to carry 100-year storm. Items of construction shall include, but not be limited to installation of storm line extension on proposed public street(s), surface and subsurface storm drain facilities, manholes with manhole frames and covers, catch basins and laterals. Note: the project may be required to **retain** stormwater runoff as part of resolution R3-2013-0032 prior to releasing discharge rates at pre-development flows. **(MHMC 17.32.020 B; 18.74.440; CMH Design Standards and Standard Details for Construction; CMH Storm Drainage System Master Plan)**
- D. **Storm Drainage General Requirements:** Prior to issuance of a grading permit, the applicant shall complete the following to the satisfaction of the City Engineer.
1. Storm drain calculations to determine detention/retention pond sizing and operations.
 2. Plan describing how material excavated during construction will be controlled to prevent this material from entering the storm drain system.
 3. Water Pollution Control Drawings (WPCD) for Sediment and Erosion Control.
- (CMH Design Standards and Standard Details for Construction)**
- E. **Valley Water Dedications:** Where the project adjoins existing Valley Water storm drain facilities, applicant shall obtain dedication(s) of all necessary easement or right-of-way to accommodate established ultimate facilities master plan.
- F. **Tree Protection:** BMP Tree protection shall be part of the SWPPP inspections.

G. **NPDES Construction Activity General Permit/SWPPP Requirements:** As required by the State Water Resources Control Board (SWRCB) Order No. 2009-0009-DWQ, construction activity resulting in a land disturbance of one (1) acre or more of soil, or whose projects are part of a larger common plan of development that in total disturbs more than one (1) acre, are required to obtain coverage under the National Pollutant Discharge Elimination System (NPDES) General Permit No. CAS000002 for Discharges of Storm Water Associated with Construction Activity (General Permit). To be permitted with the SWRCB under the General Permit, owners must file a complete Notice of Intent (NOI) ONLINE at: <http://smarts.waterboards.ca.gov/smarts/faces/SwSmartsLogin.jsp> and develop a Storm Water Pollution Prevention Plan (SWPPP) Manual in accordance with the General Permit. The SWPPP Manual shall follow the CASQA SWPPP template/format at <https://www.casqa.org/store/products/tabid/154/p-167-construction-handbookportal-initial-subscription.aspx> and shall be approved by Public Works Engineering. A Waste Discharger Identification (WDID) number to be issued to the construction site after the SWRCB receives and verifies the submitted ONLINE NOI information. The WDID number and approved SWPPP Manual shall be provided to Public Works and the Building Department prior to any approval of grading activities (**SWRCB NPDES General Permit CA000002**).

H. **NPDES GENERAL PERMIT SITE SWPPP INSPECTIONS AND COMPLIANCE:**

1. ALL project onsite and offsite construction activity shall have the site inspected by a **qualified third party SWPPP Inspector (QSD or QSP or RCE)**.
2. SWPPP Inspections shall occur weekly during the rainy season (September 15th thru May 1st).
3. SWPPP Inspections shall occur bi-weekly during the non-rainy season.
4. 48 hours prior to and following a forecasted rain event, SWPPP Inspections shall occur in addition to those of items 2 or 3 above.
5. Per each of the inspection conditions 2, 3, or 4, the NPDES SWPPP Inspector shall certify in writing to the Building and Public Works Department if the site is in compliance or non-compliance with the NPDES General Permit for Stormwater, site SWPPP Manual, and Water Pollution Control Drawings (per the CMH-SWPPP Inspection Check List to be provided by Public Works). QSD/QSP SWPPP Inspectors shall forward onsite and offsite information/certification to the Building (on-site private property issues) and Public Works (public right-of-way issues) inspectors, respectively.
6. Prior to rain events, BMPs not in compliance will need to be corrected immediately.
7. Illicit discharges per the NPDES General Permit, non-compliance of tracking control, and inlet protection within the public right of way shall be address immediately.

8. Other non-compliance issues need to be addressed within a 24-hour period.
9. Non-compliance issues which have been corrected shall be verified by NPDES SWPPP Inspector by a follow up inspection.
10. BMPs maintenance/inspections shall include tree protection if applicable.

V. WATER SYSTEM

- A. **Domestic Water System:** The applicant shall cause the design and construction to be undertaken of a domestic water system to the satisfaction of the City Engineer. The water system improvements shall be constructed within public easements or street rights-of-way to the satisfaction of the City Engineer and dedicated to the City. **(MHMC 17.32.020 A & D; CMH Design Standards and Standard Details for Construction; CMH Water System Master Plan)**
- B. **Water well abandonment:** Abandonment of any existing water well shall be in conformance with Santa Clara Valley Water District (Valley Water) Ordinance 90-1. Location and disposition to be shown on the plan. Well(s) shall be properly registered with Valley Water and either be maintained or abandoned in accordance with Valley Water standards.
- C. **Water line extension:** Install water line extension on the proposed public streets and/or private streets. **(MHMC 17.32.020 A & D; CMH Water System Master Plan)**
- D. **Water Meters:** Provide separate water services and meters for each parcel. These are to be installed by developer. **(MHMC 17.32.020 D)**
- E. Provide separate fire service and double detector check with FDC per City standard detail W-8 for each parcel.

VI. OTHER CONDITIONS

- A. **Easement Dedications:** The owner shall dedicate all necessary utility easements. **(MHMC 12.02.080 D; 17.28.010 A)**
- B. **Undergrounding new utilities:** The applicant shall cause the design and construction required to underground all electric, gas, Cable TV and communication lines within the development. Such design and construction shall be to the satisfaction of the affected utilities and the City Engineer. **(MHMC 17.32.020 E.1)**
- C. **Parcel Map:** For minor subdivision (4 lots or less), the parcel map shall be signed by the City Engineer and the Planning Commission Secretary prior to issuance of a grading permit. **(MHMC 17.20.390; 17.24.210)**

- D. **Landscaping and Irrigation Systems:** Landscaping and irrigation systems serving common areas that are required to be installed in the public right-of-way on the perimeter of this project shall be continuously maintained by the property owner or designated maintenance entity.
- E. **Final Landscape Plans:** Final landscape plans shall be submitted with and included as part of the improvement plans for the project. **(MHMC 17.08.090)**
- F. **Pre-construction Meeting:** Prior to the approval of any building permit for grading activity, the developer shall schedule a pre-construction meeting with the Public Works Inspection Division with the following project team members:
 - 1. Civil Engineer of record
 - 2. Geotechnical Engineer of record
 - 3. Third Party QSD/QSP SWPPP Inspector
 - 4. General Contractor
 - 5. Sub-Contractors

VII. NPDES WATER QUALITY STORMWATER MANAGEMENT DEVELOPMENT STANDARDS

- A. **Stormwater Management Guidance Manual for Low Impact Development State Water Resources Control Board Post Construction Requirements (PCRs):** Project shall comply with the California Regional Water Quality Control Board Central Coast Region Resolution No. R3-2013-0032 as documented by the **Stormwater Management Guidance Manual for Low Impact Development and Post-Construction Requirements** (developed from Resolution No. R-2013-0032 Attachment 1 and 2 at: http://www.waterboards.ca.gov/centralcoast/water_issues/programs/stormwater/docs/lid/lid_hydromod_charette_index.shtml). A copy of the guidance manual can be obtained through the Land Development Engineering webpage. Project shall provide Stormwater Runoff Management Plan, Stormwater Control Plan Checklist and applicable calculations per the Stormwater Management Guidance Manual for Low Impact Development and Post-Construction Requirements. Project shall meet the applicable requirements of the Stormwater Management Guidance Manual for Low Impact Development and Post-Construction Requirements:
 - 1. Performance Requirement 1: Site Design and Runoff Reduction
 - 2. Performance Requirement 2: Water Quality Treatment
 - 3. Performance Requirement 3: Runoff Retention
 - 4. Performance Requirement 4: Peak Management
- B. **Peak Storm Water Runoff Discharge Rates:** Post-development peak storm water runoff discharge rates shall not exceed the estimated pre-development rate for developments where the increased peak storm water discharge rate will

result in increased potential for downstream erosion. Note: the project may be required to **retain** stormwater runoff as part of resolution R3-2013-0032 prior to releasing discharge rates at pre-development flows.

- C. **Provide Storm Drain System Stenciling and Signage:** Storm drain stencils are highly visible source controls that are typically placed directly adjacent to storm drain inlets. The stencil contains a brief statement that prohibits the dumping of improper materials into the storm water conveyance system. Graphical icons, either illustrating anti-dumping symbols or images of receiving water fauna, are effective supplements to the anti-dumping message. All storm drain inlets and catch basins within the project area must be stenciled with prohibitive language (such as: "NO DUMPING – DRAINS TO CREEK") and/or graphical icons to discourage illegal dumping. Signs and prohibitive language and/or graphical icons, which prohibit illegal dumping, must be posted at public access points along channels and creeks within the project area. Legibility of stencils and signs must be maintained.
- D. **Properly Design Trash Enclosure Areas:** All trash enclosure areas must meet the following Structural or Treatment Control BMP requirements:
1. Roof Required: Trash enclosure areas shall have an all-weather noncombustible solid roof to prevent rainwater from mixing with the enclosure's contents.
 2. Walls Required: Trash enclosure shall have structural walls to prevent unauthorized off-site transport of trash.
 3. Doors: Trash enclosure shall have door(s) which can be secured when closed.
 4. Grades: The pad for the enclosure shall be designed to not drain outward, and the grade surrounding the enclosure shall be designed to not drain into the enclosure.
 5. Drain Inlet: Within the enclosure, an area drain with an approved (Zurn) vandal proof drain shall be installed and shall be plumbed to the sanitary sewer system with grease trap. Grease trap shall be located within the trash enclosure footprint.
- E. **Design Standards for Structural or Treatment Control BMPs:** The post-construction treatment control BMPs shall incorporate, at a minimum, either a volumetric or flow- based treatment control design standard, or both, as identified below to mitigate (infiltrate, filter or treat) storm water runoff:
1. Volumetric Treatment Control BMP
 - a. The 85th percentile 24-hour runoff event determined as the maximized capture storm water volume for the area, from the formula recommended in Urban Runoff Quality Management, WEF Manual of Practice No. 23/ASCE Manual of Practice No. 87, (1998); or
 - b. The volume of annual runoff based on unit basin storage water quality volume, to achieve 80 percent or more volume treatment by the method

recommended in California Stormwater Best Management Practices Handbook – Industrial/ Commercial, (2003); or

- c. The volume of runoff produced from a historical-record based reference 24-hour rainfall criterion for “treatment” that achieves approximately the same reduction in pollutant loads achieved by the 85th percentile 24-hour runoff event.
2. Flow Based Treatment Control BMP
 - a. The flow of runoff produced from a rain event equal to at least two times the 85th percentile hourly rainfall intensity for the area; or
 - b. The flow of runoff produced from a rain event that will result in treatment of the same portion of runoff as treated using volumetric standards above.

F. Stormwater Runoff Management Plan (SWRMP) required: The stormwater runoff management plan shall include sufficient information to evaluate the environmental characteristics of affected areas, the potential impacts of the proposed development on water resources, and the effectiveness and acceptability of measures (post construction BMPs) proposed for managing stormwater runoff.

1. The stormwater runoff management plan shall be prepared under the direction of a professional civil engineer registered in the State of California. The responsible professional civil engineer shall stamp and sign the approved stormwater runoff management plan.
2. The City Engineer or designee may require a developer to provide a signed certification from the civil engineer responsible for preparing the stormwater runoff management plan that all stormwater best management practices have been designed to meet the requirements of this chapter.
3. Each certifying civil engineer shall establish to the City's satisfaction that such person has been trained on the design of stormwater quality best management practices not more than three years prior to the certification signature date.
4. Qualifying training shall be conducted by an organization with stormwater quality management expertise, such as a university, the Bay Area Stormwater Management Agencies Association, the American Society of Civil Engineers, the American Public Works Association, or the California Water Environment Association.

G. Stormwater BMP operation, maintenance, and replacement responsibility

1. All on-site stormwater management facilities shall be operated and maintained in good condition and promptly repaired/replaced by the property owner(s), an owners' association or other legal entity approved by the city.
2. Any repairs or restoration/replacement and maintenance shall be in accordance with city-approved plans.
3. The property owner(s) shall develop a maintenance schedule for the life of any stormwater management facility and shall describe the maintenance to

be completed, the time period for completion, and who shall perform the maintenance. This maintenance schedule shall be included with the approved stormwater runoff management plan.

H. Stormwater BMP operation and Maintenance Agreement (SWBOMA)

required: Prior to the issuance of any building permit requiring stormwater management BMPs, the owner(s) of the site shall enter into a formal written stormwater BMP operation and maintenance agreement with the city. The City shall record this agreement, against the property or properties involved, with the County of Santa Clara and it shall be binding on all subsequent owners of land served by the storm water management treatment BMPs (City standard Stormwater BMP Operation and Maintenance Agreement to be provided by Land Development Engineering at improvement plan/building permit stage).

I. Stormwater BMP inspection responsibility

1. The property owner(s) shall be responsible for having all stormwater management facilities inspected for condition and function by a **Registered Civil Engineer (RCE)**.
2. Unless otherwise required by the City Engineer or designee, stormwater facility inspections shall be done at least twice per year (April 15th and September 15th) by the RCE. Written records shall be kept of all inspections and shall include, at minimum, the following information:
 - a. Site address;
 - b. Date and time of inspection;
 - c. Name of the person conducting the inspection;
 - d. List of stormwater facilities inspected;
 - e. Condition of each stormwater facility inspected;
 - f. Description of any needed maintenance or repairs; and
 - g. As applicable, the need for site re-inspection.
3. Upon completion of each inspection, an inspection report shall be submitted to Land Development Engineering.

J. Records of maintenance and inspection activities: On or before April 15th and September 15th of each year, the party responsible for the operation and maintenance of on-site stormwater management facilities under the BMP operation and maintenance agreement shall provide the City Engineer or designee with records of all inspections, maintenance and repairs.

K. Annual Certification of SWRMP: On or before September 30th of each year, a Registered Civil Engineer (RCE) shall provide written certification that the developments stormwater quality design standards are properly maintained and functioning as required by the SWRMP.

BUILDING DIVISION

- A. Trash enclosures shall be connected to an accessible route.
- B. Trash enclosures shall have a solid noncombustible roof structure to prevent storm water from entering the sanitary sewer system. See Pretreatment requirements regarding the required connection to sanitary sewer.
- C. All building entrances shall be on an accessible route, CBC 11B-206.4. CBC 1028.5 requires the exit discharge shall provide a direct and unobstructed access to a public way.
- D. **California Code of Regulations:** Project shall be designed to comply with the most current California Code of Regulations as amended by Morgan Hill Municipal Code Title 15. Building Permit applications submitted after January 1, 2020 shall be designed to comply with the 2019 California Codes of Regulations.
- E. **Compliance with Morgan Hill Municipal Code:** Project shall comply with the Morgan Hill Municipal Code (MHMC) including but not limited to:
 - 1. MHMC 15.65 Sustainable Building Regulations.
 - 2. MHMC 18.72.040 C. Electric Vehicle Charging.
 - i When Required. Electric vehicle charging stations shall be provided:
 - (a) For new structures or uses required to provide at least twenty-five parking spaces; and
 - (b) Additions or remodels that increase an existing parking lot of fifty or more spaces by ten percent or more.
 - ii Number of Charging Stations. The number of required charging stations shall be as follows:
 - (a) Twenty-five to forty-nine parking spaces: One charging station.
 - (b) Fifty to one hundred parking spaces: Two charging stations, plus one for each additional fifty parking spaces.
 - 3. MHMC 15.40 Building Security
 - 4. MHMC 15.38 Wage Theft Preventions
 - 5. MHMC 18.148 Water Conservation
 - 6. MHMC 15.63 Prohibition of Natural Gas Infrastructure in New Buildings

FIRE DIVISION

- A. **Preliminary Review Only:** The requirements and conditions stated in this review are preliminary and are intended to be used for the purposes of project planning. An official Fire Department review of the project will be conducted upon receipt of a complete plan submittal application that clearly shows all intended grading, demolition, construction or building modifications.

- B. **Proposal limited to:** Review of this Development proposal is limited to acceptability of site access as they pertain to fire department operations, and shall not be construed as a substitute for formal plan review to determine compliance with adopted model codes. Prior to performing any work, the applicant shall make application to, and receive from, the Building Department all applicable construction permits.
- C. Underground fire service, fire sprinklers, and fire alarm shall all be deferred submittals under a separate permit.

SANTA CLARA VALLEY WATER DISTRICT

- A. Proposed outfalls to the Madrone Channel shall require permits from Valley Water, the Central Coast Regional Water Quality Control Board, US Army Corps of Engineers and the California Department of Fish and Wildlife.
- B. The proposed location of the outfall to the Madrone Channel shall be reviewed and approved by Valley Water.
- C. Grading adjacent to Madrone Channel shall be at a maximum 4:1 slope along the property line, for the minimum amount necessary, per the Guidelines and Standards for Land Use Near Streams. All site drainage should be directed to the City storm drain system, not overbank towards Madrone Channel. Bio-swales should be designed to overflow into the site drainage system, not overbank into Madrone Channel.
- D. Any road work, grading, paving and proposed utility (sewer or water, etc.) crossing over Valley Water's Main-Madrone Pipeline in Half Road shall require a Valley Water Permit.
- E. Landscaping shall be setback such that there are no overhanging branches in Valley Water right of way during and at full growth. Species selection should be in accordance with the Guidelines and Standards for Land Use Near Streams.
- F. The proposed storm drain outfall manhole shall be located outside Valley Water right-of-way.
- G. Improvement plans shall be submitted to Valley Water for review and approval of the proposed Madrone Channel access.

RESOLUTION NO. 21-05

**A RESOLUTION OF THE PLANNING COMMISSION OF
THE CITY OF MORGAN HILL APPROVING OF A VESTING
TENTATIVE PARCEL MAP FOR A 4-LOT PARCEL MAP
ON A 29-ACRE SITE LOCATED ON THE NORTHERN
INTERSECTION OF CONDIT ROAD AND HALF ROAD (DE
PAUL – TC MORGAN HILL VENTURE (REDWOOD TECH
AT 101)) (APNS 728-30-006 AND 728-30-009)**

WHEREAS, on December 15, 2020, TC Morgan Hill Venture submitted an application for a vesting tentative parcel map (SD2020-0011: De Paul – TC Morgan Hill Venture) for the Redwood Tech at 101 project; and

WHEREAS, such request was considered by the Planning Commission at its meeting of May 25, 2021; and

WHEREAS, this project is consistent with the development projections analyzed in the Morgan Hill 2035 General Plan program EIR for the project site. The project also is designed to be consistent with the development standards in the General Plan and Zoning Code. No further environmental assessment is required; and

WHEREAS, testimony received at a duly-noticed public hearing, along with exhibits and drawings and other materials have been considered in the review process.

**NOW, THEREFORE, THE MORGAN HILL PLANNING COMMISSION DOES
RESOLVE AS FOLLOWS:**

SECTION 1. The Vesting Tentative Parcel Map, together with its provisions for its design and improvements, is consistent with the General Plan and the zoning code.

SECTION 2. The Vesting Tentative Parcel Map as described herein is hereby approved. The proposed project shall be subject to the conditions as identified in the set of standard conditions attached hereto, as Exhibit A, and by this reference incorporated herein.

**PASSED AND ADOPTED THIS 25th DAY OF MAY 2021, AT A SPECIAL MEETING
OF THE PLANNING COMMISSION BY THE FOLLOWING VOTE:**

AYES:	COMMISSIONERS:	HABIB, KUMAR, TANDA, GONZALEZ- ESCOTO, DOWNEY, MUNOZ-MORRIS
NOES:	COMMISSIONERS:	MUELLER

ABSTAIN: **COMMISSIONERS:** **NONE**

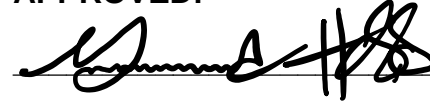
ABSENT: **COMMISSIONERS:** **NONE**

ATTEST:



JENNA LUNA, Deputy City Clerk

APPROVED:



MOHAMMAD HABIB, Chair

Date: 05/28/2021

EXHIBIT "A"
STANDARD CONDITIONS

**APPLICATION NO: SD2020-0011: DE PAUL – TC MORGAN HILL VENTURE
(REDWOOD TECH AT 101)**

**THE FOLLOWING APPROVAL REQUIREMENTS AND ANY SPECIAL CONDITIONS
SHALL BE APPLIED THROUGH THE DEVELOPMENT APPROVAL PROCESS.**

Legend

MHMC= Morgan Hill Municipal Code
MHARH= Morgan Hill Architectural Review Handbook
CMH= City of Morgan Hill
CFC= California Fire Code

I. PROJECT DESCRIPTION

The project includes a Vesting Tentative Parcel Map to subdivide the project site into four parcels.

The project shall comply with all requirements of related project approvals granted by the City, including all of the following:

II. PROJECT CONDITIONS OF APPROVAL

This Tentative Parcel Map approval is limited to the plan set dated January 2021 on file (File Number SD2020-0011) with the Development Services Department. These documents, as amended by Design Review approval, show the location and sizes of all lots in this development, the location and dimensions of all vehicle and pedestrian circulation ways (ingress/egress), common areas, and other easement areas.

The Parcel Map shall be in substantial compliance with the approved Tentative Map as determined by the City Engineer and Development Services Director.

PLANNING DIVISION

DEFENSE AND INDEMNITY

- A. As part of, and in connection, with this application to the City of Morgan Hill, Applicant agrees to defend, indemnify, and hold harmless the City of Morgan Hill, its officers, agents, employees, officials and representatives (Indemnitees) from and against any and all claims, actions, or proceedings arising from any suit for damages or for equitable or injunctive relief which is filed against City to attack, set aside, void or annul its approval of this application or any related decision, or the adoption of any environmental documents which relates to said approval. The

City shall promptly notify the Applicant of any such claim, action or proceeding and the City shall cooperate fully in the defense thereof. In the event that Applicant is required to defend Indemnitees in connection with the proceeding, Indemnitees shall retain the right to approve (a) the counsel to so defend Indemnitees; (b) all significant decisions concerning the manner in which the defense is conducted; and (c) any and all settlements, which approval shall not be unreasonably withheld. This indemnification shall include, but is not limited to, (a) all pre-tender litigation costs incurred on behalf of the City, including City's attorney's fees and all other litigation costs and expenses, including expert witnesses, required to defend against any lawsuit brought as a result of City's approval or approvals; (b) reasonable internal City administrative costs, including but not limited to staff time and expense spent on the litigation, after tender is accepted; and (c) all damages, costs, expenses, attorney fees or expert witness fees that may be awarded to the prevailing party arising out of or in connection with the approval of the application or related decision. City may, in its sole discretion, participate in the defense of such action; but such participation shall not relieve Applicant of its obligations under this condition. The undersigned hereby represents that they are the Applicant or are fully empowered by the Applicant as their agent to agree to provide the indemnification, defense and hold harmless obligations, and the signature below represents the unconditional agreement by Applicant to be bound by such conditions.

TIME LIMITS

- A. **Term:** The Tentative Parcel Map approval granted pursuant to this Resolution shall remain in effect for two years to May 25, 2023. Failure to apply for Parcel Map approval with the City Engineer within this term shall result in expiration of approval unless an extension of time is granted by the Development Services Department/Planning Commission prior to the expiration date. **(MHMC 17.20.170; 17.24.110)**

SITE DEVELOPMENT

- A. **Street Names:** Street names, private or otherwise, used to identify building locations shall be submitted to the Planning Division for approval. Proposed street names shall comply with the Street Naming Policy approved by City Council (Resolution No. 4601) and CP 94-13.

HABITAT PLAN

- A. **Fees:** The approved project is covered pursuant to the Santa Clara Valley Habitat Plan (Habitat Plan) and subject to fees and conditions contained in the Habitat Plan.
- B. **Application Package:** Prior to issuance of a grading permit, the project shall complete and submit a Habitat Plan Application Package. All fees shall be paid prior to issuance of a grading permit. **(MHMC 18.132)**

- C. **Conditions:** Any additional conditions or mitigations required by the Habitat Plan shall be clearly stated on all plans that involve any ground disturbing activity (i.e. grading plans, improvement plans, paving plans, demolition plans or other plans for site clearing or temporary stockpile of dirt). **(MHMC 18.132)**

CULTURAL RESOURCES

- A. **Significant historic or archaeological materials:** This project has been determined not to be in a site identified as archaeologically sensitive by the City's adopted archaeological sensitivity map, but nonetheless could adversely impact undocumented human remains or unintentionally discover significant historic or archaeological materials. The following policies and procedures for treatment and disposition of inadvertently discovered human remains or archaeological materials shall apply and should be provided as standard conditions on the building permit, grading permit, or improvement plans. If human remains are discovered, it is probable they are the remains of Native Americans.
1. If human remains are encountered, they shall be treated with dignity and respect as due to them. Discovery of Native American remains is a very sensitive issue and serious concern. Information about such a discovery shall be held in confidence by all project personnel on a need to know basis. The rights of Native Americans to practice ceremonial observances on sites, in labs and around artifacts shall be upheld. Remains should not be held by human hands. Surgical gloves should be worn if remains need to be handled. Surgical mask should also be worn to prevent exposure to pathogens that may be associated with the remains.
 2. In the event that known or suspected Native American remains are encountered, or significant historic or archaeological materials are discovered, ground-disturbing activities shall be immediately stopped. Examples of significant historic or archaeological materials include, but are not limited to, concentrations of historic artifacts (e.g., bottles, ceramics) or prehistoric artifacts (chipped chert or obsidian, arrow points, ground-stone mortars and pestles), culturally altered ash-stained midden soils associated with pre-contact Native American habitation sites, concentrations of fire-altered rock and/or burned or charred organic materials, and historic structure remains such as stone-lined building foundations, wells or privy pits. Ground-disturbing project activities may continue in other areas that are outside the discovery locale.
 3. An "exclusion zone" where unauthorized equipment and personnel are not permitted shall be established (e.g., taped off) around the discovery area plus a reasonable buffer zone by the Contractor Foreman or authorized representative, or party who made the discovery and initiated these

protocols, or if on-site at the time of discovery, by the Monitoring Archaeologist (typically 25-50ft for single burial or archaeological find).

4. The discovery locale shall be secured (e.g., 24-hour surveillance) as directed by the City or County if considered prudent to avoid further disturbances.
5. The Contractor Foreman or authorized representative, or party who made the discovery and initiated these protocols shall be responsible for immediately contacting by telephone the parties listed below to report the find and initiate the consultation process for treatment and disposition:
 - The City of Morgan Hill Development Services Director (408) 779-7247
 - The Contractor's Point(s) of Contact
 - The Coroner of the County of Santa Clara (if human remains found) (408) 793-1900
 - The Native American Heritage Commission (NAHC) in Sacramento (916) 653-4082
 - The Amah Mutsun Tribal Band (916) 481-5785 (H) or (916) 743-5833 (C)
6. The Coroner has two working days to examine the remains after being notified of the discovery. If the remains are Native American, the Coroner has 24 hours to notify the NAHC.
7. The NAHC is responsible for identifying and immediately notifying the Most Likely Descendant (MLD) from the Amah Mutsun Tribal Band. (Note: NAHC policy holds that the Native American Monitor will not be designated the MLD.)
8. Within 24 hours of their notification by the NAHC, the MLD will be granted permission to inspect the discovery site if they so choose.
9. Within 24 hours of their notification by the NAHC, the MLD may recommend to the City's Development Services Director the recommended means for treating or disposing, with appropriate dignity, the human remains and any associated grave goods. The recommendation may include the scientific removal and non-destructive or destructive analysis of human remains and items associated with Native American burials. Only those osteological analyses or DNA analyses recommended by the Amah Mutsun Tribal Band may be considered and carried out.
10. If the MLD recommendation is rejected by the City of Morgan Hill the parties will attempt to mediate the disagreement with the NAHC. If

mediation fails, then the remains and all associated grave offerings shall be reburied with appropriate dignity on the property in a location not subject to further subsurface disturbance.

GENERAL

- A. Recordation of Map: The recordation of the parcel map shall not be completed until approval of the Design Review Permit is completed.
- B. Signed copies of Resolution: Submit two (2) signed copies of this Resolution to the Planning Division prior to issuance of building permits.

ENGINEERING DIVISION

PROJECT SPECIFIC ENGINEERING CONDITIONS

- A. Street and Utility Improvements:
 - 1. Coordination with Adjacent Residential Project: The developer shall coordinate the De Paul Drive improvements and sanitary sewer improvements with the project known as "The Crosswinds Project" located on the east side of De Paul Drive (APNs: 728-30-001, -002, -003, & -004) and owned by Dividend Homes.
 - i. Prior to parcel map approval, the developer shall obtain the necessary right-of-way on De Paul Drive (and construction easement, if required) from Dividend Homes' Crosswinds Project.
 - 2. De Paul Drive: Construct De Paul Drive to comply with the City's half street (2/3 street) standards along the west side of De Paul Drive from Cochrane Road to the proposed cul-de-sac next to Half Road (includes the frontage along the Lands of Lee with APN: 728-30-008) to the satisfaction of the City Engineer.
 - i. Install and dedicate the required street improvements at De Paul Drive to have a straight road alignment with a minimum 46' right-of-way width and a minimum 36' pavement width from face of curb along the unimproved section of De Paul Drive to the new cul-de-sac next to Half Road.
 - ii. The City will quitclaim approximately 19' of right-of-way along the De Paul Drive frontage of APN: 728-30-009.
 - iii. The developer shall dedicate 36' right-of-way width in fee to the City for public street purposes along the De Paul Drive frontage of APN: 728-31-014 and dedicate a 10' wide Public Service Easement (PSE) behind the proposed property line.
 - iv. The project's right-of-way dedication and quitclaim shall be shown on the parcel map.
 - v. The street improvements shall include, but are not limited to, curb and gutter, sidewalk, landscaping, full cul-de-sac at the southerly end of De

- Paul Drive next to Half Road, street paving, utilities, undergrounding, stormwater post-construction facilities, and street lighting.
- vi. The project shall construct City standard sidewalk along the west side of De Paul Drive from Cochrane Road to the proposed cul-de-sac next to Half Road to provide a continuous pedestrian connection from the project site to Cochrane Road.
 - 1) The project has an option to construct a temporary asphalt sidewalk along the frontages of the future Phase 2 Project and the Lands of Lee (APN: 728-30-008)
 - vii. The project's two northerly driveways at De Paul Drive are proposed to have widths that exceed the City standard maximum industrial driveway width of 36' to allow truck access/maneuvering.
 - 1) At improvement plan/building permit stage, submit an additional truck turning template using the ultimate street width of De Paul Drive for City Engineer review.
 - viii. At improvement plan/building permit stage, revise the De Paul Drive street cross-sections to match the 2/3 street width.
3. Half Road: The developer shall construct Half Road to comply with City standards along the north side of the project's Half Road frontage to the satisfaction of the City Engineer.
- i. Install and dedicate the required street improvements at Half Road. The street improvements shall include, but are not limited to, curb and gutter, sidewalk, landscaping, street paving, utilities, stormwater post-construction facilities, and street lighting.
 - ii. The developer shall dedicate right-of-way in fee to the City for public street purposes at a width of 36' from centerline along the Half Road frontage of APN: 728-30-009 and dedicate a 10' wide PSE behind the proposed property line.
 - iii. Extend the new sidewalk along the project's Half Road frontage westerly up to the Madrone Channel/Trail entrance. The design of the sidewalk and compliance with Valley Water's access requirements to Madrone Channel will be reviewed at improvement plan/building permit stage.
4. Cochrane Road: Construct the ultimate width of Cochrane Road along the project's frontage to comply with the City's arterial street standards to the satisfaction of the City Engineer.
- i. Install and dedicate the required street improvements at Cochrane Road. The street improvements shall include, but are not limited to, curb and gutter, sidewalk, dedicated right-turn pocket along eastbound Cochrane Road, landscaping, street paving, utilities, stormwater post-construction facilities, and street lighting.
 - ii. The developer shall dedicate a minimum of 60' of right-of-way from the centerline of Cochrane Road for public street purposes along the

Cochrane Road frontage of APN: 728-31-014 and dedicate a 10' wide PSE behind the proposed property line.

- iii. At improvement plan/building permit stage, revise plans to show the number of streetlights and spacing along Cochrane Road to comply with City standards. Per City standards, streetlight spacing for arterials is 160' to 180' and streetlight location shall be directly opposite the existing streetlight on the north side of Cochrane Road.
 - iv. At improvement plan/building permit stage, submit a traffic signal modification plan for the Cochrane Road/De Paul Drive intersection. The plan shall include the relocation or replacement of the two existing traffic signal poles on the southwest corner of the intersection, signal phasing, and the proposed striping plans.
5. Utilities: The City's Water System Master Plan, Storm Drainage System Master Plan, and Sewer System Master Plan identified proposed improvements along De Paul Drive and Half Road.
- i. Storm Improvements:
 - 1) The project shall construct a 48" to 54" storm main along the project's Half Road frontage per the City's Storm Master Plan.
 - 2) Provide a minimum 20' wide additional PSE centered over the portion of the proposed storm drain main located west of Condit Road. The PSE shall be reviewed at parcel map stage.
 - 3) The developer shall continue to work with the City and Valley Water to review the design conditions of the PL-566 project and shall revise the on-site drainage plans at improvement plan stage, as needed, to the satisfaction of the City Engineer.
 - 4) Per the notes on the project's Vesting Tentative Parcel Map, the site is in Flood Zone "X- Shaded" and Flood Zone "AE" as shown on the FEMA Flood Insurance Rate Maps. Depending on the results of Valley Water's updated hydrology model, the project may be required to submit a Letter of Map Revision (LOMR) to FEMA or other appropriate documentation to update the flood zone for the site and designate the entire site to be entirely within Flood Zone "X-Shaded", an area defined as outside the 100-year floodplain.
 - 5) A segment of the proposed 24" storm main along De Paul Drive shows a manhole spacing that exceeds the City standard maximum spacing of 400' for 15" to 30" storm pipe diameters. At improvement plan/building permit stage, revise storm manhole spacing to comply with City standards.
 - 6) At improvement plan/building permit stage, revise the pipe size of the following to the minimum size of 15-inch diameter per City standard:
 - a) Proposed 12" storm main segment at De Paul Drive, between Sta. 16+00 and Sta. 18+00.
 - b) Proposed 12" storm lateral at Half Road, near Sta. 5+40.
 - c) Proposed 12" storm laterals at De Paul Drive.

- ii. Water Improvements: At improvement plan/building permit stage, revise the plans to comply with the following:
 - 1) Extend the existing 12" public water main from the southerly terminus of De Paul Drive to Half Road per the City's Water System Master Plan. The water main extension shall be public.
 - 2) At improvement plan/building permit stage, show each of the five buildings with a dedicated domestic, irrigation and fire services connected to a public water main.
 - 3) The Utility Plans show the domestic water service for two parcels (Parcels C & D) crossing other parcels. Service for Parcel D crosses Parcel A and service for Parcel C crosses Parcel B. At parcel map review stage, add private utility easements for the water services on Parcels A and B.
 - 4) Detailed review of the water service configurations, water lateral, meter and backflow preventer locations will be performed at improvement plan/building permit stage and will be subject to City Engineer approval.
- iii. Sanitary Sewer Improvements: Based on the proposed amendment to the City's Sewer Master Plan, a sewer flow re-route into the Condit Road Sewer Trunk will be a required sewer master plan improvement for the project.
 - 1) Install a 10" sanitary sewer gravity main beginning at De Paul Drive, approximately 540' south of Cochrane Road; then continue in a southbound direction to Half Road; then west along Half Road up to Condit Road; then follow Condit Road and end at a connection to the existing 10" sewer main at Main Avenue.
 - 2) At improvement plan/building permit stage, revise the plans to comply with the following:
 - a) On Sheet 6.5 (Preliminary Street Improvement Sections - Sections G & H), show the new 10" sanitary sewer main at Half Road to be constructed by the project.
 - b) Show a minimum horizontal clearance of 10' from the existing Valley Water groundwater recharge line.
 - 3) Prior to parcel map approval/building permit issuance, the project shall enter into a Private Sanitary Sewer Maintenance Agreement with the City for maintenance of all private sanitary sewer facilities which includes the private sewer mains, sewer laterals, force main and lift station.
 - 4) A sanitary sewer test manhole shall be provided for each of the five buildings and shall be accessible to the Pretreatment Inspector. The

sanitary sewer test manholes shall be located within private property but adjacent to the street right-of-way or as approved by the City Engineer in conjunction with Pretreatment Inspector review.

6. Reimbursement Agreement: Prior to parcel map approval, the developer shall enter into a Reimbursement Agreement with the City for the reimbursement of the applicable portions of the cost to construct the following improvements that are beyond the developer's responsibility as determined by the City Engineer:
- i. De Paul Drive and Half Road street improvements
 - ii. Traffic signal improvements at the intersection of Cochrane Road & De Paul Drive
 - iii. Storm improvements at Half Road per City's Storm Master Plan including the proposed outfall to Madrone Channel. The developer will be reimbursed for the cost to upsize the storm main above 24" per the City's Storm Master Plan.
 - iv. Sanitary sewer improvements per the City's Sewer Master Plan with the cost based on a sewer cost allocation to be agreed upon by the City, project developer and by Dividend Homes for the Crosswinds Project. The developer will be reimbursed for the cost to upsize the sewer main from 8" (developer's responsibility) to 10" per the proposed amendment to City's Sewer Master Plan.

STANDARD ENGINEERING CONDITIONS

I. GENERAL

- A. The applicant shall cause the construction of all public and private improvements in accordance with the latest City Standard Drawings and Specifications. **(MHMC 12.02.090 A; 17.32.010 A)**
- B. The applicant shall submit as part of the improvement drawings for the project, profiles of all improvements in the project and typical cross-sections of all streets and details of curbs, gutters, and sidewalks, to be accomplished to the satisfaction of the City Engineer prior to submittal of Parcel Map. **(MHMC Sec 17.32.060 B; 17.32.070; 17.32.080 A)**
- C. Obtain necessary encroachment permits from:
- ☒ City of Morgan Hill
 - ☒ County of Santa Clara Roads & Airports
 - ☒ Santa Clara Valley Water District (Valley Water)
- and provide guarantee covering off-site improvements. **(MHMC 12.08.040 A; 12.08.090)**
- D. Improvement plans are to show water lines, sanitary sewer, storm drain system, pavement widths, curve radius, and existing utilities.

- E. Enter into a Subdivision Improvement Agreement (SIA) with the City of Morgan Hill to cover required improvements. **(MHMC 12.02.150; 17.32.010 B; 17.32.160)**
- F. Reciprocal access easements and maintenance agreements ensuring access to all parcels and joint maintenance of all common roads, drives or parking areas shall be provided by CC&R's and by deed and shall be recorded concurrent with the map, or prior to issuance of building permit where no map is involved. **(MHMC 17.20.350 H)**
- G. **Impact Fees:** The City of Morgan Hill, pursuant to City Code Chapter 3.56 has established impact fees to finance the cost of improvements required by new development. City Code Chapter 3.56.050 provides for automatic annual (July 1st) adjustment of those fees in existence utilizing the Engineering News Record Index for the preceding twelve months. The City maintains historical records on the Engineering News Record Index. These records are available for inspection during normal business hours. **(MHMC 3.56.010; 3.56.030; 3.56.050)**

II. STREET IMPROVEMENTS

- A. **Public and Private Streets:** The applicant shall cause the design and construction of all new public and private streets serving the project. The design of all new public and private streets shall be consistent with the General Plan Land Use and Circulation Element as well as the Street Standard Details as contained within the Public Works Standards Details. The construction of the streets shall be undertaken to the lines and grades and in a manner satisfactory to the City Engineer. All street improvements shall be constructed to the satisfaction of the City Engineer. The timing of the improvements will be determined by the City. **(MHMC 12.02.010; 12.02.090; 17.32.060 B; CMH General Plan; CMH Design Standards and Standard Details for Construction)**
- B. **Installation and Dedication of Streets:** The project shall install and dedicate street improvement including, but not limited to, curb and gutter, sidewalk, compaction, street paving, oiling, storm drainage facilities, sewer and water, fire protection, undergrounding of utilities and street lighting in conformance with City of Morgan Hill requirements. **(MHMC 12.02.010; 12.02.50; 12.02.080; 12.02.100; 17.28.010; 17.32.060)**
- C. **Underground existing utilities:** All existing overhead utilities adjacent to any site boundary or along any street frontage of site shall be placed underground in accordance with City standards and affected utility company guidelines. **(MHMC 12.02.090 B; 17.32.020 E.1)**

III. SANITARY SEWER SYSTEM

- A. **Design of Sewer Improvements:** The applicant shall cause to be undertaken the design and construction of sanitary sewer improvements including, but not limited to installation of sewer line extension on the proposed public street(s) or private street(s)/drive aisle(s). The sanitary collection system shall include, but not be limited to manholes with manhole frames and covers, cleanouts, wye-branches and laterals, and separate sewer taps to each parcel. These are to be installed by the developer. **(MHMC 13.20.355; 17.32.020 C; CMH Sewer System Master Plan; CMH Design Standards and Standard Details for Construction)**
- B. All existing and future sewer lines shall be tied into the City's system and existing septic systems shall be abandoned in accordance with City requirements. **(MHMC 13.24.060; 17.32.20 C)**

IV. STORM DRAIN SYSTEM

- A. **Storm Drainage Study:** A complete storm drainage study of the proposed development must be submitted showing amount of run-off, and existing and proposed drainage structure capacities. This study shall be subject to review and approval by the City Engineer. All needed improvements will be made by the applicant. No overloading of the existing system will be permitted. **(MHMC 17.32.020 B; 17.32.090; CMH Design Standards and Standard Details for Construction)**
- B. **Storm Drainage Design:** The applicant shall cause the design and construction to be undertaken for a storm drainage collection system shown on the Tentative Map/Design Review plans. All storm drain improvements shall be constructed to the satisfaction of the City Engineer. **(MHMC 17.32.020 A & B)**
- C. **Storm Drainage Capacity:** Collection system shall be designed to be capable of handling a 10-year storm without local flooding. On-site detention facilities shall be designed to a 25-year storm capacity. Streets shall be designed to carry 100-year storm. Items of construction shall include, but not be limited to installation of storm line extension on proposed public street(s), surface and subsurface storm drain facilities, manholes with manhole frames and covers, catch basins and laterals. Note: the project may be required to **retain** stormwater runoff as part of resolution R3-2013-0032 prior to releasing discharge rates at pre-development flows. **(MHMC 17.32.020 B; 18.74.440; CMH Design Standards and Standard Details for Construction; CMH Storm Drainage System Master Plan)**
- D. **Storm Drainage General Requirements:** Prior to issuance of a grading permit, the applicant shall complete the following to the satisfaction of the City Engineer.

1. Storm drain calculations to determine detention/retention pond sizing and operations.
2. Plan describing how material excavated during construction will be controlled to prevent this material from entering the storm drain system.
3. Water Pollution Control Drawings (WPCD) for Sediment and Erosion Control. **(CMH Design Standards and Standard Details for Construction)**

- E. **Valley Water Dedications:** Where the project adjoins existing Valley Water storm drain facilities, applicant shall obtain dedication(s) of all necessary easement or right-of-way to accommodate established ultimate facilities master plan.
- F. **Tree Protection:** BMP Tree protection shall be part of the SWPPP inspections.
- G. **NPDES Construction Activity General Permit/SWPPP Requirements:** As required by the State Water Resources Control Board (SWRCB) Order No. 2009-0009-DWQ, construction activity resulting in a land disturbance of one (1) acre or more of soil, or whose projects are part of a larger common plan of development that in total disturbs more than one (1) acre, are required to obtain coverage under the National Pollutant Discharge Elimination System (NPDES) General Permit No. CAS000002 for Discharges of Storm Water Associated with Construction Activity (General Permit). To be permitted with the SWRCB under the General Permit, owners must file a complete Notice of Intent (NOI) ONLINE at: <http://smarts.waterboards.ca.gov/smarts/faces/SwSmartsLogin.jsp> and develop a Storm Water Pollution Prevention Plan (SWPPP) Manual in accordance with the General Permit. The SWPPP Manual shall follow the CASQA SWPPP template/format at <https://www.casqa.org/store/products/tabid/154/p-167-construction-handbookportal-initial-subscription.aspx> and shall be approved by Public Works Engineering. A Waste Discharger Identification (WDID) number to be issued to the construction site after the SWRCB receives and verifies the submitted ONLINE NOI information. The WDID number and approved SWPPP Manual shall be provided to Public Works and the Building Department prior to any approval of grading activities **(SWRCB NPDES General Permit CA000002)**.
- H. **NPDES GENERAL PERMIT SITE SWPPP INSPECTIONS AND COMPLIANCE:**
1. ALL project onsite and offsite construction activity shall have the site inspected by a **qualified third party SWPPP Inspector (QSD or QSP or RCE)**.
 2. SWPPP Inspections shall occur weekly during the rainy season (September 15th thru May 1st).
 3. SWPPP Inspections shall occur bi-weekly during the non-rainy season.
 4. 48 hours prior to and following a forecasted rain event, SWPPP Inspections shall occur in addition to those of items 2 or 3 above.

5. Per each of the inspection conditions 2, 3, or 4, the NPDES SWPPP Inspector shall certify in writing to the Building and Public Works Department if the site is in compliance or non-compliance with the NPDES General Permit for Stormwater, site SWPPP Manual, and Water Pollution Control Drawings (per the CMH-SWPPP Inspection Check List to be provided by Public Works). QSD/QSP SWPPP Inspectors shall forward onsite and offsite information/certification to the Building (on-site private property issues) and Public Works (public right-of-way issues) inspectors, respectively.
6. Prior to rain events, BMPs not in compliance will need to be corrected immediately.
7. Illicit discharges per the NPDES General Permit, non-compliance of tracking control, and inlet protection within the public right of way shall be address immediately.
8. Other non-compliance issues need to be addressed within a 24-hour period.
9. Non-compliance issues which have been corrected shall be verified by NPDES SWPPP Inspector by a follow up inspection.
10. BMPs maintenance/inspections shall include tree protection if applicable.

V. WATER SYSTEM

- A. **Domestic Water System:** The applicant shall cause the design and construction to be undertaken of a domestic water system to the satisfaction of the City Engineer. The water system improvements shall be constructed within public easements or street rights-of-way to the satisfaction of the City Engineer and dedicated to the City. **(MHMC 17.32.020 A & D; CMH Design Standards and Standard Details for Construction; CMH Water System Master Plan)**
- B. **Water well abandonment:** Abandonment of any existing water well shall be in conformance with Santa Clara Valley Water District (Valley Water) Ordinance 90-1. Location and disposition to be shown on the plan. Well(s) shall be properly registered with Valley Water and either be maintained or abandoned in accordance with Valley Water standards.
- C. **Water line extension:** Install water line extension on the proposed public streets and/or private streets. **(MHMC 17.32.020 A & D; CMH Water System Master Plan)**
- D. **Water Meters:** Provide separate water services and meters for each parcel. These are to be installed by developer. **(MHMC 17.32.020 D)**
- E. Provide separate fire service and double detector check with FDC per City standard detail W-8 for each parcel.

VI. OTHER CONDITIONS

- A. **Easement Dedications:** The owner shall dedicate all necessary utility easements. **(MHMC 12.02.080 D; 17.28.010 A)**
- B. **Undergrounding new utilities:** The applicant shall cause the design and construction required to underground all electric, gas, Cable TV, and communication lines within the development. Such design and construction shall be to the satisfaction of the affected utilities and the City Engineer. **(MHMC 17.32.020 E.1)**
- C. **Parcel Map:** For minor subdivision (4 lots or less), the parcel map shall be signed by the City Engineer and the Planning Commission Secretary prior to issuance of a grading permit. **(MHMC 17.20.390; 17.24.210)**

VII.NPDES WATER QUALITY STORMWATER MANAGEMENT DEVELOPMENT STANDARDS

- A. **Stormwater Management Guidance Manual for Low Impact Development State Water Resources Control Board Post Construction Requirements (PCRs):** Project shall comply with the California Regional Water Quality Control Board Central Coast Region Resolution No. R3-2013-0032 as documented by the **Stormwater Management Guidance Manual for Low Impact Development and Post-Construction Requirements** (developed from Resolution No. R-2013-0032 Attachment 1 and 2 at: http://www.waterboards.ca.gov/centralcoast/water_issues/programs/stormwater/docs/lid/lid_hydromod_charette_index.shtml). A copy of the guidance manual can be obtained through the Land Development Engineering webpage. Project shall provide Stormwater Runoff Management Plan, Stormwater Control Plan Checklist and applicable calculations per the Stormwater Management Guidance Manual for Low Impact Development and Post-Construction Requirements. Project shall meet the applicable requirements of the Stormwater Management Guidance Manual for Low Impact Development and Post-Construction Requirements:
 - 1. Performance Requirement 1: Site Design and Runoff Reduction
 - 2. Performance Requirement 2: Water Quality Treatment
 - 3. Performance Requirement 3: Runoff Retention
 - 4. Performance Requirement 4: Peak Management
- B. **Peak Storm Water Runoff Discharge Rates:** Post-development peak storm water runoff discharge rates shall not exceed the estimated pre-development rate for developments where the increased peak storm water discharge rate will result in increased potential for downstream erosion. Note: the project may be required to **retain** stormwater runoff as part of resolution R3-2013-0032 prior to releasing discharge rates at pre-development flows.
- C. **Provide Storm Drain System Stenciling and Signage:** Storm drain stencils are highly visible source controls that are typically placed directly adjacent to

storm drain inlets. The stencil contains a brief statement that prohibits the dumping of improper materials into the storm water conveyance system. Graphical icons, either illustrating anti-dumping symbols or images of receiving water fauna, are effective supplements to the anti-dumping message. All storm drain inlets and catch basins within the project area must be stenciled with prohibitive language (such as: "NO DUMPING – DRAINS TO CREEK") and/or graphical icons to discourage illegal dumping. Signs and prohibitive language and/or graphical icons, which prohibit illegal dumping, must be posted at public access points along channels and creeks within the project area. Legibility of stencils and signs must be maintained.

D. Design Standards for Structural or Treatment Control BMPs: The post-construction treatment control BMPs shall incorporate, at a minimum, either a volumetric or flow- based treatment control design standard, or both, as identified below to mitigate (infiltrate, filter or treat) storm water runoff:

1. Volumetric Treatment Control BMP

- a. The 85th percentile 24-hour runoff event determined as the maximized capture storm water volume for the area, from the formula recommended in Urban Runoff Quality Management, WEF Manual of Practice No. 23/ASCE Manual of Practice No. 87, (1998); or
- b. The volume of annual runoff based on unit basin storage water quality volume, to achieve 80 percent or more volume treatment by the method recommended in California Stormwater Best Management Practices Handbook – Industrial/ Commercial, (2003); or
- c. The volume of runoff produced from a historical-record based reference 24-hour rainfall criterion for "treatment" that achieves approximately the same reduction in pollutant loads achieved by the 85th percentile 24-hour runoff event.

2. Flow Based Treatment Control BMP

- a. The flow of runoff produced from a rain event equal to at least two times the 85th percentile hourly rainfall intensity for the area; or
- b. The flow of runoff produced from a rain event that will result in treatment of the same portion of runoff as treated using volumetric standards above.

E. Stormwater Runoff Management Plan (SWRMP) required: The stormwater runoff management plan shall include sufficient information to evaluate the environmental characteristics of affected areas, the potential impacts of the proposed development on water resources, and the effectiveness and acceptability of measures (post construction BMPs) proposed for managing stormwater runoff.

1. The stormwater runoff management plan shall be prepared under the direction of a professional civil engineer registered in the State of California. The responsible professional civil engineer shall stamp and sign the approved stormwater runoff management plan.

2. The City Engineer or designee may require a developer to provide a signed certification from the civil engineer responsible for preparing the stormwater runoff management plan that all stormwater best management practices have been designed to meet the requirements of this chapter.
3. Each certifying civil engineer shall establish to the City's satisfaction that such person has been trained on the design of stormwater quality best management practices not more than three years prior to the certification signature date.
4. Qualifying training shall be conducted by an organization with stormwater quality management expertise, such as a university, the Bay Area Stormwater Management Agencies Association, the American Society of Civil Engineers, the American Public Works Association, or the California Water Environment Association.

F. Stormwater BMP operation, maintenance, and replacement responsibility

1. All on-site stormwater management facilities shall be operated and maintained in good condition and promptly repaired/replaced by the property owner(s), an owners' association or other legal entity approved by the city.
2. Any repairs or restoration/replacement and maintenance shall be in accordance with city-approved plans.
3. The property owner(s) shall develop a maintenance schedule for the life of any stormwater management facility and shall describe the maintenance to be completed, the time period for completion, and who shall perform the maintenance. This maintenance schedule shall be included with the approved stormwater runoff management plan.

G. Stormwater BMP operation and Maintenance Agreement (SWBOMA)

required: Prior to the issuance of any building permit requiring stormwater management BMPs, the owner(s) of the site shall enter into a formal written stormwater BMP operation and maintenance agreement with the city. The City shall record this agreement, against the property or properties involved, with the County of Santa Clara and it shall be binding on all subsequent owners of land served by the storm water management treatment BMPs (City standard Stormwater BMP Operation and Maintenance Agreement to be provided by Land Development Engineering at improvement plan/building permit stage).

H. Stormwater BMP inspection responsibility

1. The property owner(s) shall be responsible for having all stormwater management facilities inspected for condition and function by a **Registered Civil Engineer (RCE)**.
2. Unless otherwise required by the City Engineer or designee, stormwater facility inspections shall be done at least twice per year (April 15th and September 15th) by the RCE. Written records shall be kept of all inspections and shall include, at minimum, the following information:
 - a. Site address;

- b. Date and time of inspection;
 - c. Name of the person conducting the inspection;
 - d. List of stormwater facilities inspected;
 - e. Condition of each stormwater facility inspected;
 - f. Description of any needed maintenance or repairs; and
 - g. As applicable, the need for site re-inspection.
3. Upon completion of each inspection, an inspection report shall be submitted to Land Development Engineering.
- I. **Records of maintenance and inspection activities:** On or before April 15th and September 15th of each year, the party responsible for the operation and maintenance of on-site stormwater management facilities under the BMP operation and maintenance agreement shall provide the City Engineer or designee with records of all inspections, maintenance and repairs.
- J. **Annual Certification of SWRMP:** On or before September 30th of each year, a Registered Civil Engineer (RCE) shall provide written certification that the developments stormwater quality design standards are properly maintained and functioning as required by the SWRMP.



Special - Regular Meeting Agenda
City Council

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

Wednesday, June 23, 2021 5:30 p.m.

Virtual Meeting

PUBLIC NOTICE

The Public Hearing to consider Vehicle-Miles-Traveled (VMT) screening criteria and thresholds of significance regarding the City's implementation of State Senate Bill 743 (SB 743) transition from Level-of-Service (LOS) to VMT as the metric for transportation analysis under the California Environmental Quality Act (CEQA) for development projects that was noticed for consideration by the City Council at this meeting will be continued to a date uncertain. This will be duly noticed.

VIRTUAL MEETING GUIDELINES AND PUBLIC COMMENT

In accordance with Executive Order N-25-20 and guidance from the California Department of Public Health on gatherings, remote public participation is allowed. Physical meetings will not be in the City Council Chamber until further notice.

City Council meetings will be live streamed on Channel 17, on the City's website and on the City's Facebook page. Those members of the community that would like to participate in the meetings remotely may do so by joining the virtual meeting at: <https://bit.ly/MHCityCouncilMeeting> or by calling in to: (669) 900-9128, then enter the webinar id: 873 3200 8380#.

Public comment may be provided in the following ways:

- Join the virtual City Council meeting via the link above, when public comment is opened, raise your virtual hand and be called upon to speak for up to 3 minutes
 - In order to speak, please be sure that your version of Zoom is up to date.
- Join the virtual meeting by calling in to the number above, dial *9 to raise your hand and be called upon to speak for up to 3 minutes
- Send public comments in writing to the City Clerk at ccpubliccomment@morganhill.ca.gov [<mailto:ccpubliccomment@morganhill.ca.gov>](mailto:ccpubliccomment@morganhill.ca.gov)

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

SPECIAL/REGULAR MEETING

A special meeting of the City Council is called at 5:30 p.m. for the purpose of conducting a Housing Sustainability Workshop and a closed session.

5:30 p.m. Housing Sustainability Workshop

6:30 p.m. Closed Session

7:00 p.m. Regular Meeting

SPECIAL MEETING

5:30 p.m. Housing Sustainability Workshop

6:30 p.m. Closed Session

CALL TO ORDER

Mayor Constantine

ROLL CALL ATTENDANCE

City Clerk Michelle Bigelow

DECLARATION OF POSTING AGENDA

Per Government Code Section 54954.2

City Clerk Michelle Bigelow

WORKSHOP

This workshop is the fourth in a series of Housing Workshops that will look at the current and future state of housing in Morgan Hill. This workshop is called "Housing Sustainability." Staff will present and discuss the following:

- o How the City plans for infrastructure needs, including planning for water, sewer, roads, police, and fire.
- o How the City can maintain long-term sustainability in the context of all of the new State-mandated housing production.

CLOSED SESSION

OPPORTUNITY FOR PUBLIC COMMENT

ADJOURN TO CLOSED SESSION

CONFERENCE WITH REAL PROPERTY NEGOTIATORS (Gov. Code section 54956.8.)

Property: APN's - 817-06-001

Agency negotiator: Christina Turner and Chris Ghione

June 23, 2021

Negotiating parties: Chu, John C. and May-Jih C.
Under negotiation: Price and Terms of Payment

CONFERENCE WITH REAL PROPERTY NEGOTIATORS (Gov. Code section 54956.8.)

Property: APN's - 762-61-3052 (Community and Cultural Center)
Agency negotiator: Christina Turner and Chris Ghione
Under negotiation: Price and Terms of Lease

CONFERENCE WITH LEGAL COUNSEL-ANTICIPATED LITIGATION (Gov. Code section 54956.9(d)(2).): (one case).

REGULAR MEETING

7:00 p.m.

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.

PROCLAMATIONS

Proclaiming the month of July as Parks & Recreation Month

RECOGNITIONS

Recognizing Fred Gomez for his years of service to Morgan Hill

CITY COUNCIL REPORTS

Council Member Spring

CITY MANAGER'S REPORT

City Manager Christina Turner

CITY ATTORNEY'S REPORT

City Attorney Donald Larkin

OTHER REPORTS

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. APPROVE AN IMPROVEMENT AGREEMENT AND A DEFERRED IMPROVEMENT AGREEMENT WITH TSC MOTORS INC. (MORGAN HILL CDR+J DEALERSHIP), AND AUTHORIZE THE CITY MANAGER TO EXECUTE AN ASSOCIATED RIGHT-OF-WAY ACQUISITION AGREEMENT WITH THE OWNER OF THE PROPERTY WITH ASSESSOR'S PARCEL NUMBER (APN) 728-17-032

Recommendation:

1. Approve an Improvement Agreement with TSC Motors Inc.;
2. Approve a Deferred Improvement Agreement with TSC Motors Inc.;
3. Authorize the City Manager to execute the Improvement Agreement and Deferred Improvement Agreement;
4. Authorize the recordation of the Improvement Agreement and Deferred Improvement Agreement; and
5. Authorize the City Manager to negotiate and execute a Right-of-Way Acquisition Agreement with the Owner of the property with Assessor's Parcel Number (APN) 728-17-032.

2. APPROVE SECOND AMENDMENT TO MAINTENANCE SERVICE AGREEMENT WITH ANIMAL DAMAGE MANAGEMENT, INC.

Recommendation:

1. Determine that competitive bids upon notice would not likely result in a lower price to the City from a responsible bidder or would cause unnecessary expense or delay under the circumstances per Section 3.04.150 (1) of the Morgan Hill Municipal Code; and
2. Authorize the City Manager to execute and administer the Second Amendment to the Maintenance Service Agreement with Animal Damage Management, Inc., extending the agreement for one additional year of service at annual amount of \$35,160 for a new total contract amount of \$140,640 over 4 years.

3. APPROVE THIRD AMENDMENT TO AGREEMENT WITH INNOVATIVE CLAIMS SOLUTIONS, INC.

Recommendation:

Authorize the City Manager to execute and administer a Third Amendment to Agreement with Innovative Claims Solutions, Inc. to provide third party claims administration for workers' compensation extending the agreement for one additional year of service at annual amount of \$34,380, for a new total contract amount of \$206,600 over 6 years.

4. APPROVE THE JUNE 16, 2021 MEETING MINUTES

Recommendation:

Approve Minutes.

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

Recommendation:

1. Award Vehicle Service Agreement to Frank's Auto Service for a total not-to-exceed amount of \$368,308 over three years; and
2. Authorize City Manager to Execute the Agreement.

6. AWARD COMMUNITY AND CULTURAL CENTER BOILER REPLACEMENT PROJECT TO STEPHEN CIARI PLUMBING AND HEATING, INC.

Recommendation:

1. Adopt resolution amending the Fiscal Year 2020-21 Adopted Budget to appropriate an additional \$28,101 from the Building Replacement Fund (741) for the Community and Cultural Center Boiler Replacement Project;
2. Award contract to Stephen Ciari Plumbing and Heating, Inc. in the amount of \$98,274 and authorize the expenditure of (10%) contingency funds not to exceed \$9,827 for a total authorization of \$108,101; and
3. Authorize the City Manager to execute and administer that certain contract with Stephen Ciari Plumbing and Heating, Inc.

7. AWARD OF EAST FIFTH STREET SEWER MAIN PROJECT TO PACIFIC UNDERGROUND CONSTRUCTION, INC.

Recommendation:

1. Approve East 5th Street Sewer Main Project plans and specifications;
2. Award contract to Pacific Underground Construction, Inc. for the East 5th Street Sewer Main Project in the amount of \$1,226,730;
3. Authorize expenditure of construction contingency not to exceed \$122,673; and
4. Authorize the City Manager to execute and administer the construction contract with Pacific Underground Construction, Inc.

PUBLIC HEARING

8. ADOPT RESOLUTION ESTABLISHING CREDIT CARD PAYMENT SERVICE FEE

Recommendation:

1. Open/Close public hearing; and
2. Adopt resolution establishing new credit card service fee for development fees and transient occupancy tax payments by credit card.

Estimated Time: 15 Minutes

9. CONSIDER APPEAL OF PLANNING COMMISSION'S APPROVAL OF SD2020-0011/SR2020-0029 THROUGH SR2020-0033 DE PAUL - TRAMMELL CROW MORGAN HILL VENTURE: REQUEST FOR A TENTATIVE PARCEL MAP AND DESIGN PERMITS FOR THE REDWOOD TECH AT 101, A FIVE BUILDING INDUSTRIAL PARK, ON A 29± ACRE SITE (APNS 728-30-006 AND 728-30-009). (AAE2021-0004 AND AAE2021-0005)

Recommendation:

1. Grant a hearing de novo;
2. Open/close public hearing; and
3. Adopt Resolution denying the appeals and reaffirming the decision of the Planning Commission to approve the project subject to Conditions of Approval.

Estimated Time: 120 Minutes

FUTURE COUNCIL INITIATED AGENDA ITEMS

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

ADJOURNMENT

NOTICE

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

PUBLIC COMMENT

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

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

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

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

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

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

AMERICANS WITH DISABILITIES ACT (ADA)

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

SUSTAINABLE MORGAN HILL



VISION

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

Choose Morgan Hill

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

City Council Ongoing Priorities

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

2020-2021 Strategic Priorities

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



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





CITY COUNCIL STAFF REPORT

MEETING DATE: June 23, 2021

PREPARED BY: Maria Angeles, Senior Civil Engineer
APPROVED BY: City Manager

APPROVE AN IMPROVEMENT AGREEMENT AND A DEFERRED IMPROVEMENT AGREEMENT WITH TSC MOTORS INC. (MORGAN HILL CDR+J DEALERSHIP), AND AUTHORIZE THE CITY MANAGER TO EXECUTE AN ASSOCIATED RIGHT-OF-WAY ACQUISITION AGREEMENT WITH THE OWNER OF THE PROPERTY WITH ASSESSOR'S PARCEL NUMBER (APN) 728-17-032

RECOMMENDATION(S)

1. Approve an Improvement Agreement with TSC Motors Inc.;
2. Approve a Deferred Improvement Agreement with TSC Motors Inc.;
3. Authorize the City Manager to execute the Improvement Agreement and Deferred Improvement Agreement;
4. Authorize the recordation of the Improvement Agreement and Deferred Improvement Agreement; and
5. Authorize the City Manager to negotiate and execute a Right-of-Way Acquisition Agreement with the Owner of the property with Assessor's Parcel Number (APN) 728-17-032.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Protecting the Environment and Preserving
Open Space and Agricultural Land

2020-2021 Strategic Priorities

Economic Development

GUIDING DOCUMENTS

Morgan Hill 2035 General Plan

REPORT NARRATIVE:

The Morgan Hill CDR+J Dealership project is a proposed 31,397 sq. ft. Chrysler, Dodge, Ram, and Jeep car dealership located on a 6-acre portion of a 9.24-acre site at the West side of Condit Road, approximately 600 feet south of Diana Avenue (APN: 728-17-035) (Attachment 1).

As required by the project's conditions of approval for Design Review (SR2017-0007), the developer is required to enter into an Improvement Agreement (Attachment 2) with the City of Morgan Hill and provide a financial guarantee covering the project's public improvements. The project has a Design Review Amendment application currently under separate review by the Planning Division to obtain approval on the modifications to the dealership buildings and other site plan changes.

The public improvements to be constructed as part of this project include the following:

1. Condit Road - West Side: Improvements on the west side of Condit Road, along the project frontage, on only the 6-acre portion of the 9.24-acre site. The improvements include, but are not limited to, curb and gutter, attached sidewalk, street trees, street paving, storm drainage facilities, sewer and water, fire protection, and street lighting.
2. Condit Road - East Side: Improvements on the east side of Condit Road, along the frontage of the property directly across from the project site. The improvements include curb and gutter, attached sidewalk, street paving, storm drainage facilities, and street lighting.

Although not directly attributable to the project, the project's Design Review included the condition for the developer to construct the frontage improvements along the east side of Condit Road with the actual improvement cost to be reimbursed by the City. The public improvements on the east side of the road will fully improve this segment of Condit Road to its ultimate width and will be consistent with the Vision Zero and Complete Streets policies.

Improvement Agreement

The Improvement Agreement includes a reimbursement provision (Section 14 of the agreement) that outlines the terms and conditions for reimbursing the developer for the actual construction and design costs associated with the completion of the public improvements along the East side of Condit Road. The reimbursement will be in the form of credits against the Traffic Impact Fees and Storm Impact Fees due from project.

The developer has furnished the City with the necessary documents to complete the processing of the Improvement Agreement by providing surety bonds and insurance for the project's proposed public improvements.

Right-of-Way Acquisition

The construction of the improvements along the East side of Condit Road includes work outside the City's right-of-way on an adjacent parcel located within the unincorporated County area. Staff is currently in communication with the owner of the property with Assessor's Parcel Number (APN) 728-17-032 on the proposed acquisition of the necessary street right-of-way, without compensation, and a 10' Public Service Easement dedication behind the new sidewalk. A Right-of-Way and Public Service Easement (PSE) dedication exhibit is included (Attachment 3) showing the proposed right-of-way and PSE to be obtained.

A Right-of-Way Acquisition Agreement will be executed with the property owner to allow the City to acquire the necessary street right-of-way and to obtain the 10' Public Service Easement dedication

Deferred Improvement Agreement

The developer requested a deferral of the construction of improvements along approximately 180' of frontage of the 3.24-acre northerly portion of the project's 9.24-acre site, in the location of the project's approved temporary automotive sales facility that is currently in operation, as shown in the attached map exhibit (Attachment 4).

Staff is recommending the deferral of the improvements as the developer has not finalized the development plans for the site's northerly area. As part of the deferral, the developer is required to enter into a Deferred Improvement Agreement (Attachment 5) with the City.

Staff recommends that the City Council approve the Improvement Agreement and Deferred Improvement Agreement, authorize the City Manager to negotiate a Right-of-Way Acquisition Agreement, authorize the City Manager to sign the Agreements; and record the Improvement Agreement and Deferred Improvement Agreement on behalf of the City.

COMMUNITY ENGAGEMENT: Inform

On September 1, 2018, the Community Development Director considered a Design Review application for a new car dealership with a 10-day public comment period.

ALTERNATIVE ACTIONS:

There are no feasible alternative actions on the approval of the Improvement Agreement as the developer has furnished the necessary documents to complete the processing of the Improvement Agreement.

The City Council could decide not to approve the Deferred Improvement Agreement. However, the developer may not be able to fully fund the additional frontage improvements along the 3-acre portion of the site and may choose not to continue with the project.

The City Council could also decide not to authorize the execution of a Right-of-Way Acquisition Agreement. This decision will defer the widening of a segment of Condit Road which is a needed improvement consistent with the Vision Zero and Complete Streets policies. Future widening of Condit Road will be performed by the City.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On December 2, 2020, the City Council approved an Incentive Agreement, consistent with the Auto Dealer Economic Development Strategy, with TSC Motors, Inc. for a new car dealership at the Auto Mall Planned Development Site on Condit Road.

On the same date, the City Council also approved and directed the City Manager to execute an Impact Fee Freeze Agreement with TSC Motors, Inc.

FISCAL AND RESOURCE IMPACT:

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

Additional development review costs will be due from the future development of the 3.24-acre portion of the project site.

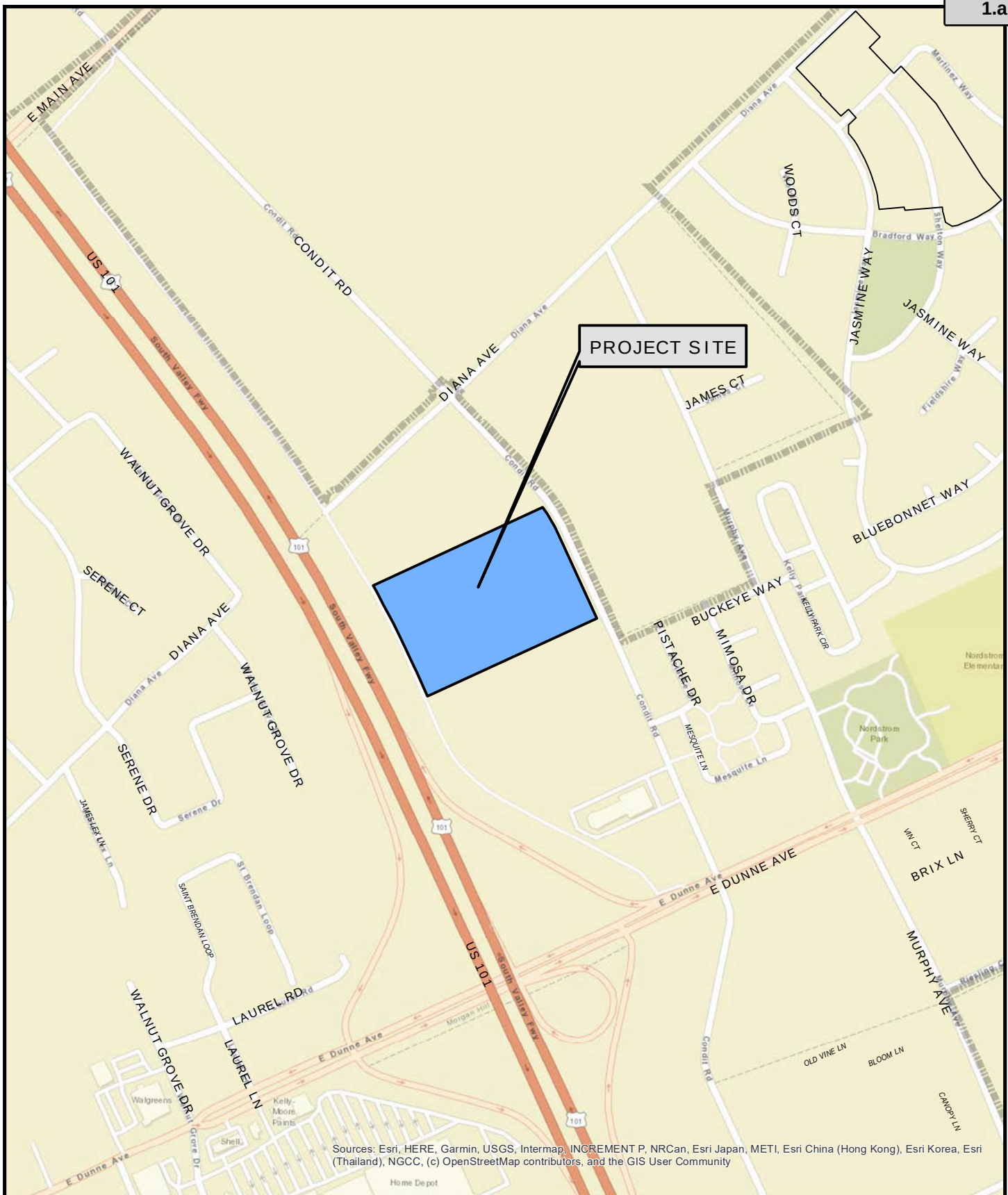
The total estimated construction and design costs for the improvements along the East side of Condit Road is \$391,526 (Reimbursable Amount). As part of the project's Improvement Agreement, the Reimbursable Amount will be applied as a credit against the Traffic Impact Fees and Storm Impact Fees due from the project. A budget amendment is not proposed for Council approval as the project's Traffic Impact Fees and Storm Impact Fees due are enough to cover the Reimbursable Amount.

CEQA (California Environmental Quality Act):

Project – A Mitigated Negative Declaration was adopted.

LINKS/ATTACHMENTS:

1. Site Map
2. Improvement Agreement
3. Right-of-Way and Public Service Easement Dedication Exhibit
4. Location Map of Deferred Improvement Area at Condit Road
5. Deferred Improvement Agreement



Land Development Engineering
Engineering and Utilities Department

G:\IR-14\Proj\GIS\John\Maria_CDRJ Dealership.mxd

SITE MAP MORGAN HILL CDR+J DEALERSHIP



0 250 500 1,000 1,500 2,000 Feet

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

CITY OF MORGAN HILL
17575 PEAK AVENUE
MORGAN HILL, CA 95037

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

THE AREA ABOVE IS RESERVED FOR RECORDER'S USE

IMPROVEMENT AGREEMENT

TSC Motors Inc.
17085 Condit Road
APN: 728-17-035
Morgan Hill CDR+J Dealership

THIS AGREEMENT is made on this _____ day of _____, 2021, by the CITY OF MORGAN HILL, a municipal corporation ("CITY"), and TSC Motors Inc., a corporation ("PROPERTY OWNER").

RECITALS

The following Recitals are a substantive part of this Agreement:

1. This Agreement is entered into pursuant to Morgan Hill Municipal Code Chapter 12.02.
2. PROPERTY OWNER has filed a Development Application and supporting documents on the property with the address of **17085 Condit Road**, and the **APN: 728-17-035** having the development name of **Morgan Hill CDR+J Dealership** ("Development").
3. CITY requires as a condition of approval of the Development Permit, as described on said permit, that certain improvements be installed by PROPERTY OWNER as shown on the fully executed Development Improvement Plans entitled **Public Improvement Plans for Morgan Hill CDR+J – Morgan Hill, CA** ("Improvements"), on file with CITY and incorporated herein by this reference.
4. PROPERTY OWNER has been unable to complete, prior to the issuance of the Development Permit, all of the Improvements required by CITY to the satisfaction of the City Engineer.
5. PROPERTY OWNER is required by the terms of the Morgan Hill Municipal Code to improve all streets, highways, or public areas which are part of the Development, including but not limited to necessary paving, curbs, sidewalks, catch basins, water mains, culverts, storm drains, and sanitary sewers, in accordance with the plans and specifications on file with the City Engineer.

6. To assure CITY that PROPERTY OWNER will complete all the work and Improvements required for the Development, the parties have entered into this Agreement.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **Term of Agreement.** The term of this Agreement shall be six (6) months from the date of issuance of the Development Permit ("Term") unless extended by written agreement.
2. **Improvements.** PROPERTY OWNER agrees to construct the Improvements in a good and workmanlike manner in accordance with the plans and documents filed with and approved by CITY in conjunction with the Development, all of which are incorporated herein by reference. These items of the Improvements shall be completed, constructed and installed at PROPERTY OWNER's sole expense unless agreed to otherwise by CITY.
3. **Rights-of-Way.** Except as otherwise provided by this Agreement, CITY can hold without acceptance or recordation all lands, rights-of-way, and easements offered for dedication. All such offers shall, however, remain open, and shall constitute irrevocable offers of dedication in accordance with the Government Code. All such offers may be accepted and recorded by CITY in its sole discretion at any later date without further notice to PROPERTY OWNER as provided by law. By way of explanation only, it is the current intention of CITY to accept all or part of the irrevocable offers to dedicate upon acceptance of the Improvements called for in this Agreement.
4. **Improvements: Time Limits.** PROPERTY OWNER agrees to cause all Improvements to be made and constructed to comply with all requirements of Morgan Hill Municipal Code Chapter 12.02, according to the improvement plans for the Development approved by the City Engineer and including any changes or alteration in the Improvements required by the City Engineer. The Improvements shall be completed utilizing CITY standards and specifications. PROPERTY OWNER agrees to complete the Improvements prior to the expiration of this Agreement, or the issuance of the certificate of occupancy, whichever is earlier; provided however, the City Manager may extend the deadline for completion by not more than six (6) months at his or her reasonable discretion and determination that granting the extension will not be detrimental to the public welfare. No extension of this deadline for completion shall be made except upon the basis of a written application made by PROPERTY OWNER stating fully the ground for the application and the facts relied upon for an extension.

It is further agreed by and between PROPERTY OWNER and CITY that any extension granted shall in no way affect the validity of this Agreement or release the surety(ies) on any bond attached hereto or the financial institution guaranteeing the same. PROPERTY OWNER further agrees to maintain the securities described in Section 6 in full force and effect during the terms of this Agreement, including any extensions of time as may be granted, and until such time as the Improvements have been accepted for maintenance by CITY.

In the event that PROPERTY OWNER shall fail to complete the Improvements within the time provided by this Agreement, CITY may in its sole discretion and in addition to any other remedy provided in this Agreement or by law, enter upon the Development and complete the Improvements and recover the full

cost and expense of construction from PROPERTY OWNER, PROPERTY OWNER's successors and assigns, PROPERTY OWNER's Performance/Labor & Material Bonds associated with this Development, or from the then owner of the Development, and/or place a lien upon the Development property for the cost and expense. Any and all CITY costs shall include but not be limited to administrative and attorney costs.

5. **Acquisition and Dedication of Easements or Rights-of-Way.** If any of the Improvements is to be constructed or installed on land not within the Development or already existing public right-of-way, no construction or installation shall be commenced before the irrevocable offer of dedication or conveyance to CITY of appropriate rights-of-way, easements or other interest in real property, and appropriate authorization from PROPERTY OWNER to allow construction or installation of the Improvements or work has been obtained and paid for by PROPERTY OWNER.

6. **Bond Requirements.** To secure the performance of each Improvement required under this Agreement and to ensure full payment to all persons furnishing or supplying labor or materials for each Improvement required, PROPERTY OWNER shall provide to CITY concurrently with the execution of this Agreement, payment and performance bonds each in the amount of 100% of the total estimated cost of the Improvements as determined by the City Engineer. A performance bond to secure faithful performance of this Agreement as required by Section 12.02.160 of the Morgan Hill Municipal Code for performance shall be provided in substantially the form set forth in Exhibit B. A payment bond to secure full payment to all persons furnishing or supplying labor or materials as required by Section 12.02.160 of the Morgan Hill Municipal Code for labor and materials shall be provided in substantially the form set forth in Exhibit C. PROPERTY OWNER shall provide an additional guarantee and warranty security (in substantially the form set forth in Exhibit D) of fifty (50%) percent of the cost of construction of the Improvements to guarantee and warranty the Improvements for a period of one year following its completion and acceptance against any defective work or labor done, or defective materials furnished, as required by Section 12.02.170 of the Morgan Hill Municipal Code.

Improvements and the City Engineer's Estimated Costs of Improvements as of **June 10, 2021** are attached hereto as Exhibit "A".

Any bonds submitted under this Agreement shall be executed by a surety company authorized to write the same in the State of California, and subject to the review and approval of the City's risk manager. All required securities shall be in a form approved by the City Attorney. The bonds shall be executed on CITY forms by a surety authorized to do business in the State of California and shall be approved by the City Attorney and the City Engineer. Submittal of the Performance/Labor & Material Bonds is a requirement prior to CITY's issuance of an encroachment permit to do work in CITY's right-of-way. Submittal of the Warranty Bond is a requirement prior to the City Engineer's consideration of acceptance of the public improvements.

Note: If Cash Deposit Agreement Guaranteeing Improvements is utilized for security purposes, the Cash Deposit Agreement amount shall be two hundred (200%) percent of the aforementioned City Engineer's Estimated Costs of Improvements. In lieu of the above, CITY will accept a certificate of deposit in CITY's name with escrow instructions acceptable to the City Engineer, subject to the approval of the City Attorney.

The release of any securities shall be governed by the provisions of Section 12.02.170 of the Morgan Hill Municipal Code.

7. **Irrevocability of Security.** The securities provided under this Agreement shall be irrevocable, shall not be limited as to time, and may be released only upon the written approval of the City Engineer and City Council.
8. **Duty to Warn.** PROPERTY OWNER shall give adequate warning to the public of each and every dangerous condition which may exist in the Improvements, and will take all reasonable actions to protect the public from any dangerous condition.
9. **Warranty.** PROPERTY OWNER guarantees and warrants the Improvements required by this Agreement and agrees to remedy any defects in the Improvements arising from faulty or defective materials or construction occurring within twelve (12) months after acceptance by CITY of said Improvements. Following notice, PROPERTY OWNER shall, without delay or cost to CITY, repair, replace, or reconstruct any defective or unsatisfactory portion of Improvements. CITY may, at its sole option, perform the repair or replacement itself if PROPERTY OWNER has failed to commence repair within twenty (20) days after CITY has mailed written notice to PROPERTY OWNER. In such event, PROPERTY OWNER agrees to pay the cost of repair and replacement, plus 15%, by CITY; and CITY may recover such costs as a lien against the Development. CITY may proceed immediately to make repairs should an emergency arise without waiving its rights of recovery against PROPERTY OWNER.
10. **Failure of Performance.** In addition to the other remedies provided by this Agreement, CITY shall have recourse to the security given. In the event that CITY seeks recourse against any security, CITY shall have recourse against PROPERTY OWNER for any and all amounts necessary to complete the obligation. All administrative costs, including attorneys' fees shall be a proper charge against the security and PROPERTY OWNER pursuant to Government Code. The right of CITY to draw upon or utilize the security is additional and not in lieu of any other remedy available to CITY at law or in equity. The parties agree that the estimated costs and security amounts may not reflect the actual cost of construction or installation of Improvements, and therefore, CITY damages for PROPERTY OWNER's default shall be measured by the cost of completing the required Improvements.
11. **Certificate of Occupancy.** PROPERTY OWNER understands that CITY will expect completion, to the satisfaction of CITY, of specific public improvements as well as private utility improvements prior to CITY Approval of a Certificate of Occupancy for any building on the Development property. The specific improvements shall include activation of all public utilities (water, sewer, storm drain); activation of all private utilities (electric, gas, phone) except for cable; street lights turn-on request filed with P G & E; and full street improvements (curb-gutter and paving with/without final lift) from existing public street to building under consideration for Certificate of Occupancy. PROPERTY OWNER, furthermore, agrees to so inform successor in lot interest should lot be transferred to another party prior to CITY acceptance of public improvements.
12. **Final Toxic Report.** Where applicable, PROPERTY OWNER hereby agrees to furnish the City Attorney with a copy of the Final Toxic Report issued by the appropriate licensed consultant on the proposed Development. This report must be received prior to final acceptance of on-site improvements and issuance of certificate of occupancy.
13. **Public Improvements Fee Schedule.** PROPERTY OWNER shall pay the following sums in cash to CITY pursuant to the provisions of Resolution 1383 and any amendments thereto. These sums shall be

paid to CITY at the time of issuance of the Development Permit, and shall be in accordance with the Department of Public Works Fee Schedule attached hereto demonstrating a current Total Fee Obligation of **\$358,298**. All Fees are estimated and may be increased by CITY subject to current resolutions and ordinances. These fees are subject to a minimum annual revision. PROPERTY OWNER consents to increases in these fees. This Agreement shall not be construed to fix or freeze fees as of any point prior to issuance of Development Permits.

All development fees shall be those in effect at the time of the issuance of the Development Permit for this Development. This Agreement does not entitle the developer to any permit including a grading permit. A separate application for a grading permit should be made to the Building Department.

14. **Reimbursements**

a) PROPERTY OWNER acknowledges and agrees that the CITY will reimburse the PROPERTY OWNER for the actual costs associated with the completion of the public improvements along the East side of Condit Road, across the property frontage ("Reimbursable Improvements"). The PROPERTY OWNER shall also be reimbursed the design/engineering consultant costs for constructing the improvements.

b) The CITY shall reimburse the PROPERTY OWNER subject to the following terms and conditions:

(1) The City shall credit/reimburse the PROPERTY OWNER in an amount not to exceed the agreed upon reimbursable amount of **\$391,526**. The reimbursement shall be issued in the form of a credit against the PROPERTY OWNER'S project fee obligation which consists of Traffic and Storm Drain Impact Fees.

(2) The PROPERTY OWNER shall keep records with complete and correct entries of all construction costs related to the improvements, including cancelled checks or other proof of payment. These records shall be made available to the CITY.

15. **Other Agreements Associated with This Improvement Agreement:** The following "checked off" Agreements are understood to be associated with this Agreement and have been fully executed prior to or concurrent with this Agreement:

☐ CITY "Streets" Reimbursement Agreement (CITY Ordinance 982)

PROPERTY OWNER acknowledges and agrees that the property is subject to a Reimbursement Agreement whereby PROPERTY OWNER must reimburse CITY for all costs associated with off-site improvements completed by the CITY and/or others or to be completed by CITY and/or others. PROPERTY OWNER agrees to pay CITY for all sums already incurred under the reimbursement agreement prior to issuance of any building permits. If the improvement has not been completed by CITY and/or others, then PROPERTY OWNER or successor-in-interest agrees to fully reimburse CITY for all costs incurred by CITY and/or others in constructing the improvements.

☐ CITY Public/Private Utility Reimbursement Agreement

☐ Landscape & Lighting Maintenance Assessment District Annexation

☒ Deferred Improvement Agreement

- [X] Incentive Agreement
[X] Impact Fee Freeze Agreement

16. **Insurance Requirements.**

Commencement of Improvements. Before beginning construction of the improvements, PROPERTY OWNER is required to procure and provide proof of the insurance coverage required by this section in the form of certificates and endorsements. The required insurance must cover the activities of PROPERTY OWNER and its subcontractors relating to or arising from the performance of work associated with the Improvements, and must remain in full force and effect at all times during the period covered by the Agreement, including any extensions of time as may be granted, and until such time as the Improvements have been accepted for maintenance by CITY. The coverages may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by excess or "umbrella" policies, provided each such policy complies with the requirements set forth herein. Any deductibles or self-insured retentions must be declared to and approved by City. Coverages may be provided by PROPERTY OWNER's General Contractor if PROPERTY OWNER is not directly insuring such exposures under an "Owners and Contractors Protective Liability Policy (OCP)" on which CITY would be an additional insured. If PROPERTY OWNER will utilize the services of a General Contractor to perform all of the work associated with the Improvements, then PROPERTY OWNER may opt to have all coverages provided by PROPERTY OWNER's General Contractor, provided that a written contract is executed between PROPERTY OWNER and the General Contractor whereby the written contract specifically required General Contractor to fulfill all of the City insurance requirements as outlined in this Agreement, including all endorsements in favor of the City. Verification of the written contract must be provided to City upon request. If PROPERTY OWNER fails to provide any of the required coverage in full compliance with the requirements outlined in this Agreement, CITY may, at its sole discretion, purchase such coverage at PROPERTY OWNER's expense and deduct the cost from payments due to PROPERTY OWNER, assess payment against Development, or terminate the Agreement for default. Any deductibles or self-insured retentions must be declared to and approved by City. PROPERTY OWNER further understands that CITY reserves the right to modify the insurance requirements set forth herein, with thirty (30) days' notice provided to PROPERTY OWNER, at any time as deemed necessary to protect the interests of CITY.

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

- (1) Commercial General Liability Insurance ("CGL"): PROPERTY OWNER shall maintain CGL and shall include coverage for liability arising from PROPERTY OWNER's or its subcontractor's acts or omissions in the performance of work associated with the Improvements against claims and liabilities for personal injury, death, or property damage providing protection in the minimum amount of: (i) five million dollars (\$5,000,000.00) combined single limit each occurrence and either a general aggregate limit of ten million dollars (\$10,000,000.00) or a general aggregate limit of five million dollars (\$5,000,000) as applied on a "per project" or "per location" basis, or (ii) the maximum amount of such insurance available to PROPERTY OWNER under PROPERTY OWNER's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

- a. CGL policy may not exclude explosion, collapse, underground excavation hazard, or removal of lateral support.
- b. CGL policy must include blanket contractual and completed operations.
- c. CGL policy will apply as though separate policies have been issued to each insured ("separation of insureds").

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

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

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

(b) **Required Endorsements.** PROPERTY OWNER shall provide proof of the following endorsements, listed for each policy for which endorsements are required, as outlined below:

(1) **ALL Policies:**

"Waiver of Subrogation" - Each required policy must include an endorsement providing

that the carrier agrees to waive any right of subrogation it may have against CITY and CITY's elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers.

(2) ALL policies except Workers Compensation:

- a. "Additionally Insured" - The City of Morgan Hill, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers are named as additional insureds.
- b. "Primary and Non-Contributing" - Insurance shall be primary non-contributing.

(c) Subcontractors. PROPERTY OWNER must ensure that each subcontractor is required to maintain the same insurance coverage required under this Section 15, with respect to its performance of work associated with the Improvements, including those requirements related to the additional insureds and waiver of subrogation.

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

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

Certificate Holder address:

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

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

18. **Non-Discrimination.** PROPERTY OWNER covenants there shall be no discrimination based upon race, color, creed, religion, gender, marital status, age, disability, national origin, or ancestry, in any activity pursuant to this Agreement.

19. **Independent Contractor.** It is agreed to that PROPERTY OWNER shall act and be an independent

contractor, and not an agent or employee of CITY.

20. **Compliance with Law.** PROPERTY OWNER shall comply with all applicable laws, ordinances, codes, and regulations of the federal, state, and local government.

21. **Right to Inspect and Inspection Fees.** PROPERTY OWNER shall at all times maintain proper facilities and provide safe access for inspection for CITY and its employees to all parts of the Improvements. PROPERTY OWNER shall pay and reimburse CITY for all expenses incurred by CITY for inspecting and checking all work to be performed under the provisions of the Municipal Code or this Agreement. CITY Engineering plan checking and field improvement inspection costs are included in the Department of Public Works Fee Schedule which may be revised from time to time.

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

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

a. Address of PROPERTY OWNER is as follows:

TSC Motors Inc.
3239 Imjin Rd
Marina CA 93933

b. Address of CITY is as follows:

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

With a copy to:

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

24. **PROPERTY OWNER'S Representations.** This Agreement shall include application or items submitted by PROPERTY OWNER to CITY'S Planning Department, Building Department, Planning Commission, and City Council. In the event of any inconsistency between their representations and this Agreement, this Agreement shall govern.

25. **Licenses, Permits and Fees.** PROPERTY OWNER shall obtain a CITY Business License, all permits, and licenses as may be required by this Agreement.

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

from CITY.

27. **Time of Essence.** Time is of the essence in the performance of this Agreement.
28. **Limitations Upon Subcontracting and Assignment.** Neither this Agreement nor any portion shall be assigned by PROPERTY OWNER without prior written consent of CITY.
29. **Authority to Execute.** The persons executing this Agreement on behalf of the parties warrant that they are duly authorized to execute this Agreement.
30. **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all such counterparts shall together constitute one and the same instrument.
31. **Indemnification.** PROPERTY OWNER agrees to protect, and hold harmless CITY and its elective or appointive boards, officers, agents, and employees from any and all claims, liabilities, expenses, or damages of any nature, including attorneys' fees, for injury or death of any person, or damage to property, or interference with use of property, arising out of, or in any way connected with performance of the Agreement by PROPERTY OWNER, PROPERTY OWNER'S agents, officers, employees, subcontractors, or independent contractors hired by PROPERTY OWNER. The only exception to PROPERTY OWNER'S responsibility to protect, defend, and hold harmless CITY, is due to the sole negligence of CITY. This hold harmless agreement shall apply to all liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by PROPERTY OWNER.
32. **Modification.** This Agreement constitutes the entire agreement between the parties and supersedes any previous agreements, oral or written. This Agreement may be modified on provisions waived only by subsequent mutual written agreement executed by CITY and PROPERTY OWNER.
33. **California Law.** This Agreement shall be construed in accordance with the laws of the State of California. Any action commenced about this Agreement shall be filed in the central branch of the Santa Clara County Superior Court.
34. **Interpretation.** This Agreement shall be interpreted as though prepared by both parties.
35. **Preservation of Agreement.** Should any provision of this Agreement be found invalid or unenforceable, the decision shall affect only the provision interpreted, and all remaining provisions shall remain enforceable.
36. **Agreement Runs With the Land.** This Agreement shall inure to the benefit of, and be binding upon, the successors and assigns of the parties. It shall be recorded in the Office of the Recorder of Santa Clara County concurrently with the issuance of the Development Permit and shall constitute a covenant running with the land and an equitable servitude upon the Development real property.

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37. **Recording.** It shall be the responsibility of CITY to cause the executed Agreement to be recorded.

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

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

ATTEST:

THE CITY OF MORGAN HILL

Michelle Bigelow, City Clerk

Christina J. Turner, City Manager

Date: _____

Date: _____

APPROVED AS TO FORM:

“PROPERTY OWNER”

Donald A. Larkin, City Attorney

By: *Christian D. Pullara*

Date: _____

Title: *VP/Tres*

Date: *6/11/21*

By:

Title: _____

Date: _____

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

State of **California**

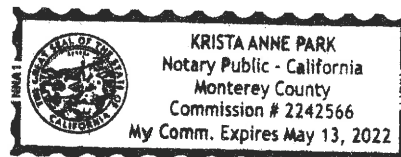
County of ~~Santa Clara~~ Monterey

On June 11 2021, before me, Krista Anne Park a Notary Public in and for said County and State, personally appeared Christian D. Pullara proved to me on the basis of satisfactory evidence to be the person whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.


SIGNATURE OF NOTARY PUBLIC



(ABOVE AREA FOR NOTARY SEAL)

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

State of **California**

County of **Santa Clara**

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

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

WITNESS my hand and official seal.

SIGNATURE OF NOTARY PUBLIC

(ABOVE AREA FOR NOTARY SEAL)

EXHIBIT A
IMPROVEMENTS AND
ESTIMATED COSTS OF IMPROVEMENTS
AS OF JUNE 10, 2021



Project: Condit Active Proj

1.0 Engineering Cost Estimate

a	Sewer System	\$ 10,825.00
b	Basins	\$ -
c	Channel System	\$ -
d	Storm Drain System	\$ 25,600.00
e	Street System / Onsite Improvements	\$ 114,592.75
f	Underground Existing Facilities (Undergrounds)	\$ -
g	Street Trees	\$ 7,200.00
h	Maintenance Districts	\$ -
i	Water System	\$ 73,750.00
j	Recycled Water System	\$ -
k	Traffic Signal System	\$ -
l	Street Light System	\$ 12,050.00
m	Misc Utilities	\$ -
n	Others	\$ -
o	Subtotal (a through n)	\$ 244,017.75
p	Mobilization (5% Subtotal)	\$ 12,200.89
q	Subtotal (o plus p)	\$ 256,218.64
r	Contingency (20%)	\$ 51,243.73
s	Subtotal (r plus s)	\$ 307,462.37

Total Construction

\$ 307,462.37

- DO NOT EXECUTE - USE SEPARATE BOND FORM -

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

Bond No.: _____
 Premium: _____

Whereas, the City Council of the City of Morgan Hill, State of California, and TSC Motors Inc. (hereinafter designated as "principal") have entered into an Improvement Agreement:

TSC Motors Inc.
APN: 728-17-035
17085 Condit Road

whereby principal agrees to install and complete certain designated public improvements, which said agreement, dated _____, 20_____, and identified as project **Morgan Hill CDR+J Dealership**, is hereby referred to and made a part hereof; and

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

Now, therefore, we, the principal and [ENTER SURETY NAME], as surety, are held and firmly bound unto the City of Morgan Hill, hereinafter called ("City"), in the penal sum of Three Hundred Seven Thousand Four Hundred Sixty Two dollars (\$307,462) lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, successors, executors and administrators, jointly and severally, firmly by these presents.

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

License No.: _____
 Address: _____
 Telephone No.: _____

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

Name of non-resident agent: _____
 Non-resident agent's office address: _____
 Telephone No.: _____

The condition of this obligation is such that if the above bounded principal, his or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and provisions in the said agreement and any alteration thereof made as therein provided, on his or their part, to be kept and

Performance Bond
 Page 1 of 3
 Version: December 2017

Attachment: Improvement Agreement [Revision 3] (3128 : APPROVAL OF IMPROV AGREEMENT, DEFERRED IMPROV & R-O-W ACQUISITION

- DO NOT EXECUTE - USE SEPARATE BOND FORM -

performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify and save harmless City, its officers, agents and employees, as therein stipulated, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

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

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

Executed this _____ day of _____ 20 ____ .

Principal

Principal

By: _____
Surety

By: _____
Attorney-in Fact

By: _____
California Resident Agent

By: _____
Non-resident Agent - Attorney-in-Fact

APPROVED:

Scott Creer, City Engineer

Date: _____

APPROVED AS TO FORM:

By: _____
Donald A. Larkin, City Attorney

Date: _____

(Acknowledgment on following page.)

Performance Bond
Page 2 of 3
Version: December 2017

Attachment: Improvement Agreement [Revision 3] (3128 : APPROVAL OF IMPROV AGREEMENT, DEFERRED IMPROV & R-O-W ACQUISITION

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

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

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

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

WITNESS my hand and official seal.

SIGNATURE OF NOTARY PUBLIC

(ABOVE AREA FOR NOTARY SEAL)

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

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

WITNESS my hand and official seal.

SIGNATURE OF NOTARY PUBLIC

(ABOVE AREA FOR NOTARY SEAL)

Performance Bond
Page 3 of 3
Version: December 2017

- DO NOT EXECUTE - USE SEPARATE BOND FORM -

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

Bond No.: _____
 Premium: _____

Whereas, the City Council of the City of Morgan Hill, State of California, and TSC Motors Inc. (hereinafter designated as "the principal") have entered into an Improvement Agreement:

TSC Motors Inc.
APN: 728-17-035
17085 Condit Road

whereby the principal agrees to install and complete certain designated public improvements, which agreement, dated _____, 20_____, and identified as project **Morgan Hill CDR+J Dealership**, is hereby referred to and made a part hereof; and

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

Now, therefore, the principal and the undersigned as corporate surety, and their successors and assigns are held firmly bound unto City and all contractors, subcontractors, laborers, materialmen, and other persons employed in the performance of the agreement and referred to in Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code in the sum of Three Hundred Seven Thousand Four Hundred Sixty Two dollars (\$307,462), for materials furnished or labor thereon of any kind, or for amounts due under the Unemployment Insurance Act with respect to this work or labor, that the surety will pay the same in an amount not exceeding the amount hereinabove set forth, and also in case suit is brought upon this bond, will pay, in addition to the face amount thereof, costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by City in successfully enforcing this obligation, to be awarded and fixed by the court, and to be taxed as costs and to be included in the judgment therein rendered.

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

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

The Surety's office is located at _____,
 Telephone No. _____; the Surety is licensed to do business in the State of California; and

Labor and Material Bond
 Page 1 of 3
 Version: December 2017

Attachment: Improvement Agreement [Revision 3] (3128 : APPROVAL OF IMPROV AGREEMENT, DEFERRED IMPROV & R-O-W ACQUISITION

- DO NOT EXECUTE - USE SEPARATE BOND FORM -

the California Insurance Agent's License No., address, and telephone number as follows:

License No.: _____
 Address: _____
 Telephone No.: _____

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

Name of non-resident agent: _____
 Non-resident agent's office address: _____
 Telephone No.: _____

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

Executed this _____ day of _____ 20 ____ .

 Principal

 Principal

By: _____
 Surety

By: _____
 Attorney-in Fact

By: _____
 California Resident Agent

By: _____
 Non-resident Agent - Attorney-in-Fact

APPROVED:

 Scott Creer, City Engineer

Date: _____

APPROVED AS TO FORM:

By: _____
 Donald A. Larkin, City Attorney

Date: _____

(Acknowledgment on following page.)

Labor and Material Bond
 Page 2 of 3
 Version: December 2017

Attachment: Improvement Agreement [Revision 3] (3128 : APPROVAL OF IMPROV AGREEMENT, DEFERRED IMPROV & R-O-W ACQUISITION

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

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

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

WITNESS my hand and official seal.

SIGNATURE OF NOTARY PUBLIC

(ABOVE AREA FOR NOTARY SEAL)

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County of **Santa Clara**

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WITNESS my hand and official seal.

SIGNATURE OF NOTARY PUBLIC

(ABOVE AREA FOR NOTARY SEAL)

Labor and Material Bond

Page 3 of 3

Version: December 2017

- DO NOT EXECUTE - USE SEPARATE BOND FORM -

EXHIBIT "D"
FORM OF WARRANTY BOND
(50% of Cost of Construction)

Bond No.: _____

Premium: _____

Whereas, the City Council of the City of Morgan Hill, State of California (hereinafter designated as "City"), and TSC Motors Inc. (hereinafter designated as "Principal") have entered into an Improvement Agreement (hereinafter "Agreement"):

TSC Motors Inc.
APN: 728-17-035
17085 Condit Road

whereby the Principal agrees to install and complete certain designated public improvements (hereinafter "Improvements"), which said Agreement, dated _____, 20____, and identified as project **Morgan Hill CDR+J Dealership**, is hereby referred to and made a part hereof; and

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

Now, therefore, we, the Principal and _____ as Surety, are held and firmly bound unto the City of Morgan Hill in the penal sum of One Hundred Fifty Three Thousand Seven Hundred Thirty One dollars (\$153,731) for the payment of which sum well and truly to be made, we bind ourselves, our heirs, successors, executors and administrators, jointly and severally, firmly by these presents.

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

Surety waives the provisions of Civil Code Sections 2819 and 2845. Surety hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the agreement or the specifications accompanying the same shall in any manner affect its obligations on this bond, and it does hereby waive notice of any such change, extension, alteration, or addition.

Warranty Bond
Page 1 of 3
Version: April 2019

Attachment: Improvement Agreement [Revision 3] (3128 : APPROVAL OF IMPROV AGREEMENT, DEFERRED IMPROV & R-O-W ACQUISITION

- DO NOT EXECUTE - USE SEPARATE BOND FORM -

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

Attn: _____

Address: _____

City/State/Zip: _____

Phone: _____

Fax: _____

Email: _____

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

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

SURETY:

Principal:

Date: _____

Date: _____

s/ _____

s/ _____

Name: _____

Name: _____

Title: _____

Title: _____

(Attach Acknowledgment with Notary
Seal and Power of Attorney)

APPROVED AS TO FORM:

By: _____
Donald A. Larkin, City Attorney

Date: _____

Warranty Bond
Page 2 of 3
Version: April 2019

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County of **Santa Clara**

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

WITNESS my hand and official seal.

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Warranty Bond
Page 3 of 3
Version: April 2019



CITY OF MORGAN HILL PUBLIC WORKS DEPARTMENT

17575 Peak Avenue Morgan Hill CA 95037 - Office (408)778-6480 Fax (408)779-7236

6/11/2021 DATE APN: 728-17-035 TRACT / APN 17085 Condit Road ADDRESS / LOT Morgan Hill CDR+J <i>(New automobile sales & service facility accessory carwash)</i> PROJECT DESCRIPTION	FEE SCHEDULE: 07.01.2016 PER RESOLUTION 5902, EFFECTIVE JULY 1, 2006 AND PER RESOLUTION 5592, INCREASED JANUARY 15, 2009 AND PER RESOLUTION 6082, EFFECTIVE FEBRUARY 5, 2007 **SEE BACK PAGE FOR ADDITIONAL FEE RESOLUTIONS 8/9/2021 FEE SCHEDULE EXPIRATION DATE	Cardinale Automotive Group NAME 3239 Imjin Road MAILING ADDRESS Marina, CA 93933 CITY, STATE, ZIP CODE (831) 277-3801 PHONE NUMBER
---	---	---

NOTES:

1. PRESSURE REGULATORS ARE REQUIRED ON ALL WATER SERVICES.
2. BACKFLOW PREVENTORS ARE REQUIRED ON ALL NON-RESIDENTIAL WATER SERVICES & FIRE SPRINKLER SERVICES. BACKFLOW INSPECTION FEE SHALL BE PAID PRIOR TO INSPECTION.
3. **MULTI-FAMILY** IS DEFINED AS ANY UNIT WITH TWO BEDROOMS OR LESS.
SINGLE FAMILY IS DEFINED AS ANY UNIT WITH 3 BEDROOMS OR MORE.

☐ **THIS FEE SCHEDULE IS ESTIMATE ONLY**

MBA

CALCULATED BY

CHECKED BY

BCOM2021-0016

BUILDING PERMIT #

DATE BLD PERMIT ISSUED

SEWER IMPACT FEES WITHIN RDA BOUNDARY

CHECK APPLICABLE SCENARIO BELOW

☒ **COMMERCIAL OR INDUSTRIAL WITHIN RDA BOUNDARY**

SEWER IMPACT FOR COMMERCIAL & INDUSTRIAL PROJECTS
TEMPORARILY ADJUSTED TO \$0 EFFECTIVE 02/05/07 PER RES# 6082.

☐ **RESIDENTIAL PROJECTS WITHIN RDCS DOWNTOWN AREA**

SEWER IMPACT FOR SINGLE-FAMILY AND MULTI-FAMILY RESIDENTIAL
TEMPORARILY ADJUSTED TO \$0 EFFECTIVE 02/05/07.

☒ **NOT IN RDA AREA BOUNDARY**

** BOTH NORMAL FEES AND ADJUSTED FEES ARE SUBJECT
TO ANNUAL CPI INCREASES.

☐ **COMMERCIAL OR INDUSTRIAL SHELL**

**RDA SEWER ALLOCATION
COMPLETED BY:**

(write Initials below)

version 07.01.16 std

WATER FEES:**1. METER DEPOSIT: 650-37672**

(Authority: Res. #5658 approved 03.19.03, Updated 07.01.16)

1"	\$468	x	1	=	\$468
1 1/2"	\$1,434	x	1	=	\$1,434
2"	\$1,619	x	0	=	\$0
3" or larger-Time & Material + Meter Cost				=	\$0

METER CREDITS

\$0 x 0 = \$0

SUBTOTAL = \$1,902**2. BACKFLOW CONST. INSPECTION: 650-37859**

(Authority: Res. #5658 approved 03.19.03, Updated 07.01.16)

\$62 x 3 Each = \$186

3. WATER FRONTAGE CHARGE: 650-37663

(Authority: Res. #5658 approved 03.19.03, Updated 07.01.16)

1 Side	\$66	x	0	LF	=	\$0
2 Sides	\$37	x	515.71	LF	=	\$19,081

4. WATER IMPACT FEE: 651-37648

(Auth: Res. #5592 approved 08.21.02, Increased 01.15.16)

a) Residential						
\$3,624 /DU	x	0	DU	=	\$0	
(Single Family)						
\$3,269 /DU	x	0	DU	=	\$0	
(Multi Family)						

b) Commercial & Industrial						
(Includes Landscape Service)						
\$10,288 /AC	x	6	AC	=	\$61,728	

WATER CREDITS

\$0 x 0 = \$0

SUBTOTAL = \$61,728**WATER FEE TOTALS = \$82,897****5. ENGINEERING & INSPECTION FEE: 206-38734**

(Minimum \$500.00):

(Authority: Res. #5902 approved 05.04.05, Updated 07.01.09)

ENGINEERING ESTIMATE: \$307,462

DATE ENGINEERING EST. SUBMITTED: 6/10/2021

% APPLIES TO ENGINEER'S ESTIMATE

13.3% \$1 to \$100,000 = \$13,300

11.8% \$100,001 to \$200,000 = \$11,800

10.3% \$200,001 to \$500,000 = \$11,068

8.8% OVER \$500,000 = \$0

ENGINEERING FEE = \$36,168

DEPOSIT PAID (Paid on 3/10/2021) = \$10,000

ENGINEERING FEE TOTAL = \$26,168**5A. LONG RANGE PLANNING FEE: 207-37912**

LONG RANGE PLANNING FEE (15% of E&I) = \$5,425

SEWER FEES:**6. SEWER FRONTAGE CHARGE: 640-37663**

(Authority: Res. #5658 approved 03.19.03, Updated 07.01.16)

1 Side	\$66	/LF	x	0	LF	=	\$0
2 Sides	\$37	/LF	x	515.71	LF	=	\$19,081

7. SEWER IMPACT FEE: 641-37648

(Auth: Res. #6082 approved 02.05.07 &

Res. #5592 approved 08.21.02, Increased 01.15.16).

a) Residential						
\$14,183 /DU	x	0	DU	=	\$0	
(Single Family)						

\$12,004 /DU	x	0	DU	=	\$0	
(Multi Family)						

b) Commercial & Industrial						
\$48.56 /GPD	x	3,513	GPD	=	\$170,591	
\$48.56 /GPD	x	0	GPD	=	\$0	

SEWER CREDITS

\$0 x 0 = \$0

MDA ASSUMED SEWER OBLIGATION

\$14,183 /DU	x	0	DU	=	\$0	
(Single Family)						

\$12,004 /DU	x	0	DU	=	\$0	
(Multi Family)						

\$48.56 /GPD	x	0	GPD	=	\$0	
(Commercial & Industrial)						

SUBTOTAL = \$170,591**SEWER FEE TOTALS = \$189,673****STORM DRAIN FEES:****8. STORM DRAIN FRONTAGE CHARGE: 304-37663**

(Authority: Res. #5658 approved 03.19.03, Updated 07.01.16)

1 Side	\$108	/LF	x	0	LF	=	\$0
2 Sides	\$53	/LF	x	0	LF	=	\$0

9. STORM DRAIN IMPACT FEE: 303-37648

(Auth: Res. #5592 approved 8.21.02, Amdd by Res. 6326 4.28.10, Increased 01.15.16)

\$3,847 /DU	x	0	DU	=	\$0	
(Single Family)						

\$2,001 /DU	x	0	DU	=	\$0	
(Multi Family)						

\$41,897 /ACRE	x	6	AC	=	\$251,382	
(Commercial & Office)						

\$30,505 /ACRE	x	0	AC	=	\$0	
(Industrial)						

STORM CREDITS

\$246,212 x 1 = -\$246,212

(See Notes & Comments on page 4)

SUBTOTAL = \$5,170**STORM DRAIN FEE TOTALS = \$5,170**

10. UNDERGROUNDING UTILITIES:		350-37649	
(Authority: Res. #5658 approved 03.19.03, Updated 07.01.16)			
1 Side	\$681	x	0 LF = \$0
2 Sides	\$343	x	0 LF = \$0
11a. PARK IMPACT FEE:		301-37648	
(Auth: Res. #5592 appr'd 8.21.02, Amdd by Res. 6326 4.28.10, Increased 01.15.16)			
\$5,378 /DU	x	0 DU	= \$0
(Single Family - Sub)			
\$3,910 /DU	x	0 DU	= \$0
(Single Family - No Sub)			
\$5,181 /DU	x	0 DU	= \$0
(Multi Family - Sub)			
\$3,771 /DU	x	0 DU	= \$0
(Multi Family - No Sub)			
11b. PARK MAINTENANCE DEV. FEE:		302-37649	
\$0	x	0 EACH	= \$0
PARK CREDITS			
\$0	x	0	= \$0
PARK FEE TOTAL =		\$0	
12. TRAFFIC IMPACT FEE:		309-37648	
(Auth: Res. #15-152 approved 06.17.15 & Res. #5592 approved 08.21.02, Increased 01.15.16)			
\$1,863 /DU	x	0 DU	= \$0
(Single Family)			
\$1,155 /DU	x	0 DU	= \$0
(Multi Family)			
\$1,863 /PHT	x	78 PHT	= \$145,314
(Commercial)			
\$1,863 /PHT	x	0 PHT	= \$0
(Industrial)			
TRAFFIC CREDITS			
\$145,314	x	1	= -\$145,314
(See Notes & Comments on page 4)			
TRAFFIC FEE TOTAL =		\$0	
13. LIBRARY IMPACT FEE:		348-37648	
(Auth: Res. #5837 appr'd 09.01.04, Amdd by Res. 6326 4.28.10, Increased 01.15.16)			
\$1,974 /DU	x	0 DU	= \$0
(Single Family)			
\$1,902 /DU	x	0 DU	= \$0
(Multi Family)			
LIBRARY CREDITS			
\$0	x	0	= \$0
LIBRARY FEE TOTAL =		\$0	
14. BURROWING OWL MITIGATION:		232-38145	
(Authority: Res. #5765 approved 01.21.04, Increased 07.01.16)			
\$200 /DU		0 DU	= \$0
(Residential)			
\$1,395 /AC		6 AC	= \$8,370
(Commercial/Industrial)			

15a. MAP CHECK FEE:		206-38716	
(Authority: Res. #5658 approved 03.19.03, Updated 07.01.16)			
PARCEL MAP:	\$3,805	=	\$0
TRACT MAP:	\$5,667	=	\$0
16. POLICE IMPACT FEE:		311-37648	
(Auth: Res. #5686 appr'd 06.18.03, Amdd by Res. 6326 4.28.10, Increased 01.15.16)			
\$767 /DU	x	0 DU	= \$0
(Single Family)			
\$741 /DU	x	0 DU	= \$0
(Multi Family)			
\$1,666 /ACRE	x	6 AC	= \$9,996
(Commercial)			
\$2,333 /ACRE	x	0 AC	= \$0
(Industrial)			
POLICE CREDITS			
\$0	x	0	= \$0
POLICE FEE TOTAL =		\$9,996	
17. FIRE IMPACT FEE:		313-37648	
(Auth: Res. #6671 approved 07.17.13, Increased 01.15.16)			
\$118 /DU	x	0 DU	= \$0
(Single Family)			
\$112 /DU	x	0 DU	= \$0
(Multi Family)			
\$1,550 /ACRE	x	6 AC	= \$9,300
(Commercial)			
\$1,550 /ACRE	x	0 AC	= \$0
(Industrial)			
FIRE CREDITS			
\$0	x	0	= \$0
FIRE FEE TOTAL =		\$9,300	
18. PUBLIC FACILITIES IMPACT FEE:		347-37648	
(Auth: Res. #5592 appr'd 8.21.02, Amdd by Res. 6326 4.28.10, Increased 01.15.16)			
\$512 /DU	x	0 DU	= \$0
(Single Family)			
\$493 /DU	x	0 DU	= \$0
(Multi Family)			
\$1,128 /ACRE	x	6 AC	= \$6,768
(Commercial)			
\$1,579 /ACRE	x	0 AC	= \$0
(Industrial)			
PUBLIC FACILITIES CREDITS			
\$0	x	0	= \$0
PUBLIC FACILITIES FEE TOTAL =		\$6,768	
20. COMMNTY/REC CTRS IMPACT FEE:		360-37648	
(Auth: Res. #15-152 appr'd 8.17.15, increased 01.15.16)			
\$3,663 /DU	x	0 DU	= \$0
(Single Family)			
\$3,213 /DU	x	0 DU	= \$0
(Multi Family)			
PUBLIC FACILITIES CREDITS			
\$0	x	0	= \$0
PUBLIC FACILITIES FEE TOTAL =		\$0	

19. RDCS MEASURE C FEES:		
School Pedestrian Safety	(355-37655)	= \$0
Public Facilities	(346-37649)	= \$0
Park Development	(302-37649)	= \$0
Public Fac. - Circulation	(346-37649)	= \$0
TOTAL RDCS MEASURE C FEES		= \$0

OTHER:		
Storm Water Runoff		
Management Plan Review	206-38734	= \$2,846
SWPPP Document Review - 1st	232-37687	= \$1,219
SWPPP Offsite Inspection - 6 month	232-37688	= \$6,097
Post Construction BMP Initial/Base Setup	206-38734	= \$596
Post Construction Each Additional BMP	206-38734	= \$119
Deferred Improvement Agreement	206-38719	= \$3,654
TOTAL FEES DUE		= \$358,298

Notes & Comments:

THE DEVELOPMENT IMPACT FEES FOR THIS PROJECT ARE LOCKED TO THE FISCAL YEAR 2016-2017 FEE SCHEDULE
PER THE IMPACT FEE FREEZE AGREEMENT EXECUTED ON 2/8/2021 BETWEEN THE CITY AND DEVELOPER.

THESE FEES INCLUDE A CREDIT/REIMBURSEMENT AGAINST THE PROJECT'S TRAFFIC & STORM IMPACT FEES
(TOTAL CREDIT OF \$391,526) FOR THE COST OF THE WORK TO BE PERFORMED BY THE DEVELOPER ON THE
EAST SIDE OF CONDUIT ROAD (SEE SECTION 14 OF THE PROJECT'S IMPROVEMENT AGREEMENT).

THESE FEES ONLY APPLY TO THE PROPOSED DEALERSHIP ON THE 6-ACRE SITE. THE FUTURE DEVELOPMENT
APPLICATION AT THE LOCATION OF THE TEMPORARY DEALERSHIP AREA (ADJACENT TO THE SITE'S NORTHERLY
PROPERTY LINE) WILL BE SUBJECT TO ADDITIONAL FEES.

New Car Dealership: Ground Floor = 29,040 sf; Second Floor = 2,897 sf

Total = 31,937 sf (Building areas taken from Building Plans - Sheet A004)

New Accessory Carwash: 3,203 sf

Site APN: 728-17-035 Total Site Area = 9.24 ac Portion to be developed = 6 ac

Frontage along Conduit Rd = 515.71 ft (Water & Sewer only)

Sewer:

New Car Sales Sewer Coefficient = 0.110 gpd/sf

New Car Dealership = (31,937 sf) (0.110 gpd/sf) = **3,513 gpd**

Traffic:

New Car Sales Traffic Coefficient = 2.43 PHT/1,000sf

(From ITE 10th Edition - Average Vehicle Trip Ends vs 1,000 sf GFA PM peak hour of adjacent street traffic)

New Car Dealership = (31,937 sf) (2.43 PHT/1,000 sf) = **78 PHT**

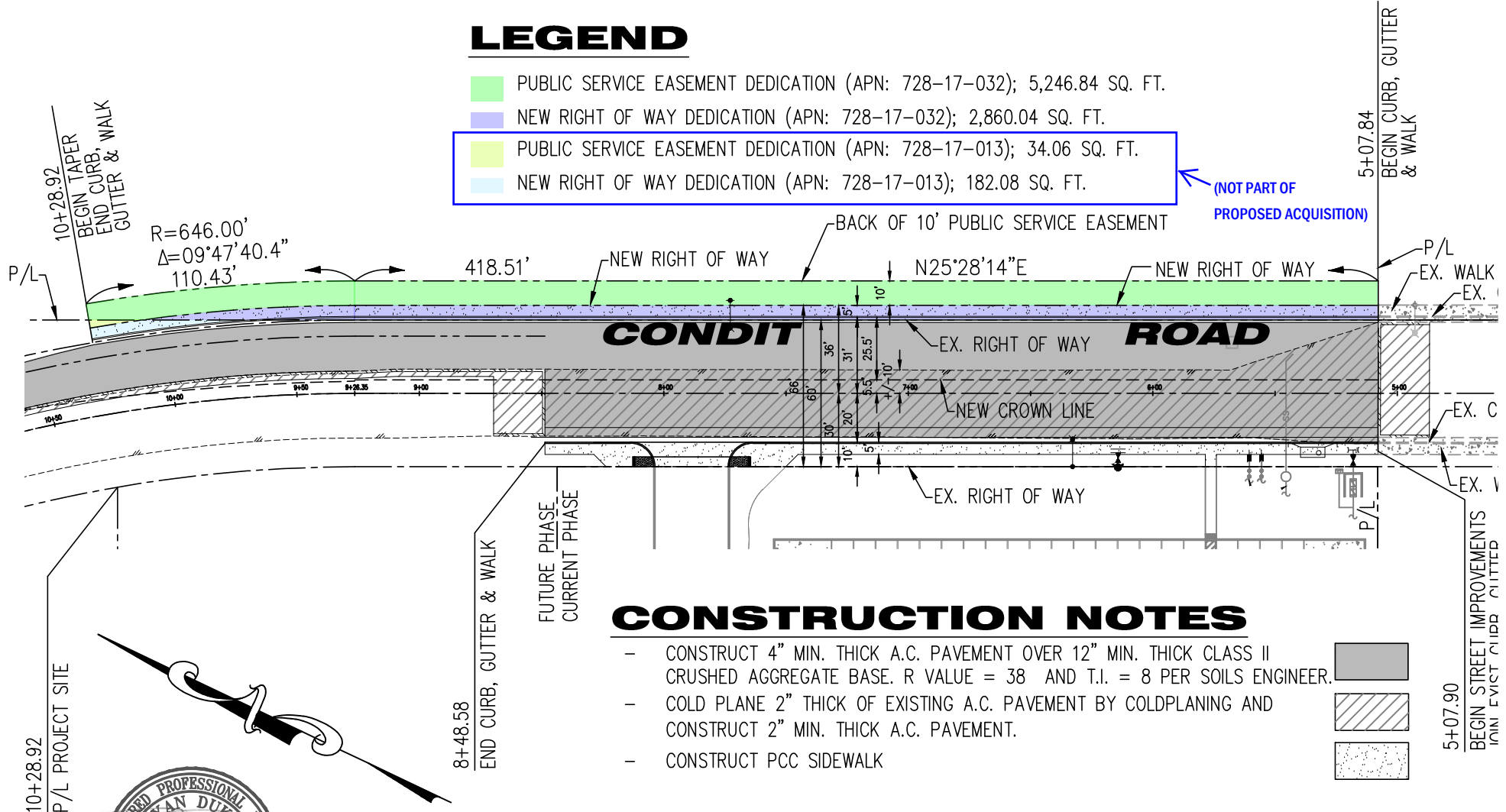
****OTHER FEE RESOLUTIONS:**

RESOLUTION 5006, EFFECTIVE 07.03.1996
RESOLUTION 5128, EFFECTIVE 01.05.1998
RESOLUTION 5658, EFFECTIVE 03.19.2003
RESOLUTION 5686, EFFECTIVE 08.18.2003
RESOLUTION 5765, EFFECTIVE 01.21.2004
RESOLUTION 5837, EFFECTIVE 10.18.2004
RESOLUTION 6080, EFFECTIVE 01.17.2007
RESOLUTION 6133, EFFECTIVE 12.05.2007
RESOLUTION 6326, EFFECTIVE 04.28.2010
RESOLUTION 6671, EFFECTIVE 09.16.2013

RIGHT OF WAY AND PUBLIC SERVICE EASEMENT DEDICATION EXHIBIT

LEGEND

- PUBLIC SERVICE EASEMENT DEDICATION (APN: 728-17-032); 5,246.84 SQ. FT.
- NEW RIGHT OF WAY DEDICATION (APN: 728-17-032); 2,860.04 SQ. FT.
- PUBLIC SERVICE EASEMENT DEDICATION (APN: 728-17-013); 34.06 SQ. FT.
- NEW RIGHT OF WAY DEDICATION (APN: 728-17-013); 182.08 SQ. FT.



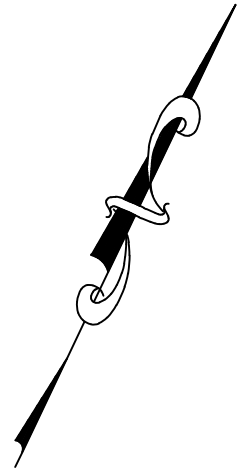
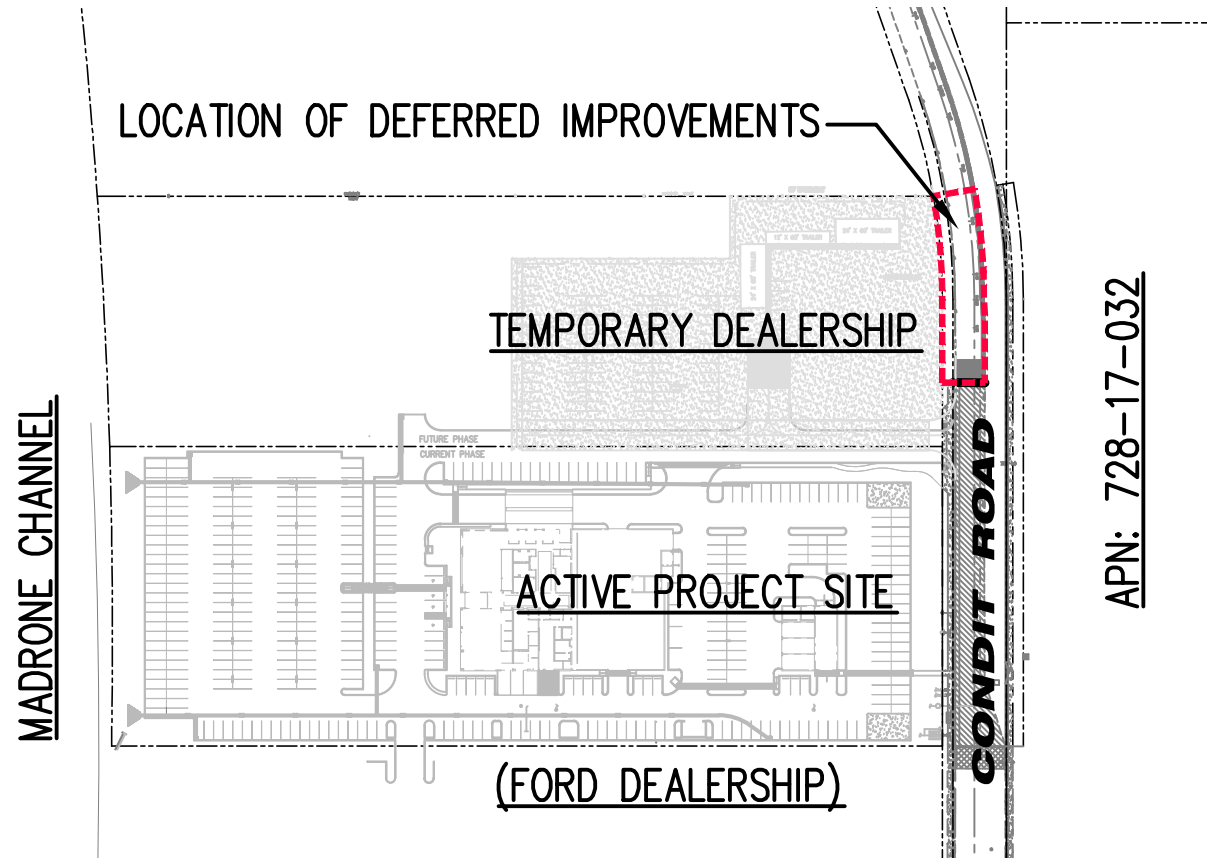
CONSTRUCTION NOTES

- CONSTRUCT 4" MIN. THICK A.C. PAVEMENT OVER 12" MIN. THICK CLASS II CRUSHED AGGREGATE BASE. R VALUE = 38 AND T.I. = 8 PER SOILS ENGINEER.
- COLD PLANE 2" THICK OF EXISTING A.C. PAVEMENT BY COLDPLANING AND CONSTRUCT 2" MIN. THICK A.C. PAVEMENT.
- CONSTRUCT PCC SIDEWALK



NOTE: PARCEL MAP BASIS OF BEARINGS AND SURVEY BASIS OF BEARINGS DIFFER BY 00°00'34". SURVEY BASIS OF BEARINGS USED HERE.

LOCATION OF DEFERRED IMPROVEMENTS AT CONDIT ROAD



SCALE: 1" = 20'



RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

CITY OF MORGAN HILL
17575 PEAK AVENUE
MORGAN HILL, CA 95037

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

THE AREA ABOVE IS RESERVED FOR RECORDER'S USE

DEFERRED IMPROVEMENT AGREEMENT

TSC Motors Inc.
17085 Condit Road
APN: 728-17-035
Morgan Hill CDR+J Dealership

THIS AGREEMENT is made on this _____ day of _____, 2021, by the CITY OF MORGAN HILL, a municipal corporation ("CITY"), and TSC Motors Inc., a corporation ("PROPERTY OWNER"). CITY and PROPERTY OWNER may be collectively referred to as "Parties."

RECITALS

The following Recitals are a substantive part of this Agreement:

1. This Agreement is entered into pursuant to Morgan Hill Municipal Code Chapter 12.02.
2. PROPERTY OWNER has filed a Development Application and supporting documents on the property with the address of **17085 Condit Road**, and the **APN: 728-17-035** ("Property") having the development name of **Morgan Hill CDR+J Dealership** ("Development").
3. PROPERTY OWNER anticipates receiving a development permit from the CITY to allow development of the approximately 6-acre portion of the total 9.24 acres of the Property ("Development Permit"). CITY requires as a condition of approval of the Development Permit, as described on the permit, that certain improvements be installed by PROPERTY OWNER along the entire property frontage of the total 9.24-acre site (west side of Condit Road), and along the frontage of a property located in the unincorporated County area, directly across the project site on the east side of Condit Road, as shown on the fully executed Development Improvement Plans entitled **Public Improvement Plans for Morgan Hill CDR+J – Morgan Hill, CA** ("Improvements"), on file with CITY and incorporated herein by this reference.
4. PROPERTY OWNER has been unable to complete, prior to the issuance of the Development Permit, all of the Improvements required by CITY to the satisfaction of the City Engineer. PROPERTY OWNER has or will execute a separate Improvement Agreement with City in conjunction with the required construction of improvements on the 6-acre portion of the Property.

5. PROPERTY OWNER is required by the terms of the Morgan Hill Municipal Code to improve all streets, highways, or public areas which are part of the entire Development, including but not limited to necessary paving, curbs, sidewalks, catch basins, water mains, culverts, storm drains, and sanitary sewers, in accordance with the plans and specifications on file with the City Engineer.
6. PROPERTY OWNER is developing about 6 acres of the 9.24-acre site. PROPERTY OWNER wishes to defer the construction of Improvements required for the remaining 3.24 acres located on the northern portion of the Property ("Future Improvements") by and through this Agreement.
7. CITY is willing to defer the improvements for the remaining 3.24-acre northern portion of the Property in exchange for PROPERTY OWNER entering into this Agreement.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **Term of Agreement.** The term of this Agreement shall be five (5) years from the date of issuance of the Development Permit ("Term"). This Agreement shall automatically be extended for five (5) terms of five (5) years each for a total of thirty (30) years unless it is earlier terminated by construction of the improvements or by mutual written agreement by the Parties. The Future Improvements must be constructed by the end of the thirty-year Term of the Agreement.
2. **Future Improvements.** Attached hereto and incorporated herein by reference as Exhibit A are the list of Future Improvements and a cost estimate for the Future Improvements to be required for the 3.24-acre northern portion of the Property ("Northern Portion"). PROPERTY OWNER agrees to construct the Future Improvements in a good and workmanlike manner in accordance with the plans and documents to be filed with and approved by CITY in conjunction with the future development of the Northern Portion of the Property, all of which are incorporated herein by reference. The Future Improvements shall be completed, constructed and installed at PROPERTY OWNER's sole expense unless agreed to otherwise in writing by CITY.
3. **Rights-of-Way.** Except as otherwise provided by this Agreement, CITY can hold without acceptance or recordation all lands, rights-of-way, and easements offered for dedication. All such offers shall, however, remain open, and shall constitute irrevocable offers of dedication in accordance with the Government Code. All such offers may be accepted and recorded by CITY in its sole discretion at any later date without further notice to PROPERTY OWNER as provided by law. By way of explanation only, it is the current intention of CITY to accept all or part of the irrevocable offers to dedicate upon acceptance of the Future Improvements called for in this Agreement.
4. **Future Improvements: Time Limits.** PROPERTY OWNER agrees to cause all Future Improvements to be made and constructed to comply with all requirements of Morgan Hill Municipal Code Chapter 12.02, according to the improvement plans for the Northern Portion to be approved by the City Engineer and including any changes or alteration in the Future Improvements required by the City Engineer. The Future Improvements shall be completed utilizing CITY standards and specifications. PROPERTY OWNER agrees to complete the Future Improvements prior to the expiration of this Agreement, or prior to the issuance of the certificate of occupancy for the future building(s) in the Northern Portion of the Property, whichever is earlier; provided however, the City Manager may extend the deadline for completion by not

more than six (6) months at his or her reasonable discretion and determination that granting the extension will not be detrimental to the public welfare. No extension of this deadline for completion shall be made except upon the basis of a written application made by PROPERTY OWNER stating fully the grounds for the application and the facts relied upon for an extension.

It is further agreed by and between PROPERTY OWNER and CITY that any extension granted shall in no way affect the validity of this Agreement.

In the event that PROPERTY OWNER shall fail to complete the Future Improvements after developing the Northern Portion, within the time for construction provided by this Agreement, CITY may in its sole discretion and in addition to any other remedy provided in this Agreement or by law, enter upon the Northern Portion and complete the Future Improvements and recover the full cost and expense of construction from PROPERTY OWNER, PROPERTY OWNER's successors and assigns, and PROPERTY OWNER's Performance/Labor & Material Bonds associated with this Development, or from the then owner of the Development, and/or record a lien upon the Property for the cost and expense. Any CITY costs shall include but not be limited to administrative costs and attorneys' fees.

5. **Acquisition and Dedication of Easements or Rights-of-Way.** If any of the Future Improvements are to be constructed or installed on land not within the Northern Portion or already existing public right-of-way, no construction or installation shall be commenced before the irrevocable offer of dedication or conveyance to CITY of appropriate rights-of-way, easements or other interest in real property, and appropriate authorization from PROPERTY OWNER to allow construction or installation of the Future Improvements or work has been obtained and paid for by PROPERTY OWNER.

6. **Bond Requirements.** To secure the performance of each Future Improvement required under this Agreement and to ensure full payment to all persons furnishing or supplying labor or materials for each Future Improvement required, PROPERTY OWNER shall provide to CITY prior to commencing construction of the Future Improvements, payment and performance bonds each in the amount of 100% of the total estimated cost of the Future Improvements as determined by the City Engineer at the time of construction of the Future Improvements. A performance bond to secure faithful performance of this Agreement as required by Section 12.02.160 of the Morgan Hill Municipal Code for performance shall be provided in substantially the form set forth in Exhibit B, or as subsequently amended by the City Attorney. A payment bond to secure full payment to all persons furnishing or supplying labor or materials as required by Section 12.02.160 of the Morgan Hill Municipal Code for labor and materials shall be provided in substantially the form set forth in Exhibit C, or as subsequently amended by the City Attorney. PROPERTY OWNER shall provide an additional guarantee and warranty security (in substantially the form set forth in Exhibit D, or as subsequently amended by the City Attorney) of fifty (50%) percent of the cost of construction of the Future Improvements to guarantee and warranty the Future Improvements for a period of one year following its completion and acceptance against any defective work or labor done, or defective materials furnished, as required by Section 12.02.170 of the Morgan Hill Municipal Code.

Future Improvements and the City Engineer's Estimated Costs of Future Improvements as of **June 10, 2021** are attached hereto as Exhibit "A".

Any bonds submitted under this Agreement shall be executed by a surety company authorized to write the same in the State of California, and subject to the review and approval of the City's risk manager. All required securities shall be in a form approved by the City Attorney. The bonds shall be executed on CITY

forms by a surety authorized to do business in the State of California and shall be approved by the City Attorney and the City Engineer. Submittal of the Performance/Labor & Material Bonds is a requirement prior to CITY's issuance of an encroachment permit to do work in CITY's right-of-way. Submittal of the Warranty Bond is a requirement prior to the City Engineer's consideration of acceptance of the public improvements.

Note: If Cash Deposit Agreement Guaranteeing Improvements is utilized for security purposes, the Cash Deposit Agreement amount shall be two hundred (200%) percent of the aforementioned City Engineer's Estimated Costs of Future Improvements. In lieu of the above, CITY will accept a certificate of deposit in CITY's name with escrow instructions acceptable to the City Engineer, subject to the approval of the City Attorney. The release of any securities shall be governed by the provisions of Section 12.02.170 of the Morgan Hill Municipal Code.

7. **Irrevocability of Security.** The securities to be provided under this Agreement shall be irrevocable, shall not be limited as to time, and may be released only upon the written approval of the City Engineer and City Council.

8. **Duty to Warn.** PROPERTY OWNER shall give adequate warning to the public of each and every dangerous condition which may exist in the Future Improvements, and will take all reasonable actions to protect the public from any dangerous condition.

9. **Warranty.** Following construction of Future Improvements, PROPERTY OWNER guarantees and warrants the Future Improvements required by this Agreement and agrees to remedy any defects in the Future Improvements arising from faulty or defective materials or construction occurring within twelve (12) months after acceptance by CITY of the Future Improvements. Following notice, PROPERTY OWNER shall, without delay or cost to CITY, repair, replace, or reconstruct any defective or unsatisfactory portion of Future Improvements. CITY may, at its sole option, perform the repair or replacement itself if PROPERTY OWNER has failed to commence repair within twenty (20) days after CITY has mailed written notice to PROPERTY OWNER. In such event, PROPERTY OWNER agrees to pay the cost of repair and replacement, plus 15%, by CITY; and CITY may recover such costs as a lien against the Development. CITY may proceed immediately to make repairs should an emergency arise without waiving its rights of recovery against PROPERTY OWNER.

10. **Failure of Performance.** In addition to the other remedies provided by this Agreement, CITY shall have recourse to the security given. In the event that CITY seeks recourse against any security, CITY shall have recourse against PROPERTY OWNER for any and all amounts necessary to complete the obligation. All administrative costs, including attorneys' fees shall be a proper charge against the security and PROPERTY OWNER pursuant to the Government Code. The right of CITY to draw upon or utilize the security is additional and not in lieu of any other remedy available to CITY at law or in equity. The parties agree that the estimated costs and security amounts may not reflect the actual cost of construction or installation of Future Improvements, and therefore, CITY damages for PROPERTY OWNER's default shall be measured by the cost of completing the required Improvements.

11. **Certificate of Occupancy.** PROPERTY OWNER understands that CITY will expect completion, to the satisfaction of CITY, of specific public improvements as well as private utility improvements prior to CITY Approval of a Certificate of Occupancy for any building on the Northern Portion of the Property. The specific improvements shall include activation of all public utilities (water, sewer, storm drain);

activation of all private utilities (electric, gas, phone) except for cable; street lights turn-on request filed with P G & E; and full street improvements (curb-gutter and paving with/without final lift) from existing public street to building under consideration for Certificate of Occupancy. PROPERTY OWNER, furthermore, agrees to inform any successor in interest to the Property should the Property be transferred to another party prior to CITY acceptance of public improvements.

12. **Final Toxic Report.** Where applicable, PROPERTY OWNER hereby agrees to furnish the City Attorney with a copy of the Final Toxic Report issued by the appropriate licensed consultant on the proposed Development. This report must be received prior to final acceptance of on-site improvements and issuance of certificate of occupancy.

13. **Public Improvements Fee Schedule.** PROPERTY OWNER shall pay the fees due at the time of construction of the Future Improvements pursuant to the provisions of Resolution 1383 and any amendments thereto. These sums shall be paid to CITY at the time of issuance of the future Development Permit, and shall be in accordance with the Department of Public Works Fee Schedule in effect at the time of construction of the Future Improvements. These fees are subject to a minimum annual revision. PROPERTY OWNER consents to increases in these fees. This Agreement shall not be construed to fix or freeze fees as of any point prior to issuance of Development Permits for the Northern Portion. All development fees shall be those in effect at the time of the issuance of the Development Permit for the Future Development. This Agreement does not entitle the developer to any permit including a grading permit. A separate application for a grading permit should be made to the Building Department.

14. **Repair and Replacement of Damaged Public Facilities.** PROPERTY OWNER shall, at its own expense, repair or replace all public improvements, public utility facilities, surveying monuments and other public facilities that are destroyed or damaged as a result of any work under this agreement. Property Owner shall promptly notify the City Engineer of such damage and shall obtain the City Engineer's approval of all repair and replacement of damaged facilities.

15. **Property Owner's Responsibility until CITY's Acceptance.** Until City accepts the Future Improvements, Property Owner shall be responsible for the care and maintenance of Future Improvements and shall bear all risks of loss or damage to the Future. CITY shall not have any liability for any accident, loss or damage to Future Improvements prior to their completion and acceptance by CITY.

16. **No Vesting of Rights.** Performance by PROPERTY OWNER under this Agreement shall not be construed to vest PROPERTY OWNER's rights with respect to any change in any zoning or building law or ordinance.

17. **Insurance Requirements.**

Commencement of Improvements. Before beginning construction of the Future Improvements, PROPERTY OWNER is required to procure and provide proof of the insurance coverage required by this section in the form of certificates and endorsements. The required insurance must cover the activities of PROPERTY OWNER and its subcontractors relating to or arising from the performance of work associated with the Future Improvements, and must remain in full force and effect at all times during the period covered by the Agreement, including any extensions of time as may be granted, and until such time as the Future Improvements have been accepted for maintenance by CITY. The coverages may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance

provided by excess or “umbrella” policies, provided each such policy complies with the requirements set forth herein. Any deductibles or self-insured retentions must be declared to and approved by City. Coverages may be provided by PROPERTY OWNER's General Contractor if PROPERTY OWNER is not directly insuring such exposures under an “Owners and Contractors Protective Liability Policy (OCP)” on which CITY would be an additional insured. If PROPERTY OWNER will utilize the services of a General Contractor to perform all of the work associated with the Improvements, then PROPERTY OWNER may opt to have all coverages provided by PROPERTY OWNER's General Contractor, provided that a written contract is executed between PROPERTY OWNER and the General Contractor whereby the written contract specifically required General Contractor to fulfill all of the City insurance requirements as outlined in this Agreement, including all endorsements in favor of the City. Verification of the written contract must be provided to City upon request. If PROPERTY OWNER fails to provide any of the required coverage in full compliance with the requirements outlined in this Agreement, CITY may, at its sole discretion, purchase such coverage at PROPERTY OWNER's expense and deduct the cost from payments due to PROPERTY OWNER, assess payment against Development, or terminate the Agreement for default. Any deductibles or self-insured retentions must be declared to and approved by City. PROPERTY OWNER further understands that CITY reserves the right to modify the insurance requirements set forth herein, with thirty (30) days' notice provided to PROPERTY OWNER, at any time as deemed necessary to protect the interests of CITY.

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

(1) Commercial General Liability Insurance (“CGL”): PROPERTY OWNER shall maintain CGL and shall include coverage for liability arising from PROPERTY OWNER's or its subcontractor's acts or omissions in the performance of work associated with the Future Improvements against claims and liabilities for personal injury, death, or property damage providing protection in the minimum amount of: (i) five million dollars (\$5,000,000.00) combined single limit each occurrence and either a general aggregate limit of ten million dollars (\$10,000,000.00) or a general aggregate limit of five million dollars (\$5,000,000) as applied on a “per project” or “per location” basis, or (ii) the maximum amount of such insurance available to PROPERTY OWNER under PROPERTY OWNER's combined insurance policies (including any excess or “umbrella” policies), whichever is greater.

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

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

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

(2) Workers' Compensation Insurance and Employer's Liability: PROPERTY OWNER shall maintain Workers Compensation coverage, as required by law. The policy must comply with the requirements of the California Workers' Compensation Insurance and Safety Act and provide protection in the minimum amount of: (i) one million dollars (\$1,000,000.00) for any one accident or occurrence, or (ii) the maximum amount of such

insurance available to PROPERTY OWNER under PROPERTY OWNER's combined insurance policies (including any excess or "umbrella" policies), whichever is greater. If PROPERTY OWNER is self-insured, PROPERTY OWNER must provide its Certificate of Permission to Self-Insure, duly authorized by the Department of Industrial Relations.

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

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

(b) **Required Endorsements.** PROPERTY OWNER shall provide proof of the following endorsements, listed for each policy for which endorsements are required, as outlined below:

(1) **ALL Policies:**

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

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

a. "Additionally Insured" - The City of Morgan Hill, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers are named as additional insureds.

b. "Primary and Non-Contributing" - Insurance shall be primary non-contributing.

(c) **Subcontractors.** PROPERTY OWNER must ensure that each subcontractor is required to maintain the same insurance coverage required under this Section 18, with respect to its performance of work associated with the Future Improvements, including those requirements related to the additional

insureds and waiver of subrogation.

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

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

Certificate Holder address:

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

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

19. **Non-Discrimination.** PROPERTY OWNER covenants there shall be no discrimination based upon race, color, creed, religion, gender, marital status, age, disability, national origin, or ancestry, in any activity pursuant to this Agreement.

20. **Independent Contractor.** It is agreed to that PROPERTY OWNER shall act and be an independent contractor, and not an agent or employee of CITY.

21. **Compliance with Law.** PROPERTY OWNER shall comply with all applicable laws, ordinances, codes, and regulations of the federal, state, and local government.

22. **Right to Inspect and Inspection Fees.** PROPERTY OWNER shall at all times maintain proper facilities and provide safe access for inspection for CITY and its employees to all parts of the Future Improvements. PROPERTY OWNER shall pay and reimburse CITY for all expenses incurred by CITY for inspecting and checking all work to be performed under the provisions of the Municipal Code or this Agreement. CITY Engineering plan checking and field improvement inspection costs are included in the Department of Public Works Fee Schedule which may be revised from time to time.

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

24. **Notices.** All notices shall be personally delivered or mailed, via first class mail to the below listed

addresses. These addresses shall be used for delivery of service of process. Notices shall be effective five (5) days after date of mailing, or upon date of personal delivery.

- a. Address of PROPERTY OWNER is as follows:

TSC Motors Inc.
3239 Imjin Rd
Marina CA 93933

- b. Address of CITY is as follows:

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

With a copy to:

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

25. **PROPERTY OWNER'S Representations.** This Agreement shall include application or items submitted by PROPERTY OWNER to CITY'S Planning Department, Building Department, Planning Commission, and City Council. In the event of any inconsistency between their representations and this Agreement, this Agreement shall govern.

26. **Licenses, Permits and Fees.** PROPERTY OWNER shall obtain a CITY Business License, all permits, and licenses as may be required by this Agreement.

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

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

29. **Limitations Upon Subcontracting and Assignment.** Neither this Agreement nor any portion shall be assigned by PROPERTY OWNER without prior written consent of CITY.

30. **Authority to Execute.** The persons executing this Agreement on behalf of the parties warrant that they are duly authorized to execute this Agreement.

31. **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all such counterparts shall together constitute one and the same instrument.

32. **Indemnification.** PROPERTY OWNER agrees to protect, and hold harmless CITY and its elective or appointive boards, officers, agents, and employees from any and all claims, liabilities, expenses, or damages of any nature, including attorneys' fees, for injury or death of any person, or damage to property, or interference with use of property, arising out of, or in any way connected with performance of the

Agreement by PROPERTY OWNER, PROPERTY OWNER'S agents, officers, employees, subcontractors, or independent contractors hired by PROPERTY OWNER. The only exception to PROPERTY OWNER'S responsibility to protect, defend, and hold harmless CITY, is due to the sole negligence of CITY. This hold harmless agreement shall apply to all liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by PROPERTY OWNER.

33. **Modification.** This Agreement constitutes the entire agreement between the parties and supersedes any previous agreements, oral or written. This Agreement may be modified on provisions waived only by subsequent mutual written agreement executed by CITY and PROPERTY OWNER.

34. **California Law.** This Agreement shall be construed in accordance with the laws of the State of California. Any action commenced about this Agreement shall be filed in the central branch of the Santa Clara County Superior Court.

35. **Interpretation.** This Agreement shall be interpreted as though prepared by both parties.

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

37. **Covenant Running with the Land.** This Agreement shall inure to the benefit of, and be binding upon the heirs, administrators, successors, assigns and transferees of the Parties, and shall be recorded in the Office of the County Recorder of Santa Clara County concurrently with the execution of this Agreement and constitute a covenant running with the land and equitable servitude upon the Property. Upon any sale or division of the Property, the terms, covenants, conditions and restrictions of this agreement shall apply to each parcel, and the owner or owners of each parcel shall succeed to the obligations imposed upon Property Owner by this Agreement.

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38. **Recording.** It shall be the responsibility of CITY to cause the executed Agreement to be recorded.

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

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

ATTEST:

THE CITY OF MORGAN HILL

Michelle Bigelow, City Clerk

Christina J. Turner, City Manager

Date: _____

Date: _____

APPROVED AS TO FORM:

"PROPERTY OWNER"

Donald A. Larkin, City Attorney

By: *Christian D. Pullara*
Title: *Corp. Dir. VP/Tres*
Date: *6/14/21*

Date: _____

By:

Title: _____

Date: _____

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

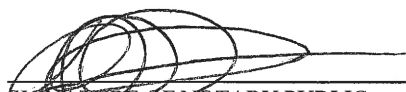
State of **California**

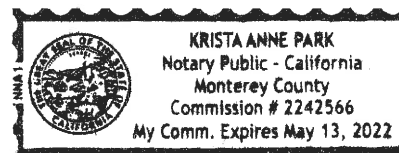
County of ~~Santa Clara~~ Monterey

On June 14 2021, before me, Krista Anne Park a Notary Public in and for said County and State, personally appeared Christian D. Pullara proved to me on the basis of satisfactory evidence to be the person whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.


SIGNATURE OF NOTARY PUBLIC



(ABOVE AREA FOR NOTARY SEAL)

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

State of **California**

County of **Santa Clara**

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

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

WITNESS my hand and official seal.

SIGNATURE OF NOTARY PUBLIC

(ABOVE AREA FOR NOTARY SEAL)

EXHIBIT "A"
LIST OF FUTURE IMPROVEMENTS AND
ESTIMATED COSTS OF IMPROVEMENTS
AS OF JUNE 10, 2021



Project: Condit Deferred Proj

1.0 Engineering Cost Estimate

a	Sewer System	\$ 10,825.00
b	Basins	\$ -
c	Channel System	\$ -
d	Storm Drain System	\$ 56,200.00
e	Street System / Onsite Improvements	\$ 76,674.70
f	Underground Existing Facilities (Undergrounds)	\$ -
g	Street Trees	\$ 4,800.00
h	Maintenance Districts	\$ -
i	Water System	\$ 64,490.00
j	Recycled Water System	\$ -
k	Traffic Signal System	\$ -
l	Street Light System	\$ 12,050.00
m	Misc Utilities	\$ -
n	Others	\$ -
o	Subtotal (a through n)	\$ 225,039.70
p	Mobilizatoion (5% Subtotal	\$ 11,251.99
q	Subtotal (o plus p)	\$ 236,291.69
r	Contingency (20%)	\$ 47,258.34
s	Subtotal (r plus s)	\$ 283,550.02

Total Construction

\$ 283,550.02

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

Bond No.: _____
 Premium: _____

Whereas, the City Council of the City of Morgan Hill, State of California, and TSC Motors Inc. (hereinafter designated as "principal") have entered into an Improvement Agreement:

TSC Motors Inc.
APN: 728-17-035
17085 Condit Road

whereby principal agrees to install and complete certain designated public improvements, which said agreement, dated _____, 20_____, and identified as project **Morgan Hill CDR+J Dealership**, is hereby referred to and made a part hereof; and

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

Now, therefore, we, the principal and [ENTER SURETY NAME], as surety, are held and firmly bound unto the City of Morgan Hill, hereinafter called ("City"), in the penal sum of Two Hundred Eighty Three Thousand Five Hundred Fifty dollars (\$283,550) lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, successors, executors and administrators, jointly and severally, firmly by these presents.

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

License No.: _____
 Address: _____
 Telephone No.: _____

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

Name of non-resident agent: _____
 Non-resident agent's office address: _____
 Telephone No.: _____

The condition of this obligation is such that if the above bounded principal, his or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and provisions in the said agreement and any alteration thereof made as therein provided, on his or their part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their

true intent and meaning, and shall indemnify and save harmless City, its officers, agents and employees, as therein stipulated, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

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

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

Executed this _____ day of _____ 20 ____ .

Principal

Principal

By: _____
Surety

By: _____
Attorney-in Fact

By: _____
California Resident Agent

By: _____
Non-resident Agent - Attorney-in-Fact

APPROVED:

Scott Creer, City Engineer

Date: _____

APPROVED AS TO FORM:

By: _____
Donald A. Larkin, City Attorney

Date: _____

(Acknowledgment on following page.)

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

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

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

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

WITNESS my hand and official seal.

SIGNATURE OF NOTARY PUBLIC

(ABOVE AREA FOR NOTARY SEAL)

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

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

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

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

WITNESS my hand and official seal.

SIGNATURE OF NOTARY PUBLIC

(ABOVE AREA FOR NOTARY SEAL)

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

Bond No.: _____
 Premium: _____

Whereas, the City Council of the City of Morgan Hill, State of California, and TSC Motors Inc. (hereinafter designated as "the principal") have entered into an Improvement Agreement:

TSC Motors Inc.
APN: 728-17-035
17085 Condit Road

whereby the principal agrees to install and complete certain designated public improvements, which agreement, dated _____, 20_____, and identified as project **Morgan Hill CDR+J Dealership**, is hereby referred to and made a part hereof; and

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

Now, therefore, the principal and the undersigned as corporate surety, and their successors and assigns are held firmly bound unto City and all contractors, subcontractors, laborers, materialmen, and other persons employed in the performance of the agreement and referred to in Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code in the sum of Two Hundred Eighty Three Thousand Five Hundred Fifty dollars (\$283,550), for materials furnished or labor thereon of any kind, or for amounts due under the Unemployment Insurance Act with respect to this work or labor, that the surety will pay the same in an amount not exceeding the amount hereinabove set forth, and also in case suit is brought upon this bond, will pay, in addition to the face amount thereof, costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by City in successfully enforcing this obligation, to be awarded and fixed by the court, and to be taxed as costs and to be included in the judgment therein rendered.

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

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

The Surety's office is located at _____,
 Telephone No. _____; the Surety is licensed to do business in the State of California; and

Labor and Material Bond
 Page 1 of 3
 Version: December 2017

Attachment: Deferred Improvement Agreement [Revision 2] (3128 : APPROVAL OF IMPROV AGREEMENT, DEFERRED IMPROV & R-O-W

the California Insurance Agent's License No., address, and telephone number as follows:

License No.: _____
 Address: _____
 Telephone No.: _____

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

Name of non-resident agent: _____
 Non-resident agent's office address: _____

Telephone No.: _____

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

Executed this _____ day of _____ 20 ____ .

 Principal

 Principal

By: _____
 Surety

By: _____
 Attorney-in Fact

By: _____
 California Resident Agent

By: _____
 Non-resident Agent - Attorney-in-Fact

APPROVED:

 Scott Creer, City Engineer

Date: _____

APPROVED AS TO FORM:

By: _____
 Donald A. Larkin, City Attorney

Date: _____

(Acknowledgment on following page.)

Labor and Material Bond
 Page 1 of 3
 Version: December 2017

Attachment: Deferred Improvement Agreement [Revision 2] (3128 : APPROVAL OF IMPROV AGREEMENT, DEFERRED IMPROV & R-O-W

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

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

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

WITNESS my hand and official seal.

SIGNATURE OF NOTARY PUBLIC

(ABOVE AREA FOR NOTARY SEAL)

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

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

WITNESS my hand and official seal.

SIGNATURE OF NOTARY PUBLIC

(ABOVE AREA FOR NOTARY SEAL)

Labor and Material Bond

Page 1 of 3

Version: December 2017

EXHIBIT "D"
FORM OF WARRANTY BOND
(50% of Cost of Construction)

Bond No.: _____

Premium: _____

Whereas, the City Council of the City of Morgan Hill, State of California (hereinafter designated as "City"), and TSC Motors Inc. (hereinafter designated as "Principal") have entered into an Improvement Agreement (hereinafter "Agreement"):

TSC Motors Inc.
APN: 728-17-035
17085 Condit Road

whereby the Principal agrees to install and complete certain designated public improvements (hereinafter "Improvements"), which said Agreement, dated _____, 20____, and identified as project **Morgan Hill CDR+J Dealership**, is hereby referred to and made a part hereof; and

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

Now, therefore, we, the Principal and _____ as Surety, are held and firmly bound unto the City of Morgan Hill in the penal sum of One Hundred Forty One Thousand Seven Hundred Seventy Five dollars (\$141,775) for the payment of which sum well and truly to be made, we bind ourselves, our heirs, successors, executors and administrators, jointly and severally, firmly by these presents.

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

Surety waives the provisions of Civil Code Sections 2819 and 2845. Surety hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the agreement or the specifications accompanying the same shall in any manner affect its obligations on this bond, and it does hereby waive notice of any such change, extension, alteration, or addition.

Warranty Bond
Page 3 of 3
Version: April 2019

Attachment: Deferred Improvement Agreement [Revision 2] (3128 : APPROVAL OF IMPROV AGREEMENT, DEFERRED IMPROV & R-O-W

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

Attn: _____

Address: _____

City/State/Zip: _____

Phone: _____

Fax: _____

Email: _____

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

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

SURETY:

Date: _____

s/ _____

Name: _____

Title: _____

Principal:

Date: _____

s/ _____

Name: _____

Title: _____

(Attach Acknowledgment with Notary
Seal and Power of Attorney)

APPROVED AS TO FORM:

By: _____
Donald A. Larkin, City Attorney

Date: _____

Warranty Bond
Page 3 of 3
Version: April 2019

Attachment: Deferred Improvement Agreement [Revision 2] (3128 : APPROVAL OF IMPROV AGREEMENT, DEFERRED IMPROV & R-O-W

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

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

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

WITNESS my hand and official seal.

SIGNATURE OF NOTARY PUBLIC

(ABOVE AREA FOR NOTARY SEAL)

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

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

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

WITNESS my hand and official seal.

SIGNATURE OF NOTARY PUBLIC

(ABOVE AREA FOR NOTARY SEAL)

Warranty Bond
Page 3 of 3
Version: April 2019



CITY COUNCIL STAFF REPORT

MEETING DATE: June 23, 2021

PREPARED BY: Cynthia Iwanaga, Management Analyst
APPROVED BY: City Manager

APPROVE SECOND AMENDMENT TO MAINTENANCE SERVICE AGREEMENT WITH ANIMAL DAMAGE MANAGEMENT, INC.

RECOMMENDATION(S)

1. Determine that competitive bids upon notice would not likely result in a lower price to the City from a responsible bidder or would cause unnecessary expense or delay under the circumstances per Section 3.04.150 (1) of the Morgan Hill Municipal Code; and
2. Authorize the City Manager to execute and administer the Second Amendment to the Maintenance Service Agreement with Animal Damage Management, Inc., extending the agreement for one additional year of service at annual amount of \$35,160 for a new total contract amount of \$140,640 over 4 years.

COUNCIL PRIORITIES, GOALS & STRATEGIES

2020-2021 Strategic Priorities

Fiscal Sustainability

REPORT NARRATIVE:

The purpose of this report is to provide the City Council with an opportunity to consider a second amendment to the City's contract with Animal Damage Management, Inc. for pest control services at various City recreational facilities, parks, booster stations, and the Morgan Hill Police Department facility. The City's current agreement with Animal Damage Management, Inc. expires on June 30, 2021.

Animal Damage Management, Inc. was selected through a competitive RFP process in 2018. The initial two-year agreement for \$70,320 began July 1, 2018. In June 2020, a First Amendment to the agreement extended the term one additional year to June 30, 2021 and increased the amount to \$105,480 per City Manager authority. This proposed Second Amendment would extend the terms an additional year at a rate of \$35,160, increasing the maximum compensation to \$140,640. Per the Second Amendment, Animal Damage Management, Inc. has agreed not to increase their rates. The annual amount is based on monthly maintenance costs of \$1,680 for 12 months of scheduled preventative maintenance service totaling \$20,160 plus \$15,000 for estimated additional pest control services as needed.

Section 3.04.150 (1) of the Morgan Hill Municipal Code authorizes the City Council to extend an agreement if the Council determines that competitive bids upon notice would not be likely to result in a lower price to the City from a responsible bidder or would

cause unnecessary expense or delay under the circumstances. Staff is satisfied with the services provided by Animal Damage Management, Inc. In addition, since this vendor has agreed not to increase their rates, extending the terms with the current pricing is advantageous to the City. Staff therefore recommends this Second Amendment as soliciting competitive bids would not likely result in a lower price to the City from a responsible bidder or would cause unnecessary expense or delay under the circumstances.

It should be noted that pest control services provided by Animal Damage Management, Inc. are performed in alignment with City Policies, including the City's policy not allowing the use of rodenticides.

COMMUNITY ENGAGEMENT: Not Applicable

As pest control services are regular and expected City services, no community engagement occurred for this proposed contract amendment.

ALTERNATIVE ACTIONS:

The City Council could decline to approve the amendment and instead direct staff to proceed with a new request for proposals (RFP) for pest control services. Should the Council wish to rebid this service, staff estimates that a new agreement could be in place by September 2021. Pest control services would be paid on a monthly time and material basis to Animal Damage Management, Inc. until a new agreement could be executed.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The City Council previously awarded the existing agreement to Animal Damage Management, Inc. on July 18, 2018.

FISCAL AND RESOURCE IMPACT:

If approved, the total funding authorization for this agreement would be \$140,640. Funding for pest control services is included in the FY 2020-2022 Adopted Budget within the contractual services line items in the Parks Maintenance Fund (302), Water Operations Fund (650), and Building Maintenance Fund (740).

CEQA (California Environmental Quality Act): Categorical Exemption

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

LINKS/ATTACHMENTS:

1. Second Amendment to Animal Damage Management Agmt_signed

SECOND AMENDMENT TO AGREEMENT ANIMAL DAMAGE MANAGEMENT, INC.

This SECOND AMENDMENT TO AGREEMENT is entered into and becomes effective on _____ (Effective Date), by THE CITY OF MORGAN HILL, a municipal corporation, ("CITY") and ANIMAL DAMAGE MANAGEMENT, INC., a California Corporation ("SERVICE PROVIDER").

RECITALS

The following recitals are a substantive part of this Agreement:

1. This Second Amendment to Agreement is entered into pursuant to the action of the Morgan Hill City Council taken on _____, ____, 20__.
2. The CITY and SERVICE PROVIDER entered into that "Maintenance Service Agreement" made as of July 18, 2018, for services for a maximum compensation of Seventy Thousand Three Hundred Twenty and no/100 dollars (\$70,320.00) ("MAINTENANCE SERVICE AGREEMENT").
3. The CITY and SERVICE PROVIDER entered into a "First Amendment to Agreement" made as of June 10, 2020, under which the maximum compensation under the MAINTENANCE SERVICE AGREEMENT, as amended, was increased to One Hundred Five Thousand Four Hundred Eighty and no/100 dollars (\$105,480.00). The MAINTENANCE SERVICE AGREEMENT and the First Amendment thereto are attached as Exhibit "1" to this Agreement.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

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

A. Paragraph 2 shall be amended and replaced in its entirety by the following:

"2. **Term of Agreement.** This Agreement shall be effective and cover services rendered from July 18, 2018, until June 30, 2022."

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

"4.1. **Amount.** Compensation under this Agreement shall not exceed ONE HUNDRED FORTY THOUSAND SIX HUNDRED FORTY AND NO/100 DOLLARS (\$140,640.00) and shall be billed based on the rate and basis set forth in **Exhibit B.**"

C. Paragraph 5.1 shall be amended by adding the following:

"5.1 **Non-appropriations.** Notwithstanding anything contained in this Agreement to the contrary, if insufficient funds are appropriated, or funds are otherwise unavailable in the budget for CITY for any reason whatsoever in any fiscal year, for payments due under this Agreement, CITY will immediately notify SERVICE PROVIDER of such occurrence,

and this Agreement shall terminate after the last day during the fiscal year for which appropriations shall have been budgeted for CITY or are otherwise available for payments."

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

TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS:

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

ATTEST:

CITY OF MORGAN HILL

Michelle Bigelow, City Clerk

Date: _____

Christina J. Turner, City Manager

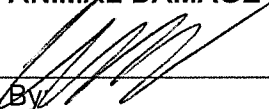
Date: _____

APPROVED AS TO FORM:

ANIMAL DAMAGE MANAGEMENT, INC.

Donald A. Larkin, City Attorney

Date: _____

By: 

Title: _____

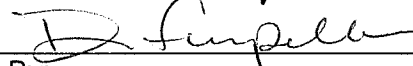
C. J. W.
Vice President

Print Name and Title of Signer.

If Corporate: Chairman, President or Vice President

Date: _____

6/2/21



By: _____

Title: _____

Diane Farfella - Secretary

Print Name and Title of Signer.

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

Date: _____

6/2/21

EXHIBIT 1

**FIRST AMENDMENT TO AGREEMENT
ANIMAL DAMAGE MANAGEMENT, INC.**

This FIRST AMENDMENT TO AGREEMENT is entered into and becomes effective on 6/10/2020 (Effective Date), by THE CITY OF MORGAN HILL, a municipal corporation, ("CITY") and ANIMAL DAMAGE MANAGEMENT, INC., a California Corporation ("SERVICE PROVIDER"), hereinafter referred to collectively as "Parties."

RECITALS

The following recitals are a substantive part of this Agreement:

1. This FIRST Amendment to Agreement is entered into pursuant to the action of the Morgan Hill City Council taken on July 18, 2018.
2. The CITY and SERVICE PROVIDER entered into that "Maintenance Service Agreement" made as of July 26, 2018, for services for a maximum compensation of Seventy Thousand Three Hundred Twenty and no/100 dollars (\$70,320.00) ("MAINTENANCE SERVICE AGREEMENT"). The MAINTENANCE SERVICE AGREEMENT is attached as Exhibit "1" to this Agreement.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

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

A. Paragraph 2 shall be amended and replaced in its entirety by the following:

"2. **Term of Agreement.** This Agreement shall be effective and cover services rendered from July 26, 2018, until July 31, 2021."

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

"4.1. **Amount.** Compensation under this Agreement shall not exceed ONE HUNDRED FIVE THOUSAND FOUR HUNDRED EIGHTY AND NO/100 DOLLARS (\$105,480.00) and shall be billed based on the rate and basis set forth in **Exhibit B.**"

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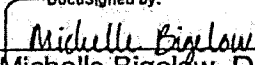
Signatures on Next Page

2. **Conflicts.** In the event of a conflict between the terms and provisions of this First Amendment to Agreement and the terms and provisions of the MAINTENANCE SERVICE AGREEMENT, the terms of this First Amendment to Agreement shall govern and control.

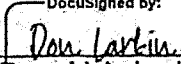
TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS:

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

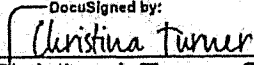
ATTEST:

DocuSigned by:

 Michelle Bigelow, Deputy City Clerk
 Date: 6/10/2020

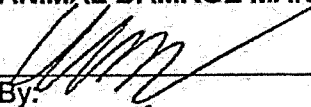
APPROVED AS TO FORM:

DocuSigned by:

 Donald A. Larkin, City Attorney
 Date: 6/9/2020

CITY OF MORGAN HILL

DocuSigned by:

 Christina L. Turner, City Manager
 Date: 6/10/2020

ANIMAL DAMAGE MANAGEMENT, INC.


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

Date: 5/28/20


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

Date: 5/28/20

128-04-08-024

EXHIBIT 1

MAINTENANCE SERVICE AGREEMENT
Animal Damage Management, Inc.

THIS AGREEMENT is entered into and becomes effective on 7/26/18 (Effective Date), by and between the CITY OF MORGAN HILL, a municipal corporation, ("CITY"), and Animal Damage Management, Inc. a California corporation ("SERVICE PROVIDER") hereinafter referred to collectively as "Parties." In consideration of the promises and the mutual covenants contained in this Agreement, the Parties agree as follows:

1. **City Authority.** This Agreement is entered into pursuant to action of the Morgan Hill City Council taken on July 18, 2018.
2. **Term of Agreement.** This Agreement shall cover services rendered from the Effective Date of this Agreement until July 31, 2020 at which time SERVICE PROVIDER'S services shall be completed. The City Manager is authorized to extend the term of this Agreement for a maximum period of one year. Any such extension shall be in writing and signed by both Parties to this Agreement.
3. **Scope of Service.** The services to be performed by SERVICE PROVIDER shall be pest control services as further described in Exhibit A.
4. **Compensation.** SERVICE PROVIDER shall be compensated as follows:
 - 4.1. **Amount.** \$70,320.00. Total compensation to CONSULTANT under this Agreement during its initial term set forth in Section 2 above shall not exceed Seventy thousand three hundred twenty dollars and shall be billed based on the rate and basis set forth in Exhibit B. If the City Manager extends the term of this Agreement for up to one year pursuant to the provisions of Section 2 above, the City Manager shall have the authority to increase the maximum compensation allowed to be paid to CONSULTANT during that extended term period, so long as City Council has appropriated sufficient funds therefor, the Parties mutually agree to such amount in a writing signed by both Parties to this Agreement and provided further that in no event shall such maximum compensation allowed for the extended term exceed 105% of the maximum compensation allowed to be paid to CONSULTANT for one year of service during the initial term of this Agreement.
 - 4.2. **Billing.** SERVICE PROVIDER shall provide CITY with an invoice containing the dated, detailed, and itemized descriptions of all services performed and expenses incurred (if such expenses are reimbursable pursuant to Exhibit B) by SERVICE PROVIDER on a monthly basis unless otherwise specified in Exhibit B. All invoices shall be sent to the CITY addressed to the department head or project manager identified below in Section 14 Notices. Payment will be made to SERVICE PROVIDER within thirty (30) days of receipt of invoice by CITY. Any rate charged shall be prorated where services are interrupted or not provided for any rate period (for example, any monthly rate charge should be prorated when services were interrupted or provided for only part of the month). For services billed on an hourly rate, the minimum unit of billed time shall not exceed one tenth of one hour. CITY shall pay for services and expenses (if so provided in Exhibit B) up to the limit of compensation set forth above, that in the CITY's judgment were necessary and reasonable. Services for work performed and expenses incurred in excess of the total compensation set forth in paragraph 4.1 above shall be at no cost to CITY.
5. **Termination.** CITY or SERVICE PROVIDER shall have the right to terminate this Agreement, without cause, by giving thirty (30) days' written notice or less under urgent circumstances. Upon such termination,

SERVICE PROVIDER shall submit to CITY an itemized statement of services performed for which compensation has not been paid. CITY may require SERVICE PROVIDER to complete certain work product or documents and SERVICE PROVIDER shall deliver to CITY all documents in its possession without additional compensation to SERVICE PROVIDER. The City Manager is authorized to terminate this AGREEMENT on behalf of CITY.

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

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

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

8.1. **Insurance Types and Amounts.**

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

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

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

8.1.5.3. If the performance of SERVICE PROVIDER's work or service under this Agreement involves contact with minors, SERVICE PROVIDER shall procure and maintain Sexual Abuse and Molestation insurance in the minimum amount of: (i) one million dollars (\$1,000,000.00) each claim, or (ii) the maximum amount of such insurance available to SERVICE PROVIDER under SERVICE PROVIDER's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

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

8.2.1. **General Liability.**

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

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

8.2.1.3. Insurance shall be primary non-contributing.

8.2.2. **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.

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

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

Certificate Holder address:

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

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

10. **Compliance with Law.**

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

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

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

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

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

Prior Judgments against SERVICE PROVIDER and/or Its Subcontractors: BY SIGNING THIS AGREEMENT, SERVICE PROVIDER AFFIRMS THAT IT HAS DISCLOSED ANY FINAL JUDGMENTS, DECISIONS OR ORDERS FROM A COURT OR INVESTIGATORY GOVERNMENT AGENCY FINDING – IN THE FIVE (5) YEARS PRIOR TO EXECUTING THIS

AGREEMENT – THAT SERVICE PROVIDER OR ITS SUBCONTRACTOR(S) HAS VIOLATED ANY APPLICABLE WAGE AND HOUR LAWS. SERVICE PROVIDER FURTHER AFFIRMS THAT IT OR ITS SUBCONTRACTOR(S) HAS SATISFIED AND COMPLIED WITH – OR HAS REACHED AGREEMENT WITH THE CITY REGARDING THE MANNER IN WHICH IT WILL SATISFY – ANY SUCH JUDGMENTS, DECISIONS OR ORDERS.

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

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

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

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

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

Address of SERVICE PROVIDER is as follows:

Animal Damage Management, Inc.
16170 Vineyard Blvd., Ste. 150
Morgan Hill, CA 95037

Address of CITY is as follows:

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

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

16. **Maintenance of Records.**

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

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

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

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

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 SERVICE PROVIDER, without prior written consent of CITY. Any attempted assignment not first approved by CITY shall be void and, at CITY's option, shall terminate this Agreement effective as of the date of such attempted assignment.
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.** SERVICE PROVIDER shall, to the fullest extent permitted by law, indemnify, defend and hold harmless CITY, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers ("INDEMNITEES") from and against any and all claims, liabilities, expenses, liens, or damages of any nature, including liability for bodily injury, property damage or personal injury, and including reasonable attorneys' fees and expenses, that arise out of, pertain to, or relate to the performance of this Agreement or the failure to comply with any obligations contained in this Agreement by SERVICE PROVIDER, and/or its agents, officers, employees, subcontractors, or independent contractors ("CLAIM").
- 21.2. **Exceptions.** SERVICE PROVIDER is not required to indemnify INDEMNITEES against liability for bodily injury, property damage or personal injury, or any other loss, damage or expense arising from the sole negligence or willful misconduct of CITY.
- 21.3. **Not limited by insurance.** The indemnity, defense and hold harmless provisions of this Agreement apply to all CLAIMs alleged against an INDEMNITEE, regardless of whether any insurance policies are applicable. Policy limits do not act as a limitation upon the amount of indemnification or defense to be provided by SERVICE PROVIDER.
- 21.4. **Right to Offset.** CITY shall have the right to offset against any compensation due SERVICE PROVIDER under this Agreement any amount due CITY from SERVICE PROVIDER as a result of SERVICE PROVIDER's failure to pay CITY promptly any indemnification arising under this Section (21) and any amount due CITY from SERVICE PROVIDER arising from SERVICE PROVIDER's failure either to (i) pay taxes on amounts received pursuant to this Agreement or (ii) comply with applicable workers' compensation laws.
- 21.5. **Interpretation.** This Section shall constitute an agreement or contract of indemnity, incorporating the interpretations under California Civil Code Section 2778. It is expressly understood and agreed that the obligation of SERVICE PROVIDER to indemnify the INDEMNITEE shall be as broad and inclusive as permitted by the laws of the State of California and shall survive termination of this Agreement.
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 SERVICE PROVIDER. If the provisions contained in the main body of this Agreement conflict with any provision contained in an exhibit to this Agreement, the provisions of the main body of this Agreement shall govern and control over any provision contained in an exhibit to this Agreement.
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 SERVICE PROVIDER in the same manner as if those successors in interest, legal representatives or other permitted assignees or transferees had entered into this Agreement originally.

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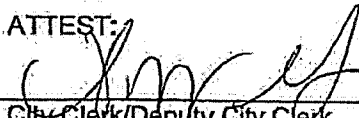
27. **Authority to Execute.** Those individuals who are signing this Agreement on behalf of entities represent and warrant that they are, respectively, duly authorized to sign on behalf of the entities and to bind the entities fully to each and all of the obligations set forth in this Agreement.

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 Clerk/Deputy City Clerk

fw Michelle Wilson
Print Name

Date: 8/11/18

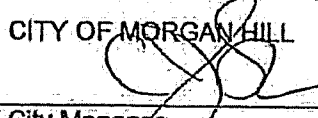
APPROVED AS TO FORM:


City Attorney

Donald A. Larkin
Print Name

Date: 7/20/2018

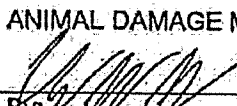
CITY OF MORGAN HILL


City Manager

Christina J. Turner
Print Name

Date: 7/26/18

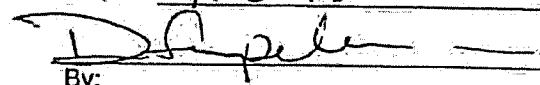
ANIMAL DAMAGE MANAGEMENT, INC.

By: 

Cody UW - Vice President
Print Name and Title of Signer.

If Corporate: Chairman, President or
Vice President

Date: 7-6-18

By: 

Dane Furpalla - Secretary
Print Name and Title of Signer.

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

Date: 7-6-18.

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

1000010890
Contractor's DIR Registration Number(s) (if applicable)

Expiration Date(s)

Expiration Date(s) 6-2019

Seal:

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Updated: May 2018

EXHIBIT A SCOPE OF SERVICES

Contractor to provide ongoing scope of services for city facilities described below:

- 1. Butterfield Detention Basin located at Railroad, Fisher and Seymour Avenues: Inspect and treat as needed using traps and or carbon monoxide gas. Monitor and report. To be serviced four (4) times per month.**
- 2. Aquatics Center located at 16200 Condit Road. Inspect, set traps as needed in turf and landscaped areas to control gophers. Monitor and report. To be serviced four (4) times per month.**
- 3. Morgan Hill Police Department located at 16200 Vineyard Boulevard: Inspect bait stations, service each as needed. Monitor and report. Services include cleaning out debris, replenishing bait, marking record card and replacing any damaged bait stations. To be serviced twice per month.**
- 4. Boys Ranch 1, 2 & 3 Wells located at 1000 to 1004 Burnett Avenue. Inspect bait stations, service each as needed. Monitor and report. Services include cleaning out debris, replenishing bait, marking record card, and replacing any damaged bait stations. To be serviced twice per month.**
- 5. Jackson Oaks Booster located at 3842 White Oak Court/E Dunne Avenue after Hilltop Court. Inspect bait stations, service each as needed. Monitor and report. Service includes cleaning out debris, replenishing bait, marking record card and replacing any damaged bait stations. To be serviced twice per month**
- 6. Encino Booster located at 18835 Glen Ayre Drive. Inspect bait stations, service each as needed. Monitor and report. Service includes cleaning out debris, replenishing bait, marking record card and replacing any damaged bait stations. To be serviced twice per month**
- 7. Woodland Acres Booster located at 17910 Woodland Avenue. Inspect bait stations, service each as needed. Monitor and report. Service includes cleaning out debris, replenishing bait, marking record card and replacing any damaged bait stations. To be serviced twice per month**
- 8. Dunne Well located at East Dunne and Condit Road: Inspect bait stations, service each as needed. Monitor and report. Service includes cleaning out debris, replenishing bait, marking record card and replacing any damaged bait stations. To be serviced twice per month**
- 9. Community Park located at 171 W. Edmundson Ave.: Inspect turf and landscape areas for gophers and ground squirrels. Treat as needed using traps and or carbon monoxide gas. Monitor and report. Trappings twice per month. Carbon monoxide gas twice per month.**
- 10. Paradise Park located at La Crosse Drive and Calle Enrique. Inspect turf and landscape areas for gophers and ground squirrels. Set traps as needed. Monitor and report. Serviced twice per month.**
- 11. Extra Services for gophers and ground squirrels, raccoons, birds, wasps, mice, insects, skunks and opossums as requested by City Maintenance Staff.**

**EXHIBIT B
SCHEDULE OF COMPENSATION RATES**

1. Butterfield Detention Basin: \$275.00 per month
2. Aquatics Center \$375.00 per month
3. Morgan Hill Police Department \$100.00 per month
4. Boys Ranch 1, 2 & 3: \$50.00 per month
5. Jackson Oaks Booster: \$50.00 per month
6. Encino Booster: \$50.00 per month
7. Woodland Acres Booster: \$50.00 per month
8. Dunne Well: \$50.00 per month
9. Community Park: \$505.00 per month
10. Paradise Park: \$175.00 per month
11. Extra Services:

Gophers and Ground Squirrels	\$195.00
Raccoons:	\$175.00
Birds:	\$225.00
Wasps:	\$175.00
Mice:	\$185.00
Insects:	\$165.00
Skunks:	\$195.00
Opossums:	\$175.00

**EXHIBIT C
SCHEDULE OF PERFORMANCE**

1. Butterfield Detention Basin: To be serviced four (4) times per month.
2. Aquatics Center To be serviced four (4) times per month.
3. Morgan Hill Police Department To be serviced twice per month.
4. Boys Ranch 1, 2 & 3: To be serviced twice per month.
5. Jackson Oaks Booster: To be serviced twice per month
6. Encino Booster: To be serviced twice per month
7. Woodland Acres Booster: To be serviced twice per month
8. Dunne Well: To be serviced twice per month
9. Community Park: Trappings twice per month. Carbon monoxide gas twice per month.
10. Paradise Park: Serviced twice per month
11. Extra Services: As requested by City Maintenance Staff



CITY COUNCIL STAFF REPORT

MEETING DATE: June 23, 2021

PREPARED BY: Michael Horta, Human Resources Director

APPROVED BY: City Manager

APPROVE THIRD AMENDMENT TO AGREEMENT WITH INNOVATIVE CLAIMS SOLUTIONS, INC.

RECOMMENDATION(S)

Authorize the City Manager to execute and administer a Third Amendment to Agreement with Innovative Claims Solutions, Inc. to provide third party claims administration for workers' compensation extending the agreement for one additional year of service at annual amount of \$34,380, for a new total contract amount of \$206,600 over 6 years.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Maintaining Infrastructure

Preserving and Cultivating Public Trust

2020-2021 Strategic Priorities

Fiscal Sustainability

REPORT NARRATIVE:

The current agreement with Innovative Claim Solutions (ICS) has been in effect since June 2016. During this time, ICS has administered several lengthy and complex workers' compensation case settlements that resulted in City Council review and approval. ICS has expended significant resources and continues to educate and inform Human Resources, departmental workers' compensation liaisons, and the City Attorney on the particular workers' compensation cases, as well as the general aspects of workers' compensation and case law. In early 2016, staff conducted a joint Request For Proposal (RFP) with the City of Gilroy for such services, through which ICS was selected as the most qualified firm to provide the services. ICS was also the lowest overall cost as a result of the RFP. ICS has offered to provide its services for an additional year without an increase to their current fees. The City will be conducting another RFP within the fiscal year. Therefore, staff recommends that Council approve the Third Amendment to Agreement, increasing the contract amount by \$34,380 to a revised not to exceed amount of \$206,600.

COMMUNITY ENGAGEMENT: Inform

This report serves to inform the community of the recommended third amendment to the agreement.

ALTERNATIVE ACTIONS:

The Council could choose not to approve the third amendment to the agreement with ICS and direct staff to conduct an RFP or consider a different third-party administrator for workers' compensation in the interim.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The Council approved the City's current agreement with ICS on May 18, 2016, which was subsequently amended for an additional one-year and two-year term, pursuant to the City Manager's authority.

FISCAL AND RESOURCE IMPACT:

The third amendment to the agreement would increase the compensation by \$34,380 over one year. Costs for these services are budgeted and paid from the Workers' Compensation Fund (770). (GL#:770.8220.42231).

CEQA (California Environmental Quality Act): Not a Project.

This is an administrative action that will not result in physical changes in the environment.

LINKS/ATTACHMENTS:

1. Innovative Claims Solutions - Third Amendment

THIRD AMENDMENT TO AGREEMENT INNOVATIVE CLAIMS SOLUTIONS, INC.

This THIRD AMENDMENT TO AGREEMENT is entered into and becomes effective on _____ (Effective Date), by THE CITY OF MORGAN HILL, a municipal corporation, ("CITY") and INNOVATIVE CLAIMS SOLUTIONS, INC., a California Corporation ("CONSULTANT").

RECITALS

The following recitals are a substantive part of this Agreement:

1. This Third Amendment to Agreement is entered into pursuant to the action of the Morgan Hill City Council taken on _____, _____, 20____.
2. The CITY and CONSULTANT entered into that "Consultant Agreement" made as of June 14, 2016, for consultant services for a maximum compensation of Sixty-Nine Thousand Eighty and no/100 dollars (\$69,080.00) ("CONSULTANT AGREEMENT").
3. The CITY and CONSULTANT entered into a "First Amendment to Agreement" made as of June 7, 2018, under which the maximum compensation under the CONSULTANT AGREEMENT, as amended, was increased to One Hundred Three Thousand Four Hundred Sixty and no/100 dollars (\$103,460.00).
4. The CITY and CONSULTANT entered into a "Second Amendment to Agreement" made as of November 14, 2019, under which the maximum compensation under the CONSULTANT AGREEMENT, as amended, was increased to One Hundred Seventy-Two Thousand Two Hundred Twenty and no/100 dollars (\$172,220.00). The CONSULTANT AGREEMENT, and the First, Second and Third Amendments thereto are attached as Exhibit "1" to this Agreement.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **Amendments:** All terms and conditions of the CONSULTANT AGREEMENT, as amended, as attached as Exhibit "1," shall remain in full force and effect; except that the following amendments shall be made as set forth below:
 - A. Paragraph 2 shall be amended and replaced in its entirety by the following:

"2. **Term of Agreement.** This Agreement shall be effective and cover services rendered from June 14, 2016, until June 30, 2022."
 - B. Rates as described in Exhibit B dated May 22, 2019, are continued in place through June 30, 2022.
 - C. Paragraph 5 shall be amended by adding the following:

"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.”

D. Paragraph 9 shall be amended and replaced in its entirety by the following to correct reference from SERVICE PROVIDER to CONSULTANT:

"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."

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Signatures on the Next Page

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

TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS:

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

ATTEST:

CITY OF MORGAN HILL

Michelle Bigelow, City Clerk

Date: _____

APPROVED AS TO FORM:

Donald A. Larkin, City Attorney

By: _____

Date: _____

Christina J. Turner, City Manager

Date: _____

INNOVATIVE CLAIMS SOLUTIONS, INC.

Cheryl Westeren

By: Cheryl Westeren

Title: President & COO

Print Name and Title of Signer.

If Corporate: Chairman, President or Vice President

Date: _____

6/2/2021

Gary Archibald

By: Gary Archibald

Title: President & COO

Print Name and Title of Signer.

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

Date: _____

6/3/2021

12604-16-053

EXHIBIT 1

**SECOND AMENDMENT TO AGREEMENT
INNOVATIVE CLAIMS SOLUTIONS, INC.**

This SECOND AMENDMENT TO AGREEMENT is entered into and becomes effective on 11/4/19 (Effective Date), by THE CITY OF MORGAN HILL, a municipal corporation, ("CITY") and INNOVATIVE CLAIMS SOLUTIONS, INC., a California Corporation ("CONSULTANT").

RECITALS

The following recitals are a substantive part of this Agreement:

1. This Second Amendment to Agreement is entered into pursuant to the action of the Morgan Hill City Council taken on JUNE 20, 2019
2. The CITY and CONSULTANT entered into that "Consultant Agreement" made as of June 14, 2016, for consultant services for a maximum compensation of SIXTY-NINE THOUSAND EIGHTY AND NO/100 DOLLARS (\$69,080.00) ("CONSULTANT AGREEMENT").
3. The CITY and CONSULTANT entered into a "First Amendment to Agreement" made as of June 7, 2018, under which the maximum compensation under the CONSULTANT AGREEMENT, as amended, was increased to ONE HUNDRED THREE THOUSAND FOUR HUNDRED SIXTY AND NO/100 DOLLARS (\$103,460.00). The CONSULTANT AGREEMENT and the First Amendment thereto are attached as Exhibit "1" to this Agreement.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

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

A. Paragraph 2 shall be amended and replaced in its entirety by the following:

"2. **Term of Agreement.** This Agreement shall be effective and cover services rendered from June 14, 2016, until June 30, 2021."

B. Effective July 1, 2019, CONSULTANT'S billing rates are set forth in the revised Exhibit "B" dated May 22, 2019, approved by CITY and attached hereto and incorporated herein by this reference. Paragraph 4.1 shall be amended and replaced in its entirety by the following:

"4.1. **Amount.** Compensation under this Agreement shall not exceed ONE HUNDRED SEVENTY-TWO THOUSAND TWO HUNDRED TWENTY AND NO/100 DOLLARS (\$172,220.00) and shall be billed based on the rate and basis set forth in Exhibit B.

C. Paragraph 5 shall be amended and replaced in its entirety by the following:

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.

D. Paragraph 7.2.2 shall be amended and replaced in its entirety by the following:

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.

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

TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS:

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

ATTEST:

Michelle Bigelow
 Michelle Bigelow, Deputy City Clerk
 Date: 11/8/19

APPROVED AS TO FORM:

Donald A. Larkin
 Donald A. Larkin, City Attorney
 Date: 10-28-19

CITY OF MORGAN HILL

Christina J. Turner
 Christina J. Turner, City Manager
 Date: 11/4/19

INNOVATIVE CLAIMS SOLUTIONS, INC.

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

Date: 6/12/19
Gary Archibald
 By: Gary Archibald
 Title: President & CIO
 Print Name and Title of Signer.
 If Corporate: Secretary, Assistant Secretary, Chief Financial Officer or Assistant Treasurer

Date: 6-12-19

REVISED EXHIBIT B

INNOVATIVE CLAIMS SOLUTIONS, INC. – SECOND AMENDMENT TO AGREEMENT
MAY 22, 2019

City shall pay CONSULTANT:

1. An annualized fee of \$34,380 for the period of July 1, 2019 – June 30, 2020; and
2. an annualized fee of \$34,380 for the period of July 1, 2020 – June 30, 2021.

The payments will be made in equal monthly installments of \$2,865.00.

126-04-16-053

EXHIBIT "1"

FIRST AMENDMENT TO AGREEMENT
INNOVATIVE CLAIMS SOLUTIONS, INC.

This FIRST AMENDMENT TO AGREEMENT is entered into and becomes effective on June 7, 2018 (Effective Date), by THE CITY OF MORGAN HILL, a municipal corporation, ("CITY") and, INNOVATIVE CLAIMS SOLUTIONS, INC., a California corporation ("CONSULTANT").

RECITALS

The following recitals are a substantive part of this Agreement:

1. This First Amendment to Agreement is entered into pursuant to the action of the Morgan Hill City Council taken on May 18, 2016.
2. The CITY and CONSULTANT entered into that "Consultant Agreement" made as of June 14, 2016, for consultant services for a maximum compensation of SIXTY-NINE THOUSAND EIGHTY AND NO/100 DOLLARS (\$69,080.00) ("CONSULTANT AGREEMENT"). The CONSULTANT AGREEMENT is attached as Exhibit "1" to this Agreement.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

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

A. Paragraph 2 shall be amended and replaced in its entirety by the following:

"2. Term of Agreement. This Agreement shall be effective and cover services rendered from June 14, 2016, until June 30, 2019."

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

"4.1. Amount. Compensation under this Agreement shall not exceed ONE HUNDRED THREE THOUSAND FOUR HUNDRED SIXTY AND NO/100 DOLLARS (\$103,460.00) and shall be billed based on the rate and basis set forth in the revised Exhibit B dated May 17, 2018, attached hereto and incorporated herein by this reference."

C. Paragraph 9 shall be amended and replaced in its entirety by the following:

"9. Compliance with Law.

9.1 SERVICE PROVIDER and its officers, employees, agents, and subcontractors shall comply with all applicable laws, ordinances, administrative regulations, and permitting requirements in carrying out their obligations under this Agreement. SERVICE PROVIDER and its officers, employees, agents, and

subcontractors covenant there shall be no discrimination based upon race, color, creed, religion, gender, marital status, age, sexual orientation, national origin, mental disability, physical disability, medical condition, or ancestry, in any activity pursuant to this Agreement.

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

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

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

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

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

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

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

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

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

[Signatures on Next Page]

2. **Conflicts.** In the event of a conflict between the terms and provisions of this First Amendment to Agreement and the terms and provisions of the CONSULTANT, the terms of this First Amendment to Agreement shall govern and control.

TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS:

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

ATTEST:

Procity
 City Clerk
 Date: 06/13/18

APPROVED AS TO FORM:

for
 City Attorney
 Date: 5-21-18

CITY OF MORGAN HILL

City Manager
 Date: 6-7-18

INNOVATIVE CLAIMS SOLUTIONS, INC.

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

Date: 5-21-2018
 By: Gary Archbold
 Title: President + CIO
 Print Name and Title of Signer.
 If Corporate: Secretary, Assistant Secretary, Chief Financial Officer or Assistant Treasurer

Date: 5-21-2018

REVISED EXHIBIT B
INNOVATIVE CLAIMS SOLUTIONS, INC. - FIRST AMENDMENT TO AGREEMENT
MAY 17, 2018

City shall pay CONSULTANT an annualized fee of \$34,380 for the period of July 1, 2018 – June 30, 2019, and payments will be made in equal monthly installments of \$2,865.00.

126-04-16-053

EXHIBIT "1"**CONSULTANT AGREEMENT
Innovative Claims Solutions, Inc.**

THIS AGREEMENT is entered into and becomes effective on 6/14/16 (Effective Date), by and between the CITY OF MORGAN HILL, a municipal corporation, ("CITY"), and Innovative Claims Solutions, 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 action of the Morgan Hill City Council taken on MAY 18, 2016.
2. Term of Agreement. This Agreement shall cover services rendered from the Effective Date of this Agreement until June 30, 2018 at which time CONSULTANT'S services shall be completed. The City Manager is authorized to extend the term of this Agreement for a maximum period of one year. Any such extension shall be in writing and signed by both Parties to this Agreement.
3. Scope of Service. The services to be performed by CONSULTANT shall be workers compensation claims administration as further described in Exhibit A.
4. Compensation. CONSULTANT shall be compensated as follows:
 - 4.1. Amount. \$69,080.00. Total compensation to CONSULTANT under this Agreement during its initial term set forth in Section 2 above shall not exceed sixty nine thousand eighty dollars and shall be billed based on the rate and basis set forth in Exhibit B. If the City Manager extends the term of this Agreement for up to one year pursuant to the provisions of Section 2 above, the City Manager shall have the authority to increase the maximum compensation allowed to be paid to CONSULTANT 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 during the extended term period exceed an additional five percent (5%) above the compensation allowed to be paid to CONSULTANT during the initial term of this Agreement.
 - 4.2. Billing. CONSULTANT shall provide CITY with a monthly 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. 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 on behalf of CITY.

6. Performance of Work. CONSULTANT represents that it is qualified by virtue of experience, training, education, and expertise to accomplish these services. Services shall be performed by CONSULTANT in accordance with professional practices in a manner consistent with a level of care, competence and skill exercised by qualified members of the CONSULTANT'S profession. By delivery of completed work, CONSULTANT certifies that the work conforms to the requirements of this Agreement and all applicable federal, state and local laws. If CONSULTANT desires to leave or store any of CONSULTANT's equipment at a CITY site while CONSULTANT is performing work or service pursuant to this Agreement, CONSULTANT will first obtain the consent of CITY's City Manager, or his 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, 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) for bodily injury or death to any one person for any one accident or occurrence and at least one million dollars (\$1,000,000.00) for property damage, 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) for bodily injury or death to any one person for any one accident or occurrence and at least one million dollars (\$1,000,000.00) for property damage, 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 contractor's liability for bodily injury, property damage and environmental damage resulting from pollution and related cleanup costs arising out of the work or services to be performed under this Agreement. Coverage shall be provided for both work performed on site, as well as during the transport of hazardous materials. Such coverage shall be in the minimum amount of: (i) one million dollars (\$1,000,000.00) for any one accident or occurrence, or (ii) the maximum amount of such insurance available to 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, 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.

7.1.5.3. 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) 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.

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

7.2.1. General Liability.

7.2.1.1. 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.

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.

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

7.4. Certificates. CONSULTANT shall furnish CITY of Morgan Hill with copies of all policies or 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. 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.

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:

Innovative Claims Solutions, Inc.
P.O. Box 5128
San Ramon, CA 94583

Address of CITY is as follows:

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

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

15. Maintenance of Records.

15.1. 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.

15.2. 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.

15.3. 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.

16. 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.

17. Time of Essence. Time is of the essence in the performance of this Agreement.

18. 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.

19. 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.

20. Defense and Indemnification.

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

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

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

20.4. Right to Offset. CITY shall have the right to offset against any compensation due CONSULTANT under this Agreement any amount due CITY from CONSULTANT as a result of CONSULTANT's failure to pay CITY promptly any indemnification arising under this Section (20) 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.

20.5. Interpretation. This Section shall constitute an agreement or contract of indemnity, incorporating the interpretations under California Civil Code Section 2778. It is expressly understood and agreed that the obligation of the CONSULTANT to indemnify the INDEMNITEE shall

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

21. 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.

22. 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.

23. 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.

24. 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.

25. Binding Agreement. Notwithstanding the provisions of Section 18 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.

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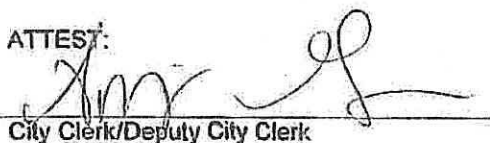
26. Authority to Execute. Those individuals who are signing this Agreement on behalf of entities represent and warrant that they are, respectively, duly authorized to sign on behalf of the entities and to bind the entities fully to each and all of the obligations set forth in this Agreement.

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.

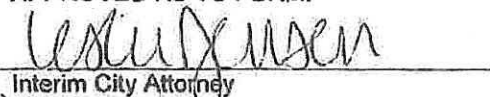
ATTEST:


City Clerk/Deputy City Clerk

Michelle Wilson
Print Name

Date: 6/14/16

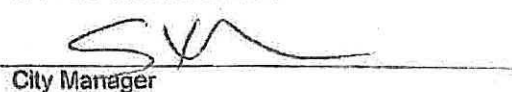
APPROVED AS TO FORM:


Interim City Attorney

Gary Baum
Print Name

Date: 06/14/16

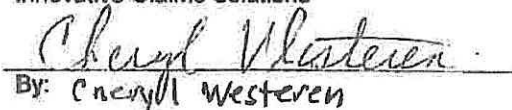
CITY OF MORGAN HILL


City Manager

Steve Rymer
Print Name

Date: 6/14/16

Innovative Claims Solutions


By: Cheryl Western

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

Date: 5/9/16


By: Gary Archibald

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

Date: 5/9/16

EXHIBIT A SCOPE OF SERVICES

Claims Administration. ICS shall adhere to the following claims administration standards and procedures:

1. ICS shall review and process reported claims for workers' compensation benefits that have not been closed as of the Effective Date of this Agreement and closed claims that reopen on or after the Effective Date. ICS shall have no responsibility other than custody of files and statistical reporting for claims closed prior to the Effective Date.
2. Determine liability for claimed injuries and illnesses in accordance with California Workers' Compensation Laws.
3. Review and process all claims in accordance with rules and regulations established by the Division of Industrial Relations, Department of Self-Insurance Plans.
4. Establish files containing medical and factual information on each reported claim together with complete accounting records and maintain same in accordance with statutory time requirements.
5. ICS shall make all workers compensation disability payments and send all notices in a timely and accurate manner and in conformance in all material respects with all applicable provisions of the California Labor Code and the California workers' compensation laws, rules and regulations.
6. Determine nature and extent of permanent disability and arrange for informal disability rating whenever possible to avoid Workers' Compensation Appeals Board litigation.
7. Explain to and assist employee in completing necessary forms for permanent disability ratings.
8. Review compute and pay all informal rating, findings and awards, life pensions or compromise and release settlements.
9. Maintain and establish reserve estimates for each reported claim.
10. Arrange for and supervise all necessary investigations to determine eligibility for compensation benefits and/or liability of negligent, third parties.
11. Identify, recommend and obtain special fraud investigations after obtaining advance authority from the CLIENT.
12. As a service to the CLIENT, ICS will report all excess claims to excess reinsurance carrier, although the final responsibility for reporting such claims is that of the CLIENT's.
13. Arrange and supervise rehabilitation services where indicated.
14. Arrange for and set up system for payment of benefits and allocated expenses in accordance with CLIENT's needs.
15. ICS shall prepared with the assistance of the CLIENT all reports, which are now, or will be required by the State of California or other government agencies with respect to self-funded programs.

16. ICS shall subscribe to and pay for enrollment in the Index Bureau System and will report to the Index Bureau on each and every indemnity claim. The per claim cost of this service shall be posted as an allocated expense to the CLIENT.

17. On behalf of the Client, ICS will perform all workers compensation claim reporting services required by the Medicare, Medicaid and SCHIP Extension Act (MMSEA) Section 111 Mandatory Reporting to the Centers for Medicare & Medicaid Services (CMS) for the periods identified in this contract.

18. ICS will comply with the performance standards as required by the City's excess carrier. ICS will advise if there are any exceptions, or when compliance with new standards may impact our annual fee.

B. Medical Administration. ICS shall adhere to the following medical administration standards:

1. Authorize, review and monitor all medical treatment required on injury or illness claims.
2. Audit and pay all medical expenses in a timely manner, and within statutory guidelines.
3. Maintain close contact with treating physicians to ensure employees receive proper medical treatment and are returned to full employment at earliest date.
4. Arrange for medical-legal opinions in disputed cases, conferring with medical examiners, CLIENT, and legal counsel where indicated.
5. Consult as required with CLIENT on those cases where injury residual might involve restriction and/or retirement potential.

C. Legal Administration. ICS shall adhere to the following legal administration standards:

1. Refer litigated cases, when needed, to attorneys recommended by ICS and approved by CLIENT for purposes of defending CLIENT's interests before Workers' Compensation Appeals Board and the court.
2. Work closely with counsel in preparing defense of litigated cases.
3. Obtain CLIENT's authorization on all settlements or stipulations when required.
4. Work closely with applicant's attorney and legal counsel in informal dispositions of litigated cases.
5. Attend, when required, Workers' Compensation Appeals Board hearings.
6. Discharge on behalf of CLIENT, all legal obligations to its injured employees imposed by Workers' Compensation Appeals Board and higher courts.
7. Protect and preserve CLIENT's interests in all potential subrogation cases.

D. Medical Cost Containment Services. ICS shall adhere to the following medical cost containment services standards:

1. ICS shall use and cooperate fully with the designated medical cost containment vendor (bill review and utilization review service provider) to review the medical bills for the CLIENT and other medical charges and provide necessary utilization review services relating to treatment requests on all claims of industrial injury or illness.

2. Unless otherwise directed, ICS will select the service provider to be utilized and CLIENT will pay for such services. The City of Morgan Hill shall be responsible for all Managed Care Services and Loss Adjustment Expenses. Managed Care Services shall include medical bill review, utilization review, and medical case management. Costs for such services are documented in Exhibit B; however, bill review services shall be billed at a rate not to exceed \$30.00 per bill. Loss Adjustment Expenses shall include all reasonable expenses necessary to the adjustment of a claim in accordance with the Service Agreement, including, but not limited to, fees for engaging defense counsel, court reporters, expert witnesses and field investigators, incurred on behalf of the City of Morgan Hill.

E. Information Systems. ICS will provide a computer system with appropriate data base management capabilities to maintain records related to the administration of the Client's workers' compensation program. ICS shall coordinate data entry for employees in the program and for services supplied by ICS. The CLIENT shall have access to the computer system during normal working hours and access to the database through its own computers at its own expense. ICS shall provide computer-generated reports that are reasonably requested on a regular basis as detailed in section F below.

F. Statistical. ICS will adhere to the following statistical report production obligations and provide all required reports to the client at agreed to intervals:

1. Report to CLIENT, monthly status of claim payments and reserves on an individual claim basis and in the aggregate.
2. Report to CLIENT, quarterly loss analysis of claims filed by frequency and severity.
3. Assist in the preparation of all reports required by the State of California or other Governmental agencies relating to Workers' Compensation claims.
4. ICS will prepare the federal information return (Form 1099) by the statutory deadline for all payments subject to 1099 reporting made by ICS on behalf of the CLIENT during the term of this Agreement.
5. Additional ad-hoc reports will be provided to CLIENT at their request at no additional cost. Special report requests that require programming time will be charged to CLIENT at \$150 per hour, which is our direct cost. Our system is capable of generating standardized reports as follows:

- Claim Logs
- Claim Activity
- Claim Cost Detail
- Claim Cost Summary
- Claim Cost Summary by Year
- Examiner Activity
- Examiner Case Log
- Frequency Reports
- Location Summary
- Management Summary
- Multiple Claims Listing
- Occurrence Cost
- OSHA
- Payment Type Totals
- Vendor Payments Summary
- State Annual Report

B. Ad-hoc reports queries, which require no specific programming will be provided at no cost to CLIENT.

G. Banking Services. ICS will adhere to the following services standards, as directed by the clients:

1. The CLIENT agrees to establish, fund and replenish an account at a financial institution agreed upon by the CLIENT and ICS for the purpose of paying benefits to workers or care providers and to pay Allocated Loss Adjustment Expenses.

2. All funds in the CLIENT Account belong to the CLIENT. ICS shall have authority to write checks on the CLIENT Account, however, two signatures may be required at client's requested level.

3. ICS shall have authority to pay Allocated Loss Adjustment Expenses from the CLIENT Account to vendors. ICS shall provide the CLIENT with detailed accountings of the expenditures from the CLIENT Account.

4. ICS agrees to make records pertinent to the CLIENT's account available to CLIENT for audit purposes at all reasonable times with at least 24 hours' notice.

5. ICS agrees to maintain CLIENT's trust fund account, if CLIENT elects such arrangement. Otherwise, CLIENT is responsible for all reconciliation and banking processes involved with CLIENT account.

6. Additional services, including but not limited to, field and investigative services, legal expenses, managed care services, index bureau inquiries, bill review and all services which are provided by outside vendors on behalf of the CLIENT shall be paid out of the CLIENT's account, or trust account.

H. Assignments. ICS shall not assign this Agreement, nor any part thereof.

I. **File Storage.** Pursuant to RR 15400.2 Of the California Code of Regulations all files closed for more than 5 (five) years shall be identified. UPON CLIENT direction ICS shall return the file(s) to CLIENT, destroy file(s) or maintain file(s) at CLIENT expense with an off-site storage facility.

J. **Cooperation.** In the event of early termination or non-renewal, both parties will cooperate in good faith to implement a transition to a new service provider with minimum disruption to the provision of benefits to workers. ICS will make available to client, and to a new service provider, all files, summary data, records and information developed with respect to this Agreement, including all loss records and a record layout describing the format of the data tapes. Such information shall be made available electronically whenever possible. The CLIENT shall assume all responsibility for open claims as of the effective date of termination.

K. **Files** All claims files, records, reports and other documents pertaining to employee claims are the property of the CLIENT and CLIENT may audit or inspect the files at any time during normal business hours. ICS shall turn over possession of all files and other documents to the CLIENT or its designee promptly upon the effective date of termination or non-renewal of this Agreement. The CLIENT shall allow ICS to review all files and other documents with information relating to its performance pursuant to this agreement.

L. **Penalties and Fines.** ICS and client agree to the following standards, protocols and principals relating to the fines and penalties:

1. ICS and CLIENT hereto acknowledge the various penalties and administrative fines that contained in The California Workers' Compensation Reform Act of 1989 (effective January 1, 1990 and January 1, 1991) that may be imposed on both employers and claim administrators.
2. ICS will be responsible for any fines or penalties associated with questionable or converted claims that ICS denies without first consulting and obtaining approval by the CLIENT for denial of the claim(s). ICS will not be responsible for any fines or penalties levied by the Division of Workers' Compensation or any other judicial or quasi-judicial organization for improper denial of a claim(s) if, over the objections of ICS, ICS has denied said claim(s) at the direction of the CLIENT.
3. The CLIENT shall be responsible for all penalties where ICS has not been given sufficient notice such that ICS has had at least seven (7) working days in which to investigate the claim and to pay temporary disability or send the required wage continuation notice before the penalties were assessed. ICS shall be responsible for all penalties in which it has had seven (7) or more working days in which to investigate and pay temporary disability or send a wage continuation notice. For the purposes of this section "working day" means all days except Saturdays, Sundays, and commonly observed holidays.
4. The services as described in this Agreement shall be performed in all material respects in accordance with applicable laws, rules, regulations and standards of governmental authorities including, in particular, applicable Workers' Compensation Laws of the State of California.
5. This Agreement shall be construed in accordance with, and governed by, the internal laws of the State of California and the venue for any disputes is the county of Santa Clara as requested by the CLIENT.

**EXHIBIT B
SCHEDULE OF COMPENSATION RATES**

City shall pay CONSULTANT an annualized fee of \$34,380 for the period of July 1, 2016 - June 30, 2017 and an annualized fee of \$34,700 for the period of July 1, 2017 - June 30, 2018.

For FY 16/17, payments will be made in equal monthly installments \$2,865.00 and for FY 17/18, payments will be made in equal monthly installments of \$2,891.66.

DRAFT



Meeting Minutes City Council

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

Wednesday, June 16, 2021 5:30 pm

Virtual Meeting

SPECIAL/REGULAR MEETING

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

5:30 p.m. Housing Affordability Workshop

7:00 p.m. Regular Meeting

SPECIAL MEETING

5:30 p.m. Housing Affordability Workshop

CALL TO ORDER

Mayor Constantine called the meeting to order at 5:30 p.m.

ROLL CALL ATTENDANCE

City Clerk Michelle Bigelow called the roll.

Attendee Name	Title	Status	Arrived
Rich Constantine	Mayor	Remote	
John McKay	Mayor Pro Tem	Remote	
Gino Borgioli	Council Member	Remote	

Minutes Acceptance: Minutes of Jun 16, 2021 5:30 PM (CONSENT CALENDAR)

Yvonne Martinez Beltran	Council Member	Remote	
Rene Spring	Council Member	Remote	

DECLARATION OF POSTING AGENDA

City Clerk Michelle Bigelow declared the posting of the agenda.

WORKSHOP

This workshop is the third in a series of Housing Workshops that will look at the current and future state of housing in Morgan Hill. This workshop is called "Housing Affordability." Staff will present and discuss the following:

- What is considered affordable housing?
- What are the different ways these units are built and by who?
- Who is the housing for?
- What agencies work on affordable housing?
- City's history of affordable housing production.
- Current City efforts.

Assistant City Manager Edith Ramirez introduced the workshop and the housing team. She then turned the presentation over to Housing Manager Rebecca Garcia who provided a presentation.

Public comment opened at 6:44 p.m.

Rocke Garcia was called to speak.

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

The workshop adjourned at 6:58 p.m.

WORKSHOP PRESENTATION

REGULAR MEETING

7:00 p.m.

The regular meeting was called to order at 7:06 p.m.

PRESENTATIONS

YAC PRESENTATION- ASSET #33- INTERPERSONAL COMPETENCE

PROCLAMATIONS

Proclaiming June 19, 2021 as Juneteenth

RECOGNITIONS

Recognizing the many volunteers who staffed the Morgan Hill Safeway/Albertsons Companies COVID-19 vaccination clinics

CITY COUNCIL REPORTS

Council Member Yvonne Martinez Beltran reported that Sister Cities has been meeting less frequently because of COVID but they hope to start their programs again once everything starts to open up again. She stated that Cal Cities had their Housing, Economic Development, and Transportation Committee

meetings where they reviewed various pieces of legislations before going through committees at the state level. Senate Bill 9 (SB 9) did advance at the State Assembly even though Cal Cities opposed it. Cal Cities sent a letter urging the legislature to take action on the Governor's proposed \$7 billion dollar, over three years, plan as it's in line with Cal Cities current budget which asks for \$3 billion next fiscal year to modernize broadband infrastructure and expand broadband to underserved and communities in need to close the digital divide. Silicon Valley Clean Energy (SVCE) they approved a 15-year renewable energy contract and will start delivering power in 2023 for a total of 239 megawatts of new energy and 40 megawatts of battery storage. They are implementing efforts to inform customers about possible summer flex alerts and energy emergencies. In response to the ASIO and PG&E notifications, SVCE will activate notices and messaging to call customers to conserve or let them know how they can prepare. They have also extended the timeline for customers to sign up for the Community Resiliency funding. Morgan Hill is eligible for a total of \$243,000. She provided an update on VTA, sharing that at their June meeting the Board approved an employment contract for the new General Manager/CEO and approved the 2022/2023 biannual budget. There is a special meeting being held on June 18th, to adopt resolutions of necessity for properties that are needed to complete the Bart Phase 2 and to consider approval of the implementation plan including 9.7 million for improvements along Cochrane Rd, Madrone Channel Trail, and Tennant Ave. and some improvements and feasibility studies along Monterey Rd.

CITY MANAGER'S REPORT

City Manager Christina Turner spoke to the evening's supplements and presentations. Due to the intense heat that we have been experiencing that will be intensifying over the next two days, there are two cooling centers set up in Morgan Hill. The Centennial Recreation Center (CRC) lobby is available as a cooling center Wednesday through Friday, June 18th from 8:00 a.m. to 9:00 p.m. The Morgan Hill Library is also set up as a cooling center today through Thursday, June 17th from 1:00 p.m. to 6:00 p.m.

A Flex Alert has been issued. The California Independent System Operator (ISO) put out an extreme heat forecast for much of California and the Southwest. What the statewide flex alert does is it encourages electricity conservation during a specific timeframe. For now they are asking for conservation between 5:00 p.m. and 10:00 p.m. This reduces stress on the grid and avoids power outages. In the past, when flex alerts happened, consumers have answered the call and cut back on electricity usage. It has helped California avoid power outages. It can, if conditions persist or worsen, become necessary when demand for electricity outstrips capacity.

She spoke regarding the dangers of fireworks. Fireworks are illegal in certain areas of California because of serious injury and millions of dollars of property loss that occur every year from wildfires sparked by fireworks. Large grass crops and dry vegetation increase the threat for devastating wildfires throughout our state. California has zero tolerance for the sale and use of illegal fireworks. Illegal fireworks include skyrockets, bottle rockets, roman candles, arial shells, firecrackers, and other fireworks that explode, go into the air, or move on the ground in an uncontrollable manner. It is illegal to sell, transport, or use fireworks that do not carry the safe and sane seal as well as possess or use fireworks in Morgan Hill. Safe and Sane fireworks can be purchased in Gilroy, but they are not to be used in Morgan Hill. If convicted, a violator can be fined up to \$50,000 as well as be sent to jail for up to one year. Parents are liable for any damage or injuries caused by their children using fireworks. Fireworks started an estimated 19,500 fires in 2018. This was 1,900 structure fires, 500 vehicle fires, and 17,100 other fires. They caused five deaths, 46 civilian injuries, and 105 million in direct property damage.

She concluded by recognizing individuals from the Police Department who participated in the Special Olympics Torch Run today. Individuals walked, ran, or rode their bikes. They started at our Cal Fire Headquarter station and ended at Monterey and Cochrane near the Arco station.

CITY ATTORNEY'S REPORT

No report.

OTHER REPORTS

Council Member Borgioli shared that the route 568 Express Bus will resume services in August of 2021 .

Mayor Pro Tem John McKay recognized School Superintendent Steve Betando for his work with the vaccination clinics and thanked him for his dedication, hard work, and for setting the tone. He thanked former City Council Member Larry Carr for bringing the resources to our community and making sure those resources were used effectively. He also recognized Emergency Services Coordinator Jennifer Ponce for the great work that she did. It was an incredible team effort, 141 volunteers manned 49 clinics and gave out 18,000 vaccines over the period of two and a half months.

PUBLIC COMMENT

Public comment opened at 7:46 p.m. The following people were called to speak:

Roseryn Bhudsabourg spoke on behalf of Valley Water

Joe Baranowski (Susie and Miguel Jimenez ceded their time)

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

PUBLIC COMMENT SUPPLEMENT 1

PUBLIC COMMENT SUPPLEMENT 2

PUBLIC COMMENT SUPPLEMENT 3

ADOPTION OF AGENDA

MOTION:

Adopting the agenda as posted.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Rene Spring, Council Member
SECONDER:	John McKay, Mayor Pro Tem
AYES:	Constantine, McKay, Borgioli, Martinez Beltran, Spring

CONSENT CALENDAR

MOTION:

Approving consent calendar items 2 through 10.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	John McKay, Mayor Pro Tem
SECONDER:	Rene Spring, Council Member
AYES:	Constantine, McKay, Borgioli, Martinez Beltran, Spring

1. **ITEM PULLED FOR DISCUSSION**
2. **ADOPT THE 2021 SANTA CLARA COUNTY MULTI-JURISDICTIONAL PROGRAM FOR PUBLIC INFORMATION (PPI), A PROGRAM UNDER THE COMMUNITY RATING SYSTEM OF THE FEDERAL EMERGENCY MANAGEMENT AGENCY'S NATIONAL FLOOD INSURANCE PROGRAM**

Recommendation:

1. Adopt the 2021 Santa Clara County Multi-Jurisdictional Program for Public Information (PPI), a program under the Community Rating System of the Federal Emergency Management Agency's National Flood Insurance Program; and
2. Approve the implementation of the 5-Year PPI Plan for the Community Rating System Program.

3. ADOPT RESOLUTION AMENDING FY 2021-2022 BUDGET TO SUPPORT A PILOT PRIVATE SEWER LATERAL GRANT PROGRAM

Recommendation:

1. Direct staff to implement a Pilot Private Sewer Lateral Grant Program; and
2. Adopt resolution amending the FY 2021-2022 Adopted Budget by \$100,000 to support the Program.

4. APPROVE THIRD AMENDMENT TO SUBDIVISION IMPROVEMENTS AGREEMENT FOR DUNNE MURPHY - TRACT NO. 10387

Recommendation:

1. Approve Third Amendment to Subdivision Improvements Agreement;
2. Authorize the City Manager to execute the Third Amendment to the Subdivision Improvements Agreement with Nordstrom Cal Homes, LLC; and
3. Authorize the recordation of the Third Amendment to the Subdivision Improvements Agreement.

5. APPROVE PURCHASE OF THREE POLICE VEHICLES AND TWO POLICE MOTORCYCLES

Recommendation:

1. Approve the purchase and build out of three vehicles from Priority 1 Public Safety Equipment and two motorcycles from BMW of Long Beach for a total amount not to exceed \$395,502;
2. Authorize the City Manager to approve the purchases with Priority 1 Public Safety Equipment Installation, Inc. and Long Beach BMW; and
3. Authorize the auction of 2006 Ford Van F350-Transport Van #122 and 2003 Ford F250 Truck ASO truck #147 as necessary following their temporary use assignments.

6. APPROVE SEVENTH AMENDMENT TO CENTENNIAL RECREATION CENTER PARTNERSHIP AGREEMENT WITH THE YMCA OF SILICON VALLEY

Recommendation:

Authorize the City Manager to execute a seventh amendment to the Centennial Recreation Center Operating Agreement with the YMCA of Silicon Valley.

7. APPROVE THE MAY 5, 2021 MEETING MINUTES

Recommendation:

Approve Minutes.

8. APPROVE THE MAY 19, 2021 MEETING MINUTES

Recommendation:

Approve Minutes.

9. APPROVE THE MAY 26, 2021 MEETING MINUTES

Recommendation:

Approve Minutes.

10. APPROVE THE JUNE 2, 2021 MEETING MINUTES

Recommendation:

Approve Minutes.

Item pulled for Discussion

1. RECEIVE REPORT REGARDING USE OF PROPOSITION 68 PARK GRANT FUNDING

Recommendation:

Receive report on potential use of Proposition 68 Per Capita Grant Funding and anticipated use for Community Park improvements.

Public comment opened at 7:55 p.m.

Armando Benavides was called to speak.

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

Public Services Director Chris Ghione provided a report.

MOTION:

Receiving the report and directing staff to bring an item back to appropriate funding for the restrooms at Galvan Park.

The meeting recessed at 8:16 p.m. and reconvened at 8:25 p.m.

PUBLIC HEARING

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

Recommendation:

1. Open and close the Public Hearing; and
2. Adopt resolution confirming Fiscal Year (FY) 2021-22 annual assessments and ordering the levy of assessments for the District.

Maintenance Services Coordinator Keri Russell provided the report.

The public hearing opened at 8:26 p.m.
There being no requests to speak, the public hearing closed.

MOTION:

Approving the recommended action.

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

OTHER BUSINESS

12. RECEIVE MONTHLY BUDGET UPDATE AND APRIL 2021 FINANCIAL AND INVESTMENT REPORTS

Recommendation:

Accept and file report.

Finance Director Dat Nguyen provided a presentation and report.

Public comment opened at 8:31 p.m.
There being no requests to speak, public comment closed.

RESULT:	ACCEPT REPORT
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13. ADOPT RESOLUTION DECLARING LEVEL 2 WATER SUPPLY SHORTAGE

Recommendation:

Adopt resolution declaring a Level 2 Water Supply Shortage and amending adopted budget.

Program Administrator Anthony Eulo provided a presentation and report.

Public comment opened at 9:40 p.m.
Armando Benavides was called to speak.
There being no further requests to speak, public comment closed.

MOTION:

Approving the recommended action.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Rene Spring, Council Member
SECONDER:	Yvonne Martinez Beltran, Council Member
AYES:	Constantine, McKay, Borgioli, Martinez Beltran, Spring

FUTURE COUNCIL INITIATED AGENDA ITEMS

Council Member Spring requested that the Council send letters of opposition to Senate Bills (SB) 8, 9, 10, and SB478. He requested that the City Attorney ask the court for permission to file a brief amicus curiae (friend of the court) to oppose the YIMBY lawsuit and to protect the City from having its RHNA increased.

Council Member Martinez Beltran requested a community workshop on where they would like to see the additional American Rescue Plan Act funds to be spent.

Mayor Pro Tem McKay requested a Council discussion about what can be done to have a greater impact in Sacramento. He also requested periodic updates on water conservation.

ADJOURNMENT

There being no further business, the meeting adjourned at 9:53 p.m.

MINUTES PREPARED BY:

Michelle Bigelow, City Clerk



CITY COUNCIL STAFF REPORT

MEETING DATE: June 23, 2021

PREPARED BY: Ray Ramos, Administrative Sergeant
APPROVED BY: City Manager

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

RECOMMENDATION(S)

1. Award Vehicle Service Agreement to Frank's Auto Service for a total not-to-exceed amount of \$368,308 over three years; and
2. Authorize City Manager to Execute the Agreement.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety
Maintaining Infrastructure

2020-2021 Strategic Priorities

Fiscal Sustainability

GUIDING DOCUMENTS

Public Safety Master Plan

REPORT NARRATIVE:

The Police and Public Services Departments collectively maintain a fleet of vehicles. As such, vehicle maintenance and repair are essential for City operations and the safety of our staff and community.

In February 2021, the City of Morgan Hill issued a Request for Proposal (RFP) for vehicle fleet repair and maintenance for the Police and Public Services Departments. The City of Morgan Hill received two proposals: 1) Frank's Auto Service and 2) AMMCO, both of which met the RFP requirements.

In response to the RFP, the Police and Public Services Departments recommend entering into a new Service Agreement with Frank's Auto Service for a 3-year term. Frank's Auto Service has provided fleet services to the Police Department for over six (6) years. The Police Department remains extremely satisfied with the services and workmanship provided. Staff is confident Frank's Auto Service will continue to provide a superior level of service under the new Agreement.

The Fleet Maintenance Agreement will begin on July 1, 2021, and run through June 30, 2024. To maintain operational efficiencies and consistency, at the end of the Agreement term, the City shall have the option to renew the Agreement for an additional two-year period.

COMMUNITY ENGAGEMENT: Inform

The RFP was posted on the City's website and with the mechanics' trade association for publication. This staff report serves to inform the community of the proposed agreement between the City of Morgan Hill and Frank's Auto Service for the repair and maintenance of vehicles operated by the Police and Public Services Departments.

ALTERNATIVE ACTIONS:

The City Council could choose not to approve this Fleet Maintenance Agreement and direct staff to issue a new RFP.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The City Council approved a maintenance agreement with Frank's Auto on June 13, 2017. The Agreement was extended for an additional year and expires June 30, 2021.

FISCAL AND RESOURCE IMPACT: There are sufficient funds in the Police and Public Services Departments' FY2021-2022 operating budgets for the costs associated with fleet repair and maintenance. Funds for FY2022-2024 (years two and three of the Agreement) will be included in the next two-year budget development process. Below is a matrix outlining the costs for each year of the 3-year Agreement.

The costs reflected in the proposal submitted by Frank's Auto Service are as follows:

Year 1: Labor Cost per Hour - \$140.00 | Material Costs 20% Above Wholesale

Year 2: Labor Cost per Hour - \$145.00 | Material Costs 20% Above Wholesale

Year 3: Labor Cost per Hour - \$150.00 | Material Costs 20% Above Wholesale

The Repair and Maintenance Agreement shall not exceed \$368,308 based on the annual breakdown reflected below (based on July 2021 contract effective date):

3 Year Vehicle Maintenance & Repair Projected Costs

Dept/Division	Cost Center	Year 1	Year 2	Year 3	TOTAL
Police	010.3210	\$68,000	\$70,720	\$73,088	\$211,808
Wastewater Operations	640.5900	\$20,800	\$21,666	\$22,534	\$65,000
Water Operations	650.5710	\$22,800	\$23,876	\$24,824	\$71,500
Streets	010.5800	\$5,000	\$5,000	\$5,000	\$15,000
Parks	010.8030	\$1,664	\$1,667	\$1,669	\$5,000
GRAND TOTAL					\$368,308

CEQA (California Environmental Quality Act): Not a Project

Continuing administrative or maintenance activities, such as purchases for supplies, personnel-related actions, general policy, and procedure making.

LINKS/ATTACHMENTS:

1. Frank's Auto and City Fleet Maintenance Agreement

SERVICE AGREEMENT FRANK O. GAMEZ

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

1. **City Authority.** This Agreement is entered into pursuant to the action of the Morgan Hill City Council taken on _____, _____, 20____.
2. **Term of Agreement.** This Agreement shall cover services rendered from the Effective Date of this Agreement until June 30, 2024 at which time SERVICE PROVIDER'S services shall be completed. The City Manager is authorized to extend the term of this Agreement for a maximum period of 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 SERVICE PROVIDER shall be repair, service and routine maintenance of the Police Department, Engineering, Utilities and Community Services fleet as further described in **Exhibit A**.
4. **Compensation.** SERVICE PROVIDER shall be compensated as follows:
 - 4.1. **Amount.** \$368,308. Total compensation to SERVICE PROVIDER under this Agreement during its initial term set forth in Section 2 above shall not exceed Three Hundred and Sixty Eight Thousand and Three Hundred and Eight dollars and shall be billed based on the rate and basis set forth in **Exhibit C**. If the City Manager extends the term of this Agreement pursuant to the provisions of Section 2 above, the City Manager shall have the authority to increase the maximum compensation allowed to be paid to SERVICE PROVIDER during that extended term period, so long as City Council has appropriated sufficient funds therefor, the Parties mutually agree to such amount in a writing signed by both Parties to this Agreement and provided further that in no event shall such maximum compensation allowed for the extended term exceed 105% of the maximum compensation allowed to be paid to SERVICE PROVIDER for one year of service during the initial term of this Agreement.
 - 4.2. **Billing.** SERVICE PROVIDER shall provide CITY with an invoice containing the dated, detailed, and itemized descriptions of all services performed and expenses incurred (if such expenses are reimbursable pursuant to Exhibit C) by SERVICE PROVIDER on a monthly basis unless otherwise specified in Exhibit C. All invoices shall be sent to the CITY addressed to the department head or project manager identified below in Section 14 Notices. Payment will be made to SERVICE PROVIDER within thirty (30) days of receipt of invoice by CITY. Any rate charged shall be prorated where services are interrupted or not provided for any rate period (for example, any monthly rate charge should be prorated when services were interrupted or provided for only part of the month). For services billed on an hourly rate, the minimum unit of billed time shall not exceed one tenth of one hour. CITY shall pay for services and expenses (if so provided in Exhibit C) up to the limit of compensation set forth above, that in the CITY's judgment were necessary and reasonable. Services for work performed and expenses incurred in excess of the total compensation set forth in paragraph 4.1 above shall be at no cost to CITY.

5. **Termination.** CITY or SERVICE PROVIDER shall have the right to terminate this Agreement, without cause, by giving thirty (30) days' written notice or less under urgent circumstances. Upon such termination, SERVICE PROVIDER shall submit to CITY an itemized statement of services performed for which compensation has not been paid. CITY may require SERVICE PROVIDER to complete certain work product or documents and SERVICE PROVIDER shall deliver to CITY all documents in its possession without additional compensation to SERVICE PROVIDER. The City Manager 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 SERVICE PROVIDER of such occurrence, and this Agreement shall terminate after the last day during the fiscal year for which appropriations shall have been budgeted for CITY or are otherwise available for payments.

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

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

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

8.1. **Insurance Types and Amounts.**

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

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

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

8.1.4. **Pollution (Environmental) Liability.** Intentionally Omitted.

8.1.5. **Garagekeepers:** SERVICE PROVIDER shall maintain Garagekeepers insurance covering all owned and non-owned automobiles, including automobile parts and equipment, in SERVICE PROVIDER's care, custody or control against claims and liabilities for damage, theft, or other loss in the minimum amount of: (i) one hundred and fifty thousand dollars (\$150,000.00) or (ii) the maximum amount of such insurance available to SERVICE PROVIDER under SERVICE PROVIDER's combined insurance policies (including any excess or "umbrella" policies), whichever is greater. Such insurance shall be primary over any other insurance.

8.1.6. **Professional Liability.** Intentionally Omitted.

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

8.2.1. **General Liability.**

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

8.2.1.2. 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,

8.2.1.3. Insurance shall be primary non-contributing.

8.2.2. Workers Compensation.

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

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

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

Certificate Holder address:

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

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

10. Compliance with Law.

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

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

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

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

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

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

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

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

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

Address of SERVICE PROVIDER is as follows:

Frank O. Gamez, Inc dba Frank's Auto Service
16250 Railroad Avenue
Morgan Hill, CA 95037

Address of CITY is as follows:

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

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

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

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

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

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

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

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

22. **Defense and Indemnification.**

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

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

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

22.4. **Right to Offset.** CITY shall have the right to offset against any compensation due SERVICE PROVIDER under this Agreement any amount due CITY from SERVICE PROVIDER as a result of SERVICE PROVIDER's failure to pay CITY promptly any indemnification arising under this Section (22) and any amount due CITY from SERVICE PROVIDER arising from SERVICE PROVIDER'S

failure either to (i) pay taxes on amounts received pursuant to this Agreement or (ii) comply with applicable workers' compensation laws.

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

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

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

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

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

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

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[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
 Print Name

 Christina J. Turner
 Print Name

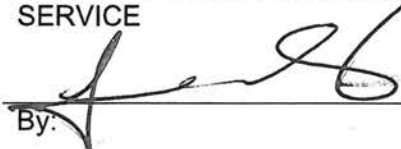
Date: _____

Date: _____

APPROVED AS TO FORM:

FRANK O. GAMEZ, INC, dba FRANK'S AUTO SERVICE

 City Attorney

By: 

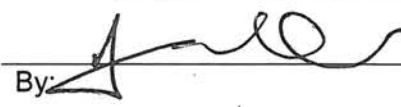
 Donald A. Larkin
 Print Name

FRANK GAMEZ PRESIDENT
 Print Name and Title of Signer.

If Corporate: Chairman, President or Vice President

Date: _____

Date: 6-10-21

By: 

FRANK GAMEZ VICE PRESIDENT
 Print Name and Title of Signer.

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

Date: 6-10-21

EXHIBIT A SCOPE OF SERVICES

GENERAL PROVISIONS

Service Provider will perform general and preventive maintenance and routine repair services on vehicles and equipment including, but not limited to, brakes, tires, suspension, heat/air conditioning systems, electrical systems, engine, etc. as outlined below.

A. Preventive Maintenance

The Police Department has (41) vehicles in its fleet, and they are routinely driven in short distances, frequent start/stop, and long idle periods. The Police Department requests the SERVICE PROVIDER to provide a recommended schedule for fleet vehicle maintenance requirements due to the use conditions. The average annual usage is 13,000 miles for Police patrol vehicles.

Engineering, Utilities, and Community Services have (54) vehicles in its fleet, and they are routinely driven in short distances, frequently start/stop, and for long periods of time. The average annual usage is approximately 7,000 miles for utility vehicles.

B. Repairs and Maintenance

Provide service/repairs to all common mechanical and electrical systems as needed.

C. Transport of Vehicles for Services

- a. Provide pick-up and delivery vehicle to and from Police Department.
 - i. Police Department - 16200 Vineyard Boulevard
- b. Provide pick-up and delivery vehicle to and from the City of Morgan Hill's Corporation Yard
 - i. City of Morgan Hill Corporation Yard – 100 Edes Court
- c. For vehicles not drivable, an additional towing charge may be billed upon approval of authorized city staff.
- d. Contractor shall store vehicles in a secured yard for overnight storage.
- e. 24/7 on-call phone and shop open to all city vehicles.
- f. Locked and gated facility that includes alarm and security cameras.

D. Conditions on Required Services

- a. When a prior appointment has been made for routine maintenance, the turn-around time should be between 4 to 6 hours.
- b. Provide adequate inventory on special parts to ensure minimum turn-around on non-routine repairs.
- c. All Police Department fleet vehicles that have been involved in a pursuit will undergo inspection and repair as required. Vehicles to be inspected after pursuit will be the discretion of officer-involved and authorized Police Department staff.
- d. The inspection will be completed immediately after a pursuit.

E. Repair Order Content and Procedure

- a. The SERVICE PROVIDER shall provide Repair Orders for all services provided containing the following information:
- b. Repair estimates with anticipated work to be performed, estimated completion time, and estimated cost signed by the City staff upon pick-up/drop-off. A confirming copy with the final cost shall be emailed to City upon completion, and a billing copy shall be sent to the City with the invoice.
- c. Actual work/cost above written estimate requires City approval prior to work start.
- d. Authorization of work by a designated City employee or designee is required for all repair orders.
- e. Individual vehicle charges shall be submitted on separate repair orders for each service visit. *The repair order must include:*
 - i. Date work performed
 - ii. Vehicle Number and/or license #, make/model
 - iii. Vehicle mileage at the time of service/repair
 - iv. Date in / date out / time completed
 - v. Detail type of service, hours, material used, and cost associated with each.
 - vi. Subcontracted repair orders containing the same information shall be attached to the repair order.
- f. The SERVICE PROVIDER guarantees and warrants that all material furnished, and all services performed will be free from defects in material and workmanship and will be warranted by SERVICE PROVIDER for a minimum of 12 months, 12,000 miles, or the length of time of any warranty given by the manufacturer or rebuilder/remanufacturer, whichever is greater, after acceptance. The SERVICE

PROVIDER shall remedy all such defects at his/her own expense within one (1) working day after notification by the City.

- g. Warranty repair orders need to be provided by the SERVICE PROVIDER. The SERVICE PROVIDER shall be the prime Contractor.

F. Fleet Maintenance Software

City has purchased a cloud-based fleet management software program called RTA. SERVICE PROVIDER is required to utilize the software to maintain service and repair records and track inventory of parts purchased. SERVICE PROVIDER will be required to install the RTA software on its business/commercial hardware and identify appropriate staff to be trained in its use and utilize the software as required for the Police Department and Engineering, Utilities, and Community Services.

G. Hours of Operation

The Police Department is active on a 24/7 basis and desires the most comprehensive hour coverage possible. Normal business hours for Frank's Auto Service are Monday to Friday from 8:00 am to 5:00 pm. Frank's Auto Service has provided an emergency contact number to the Police Department representative to arrange for delivery of vehicles, if required, outside of regularly scheduled hours of operation

H. Employees

SERVICE PROVIDER'S employees who work on all City vehicles shall undergo a criminal background check. Any arrest recorded will be reviewed by the police department's designee.

EXHIBIT B OPERATING PROCEDURES FOR VEHICLE MAINTENANCE SERVICES

This sets forth the operating policy and procedures for servicing City vehicles and equipment. It discusses maintenance scheduling procedures and invoicing requirements.

Contracted maintenance facilities are expected to provide prompt, courteous and competent service to drivers. Garage staff must be knowledgeable about service procedures and initiate the service transaction within 30 minutes of their arrival and/or service call is placed. It is important that the service desk is staffed adequately to provide efficient customer service in a timely manner.

To assist the SERVICE PROVIDER with the maintenance program, the City will provide:

1. Listing of covered vehicles (Exhibit F) updated, as necessary.
2. Repair orders and billing invoices must refer to the vehicles by their VIN number.
3. City preventive maintenance schedule (Schedule A).
4. Designated City staff contacts.

A. **Safety Check**

SERVICE PROVIDER shall perform a safety check in conjunction with all maintenance requirements listed within this Agreement. These safety checks shall be performed every time a vehicle is brought in for service:

- ✓ Tires – Visually check condition/Alignments.
- ✓ Lights – Check directional signaling devices and emergency light systems for proper operation.
- ✓ Seat belt – Check operation of seat belts.

Windshield Wipers and Washers – Check condition of wiper arms and blades. Check aim and flow of washer spray. Fill washer reservoir with washer solvent.

- ✓ Fluid Levels – Check and replenish fluid levels in transmission, differential, steering sector or power steering pump, and master cylinder. Inspect all units for leakage and clogging.
- ✓ Battery – Check condition of heatshield, hold-down clamps and cable ends, top off electrolyte level, and clean top and terminals as necessary.
- ✓ Heater-Defroster-Air Conditioner System and Wiper Controls – Check switches,

valves, and ducting doors for proper operation.

- ✓ Exhaust System – Visually inspect complete exhaust system including catalytic converter and heat-shielding. Check for broken, damaged, missing, or poorly positioned parts. Inspect for open seams, holes, or any condition which could allow exhaust fumes to enter the vehicle.
- ✓ Steering and Suspension Components – Conduct a “look and “shake” inspection.
- ✓ Frame/Sub-Frame and Cross Member – Visually check for “drive-over” and/or vehicular damage and fatiguing.
- ✓ Drive Shaft U-Joints / CV Joints – Conduct a “look” and “shake” inspection for seal leakage and joint failure.
- ✓ Critical Components – Check condition of all under-hood heatshields, and the routing of all hoses and wiring to ensure maximum protection from radiated exhaust heat. Inspect all coolant hoses, fuel line hoses, power steering hoses, engine accessory drive belts, and other under-hood plastic or rubber components.
- ✓ Brakes – Inspect all brake line hoses and master cylinder for signs of leaks or damage. Inspect front brake pads, rear brake linings, wheels cylinders, and parking brake cables and linkage. Report estimate of remaining life of pads and shoes.
- ✓ Starter/Charging System – Electronically check starter motor cranking speed and current draw. Check alternator charging rate.
- ✓ Cooling System – Visually inspect entire system for leaks, damage or others signs of needed repair.
- ✓ Tire Repair/Headlamps/Brakes – these shall be repaired and receive priority while officer waits in order to minimize time vehicle is out of service.

B. Scheduling of Maintenance and Service Procedures

1. The Police Department and Engineering, Utilities, and Community Services will designate an authorized Fleet Representative (FR); the FR is the SERVICE PROVIDER'S primary contact with the City.
2. SERVICE PROVIDER shall identify a single individual by name to serve as the responsible contact for daily communication with the Police Department and Engineering, Utilities, and Community Services regarding vehicle scheduling and vehicle status update(s).

3. The FR will contact the designated SERVICE PROVIDER'S representative between 8:00 a.m. and 5:00 p.m., weekdays to determine the status of vehicles and/or equipment being serviced. The SERVICE PROVIDER'S representative shall provide accurate and timely information to the FR on vehicle status including but not limited to:
 - What vehicle(s)/equipment are ready by vehicle VIN number.
 - What vehicle(s)/equipment are being serviced/require repair.
 - Estimated completion of vehicle(s)/equipment under repair.
 - Description of repairs and costs.
4. After the service is completed, the SERVICE PROVIDER shall:
 - a. Complete Vehicle Service Order ready for FR or designee to sign.
 - b. Place service reminder label on the driver's side windshield stating the next maintenance Mileage and Date for routine preventive maintenance.
 - c. Contact FR or designee to provide time that vehicle is ready for transporting back to the original location. If the FR is not available, leave a voicemail message.
 - d. After the FR or designee has checked the work performed, signed off on the Repair Order, the Service Provider's representative shall provide the vehicle keys to the FR or designee.
5. When repairs cannot be accomplished at the SERVICE PROVIDER'S facility, the Service Provider must contact the FR for instructions. No repairs shall be made by non-authorized facilities without notification of the FR.
6. SERVICE PROVIDER shall report to the FR any vehicle brought in for service or repair and the Service Provider has determined that the service or repair was due to driver misuse.
7. SERVICE PROVIDER will be responsible for loss and damage to all City vehicles under its custody and/or control.
8. All repair parts are to be original equipment manufacturer (OEM) or equivalent. Exceptions will be individually considered by the FR on a case-by-case basis.

C. Preventive Maintenance

Based on the Maintenance Schedule attached as Schedule A, the Police Department and Engineering, Utilities, and Community Services will provide a listing of vehicles due for preventive maintenance service at the beginning of each month. Vehicles will be listed by VIN number, the type of preventive maintenance the vehicle is to receive, and the week the vehicle is due for service. The FR or designee will notify the SERVICE PROVIDER for specific dates vehicle will be ready for service.

The preventive maintenance services will be in accordance with the preventive maintenance schedule. Additionally:

1. If projected brake pad/shoe life is less than 1500 miles, replace brake pads/shoes.
2. Tires will be checked, and depth of tread will be indicated on Repair Order.
3. Turn-around time of 6 to 8 hours for routine preventive maintenance is expected.
4. When a prior appointment has been made for routing maintenance, the turnaround time should be four (3 to 5) hours.

CI. Non-Preventive Maintenance Service and Emergencies

1. Non-routine maintenance, other than emergencies, will be handled by appointment through the FR or designee. If a City employee delivers a vehicle to the SERVICE PROVIDER'S facility Monday through Friday between 8:00 a.m. and 5:00 p.m. requesting service without prior notification to you from the City, call the FR or designee for instructions.
2. After hour's delivery, if a City vehicle has a breakdown or is involved in an accident and must be towed, then it will be towed to the SERVICE PROVIDER'S locked facility. In such a situation, the Service Provider shall contact the FR for instructions and be present to accept vehicle.
3. There may be times when the FR calls early in the day with a specific set of instructions, and later in the day changes them; or, another staff member will call to change them if the FR is not available. The last set of instructions will prevail.
4. Turn-around time of 6 to 8 hours for non-preventive maintenance service is required, unless otherwise approved by the FR.

**EXHIBIT C
PAYMENT PROVISIONS**

Payment for services shall be as described in Exhibit D and E

SCHEDULE A

VEHICLE MAINTENANCE SCHEDULE

		Service A				Service B				Service C				Service D			
		At 15,000 Miles	At 30,000 Miles	At 45,000 Miles	At 60,000 Miles	At 15,000 Miles	At 30,000 Miles	At 45,000 Miles	At 60,000 Miles	At 15,000 Miles	At 30,000 Miles	At 45,000 Miles	At 60,000 Miles	At 15,000 Miles	At 30,000 Miles	At 45,000 Miles	At 60,000 Miles
1	Change Engine Oil	X				X				X				X			
2	Change Engine Oil Filter	X				X				X				X			
3	Check Air Filter Condition	X				X				X				X			
4	Check and Adjust Drive Belts	X				X				X				X			
5	Check Battery Electrolyte Level, Add Water As Needed; Clean And Tighten Terminals	X				X				X				X			
6	Check Brake Fluid Level	X				X				X				X			
7	Check Brake Pads, Shoes, Hoses	X				X				X				X			
8	Check Breather Condition	X				X				X				X			
9	Check Drive Tran Fluid Levels (Transmission, Transfer case, Differential)	X				X				X				X			
10	Check Engine Compartment Fluid Levels, Add As Needed	X				X				X				X			
11	Check Engine Cooling System, Hoses And Clamps	X				X				X				X			
12	Check Exhaust System	X				X				X				X			
13	Check Front And Rear Shocks For Wear and/or Leakage	X				X				X				X			
14	Check Exterior & Interior Lights And Other Electrical Items For Correct Operation	X				X				X				X			
15	Check Power Steering Fluid Level	X				X				X				X			
16	Check Tire Pressure And Condition	X				X				X				X			
17	Check Windshield Wiper operation, Blades condition, Washer Solvent level, Fill as needed.	X				X				X				X			
18	Lubricate Chassis/CV boots	X				X				X				X			
19	Lubricate Steering Linkage	X				X				X				X			
20	Check Front Brake Pads, Rotors And Calipers	X				X				X				X			
21	Check Rear Brake Shoes, Drums And Wheel Cylinders	X				X				X				X			
22	Rotate Tires (4 Way - Front To Rear)	X				X				X				X			
23	Air Filter - Replace	As Needed				As Needed				As Needed				As Needed			
24	Check Headlight Alignment	X				X				X				X			
25	Check Parking Brake Operation	X				X				X				X			
26	Lubricate Door Latches, Locks And Hinges	X				X				X				X			
27	Fuel Filter - Replace	As Needed				As Needed				As Needed				As Needed			
28	Transmission - Change Fluid, Filter, Gasket	X				X				X				X			
29	Check Air Condition System, Freon Level And Compressor Operation Where Applicable	X				X				X				X			
30		X				X				X				X			

EXHIBIT D

RECOMMENDED VEHICLE MAINTENANCE SCHEDULE		Service A		Service B		Service C		Service D	
		At	5000 Miles	At	5000 Miles	At	5000 Miles	At	5000 Miles
1	Change Engine Oil								
2	Change Engine Oil Filter								
3	Check Air Filter Condition								
4	Check and Adjust Drive Belts								
5	Check Battery Electrolyte Level, Add Water As Needed; Clean And Tighten Terminals								
6	Check Brake Fluid Level								
7	Check Brake Pads, Shoes, Hoses								
8	Check Breather Condition								
9	Check Drive Tran Fluid Levels (Transmission, Transfer case, Differential)								
10	Check Engine Compartment Fluid Levels, Add As Needed								
11	Check Engine Cooling System, Hoses And Clamps								
12	Check Exhaust System								
13	Check Front And Rear Shocks For Wear and/or Leakage								
14	Check Exterior & Interior Lights And Other Electrical Items For Correct Operation								
15	Check Power Steering Fluid Level								
16	Check Tire Pressure And Condition								
17	Check Windshield Wiper operation, Blades condition, Washer Solvent level, Fill as needed.								
18	Lubricate Chassis/CV boots								
19	Lubricate Steering Linkage								
20	Check Front Brake Pads, Rotors And Calipers								
21	Check Rear Brake Shoes, Drums And Wheel Cylinders								
22	Rotate Tires (4 Way - Front To Rear)								
23	Air Filter - Replace								
24	Check Headlight Alignment								
25	Check Parking Brake Operation								
26	Lubricate Door Latches, Locks And Hinges								
27	Fuel Filter - Replace								
28	Transmission - Change Fluid, Filter, Gasket								
29	Check Air Condition System, Freon Level And Compressor Operation Where Applicable								
30									

EXHIBIT E
COST AND CONDITIONS

Services/Costs	Police, Engineering and Utilities, and Community Services 4x4 Trucks, Utility Vehicles & Sedans							
	Labor Per Hour	Year 1	Year 2	Year 3	Material Cost	Year 1	Year 2	Year 3
Service A: Vehicle Maintenance Services provided at mileage level as reflected in Exhibit D		\$140	\$145	\$150		20%	20%	20%
Service B: Vehicle Maintenance Services provided at mileage level as reflected in Exhibit D		\$140	\$145	\$150		20%	20%	20%
Service C: Vehicle Maintenance Services provided at mileage level as reflected in Exhibit D		\$140	\$145	\$150		20%	20%	20%
Service D: Vehicle Maintenance Services provided at mileage level as reflected in Exhibit D		\$140	\$145	\$150		20%	20%	20%
Cost of Hourly Labor Rate (not included in Service A,B,C,D)		\$140	\$145	\$150		20%	20%	20%
Replacement Dealer Parts (not included in Service A,B,C,D)		\$140	\$145	\$150		20%	20%	20%
Replacement Non-Dealer Parts (not included in Service)		\$140	\$145	\$150		20%	20%	20%

5.a

Conditions:

1. Prices for the services listed above must include all labor and material needed to complete the services specified.
2. Prices proposed in this section are fixed prices for the initial period of the contract (three years). Should City elect to renew the contract for an additional 2 years, the unit price of the Contract will be subject to negotiation and be mutually agreed upon by both parties for the 24-month term.
3. All repair parts are to be OEM or equivalent. Exceptions will be individually considered on a case- by-case basis. Price for each service shall include parts, labor and all necessary fluids and free fluid top off between service intervals.
4. Provide break down of labor hours for each periodic repair item and indicate any exceptions, if applicable. Labor hours shall be repair time, not factory time.
5. Unless otherwise specified and/or agreed to, all services performed will be free from defects in material and workmanship and will be warranted for a minimum of 120 days or 4000 miles, or the length of time of any warranty given by the manufacturer or rebuilder/remanufacturer, whichever is greater, after acceptance.

EXHIBIT F
Morgan Hill Police Department and Engineering, Utilities, and Community Services
Fleet List

DESCRIPTION	REPLACEMENT DATE
2005 Ford Expedition (115)	N/A
2006 Ford E350 Prisoner Transport Van (122)	2021
2010 Ford Police Interceptor (139)	N/A
2012 Chevy Tahoe (141)	2020
2015 Ford Police Interceptor SUV (144)	2021
2003 Ford F250 Utility-Animal Control (147)	2021
2017 Ford Police Interceptor SUV (152)	2023
2017 Ford Police Interceptor SUV (153)	2023
2007 Chevy Silverado- Graffiti (154)	N/A
2017 Ford Police Interceptor SUV (155)	2023
2017 Ford Police Interceptor SUV (156)	2023
2017 Ford Police Interceptor SUV (157)	2023
2017 Ford Police Interceptor SUV (158)	2023
2019 Ford Police Interceptor SUV (159)	2025
2019 Ford Police Interceptor SUV (160)	2025
2019 Ford Police Interceptor SUV (161)	2025
2018 Ford F150- MSO (162)	2025
2019 Chevy Tahoe (163)	2025
2016 Honda Motorcycle (148)	2022
2016 Honda Motorcycle (149)	2022
2020 BMW Motorcycle (150)	2026
2006 Ford F150 Extended Cab- Tan (300)	N/A
2011 Chevy Malibu- Blue (304)	N/A
2011 Ford Taurus- Silver (305)	N/A
2012 Ford Taurus- White (306)	N/A
2013 Ford Taurus – Silver (308)	2021
2014 Ford Fusion – Silver (309)	2022
2001 Ford F450- SWAT (307)	NA
2014 Honda Accord (310)	2022

2015 Honda Accord (311)	2023
2015 Honda Accord (312)	2023
2016 Chevy Tahoe (313)	2024
2000 Chevy Express G1500- EOC (314)	N/A
2020 Ford Explore (315)	2028
2020 Ford Explore (316)	2028
2020 Ford Explore (317)	2028
1955 Oldsmobile	NA
Radar Trailer	2015
DUI Trailer	NA
2004 Pace Am Trl MEDC03A	NA
2005 Zieman Dual Motorcycle Trailer	NA
2004 Pace Am Trl HOMSEC	NA

Engineering, Utilities, and Community Services

Vehicle Description	Replacement Year
2007 Ford F250 4x4 (S07158)	2020
2008 Ford F450 Dump Truck (S08123)	2023
2011 Ford F350 Flat Bed 4x4 (S11159)	2023
2015 Ford F350 flatbed 4X4 (S15116)	2023
2018 CCTV Truck (S18160)	2033
2019 Ford F-150 (S19103)	2026
2019 Ford F450 Supercab w/ Scelzi Utility Body (S19152)	2026
2019 Ford F-150 (S19169)	2026
2007 Ford 4WD Expedition SUV (U07114)	2020
2007 Ford Escape (U07137)	2021
2010 Ford F150 Super Cab (U10167)	2020
2006 Ford F150 4x4 (W06165)	2020
2007 Ford F150 Super Cab (W07115)	2021
2007 Ford F150 Super Cab (W07129)	2020
2008 Ford F350 (W08155)	2021

2009 Ford Ranger Super Cab (W09154)	2021
2011 Ford F450 Utility Truck w/Crane (W11124)	2022
2014 Ford F150 Super Cab (W14161)	2024
2015 Ford F450 Supercab (W15117)	2022
2015 Ford F450 Supercab w/ Scelzi Utility Body (W15144)	2022
2018 Ford Transit Cargo Van (W18163)	2025
2019 Ford F350 Supercab w/ Scelzi Utility Body (W19104)	2027
2019 Ford F450 Supercab w/ Scelzi Utility Body (W19168)	2026
2019 Ford F450 Supercab w/ Scelzi Utility Body (W19170)	2026
2019 Ford F450 Supercab w/ Scelzi Utility Body (W19171)	2026
2020 Ford F150 (U20167)	2027
2020 Ford F150 (U20165)	2027
2020 Ford F150 (U2019)	2027
2020 Ford F250 4x4 (S20158)	2027
2008 Ford Ranger Extended Cab (E08153)	2020
2008 Ford Ranger Extended Cab (E08156)	2020
2007 Ford Escape SLS 4WD (E07141)	2020
2020 Ford F150 (R20120)	2027
2007 Ford F250 4x2 supercab utility (R07150)	N/A
2020 Ford F250 4x2 supercab (R20102)	2027
1999 Dodge 1500 Club Cab (R99117)	N/A
2008 Ford F250 4x2 supercab (R08118)	N/A
2001 Jeep Cherokee (D01116)	N/A
2014 Chevy PU 2WD (D14182)	N/A
2008 Ford F450 4x2 reg cab utility w/crane	N/A
2020 Ford F250 4x4 supercab	2027
2011 Ford F250 4X4 - abatement spray truck (D11151)	N/A
2008 Ford F450 4x2 crew cab (D08127)	N/A
2014 Ford Focus Electric (D14116)	N/A
2014 Ford 150 (B14152)	N/A

2014 Ford 150 (B14153)	N/A
2018 Ford Escape SE 4WD (B18151)	N/A
2018 Chevy Colorado (B18150)	N/A
2019 Ford F150 crew cab	N/A
2020 Ford Ranger	N/A
2002 Chevy pick up 2WD (D02182)	N/A
2010 Ford Ranger pick up (A10120)	N/A
2014 Ford Flex (A14121)	N/A
2014 Ford F150 (A14122)	N/A



CITY COUNCIL STAFF REPORT

MEETING DATE: June 23, 2021

PREPARED BY: Cynthia Iwanaga, Management Analyst
APPROVED BY: City Manager

AWARD COMMUNITY AND CULTURAL CENTER BOILER REPLACEMENT PROJECT TO STEPHEN CIARI PLUMBING AND HEATING, INC.

RECOMMENDATION(S)

1. Adopt resolution amending the Fiscal Year 2020-21 Adopted Budget to appropriate an additional \$28,101 from the Building Replacement Fund (741) for the Community and Cultural Center Boiler Replacement Project;
2. Award contract to Stephen Ciari Plumbing and Heating, Inc. in the amount of \$98,274 and authorize the expenditure of (10%) contingency funds not to exceed \$9,827 for a total authorization of \$108,101; and
3. Authorize the City Manager to execute and administer that certain contract with Stephen Ciari Plumbing and Heating, Inc.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety
Maintaining Infrastructure

REPORT NARRATIVE:

The purpose of this item is to provide the City Council with an opportunity to consider the award of a contract to Stephen Ciari Plumbing and Heating, Inc. ("Ciari") in the amount of \$98,274 with a 10% contingency amount of \$9,827 for a total authorization of \$108,101. The scope of work for this Community and Cultural Center (CCC) Boiler Replacement Project ("Project") includes all labor and material necessary to remove and replace the water boiler at the CCC. The water boiler supplies the HVAC heating water to the building. It is original equipment from the CCC opening in 2002 and is near end of life and requires replacement.

The Invitation to Bid was released on May 17, 2021 and four bids were received on June 3, 2021. In soliciting bids for this project, the City advertised in the Morgan Hill Times on May 14, 2021. The bids were also posted on the City website and on two online bid services, Public Purchase and the Online Plan Service, whose subscribers include multiple Northern California Builders' Exchanges. Bid documents were also sent directly to the County of Santa Clara Builders' Exchange and the Central Coast Builders' Association.

On June 3, 2021, four (4) bids were received from the following contractors:

Bidder's Name	Bid Amount
A&B Mechanical, Inc.	\$153,980
ACCO Engineered Systems	<u>\$189,975</u>
Bay City Boiler and Engineering Co.	\$116,000
Stephen Ciari Plumbing and Heating, Inc.	\$ 98,274

Staff recommends that the City Council award the contract to Stephen Ciari Plumbing and Heating, Inc. and authorize the City Manager to execute and administer the agreement (Attachment B).

COMMUNITY ENGAGEMENT: Inform

Before and during the boiler replacement project, signs will be posted at the Community and Cultural Center informing customers of the upcoming project and days or times that the facility will be closed. Scheduling will occur to minimize any impacts on CCC users. Welcome Desk staff will be kept informed of the schedule to respond to any customer inquiries. The project status will also be included in the City's The Scoop weekly newsletter.

ALTERNATIVE ACTIONS:

The City Council could decide not to approve this project and direct staff to pursue an alternative approach to replacing the hot water boiler at the CCC. Postponing this work is not recommended due to the age and condition of the original boiler.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The Council has not previously taken action on this item.

FISCAL AND RESOURCE IMPACT:

If approved, the total funding authorization for this agreement will be \$108,101, which includes the contract amount of \$98,274 and a 10% contingency (\$9,827). The contingency will support completing the project within the anticipated schedule ensuring the best customer service. The FY 2020-21 Adopted Budget includes \$80,000 in the Building Replacement Fund (741) for this project. Because the cost is higher than anticipated, staff recommends adopting the attached resolution and budget scorecard (Attachment A) which appropriates an additional \$28,101 in the Building Replacement Fund (741) to this project.

CEQA (California Environmental Quality Act): Categorical Exemption.

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

LINKS/ATTACHMENTS:

1. Attachment A- Resolution_CCC Boiler_Amend_Budget_FY_2021_v2
2. Attachment B- Ciari Plumbing Contract_CCC Boiler Replacement

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO THE CITY'S FISCAL YEAR 2020/2021 BUDGET IN THE BUILDING REPLACEMENT FUND (FUND NO. 741) TO APPROPRIATE \$28,101 THEREFOR

WHEREAS, the City of Morgan Hill, a municipal corporation and general law city duly organized and existing under and pursuant to the Constitution and laws of the State of California ("City"), is authorized to enter into contracts and agreements for the benefit of the City and, has adopted a two-year budget for Fiscal Years 2020/2021 and 2021/2022; and

WHEREAS, recommended amendments are needed and proposed to the City's previously adopted Two Year Budget for Fiscal Years 20/21 and 21/22, as set forth on Exhibit A to this Resolution, to appropriate the requisite funds to implement the actions authorized by this Resolution; and

WHEREAS, the activities allowed under this Resolution do not constitute a project under the provisions of California Environmental Quality Act of 1970; and

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

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

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

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

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

- a. That the City's previously adopted Two Year Budget for Fiscal Years 20/21 and 21/22, as the same has been amended to date, is hereby further amended in accordance with and as reflected on Exhibit A attached hereto and incorporated herein by this reference; and

- b. That the City Clerk is hereby authorized and directed to forward a copy of this Resolution to the City's Finance Director, who is hereby authorized and directed to take all actions necessary to implement the terms of this **Resolution pertaining to the Two-Year Budget for Fiscal Years 20/21 and 21/22; and**

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

PASSED, APPROVED AND ADOPTED by the City Council of Morgan Hill at a regular meeting held on the 23rd day of June 2021.

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

APPROVED:

ATTEST:

RICH CONSTANTINE, Mayor

MICHELLE BIGELOW, City Clerk

∞ CERTIFICATION ∞

I, Michelle Bigelow, City Clerk of the City of Morgan Hill, California, do hereby certify that the foregoing is a true and correct copy of Resolution No. 21-XXX, adopted by the City Council at the meeting held on June 23, 2021.

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

DATE: _____

Michelle Bigelow, CITY CLERK

AGENDA BUDGET SCORECARD

FISCAL YEAR 2020-2021

ADJUSTMENT #

017

FUND:

741

Building Replacement Fund

DEPARTMENT:

8500

Building Replacement-Equipment Replacement

OBJECT:

43820

OTHER IMPROVEMENTS

AGENDA DATE:

06/23/21

AGENDA ITEM TITLE:

CCC Boiler Replacement Project

	07/01/20 PROJECTED BEGINNING FUND BALANCE	ESTIMATED REVENUES	AMENDED APPROPRI- ATIONS	06/30/21 PROJECTED ENDING FUND BALANCE
ORIGINAL BUDGET	2,515,067	726,251	457,000	2,784,318
CUMULATIVE REVISIONS PRIOR TO RECOMMENDED ACTION	-	-	-	-
RECOMMENDED ACTION		-	28,101	(28,101)
RESULT OF RECOMMENDED ACTION	<u>2,515,067</u>	<u>726,251</u>	<u>485,101</u>	<u>2,756,217</u>

CONTRACT

This public works contract ("Contract") is entered into by and between the City of Morgan Hill ("City") and Stephen Ciari Plumbing and Heating, Inc. ("Contractor") for work on the CCC Boiler Replacement Project ("Project").

The parties agree as follows:

1. **Award of Contract.** In response to the Notice Inviting Informal Bids, Contractor has submitted a Bid Proposal to perform work on the Project, and on [REDACTED], 20 [REDACTED], (Contract Date) City authorized award of this Contract to Contractor for the amount of Contractor's bid.
2. **Contract Documents.** The Contract Documents incorporated into this Contract include and are comprised of all of the following:

- 2.1 Notice Inviting Informal Bids;
- 2.2 Instructions to Bidders;
- 2.3 Addenda, if any;
- 2.4 Bid Proposal and attachments thereto;
- 2.5 Contract;
- 2.6 Payment and Performance Bonds;
- 2.7 General Conditions;
- 2.8 Special Conditions;
- 2.9 Project Drawings and Specifications;
- 2.10 Change Orders, if any;
- 2.11 Notice of Award;
- 2.12 Notice to Proceed;
- 2.13 And the following:

"No other documents"

3. **Contractor's Obligations.** Contractor agrees to perform all of the Work required for the Project, as specified in the Contract Documents. Contractor must provide, furnish, and supply all things necessary and incidental for the timely performance and completion of the Work, including all necessary labor, materials, equipment, transportation, and utilities, unless otherwise specified in the Contract Documents. Contractor must use its best efforts to complete the Work in a professional and expeditious manner and to meet or exceed the performance standards required by the Contract Documents.

4. **Payment.** As full and complete compensation for Contractor's timely performance and completion of the Work in strict accordance with the terms and conditions of the Contract Documents, City will pay Contractor Ninety-Eight Thousand Two Hundred Seventy-Four Dollars (\$98,274.00) (the "Contract Price"), in accordance with the payment provisions in the General Conditions. The Contract Price includes all applicable federal, state, and local taxes.
5. **Time for Completion.** Contractor will fully complete the Work for the Project within **30 calendar days** from the commencement date given in the Notice to Proceed ("Contract Time"). By signing below, Contractor expressly waives any claim for delayed early completion.
6. **Liquidated Damages.** If Contractor fails to complete the Work within the Contract Time, City will assess liquidated damages in the amount of Five Hundred Dollars (\$500.00) for each day of unexcused delay in completion, and the Contract Price will be reduced accordingly.
7. **Labor Code Compliance.**
 - 7.1 **General.** This Contract is subject to all applicable requirements of Chapter 1 of Part 7 of Division 2 of the Labor Code, including requirements pertaining to wages, working hours and workers' compensation insurance.
 - 7.2 **Prevailing Wages.** This Project is subject to the prevailing wage requirements applicable to the locality in which the Work is to be performed for each craft, classification or type of worker needed to perform the Work, including employer payments for health and welfare, pension, vacation, apprenticeship and similar purposes. Copies of these prevailing rates are available online at <http://www.dir.ca.gov/DLSR>.
 - 7.3 **DIR Registration.** City will not accept a Bid Proposal from or enter into the Contract with a bidder, without proof that the bidder and its Subcontractors are registered with the California Department of Industrial Relations ("DIR") to perform public work under Labor Code Section 1725.5, subject to limited legal exceptions.
8. **Workers' Compensation Certification.** Under Labor Code Section 1861, by signing this Contract, Contractor certifies as follows: "I am aware of the provisions of Labor Code Section 3700 which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the Work on this Contract."

9. **Notice.** Any notice required by the Contract Documents must be made in writing, and sent to the other party by personal delivery, U.S. Mail, a reliable overnight delivery service, facsimile, or by email as a PDF (or comparable) file. Notice is deemed effective upon delivery unless otherwise specified. Notice for each party must be given as follows:

City:

City of Morgan Hill
17575 Peak Avenue
Morgan Hill, CA 95037
Phone: (409) 779-7259
Attn: City Clerk
Email: michelle.bigelow@morganhill.ca.gov
Copy to: cynthia.iwanaga@morganhill.ca.gov

Contractor:

Name: Stephen Ciari Plumbing and Heating, Inc.
Address: 1054 Elm Street
City/State/Zip: San Jose, CA 95126
Phone: (408) 296-6010
Attn: Stephen Ciari, President
Email: steve@ciariplumbing.com
Copy to: marc@ciariplumbing.com

10. General Provisions.

- 10.1 Assignment and Successors.** Contractor may not assign its rights or obligations under this Contract, in part or in whole, without City's written consent. This Contract is binding on Contractor's successors and permitted assigns.
- 10.2 Third Party Beneficiaries.** There are no intended third party beneficiaries to this Contract except as expressly provided in the General Conditions or Special Conditions.
- 10.3 Governing Law and Venue.** This Contract will be governed by California law and venue will be in the Superior Court of Santa Clara County, and no other place.
- 10.4 Amendment.** No amendment or modification of this Contract will be binding unless it is in a writing duly authorized and signed by the parties to this Contract.

- 10.5 Integration; Severability.** This Contract and the Contract Documents incorporated herein, including authorized amendments or Change Orders thereto, constitute the final, complete, and exclusive terms of the agreement between City and Contractor. If any provision of the Contract Documents, or portion of a provision, is determined to be illegal, invalid, or unenforceable, the remaining provisions of the Contract Documents will remain in full force and effect.
- 10.6 Authorization.** Each individual signing below warrants that he or she is authorized to do so by the party that he or she represents, and that this Contract is legally binding on that party. If Contractor is a corporation, signatures from two (2) officers of the corporation are required pursuant to California Corporation Code Section 313.

[Signatures are on the following page.]

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

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

The parties agree to this Contract as witnessed by the signatures below:

CITY OF MORGAN HILL:

 Christina J. Turner
 City Manager

Date: _____

Attest:

 Michelle Bigelow
 City Clerk

Date: _____

Approved as to Form:

 Donald A. Larkin
 City Attorney

Date: _____

CONTRACTOR:

STEPHEN CIARI PLUMBING AND
 HEATING, INC.

 Signature

STEPHEN CIARI / PRESIDENT
 Name/Title [print]

Date: 6-7-2021

*Corporate entities must provide a
 second signature:*

 Signature

Theresa Ciari/officer
 Name/Title [print]

Date: 6/7/2021

828351

Contractor's License Number(s)

12/31/2021

Expiration Date(s)

Seal:

1000003021

Contractor's DIR Registration Number(s)

06/30/2022

Expiration Date

END OF CONTRACT



CITY COUNCIL STAFF REPORT

MEETING DATE: June 23, 2021

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

AWARD OF EAST FIFTH STREET SEWER MAIN PROJECT TO PACIFIC UNDERGROUND CONSTRUCTION, INC.

RECOMMENDATION(S)

1. Approve East 5th Street Sewer Main Project plans and specifications;
2. Award contract to Pacific Underground Construction, Inc. for the East 5th Street Sewer Main Project in the amount of \$1,226,730;
3. Authorize expenditure of construction contingency not to exceed \$122,673; and
4. Authorize the City Manager to execute and administer the construction contract with Pacific Underground Construction, Inc.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Maintaining Infrastructure

2020-2021 Strategic Priorities

Economic Development

GUIDING DOCUMENTS

Wastewater System Master Plan

REPORT NARRATIVE:

The City's 2017 Sewer System Master Plan calls for the construction of a new 12" sewer main in East Dunne Avenue between Monterey Road and the east side of the UPRR right-of-way. The construction of the new sewer main is intended to reduce the potential for sewer spills on Monterey Road south of Dunne Avenue by diverting the sewer flow coming through the Downtown to the 15" sewer trunk line on the east side of the UPRR right-of-way. To reduce project costs and minimize construction impacts to the community, the decision was made to relocate the new 12" inch sewer main from East Dunne Avenue to East 5th Street. The new 12" sewer main will replace the old sewer main in East 5th which will have the benefit of improving the sewer system for the residents in this neighborhood as well.

The scope of work for the East 5th Street Sewer Main Project includes replacing the existing sewer main in East 5th Street between Monterey Road and Depot Street and extending a new 12" sewer main east of Depot Street through the Hale Lumber site and under the UPRR right-of-way (via bore and jack method). Additional work as part of the project will include sewer lateral connections, trench restoration, new sewer manholes, a 2" asphalt concrete overlay on East Fifth Street (between Monterey Road and Depot Street), and all other incidental work to complete the project. The plans and specifications were completed in April 2021.

The bid opening for this project was held on June 7, 2021 and five bids were received:

Pacific Underground Construction, Inc.	\$1,226,730
Ranger Pipelines, Inc.	\$1,285,775
Monterey Peninsula Engineering, Inc.	\$1,366,290
A. Teichert & Son, Inc. DBA Teichert Construction	\$1,443,403
KJ Woods Construction	\$1,448,000

Pacific Underground Construction, Inc.'s bid of \$1,226,730 is approximately 28% less than the engineer's estimate of \$1,700,000. Pacific Underground Construction, Inc. is an experienced contractor for this type of work and has performed work for the City on previous undergrounding utility projects. Staff recommends award of the contract to Pacific Underground Construction, Inc. in the amount of \$1,226,730 with a 10% contingency to this project. The project is scheduled to start in July 2021 and be completed by December 2021.

The plans and specifications are available for review on the City's web page under the Government tab and Community Projects site: <https://www.morgan-hill.ca.gov/1436/Project-Plans-Specifications-and-Bid-Res>

COMMUNITY ENGAGEMENT: Inform

The East 5th Street Sewer Main Project is located within residential neighborhoods and a few businesses in the area. While there may be inconveniences to residents and business owners, staff will work with the contractor to minimize these inconveniences and provide email and door notifications prior to any construction activities. Staff will also provide regular updated construction information weekly through Nextdoor and on the City's website.

ALTERNATIVE ACTIONS:

City Council may elect to reject the bids for this construction contract and request the project be re-bid. Staff does not recommend this alternative as competitive bids were received. Rebidding the project is not likely to result in significant savings and it will delay the project approximately three to four months.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

October 18, 2017 - City Council adopted the 2017 Sewer System Master Plan.

November 1, 2017 – City Council approved design agreement with Mott Macdonald for the Tennant Avenue and Dunne Avenue Sewer Project.

June 17, 2020 - City Council adopted the FY 2020-21 through FY 2025-26 Capital Improvement Budget which identifies funding for the proposed sewer projects through bond proceeds.

November 20, 2020 - City Council adopted a resolution authorizing the execution of an installment purchase agreement to provide financing of the City's anticipated projects through the sale of \$20 million in sewer revenue bonds.

FISCAL AND RESOURCE IMPACT:

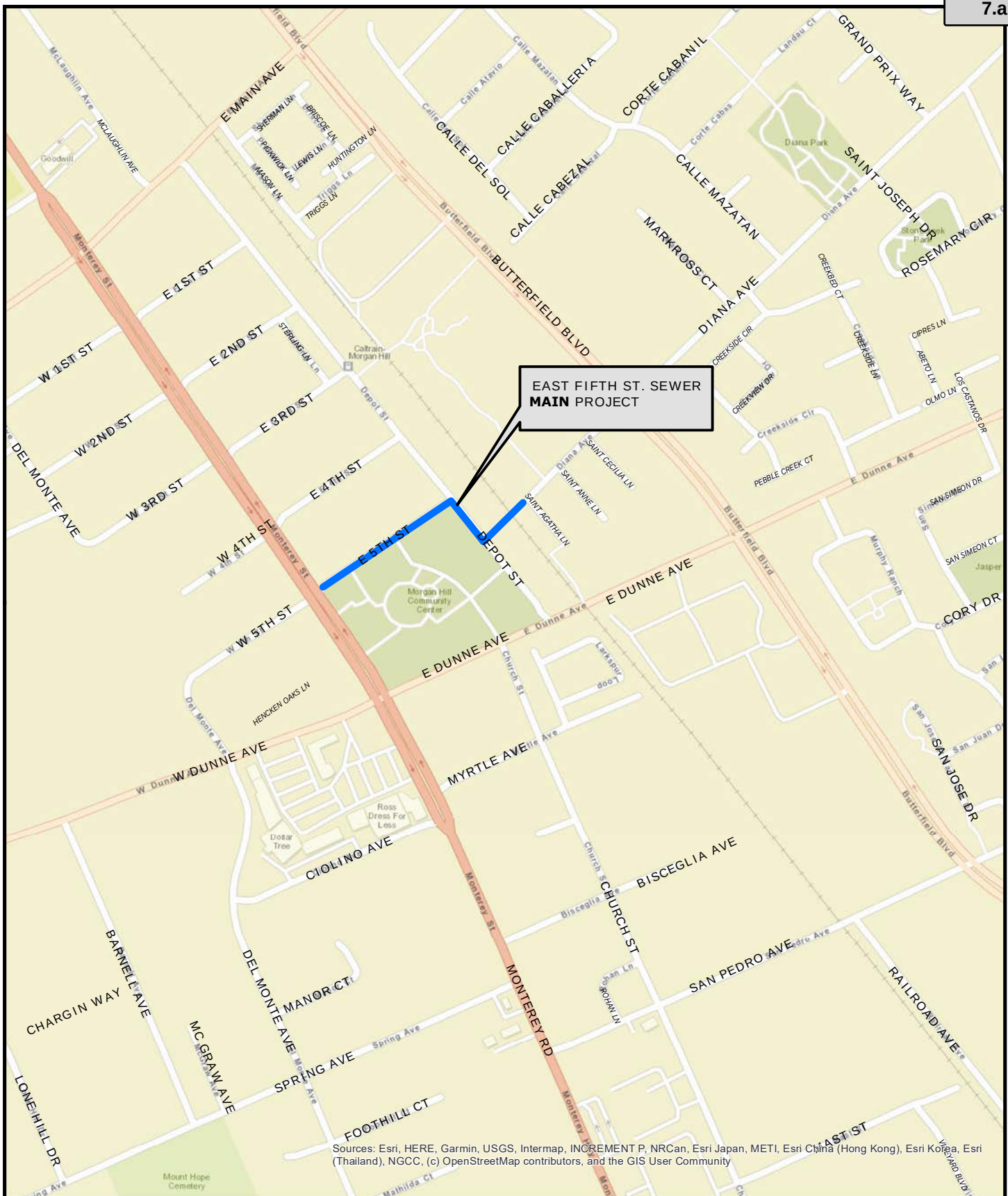
If approved, the total authorization of this project shall be \$1,349,403, which includes a 10% contingency of \$122,673. There are sufficient funds within the FY 2020-21 Budget for this project (302T17). Funding for the 2" asphalt concrete overlay on East Fifth Street between Monterey Road and Depot Street will come from Fund 308.

CEQA (California Environmental Quality Act): Categorical Exemption

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

LINKS/ATTACHMENTS:

1. East Fifth Street Sewer Main Project Vicinity Map 6-23-21
2. Plans and Specifications (weblink)



Engineering and Utilities Department
CIP Engineering Division

G:\R-14\Proj\GIS\John\Yat_5th St Sewer Proj.mxd

EAST FIFTH STREET SEWER MAIN PROJECT



0 250 500 1,000 1,500 2,000 Feet



CITY COUNCIL STAFF REPORT

MEETING DATE: June 23, 2021

PREPARED BY: Dat Nguyen, Finance Director
APPROVED BY: City Manager

ADOPT RESOLUTION ESTABLISHING CREDIT CARD PAYMENT SERVICE FEE

RECOMMENDATION(S)

1. Open/Close public hearing; and
2. Adopt resolution establishing new credit card service fee for development fees and transient occupancy tax payments by credit card.

COUNCIL PRIORITIES, GOALS & STRATEGIES

2020-2021 Strategic Priorities

Fiscal Sustainability

REPORT NARRATIVE:

The City accepts credit cards for a wide array of fees and through various mediums. Historically, the City has viewed credit card acceptance as a method of encouraging prompt and a more guaranteed form of payment. However, in recent years, credit and debit cards have become so widely used that customers expect the ability to pay with a card.

Excluding utilities, payments made by debit and prepaid cards, the City processed credit card transactions totaling over \$5.2 million from May 2019 to May 2021 and paid \$111,423, or 2.13% in bank fees to process the transactions.

Visa and MasterCard bank fees are quite complex. The amount charged for a given transaction depends on various factors; whether the payment card is a credit or debit, what the industry code is for the merchant account (e.g., retail, utilities), and the card type (e.g., business card, rewards card). Debit cards are the least expensive cards to process, costing an average of \$0.25-\$0.35 per transaction. Conversely, certain business cards and rewards cards are the most expensive to process, costing approximately 2.75% of the transaction amount.

The City does not currently pass along any bank fees to customers as transaction fees or convenience fees. However, it has been the City's practice to cap the maximum payment that customers or residents can make with a credit card at \$25,000 per customer/resident/project. This cap would continue to encourage residents and customers to utilize City's auto and online payment method and prompt payment while limiting City's expenses.

However, it has been brought to staff's attention that putting a maximum limit on a card transaction is against Visa and Mastercard rules. In speaking with our merchant bank, staff discussed several options to determine what might be allowable. The below table provides the options discussed:

Processing Option	Permitted
Place a dollar limit on credit card transactions	No
Charge a fee on transactions over a certain dollar amount	No
Charge fees for all over the counter transactions	Yes
Not accept credit cards for certain fees	Yes
Add service fee for certain fees	Yes

To continue encouraging residents and customers to sign up for autopay, online, and prompt payment for utilities, business licenses, recreation services, and other certain small fees while limiting City's expenses, staff recommends a new fee for development fees and TOT payments made by credit card. Development fees could run as high as hundreds of thousands of dollars, while monthly TOT due for a hotel could range from tens of thousands of dollars. The fee of 2.0% of the transactions allows the City to offset some of the bank fees when residents and customers are paying by credit card for development fees and TOT.

COMMUNITY ENGAGEMENT: Inform

This public hearing has been properly noticed in the Morgan Hill Times on June 11, 2021.

ALTERNATIVE ACTIONS:

The Council has the discretion not to adopt the proposed fee or lower it.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

None.

FISCAL AND RESOURCE IMPACT:

Adopting the proposed fee would marginally increase the net revenue for the general fund and development services fund.

CEQA (California Environmental Quality Act):

Not a Project

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

LINKS/ATTACHMENTS:

1. Resolution Adopting Credit Card Fee
2. Proposed credit card service fee

RESOLUTION NO.

**A RESOLUTION OF THE CITY COUNCIL OF THE
CITY OF MORGAN HILL ESTABLISHING CREDIT
CARD SERVICE FEE FOR DEVELOPMENT FEES
AND TRANSIENT OCCUPANCY TAX PAYMENTS BY
CREDIT CARD**

WHEREAS, the City Council, pursuant to Section 3.50.010 of the Morgan Hill Municipal Code ("Code"), requires the recovery of costs reasonably born from fees and charges levied in providing the regulation, products or services enumerated in Code Chapter 3.50 – Fee and Service Charge Revenue/Cost Comparison System; and

WHEREAS, the City of Morgan Hill has conducted a fee study to calculate the costs reasonably borne to provide the specified payment by credit card, which study has been available to the public for at least ten (10) days prior to the adoption of this Resolution; and

WHEREAS, the proposed establishment of the fees that are the subject of this Resolution was agendized for consideration by the City Council of the City of Morgan Hill at a duly noticed public hearing of the Council held on June 23, 2021, at which hearing all interested persons were afforded an opportunity to be heard on said proposed fees; and

WHEREAS, the Council heard all relevant testimony and reviewed all written materials submitted in connection with its hearing on this Resolution.

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

1. The City Council has conducted an extensive analysis of its credit card service fee, including the cost to the City for payments made by credit card; and
2. Based upon the analysis and the provided information, the City (i) identifies the purpose of the proposed fees, (ii) identifies the use to which the fees will be put, (iii) demonstrates a reasonable relationship between the fees' use and the types of services on which the fees are imposed, and (iv) demonstrates a reasonable relationship between the amount of the fees and the cost of the City's services attributable to the applications on which the fees are imposed; and
3. The City Council finds and determines the fees calculations utilized to establish credit card service fee for development fees and transient occupancy tax payments by credit card will not cause fee revenues to exceed the estimated cost reasonably borne of providing the services which the fees are levied; and
4. The City Council hereby adopts and approves the establishment of a new fee to be titled Credit Card Service Fee to be set at 2 percent of the development fees and transient occupancy tax payments by credit card as set forth in attached **Exhibit A** and incorporated by this reference; and

5. The City Manager or his/her designee is hereby authorized and directed to amend the City Fee Schedule to reflect the fees as set forth in **Exhibit A**.

PASSED, APPROVED, AND ADOPTED by the City Council of the City of Morgan Hill at a regular meeting held on the 23rd day of June 2021.

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

APPROVED:

ATTEST:

RICH CONSTANTINE, Mayor

MICHELLE BIGELOW, 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. _____, adopted by the City Council at a regular meeting held on June 23, 2021.

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

DATE: _____

Michelle Bigelow, City Clerk

Attachment: Resolution Adopting Credit Card Fee [Revision 1] (3135 : CREDIT CARD PAYMENT SERVICE FEE)

EXHIBIT A

Credit Card Service Fee for Development Fees and Transient
Occupancy Tax Payments by Credit Card

<u>Fee Description</u>	<u>Amount</u>
Credit Card Service Fee	2%

Attachment: Resolution Adopting Credit Card Fee [Revision 1] (3135 : CREDIT CARD PAYMENT SERVICE FEE)

**PROPOSED SERVICE FEE FOR DEVELOPMENT FEES AND TRANSIENT OCCUPANCY
TAX (TOT) PAYMENTS BY CREDIT CARD**

Total amount processed less utilities, debit, and prepaid cards from May 2019 to May 2021	\$ 5,229,650.28
Total credit card fees less utilities, debit, and prepaid cards fees paid by City from May 2019 to May 2021	\$ 111,422.60
Percentage	2.13%
PROPOSED FEE	2.00%

Attachment: Proposed credit card service fee [Revision 1] (3135 : CREDIT CARD PAYMENT SERVICE FEE)



CITY COUNCIL STAFF REPORT

MEETING DATE: June 23, 2021

PREPARED BY: Adam Paszkowski, Principal Planner
APPROVED BY: City Manager

CONSIDER APPEAL OF PLANNING COMMISSION'S APPROVAL OF SD2020-0011/SR2020-0029 THROUGH SR2020-0033 DE PAUL - TRAMMELL CROW MORGAN HILL VENTURE: REQUEST FOR A TENTATIVE PARCEL MAP AND DESIGN PERMITS FOR THE REDWOOD TECH AT 101, A FIVE BUILDING INDUSTRIAL PARK, ON A 29± ACRE SITE (APNS 728-30-006 AND 728-30-009). (AAE2021-0004 AND AAE2021-0005)

RECOMMENDATION(S)

1. Grant a hearing de novo;
2. Open/close public hearing; and
3. Adopt Resolution denying the appeals and reaffirming the decision of the Planning Commission to approve the project subject to Conditions of Approval.

COUNCIL PRIORITIES, GOALS & STRATEGIES

GUIDING DOCUMENTS

Economic Blueprint
Morgan Hill 2035 General Plan

REPORT NARRATIVE:

The City has received two appeals and a request from Council Member Spring to elevate the Planning Commission decision to the City Council. The appellants, Adams Broadwell Joseph & Cardozo Attorneys at Law (on behalf of the Morgan Hill Residents for Responsible Development) and Joe Baranowski (on behalf of the Morgan Hill Responsible Growth Coalition (MHRGC)), have each filed an appeal of the decision of the Planning Commission to approve a Vesting Tentative Parcel Map and Design Permits (SR2020-0029 through SR2020-0033 De Paul – TC Morgan Hill Venture) for the Redwood Tech at 101 project to allow five buildings ranging in size from 73,828± square feet to 138,714± square feet and to subdivide the 29± acre project site into four parcels ranging in size from 4.18± acres to 9.16± acres.

In accordance with Chapter 18.112 (Appeals) of the Morgan Hill Municipal Code, all Planning Commission decisions may be appealed to the City Council. Section 18.112.040 of the Municipal Code governs the Call for Review process. Any City Council Member may make the Call for Review, and a Council Member calling for review is not required to provide a statement of reasons for the review.

Planning Commission Actions

The Planning Commission discussed the project and received public testimony at their May 25, 2021 meeting. After hearing public testimony, the Planning Commission approved Resolutions No. 21-04 and 21-05 (Exhibit A to Attachment 1) at the May 25, 2021, meeting, approving the proposed Design Permits and Vesting Tentative Parcel Map. The May 25, 2021, Planning Commission Staff Report has been attached (Attachment 2).

The Appeal and Call for Review

The appeals and call for review were filed on or before June 4, 2021, within 10 (ten) calendar days following the date the decision was rendered by the Planning Commission, consistent with Chapter 18.112. Both appellants' letters (Attachments 3 and 4) provide the basis for their appeals. No supplemental materials are required for a Call for Review.

Morgan Hill Residents for Responsible Development

The appellant, Adams Broadwell Joseph & Cardozo Attorneys at Law, on behalf of the Morgan Hill Residents for Responsible Development, states that the specific grounds of appeal are:

1. The City's failure to comply with the requirements of CEQA to prepare a legally adequate Environmental Impact Report (EIR) for the project;
2. That the Morgan Hill 2035 General Plan EIR was not intended to be used to evaluate individual future development and did not provide adequate analysis of any impacts specific to the project;
3. That the project is a component of a reasonably foreseeable larger project; and
4. The project may result in potentially significant, unmitigated impacts on air quality, public health, greenhouse gas (GHG) emissions, noise, and transportation that must be disclosed and mitigated in an EIR.

The following responds to the three comments from the appellant regarding the need to prepare an EIR for the Redwood Tech at 101 project and not utilize the Morgan Hill 2035 General Plan EIR. Pursuant to Section 15168(c) of the *State CEQA Guidelines*, a later activity or project must be examined in the light of the Program EIR to determine whether an additional environmental document must be prepared. If the City finds that no subsequent EIR would be required, the City can approve the activity as being within the project's scope covered by the program EIR, and no new environmental document would be required. Whether a later activity is within the scope of a program, EIR is a factual question that the lead agency determines based on substantial evidence in the record. Factors that an agency may consider in making that determination include, but are not limited to, consistency of the later activity with the type of allowable land use, overall planned density and building intensity, geographic area analyzed for environmental impacts and covered infrastructure as described in the program EIR. As outlined below, the proposed Redwood Tech at 101 project meets these factors.

The project evaluated in the Morgan Hill 2035 Genal Plan EIR is the adoption and

implementation of the 2035 General Plan, which includes land use, urban design, circulation, public services, natural resources, and safety goals, policies, and actions to guide investment and development in the city. The Morgan Hill 2035 General Plan EIR provides a programmatic analysis of the environmental impacts associated with the projected buildout of the 2035 General Plan.

The Redwood Tech at 101 project proposes land uses allowed by right consistent with the Morgan Hill 2035 General Plan EIR and 2035 General Plan. Specifically, the Morgan Hill 2035 General Plan EIR states the Commercial/Industrial designation allows office, research and development, light industrial uses, and similar uses, and would also allow amenities, such as retail services, restaurants, and lodging, to support the primary job-generating uses within business park settings.

The Redwood Tech at 101 project does not propose any conditional uses. However, should a future use on the site require a conditional use permit, that user will be responsible for conducting the environmental review for the proposed use as required under CEQA.

As listed in the Morgan Hill 2035 General Plan EIR and 2035 General Plan, the Commercial/Industrial designation allows for a maximum floor area ratio of 0.6 and a maximum building height of 50 feet for industrial uses, which the proposed Redwood Tech at 101 project is consistent with. In addition, the Morgan Hill 2035 General Plan EIR was a program EIR that analyzed environmental impacts throughout the City regarding implementation of the 2035 General Plan.

On July 27, 2016, the City Council certified the Morgan Hill 2035 General Plan EIR. As mentioned previously, the EIR for the General Plan was prepared as a program EIR under the provisions of Section 15168 of the *State CEQA Guidelines*. As a program EIR, the document adopted by the City Council adequately addressed the potential environmental impacts associated with the comprehensive update of the City's constitution for growth, including certain implementation activities, and provided for streamlining of the environmental review process for projects proposed subsequent to the certification of the EIR. The proposed Redwood Tech at 101 project entails dividing the subject property and constructing buildings consistent with the General Plan. The division and development of parcels consistent with the General Plan were addressed in the program EIR for the 2035 General Plan. Therefore, pursuant to Section 15162 and Section 15183 of the *State CEQA Guidelines*, no additional review under the California Environmental Quality Act is required for the proposed project.

In addition, the proposed Vesting Tentative Parcel Map is categorically exempt pursuant to Section 15315 of the *State CEQA Guidelines* because it consists of the division of property in urbanized areas zoned for industrial use into four parcels and conforms with the General Plan and zoning, no variances or exceptions are required, all services and access to the proposed parcels to local standards are available, the parcel was not involved in a division of a larger parcel within the previous two years, and the parcel does not have an average slope greater than 20 percent.

It should also be noted as part of the Planning Commission's May 25th meeting packet, the City of Morgan Hill received a letter dated April 29, 2021, from Allen Matkins Attorneys at Law on behalf of Trammell Crow regarding the Planning Commission's scope of design review and its relation to CEQA. The letter points to two cases, *Protecting Our Water & Environmental Resources v. County of Stanislaus* and *McCorkle Eastside Neighborhood Group v. City of St. Helena*. The letter stated the Planning Commission lacks the discretion to address potential environmental effects, making the Project ministerial for CEQA purposes, and therefore, should the Planning Commission exempt the proposed project from CEQA, the Commission should also make the findings that the exemption is not required due to the ministerial nature of the City's design review procedures.

The appellant alleges [or further alleges] that the project is a component of a reasonably foreseeable larger project. They claim that the City is piecemealing the Redwood Tech at 101 project and a residential application filed by Dividend Homes, titled "Crosswinds," for a 269 residential unit development on 28-acres located on the east side of De Paul Drive.

The appellant states that the previous application submitted by Trammell Crow, the "Morgan Hill Technology Center," (which included the Redwood Tech at 101 project site) also included a 319 residential unit component, which required an EIR. The appellant mistakenly states that the City is improperly piecemealing the two projects, the industrial project (Redwood Tech at 101) and the residential project (Crosswinds).

CEQA requires that EIRs be evaluated on a comprehensive and cumulative analysis which includes reasonably foreseeable development. The City of Morgan Hill received a Conceptual Plan Review application from Dividend Homes in 2019. Therefore, the Draft EIR for the Morgan Hill Technology Center stated that although only preliminary plans and no formal land use entitlement applications were currently on file for the 28-acre residential site to the east of De Paul Drive, the Morgan Hill Technology Center EIR was being evaluated at a programmatic level to include a maximum of 319 single-family detached and attached units. The Draft EIR continued to state, the future development of this land is reasonably foreseeable given the existing land use designation and zoning and the proposed roadway and other infrastructure, and therefore the EIR analyzes and discloses the effects of the whole project.

Since then, Dividend Homes have applied for a 269 residential unit development on 28-acres, titled "Crosswinds," which will be evaluated by an EIR which will evaluate cumulative impacts of reasonably foreseeable development since the build out of the area the Crosswinds project occupies was not evaluated in the Morgan Hill 2035 General Plan EIR.

Morgan Hill Responsible Growth Coalition (MHRGC)

The appellant, MHRGC, states that the specific grounds for the appeal are:

1. Neither resolution by the Planning Commission is consistent with General Plan Policies CNF-18.3 and CNF-18.4; and

2. The Planning Commission could not make the necessary findings to approve a design permit or tentative map for the project based on information in the record.

Policies CNF-18.3 and CNF-18.4 of the Morgan Hill 2035 General Plan read as follows:

*Policy CNF-18.3 **Compatible Industrial Uses.** Require Planned Development overlay zones (PD) for the industrial and/or commercial development along the side of Highway 101 (south of Cochrane Road and north of Diana Avenue) and the area west of Highway 101 and south of Tennant Avenue to ensure that issues such as circulation, allowable uses, neighborhood compatibility, high visibility, and development standards are properly addressed.*

*Policy CNF-18.4 **Commercial/Industrial Area East of Highway 101.** Require the commercial/industrial area east of Highway 101 to develop in no more than three PDs. The boundary between the PDs, should two or three be proposed, would be Half Road and Main Avenue. The PDs will need to address such issues as traffic circulation, design, allowable uses, and impacts on surrounding areas. Mitigation of impacts on nearby residential areas shall be a high priority in planning for and development of the PDs. Allowable uses within these PDs shall include, in addition to industrial uses, retail services, lodging, medical facilities, hospitals, and educational facilities.*

In July 2020, the Development Services Department and City Attorney's Office provided an interpretation of Morgan Hill Municipal Code Section 18.14.00.C relating to Legacy Zoning Districts; specifically, an interpretation regarding land uses and development standards that apply to Planned Unit Development (PUD) legacy districts that do not have an approved Master Plan (Attachment 5). The interpretation concluded that absent an approved Master Plan, properties in an existing PUD combining district may develop only to the base zoning. A Master Plan would be needed to allow any deviation from the standards and regulations under the base zoning district. The proposed Redwood Tech at 101 project does not seek any deviation from the standards and regulations under the base zoning district; therefore, the project may develop pursuant to the base Light Industrial (IL) zoning district. Hence, Policies CNF-18.3 and CNF-18.4 of the 2035 General Plan do not apply to the Redwood Tech at 101 project.

In response to the appellant's comment that the Planning Commission could not make the necessary findings to approve the project at the May 25, 2021, Planning Commission meeting, the Planning Commission made the necessary findings to approve the Redwood Tech at 101 project on a 6-1 vote with the following amendment: "Buildings should have a consistent design on all elevations viewable from public streets. The Director shall work with the applicant to ensure colors and materials are included on all elevations that limit the amount of blank wall space."

In approval of the Design Permit, the Planning Commission made the following findings as outlined in the May 25, 2021, Planning Commission Staff Report pursuant to Section 18.108.040.J of the Zoning Ordinance:

1. The proposed project is consistent with the General Plan and any applicable specific plan, area plan, or other design policies and regulations adopted by the City Council.
2. The proposed project will comply with all applicable provisions of the Zoning Code and Municipal Code.
3. The proposed project substantially complies with all applicable design standards and guidelines contained in the Design Review Handbook.
4. The proposed project has been reviewed in compliance with the California Environmental Quality Act (CEQA).
5. The proposed project development will not be detrimental to the public health, safety, or welfare or materially injurious to the properties or improvements in the vicinity.
6. The proposed project complies with all Design Review criteria in subsection H. of Section 18.108.040 of the municipal code.
7. For new residential development, the project complies with commitments made through the Residential Development Control System (RDCS).

In approval of the Vesting Tentative Parcel Map, the Planning Commission made the following finding pursuant to Section 17.24.070 of the Municipal Code:

1. The Tentative Parcel Map, together with its provisions for its design and improvements, is consistent with the General Plan.

Conclusion

As discussed, the proposed project meets the requirements of the General Plan and Zoning Ordinance. The facts do not adequately support the allegations made in the appeals. For the reasons set forth in this report, it is recommended that the City Council adopt a resolution denying the appeals.

COMMUNITY ENGAGEMENT: Involve

The Planning Commission approved the project at its meeting on May 25, 2021. A notice of the appeal hearing was mailed to all property owners on the east side of 101 from Eagle View drive to the north, Cochrane to the east, and Half Road to the south encompassing all the residential neighborhoods in this area.

ALTERNATIVE ACTIONS:

If the City Council is able to make adequate findings, it could decide to grant the appeal to SD2020-0011/SR2020-0029 through SR2020-0033 De Paul – TC Morgan Hill Venture and deny the Vesting Tentative Parcel Map and Design Permits.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The Planning Commission approved the project at the May 25, 2021, meeting (6-1), with Commissioner Mueller casting the dissenting vote. Commissioner Mueller's primary concern was not being able to determine that the project is consistent with the development projections analyzed in the Morgan Hill 2035 General Plan program EIR for the project site.

FISCAL AND RESOURCE IMPACT:

The City Development Review functions are cost-recovery, with fees collected from applicants to cover the cost of services. These fees have been collected from the applicant. Appeal fees for the appellants are not cost recovery fees and were reduced by the City Council to not create an impediment to public participation.

CEQA (California Environmental Quality Act):

Categorical Exemption

On July 27, 2016, the City Council certified an environmental impact report (EIR) for the Morgan Hill 2035 General Plan. The EIR for the General Plan was prepared as a program EIR under the provisions of Section 15168 of the *State CEQA Guidelines*. As a program EIR, the document adopted by the City Council adequately addressed the potential environmental impacts associated with the comprehensive update of the City's constitution for growth, including certain implementation activities, and provided for streamlining of the environmental review process for projects proposed subsequent to the certification of the EIR. The proposed project entails dividing the subject property and constructing buildings consistent with the General Plan. The division and development of parcels consistent with the General Plan were addressed in the program EIR for the 2035 General Plan and, therefore, pursuant to Section 15162 and Section 15183 of the *State CEQA Guidelines*, no additional review under the California Environmental Quality Act is required for the proposed project.

This project is also exempt pursuant to Section 15315 of the *State CEQA Guidelines* because it consists of the division of property in urbanized areas zoned for industrial use into four parcels and conforms with the General Plan and zoning, no variances or exceptions are required, all services and access to the proposed parcels to local standards are available, the parcel was not involved in a division of a larger parcel within the previous two years, and the parcel does not have an average slope greater than 20 percent. Further, the map involves no unusual circumstances that would warrant additional CEQA review.

LINKS/ATTACHMENTS:

1. City Council Resolution
2. May 25, 2021 - PC Staff Report (Weblink)
3. Appeal by Adams Broadwell Joseph & Cardozo
4. Appeal by Morgan Hill Responsible Growth Coalition
5. PUD Zoning Interpretation Letter

RESOLUTION NO. XX-XX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL DENYING THE APPEALS SUBMITTED BY MORGAN HILL RESIDENTS FOR RESPONSIBLE DEVELOPMENT AND MORGAN HILL RESPONSIBLE GROWTH COALITION FOR SD2020-0011 AND SR2020-0029 THROUGH SR2020-0033: DE PAUL-TC MORGAN HILL VENTURE AND REAFFIRMING THE APPROVAL OF THE VESTING TENTATIVE PARCEL MAP AND DESIGN PERMITS FOR THE REDWOOD TECH AT 101 PROJECT ON PROPERTY LOCATED ON THE NORTHERN INTERSECTION OF CONDIT ROAD AND HALF ROAD (APNS 728-30-006 AND 728-30-0009)

WHEREAS, such request was considered by the Planning Commission at its regular meeting of May 25, 2021, at which time the Planning Commission approved Vesting Tentative Parcel SD2020-0011 and Design Permits SR2020-0029 through SR2020-0033: De Paul-TC Morgan Hill Venture (Redwood Tech at 101); and

WHEREAS, testimony received at a duly noticed public hearing, along with exhibits and drawings and other materials have been considered in the review process; and

WHEREAS, Morgan Hill Residents for Responsible Development and Morgan Hill Responsible Growth Coalition, both filed an appeal of the Planning Commission's decision on the Application to the City Council pursuant to the applicable provisions of the Morgan Hill Municipal Code; and

WHEREAS, at the time and place noticed for a hearing on the appeal, the City Council of the City of Morgan Hill conducted a *de novo* appeal hearing on the Application, provided all interested persons an opportunity to be heard, and received, reviewed, and considered all testimony and other evidence provided regarding the subject of this appeal.

NOW, THEREFORE, BASED UPON ALL OF THE INFORMATION SUBMITTED TO THE CITY COUNCIL FOR THE APPEAL AT THE PUBLIC HEARING CONDUCTED FOR THE APPEAL, THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY RESOLVE AS FOLLOWS:

SECTION 1. Following are the relevant facts in connection with Application:

- A. The approved Vesting Tentative Parcel Map and Design Permits are consistent with the Zoning Ordinance and the General Plan.

- B.** At their meeting of May 25, 2021, the Planning Commission found that the approved Vesting Tentative Parcel Map and Design Permits would be consistent with the criteria for Vesting Tentative Parcel Map and Design Permits approval contained within the Zoning Code. The basis and findings were set forth in the staff report for May 25, 2021.

SECTION 2. Based upon the above facts, the City Council finds as follows:

- A.** The project is consistent with the Zoning Ordinance, and General Plan.
B. The Design Review has been found consistent with the criteria for Design Review permit approval contained in Section 18.108.040 of the Morgan Hill Municipal Code. The proposed project is in compliance with all applicable design standards and guidelines contained in the Design Review Handbook.

SECTION 3. Based upon the above facts and findings the City Council determines as follows:

- A.** The approval of the Vesting Tentative Parcel Map and Design Permits granted by the Planning Commission on May 25, 2021, were made consistent with the Morgan Hill Municipal Code. Therefore, the appeal submitted regarding the Vesting Tentative Parcel Map and Design Permits approval should not be approved.
B. The Planning Commission approval as set forth in Planning Commission Resolution No. 21-04 and Resolution No. 21-05, attached hereto as Exhibit A and incorporated herein by this reference, is hereby reaffirmed, and approved.

SECTION 4. For the reasons set forth above, the appeal is **DENIED**.

PASSED AND ADOPTED THIS 23rd DAY OF JUNE 2021, AT A MEETING OF THE CITY COUNCIL BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

City of Morgan Hill
Resolution No.
Page 3 of 5

ATTEST:

APPROVED:

MICHELE BIGELOW, City Clerk

RICHARD CONSTANTINE, Mayor

Attachment: City Council Resolution [Revision 2] (3130 : Trammell Crow Redwood Tech at 101 Appeal)

CERTIFICATE OF THE CITY CLERK

I, MICHELLE BIGELOW, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Resolution No. _____, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the ____ day of _____, 2021.

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

DATE: _____

MICHELE BIGELOW, City Clerk

EXHIBIT A

Planning Commission Resolution No. 21-04 and Resolution No. 21-05

RESOLUTION NO. 21-04

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MORGAN HILL APPROVING A DESIGN PERMIT TO ALLOW FOR THE CONSTRUCTION OF THE REDWOOD TECH AT 101 PROJECT - A FIVE BUILDING INDUSTRIAL PARK LOCATED ON THE NORTHERN INTERSECTION OF CONDIT ROAD AND HALF ROAD (DE PAUL – TC MORGAN HILL VENTURE (REDWOOD TECH AT 101)) (APNS 728-30-006 AND 728-30-009)

WHEREAS, the developer Trammell Crow applied for a Design Permit to construct an industrial park containing five (5) industrial buildings ranging in size from 73,668 to 138,698 square feet. (SR2020-0029 through -033: De Paul – TC Morgan Hill Venture (Redwood Tech at 101)); and

WHEREAS, such request was considered by the Planning Commission at its meeting of May 25, 2021; and

WHEREAS, this project is consistent with the development projections analyzed in the Morgan Hill 2035 General Plan program EIR for the project site. The project also is designed to be consistent with the development standards in the General Plan and Zoning Code. No further environmental assessment is required; and

WHEREAS, testimony received at a duly-noticed public hearing, along with exhibits and drawings and other materials have been considered in the review process.

NOW, THEREFORE, THE MORGAN HILL PLANNING COMMISSION DOES RESOLVE AS FOLLOWS:

SECTION 1. The project is consistent with the Zoning Ordinance, and General Plan.

SECTION 2. The Design Review has been found consistent with the criteria for Design Review permit approval contained in Section 18.108.040 of the Morgan Hill Municipal Code. The proposed project is in compliance with all applicable design standards and guidelines contained in the Design Review Handbook.

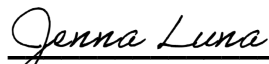
SECTION 3. The Planning Commission approves SR2020-0029 through -0033: De Paul – TC Morgan Hill Venture (Redwood Tech at 101). The design shall be expressly conditioned in conformance with conditions incorporated herein and as attached as Exhibit “A”. Minor deviations to the site review permit may be approved by the Community Development Director when consistent with the overall intent of the project.

SECTION 4. Notice is hereby given that, pursuant to the Mitigation Fee Act, the City of Morgan Hill charges certain fees (as such term is defined in Government Code Section 66000) in connection with approval of your use for the purpose of defraying all or a portion of the cost of public facilities related to your development project (Mitigation Fee Act Fees). These fees do not include fees for processing applications for governmental regulatory actions or approvals, or fees collected (a) under development agreements, (b) pursuant to agreements with the Morgan Hill Redevelopment Agency or (c) as a part of your application for development allocations under the City's Residential Development Control System. The Mitigation Fee Act Fees applying to your project are listed in the schedule of fees provide. Notice is also hereby given that you have the opportunity to protest the imposition of the Mitigation Fee Act Fees within 90 days of the approval of the approval or conditional approval of your development project and that the 90-day approval period in which you may protest has begun. This right to protest does not apply to voluntary Residential Development Control System fees.

PASSED AND ADOPTED THIS 25th DAY OF MAY 2021, AT A REGULAR MEETING OF THE PLANNING COMMISSION BY THE FOLLOWING VOTE:

AYES:	COMMISSIONERS:	HABIB, KUMAR, TANDA, GONZALEZ-ESCOTO, DOWNEY, MUNOZ- MORRIS
NOES:	COMMISSIONERS:	MUELLER
ABSTAIN:	COMMISSIONERS:	NONE
ABSENT:	COMMISSIONERS:	NONE

ATTEST:


JENNA LUNA, Deputy City Clerk

APPROVED:


MOHAMMAD HABIB, Chair

EXHIBIT "A" STANDARD CONDITIONS

APPLICATION NO: SR2020-0029 through -0033

THE FOLLOWING APPROVAL REQUIREMENTS AND ANY SPECIAL CONDITIONS SHALL BE APPLIED THROUGH THE DEVELOPMENT APPROVAL PROCESS.

Legend

MHMC= Morgan Hill Municipal Code
 MHARH= Morgan Hill Architectural Review Handbook
 CMH= City of Morgan Hill
 CFC= California Fire Code

I. PROJECT DESCRIPTION

This project proposes approximately 501,000 square feet of flexible industrial space spread across 5 separate concrete tilt-up buildings on four separate lots. As with all other development, this project requires a Design Permit. The Community Development Director has elevated this project to the Planning Commission for consideration. All five buildings are designed to be divisible into two or three tenant spaces with a maximum exterior height of 43 feet.

The project shall comply with all requirements of related project approvals granted by the City, including all of the following:

II. PROJECT CONDITIONS OF APPROVAL

This Design Permit approval is limited to the plan set dated December 11, 2020 on file (File Number SR2020-0029 through -0033: De Paul – TC Morgan Hill Venture (Redwood Tech at 101)) with the Development Services Department. The approved building plans and landscape plans must be in substantial conformance with the Design Review plans as determined by the Development Services Director. These documents show the location and dimensions of all buildings and elevations with colors and materials, amenities and square footage for all common areas, and vehicle and pedestrian circulation ways (ingress/egress), common areas, and other easement areas.

It shall be the responsibility of the Owner to ensure that any changes or modifications to the Project or any Unit are in compliance with the original City Conditions of Approval of the Project, which are incorporated herein.

PLANNING COMMISSION

Buildings shall have a consistent design on all elevations viewable from public streets. The Development Services Director shall work with the applicant to ensure colors and materials are included on all elevations that limit the amount of blank wall space.

PLANNING DIVISION

DEFENSE AND INDEMNITY

- A. As part of, and in connection, with this application to the City of Morgan Hill, Applicant agrees to defend, indemnify, and hold harmless the City of Morgan Hill, its officers, agents, employees, officials and representatives (Indemnitees) from and against any and all claims, actions, or proceedings arising from any suit for damages or for equitable or injunctive relief which is filed against City to attack, set aside, void or annul its approval of this application or any related decision, or the adoption of any environmental documents which relates to said approval. The City shall promptly notify the Applicant of any such claim, action or proceeding and the City shall cooperate fully in the defense thereof. In the event that Applicant is required to defend Indemnitees in connection with the proceeding, Indemnitees shall retain the right to approve (a) the counsel to so defend Indemnitees; (b) all significant decisions concerning the manner in which the defense is conducted; and (c) any and all settlements, which approval shall not be unreasonably withheld. This indemnification shall include, but is not limited to, (a) all pre-tender litigation costs incurred on behalf of the City, including City's attorney's fees and all other litigation costs and expenses, including expert witnesses, required to defend against any lawsuit brought as a result of City's approval or approvals; (b) reasonable internal City administrative costs, including but not limited to staff time and expense spent on the litigation, after tender is accepted; and (c) all damages, costs, expenses, attorney fees or expert witness fees that may be awarded to the prevailing party arising out of or in connection with the approval of the application or related decision. City may, in its sole discretion, participate in the defense of such action; but such participation shall not relieve Applicant of its obligations under this condition. The undersigned hereby represents that they are the Applicant or are fully empowered by the Applicant as their agent to agree to provide the indemnification, defense and hold harmless obligations, and the signature below represents the unconditional agreement by Applicant to be bound by such conditions.

TIME LIMITS

- A. **Term:** The Design Review approval granted pursuant to this Resolution shall remain in effect for two years to May 25, 2023. Failure to obtain building permits within this term shall result in termination of approval unless an extension of time is granted with a showing of just cause prior to expiration date. **(MHMC 18.108.040)**

SITE DEVELOPMENT

- A. **Final Site Development Plans:** Final site development plans shall be reviewed for conformance with Design Permit SR2020-0029 through -0033: De Paul – TC Morgan Hill Venture (Redwood Tech at 101) and in accordance with Morgan Hill Municipal Code Section 18.108.040 (Design Permit) and approved by the Development Services Department prior to issuance of a building permit. All such plans shall include:
1. Detail depicting all concrete curbs as full formed.
 2. Exterior lighting of the building and site shall be designed so that lighting is not directed onto adjacent properties and light source is shielded from direct off-site viewing.
 3. Ramps, special parking spaces, signing and other physical features for the disabled, shall be provided throughout the site for all publicly used facilities.
 4. All mechanical equipment, including electrical and gas meters, post indicator valve, backflow prevention devices, etc., shall be architecturally screened from view or located interior to the building. All ground mounted utility appurtenances such as transformers shall not be visible from any public right-of-way and shall be adequately screened through the use or combination of concrete or masonry walls, berming, and landscaping. **(MHARH p.20, 45, 79)** For additional screening, backflow preventers shall be painted dark green, except the fire connection which shall be painted yellow.
 5. All existing on-site overhead utilities shall be placed underground in an approved conduit from the service connection at the street or at the property line to the service connection at the building as detailed in engineering conditions within this document.
 6. Adequate bicycle trails and amenities (e.g. bike racks, bike fix-it station) and pedestrian connections throughout the site, including connections to De Paul Drive, and a sidewalk along the De Paul Drive frontage.

7. To the extent acceptable to end users, implement good faith Transportation Demand Management Plan measures to promote alternate means of transportation and reduce single occupancy vehicle trips to and from the Project.
- B. **Building Coverage:** In accordance with Morgan Hill Municipal Code Section 18.26.030 (Development Standards) and approved by the Development Services Director prior to issuance of a building permit, Building B shall be reduced in size to have a maximum building coverage of 50%.
 - C. **Trash Enclosures:** All trash enclosures shall include a solid noncombustible roof structure consistent in design, materials and colors as the primary buildings and shall be reviewed and approved by the Development Services Director prior to issuance of a building permit.
 - D. **Pedestrian Access:** The Project shall provide pedestrian walkways in compliance with ADA requirements and with Section 18.72.060.H of the Morgan Hill Municipal Code, which states the following:
 1. Parking lots with more than thirty parking spaces shall include a pedestrian walkway in compliance with ADA requirements.
 2. The design of the pedestrian walkway shall be clearly visible and distinguished from parking and circulation areas through striping, contrasting paving material, or other similar method as approved by the Development Services Director.
 - E. **Bicycle parking.** The project shall provide short-term and long-term bicycle parking spaces in conformance with Section 18.72.080 of the Morgan Hill Municipal Code:
 1. **Short-Term/Class II Bicycle Parking Standards.** Short-term bicycle parking shall be located within one hundred feet of the primary entrance of the structure or use it is intended to serve.
 2. **Long-Term Bicycle Parking Standards.** The following standards apply to long-term bicycle parking:
 - a. Location. Long-term bicycle parking shall be located on or within seven hundred fifty feet of the use that it is intended to serve.
 - b. Security. Long-term bicycle parking spaces shall be secured. Spaces are considered secured if they are:

- i. In a locked room or area enclosed by a fence with a locked gate;
 - ii. Within view or within one hundred feet of an attendant or security guard;
 - iii. In an area that is monitored by a security camera; or iv. Visible from employee work areas.
- 3. **Parking Space Dimensions.**
 - a. Minimum dimensions of two feet by six feet shall be provided for each bicycle parking space.
 - b. An aisle of at least five feet shall be provided behind all bicycle parking to allow room for maneuvering.
 - c. 2 feet of clearance shall be provided between bicycle parking spaces and adjacent walls, polls, landscaping, pedestrian paths, and other similar features.
 - d. Four feet of clearance shall be provided between bicycle parking spaces and adjacent automobile parking spaces and drive aisles.
- 4. **Rack Design.** Bicycle racks must be capable of locking both the wheels and the frame of the bicycle and of supporting bicycles in an upright position.
- 5. **Cover.** Required cover for bicycle parking spaces shall be permanent, designed to protect the bicycle from rainfall, and at least seven feet above the floor or ground.

The location of all bicycle parking spaces shall be identified prior to issuance of a building permit.

- D. **Electric Vehicle Charging Stations:** The Project shall provide electric vehicle charging stations in compliance with Section 18.72.040.C of the Morgan Hill Municipal Code. The project is required to provide two charging stations, plus one for each additional fifty parking spaces. The developer shall provide location of each charging station prior to issuance of building permit.
- E. **Prohibition of Natural Gas Infrastructure in New Buildings.** In accordance with Chapter 15.63 of the Municipal Code, future tenants will be required to demonstrate the need for gas service for manufacturing and other business uses. Natural gas shall not be used for heating and cooling of the building.

BUILDING DESIGN

- A. **Roof Mounted Mechanical Equipment:** All roof mounted mechanical equipment shall be placed within a screened roof top enclosure depicted on the elevation drawings or located below the parapet level and shall not be visible from the ground at any distance from the building. Cross section roof drawings shall be provided at the building permit stage indicating the relative height of the screen wall or parapet. Minimum screen height or parapet depth shall be 5 feet or greater to match the height of any proposed equipment. **(MHARH p.48, 65, 87, 106)**
- B. **Building Mounted Lighting:** Lighting fixtures shall not project above the fascia or roofline of the building. Any ground mounted lighting projecting onto the building or site shall be subject to the review and approval of the Development Services Director. Adjustment to the lighting intensity may be required after the commencement of the use. **(MHARH p. 67, 109)**

PARKING, VEHICULAR ACCESS AND LANDSCAPING

- A. **Parking Lot Landscaping:** All landscaping within parking lots shall comply with the requirements of Chapter 18.72 (Landscaping) in addition to the standards within this section.
 - 1. Interior Landscaping. All areas within a parking lot not utilized for parking spaces or access/circulation shall be landscaped. For parking lots with more than fifteen spaces, the minimum amount of interior landscaping is specified in Table 18.72-6. Interior landscaping is defined as any landscaped area surrounded on at least two sides by parking spaces or drive aisles, and excluding areas around the perimeter of the parcel or development site.
 - 2. **Shade Trees.**
 - a. One shade tree shall be provided for every five parking spaces in a parking lot.
 - b. Shade trees shall be a minimum twenty-four-inch box in size and shall provide a minimum thirty-foot canopy at maturity.
 - c. Shade trees shall be of a type that can reach maturity within fifteen years of planting and shall be selected from a city-recommended list of canopy tree species.
 - d. Shade trees shall be arranged in a parking lot to provide maximum shade coverage (based on a thirty-foot canopy) on August 21. The arrangement should approximate nearly fifty percent shade coverage.

3. **Concrete Curbs.**
 - a. All landscape areas shall be separated from parking spaces, drive aisles and driveways by a continuous, raised concrete curb. Raised concrete curbs shall be a minimum of six inches high by four inches deep.
 - b. The city may approve alternatives to raised concrete curbs as needed to comply with any mandatory stormwater drainage standards.
 4. **Parking Space Landscaping.** A maximum of two feet at the front end of a parking space may be landscaped with low shrubs or ground cover in which a vehicle could extend over in lieu of paving surface. This landscaping may not count toward minimum required parking lot landscaped area.
 5. **Timing.** Adjacent parking lot landscaping shall be installed prior to the city's authorization to occupy any buildings served by the parking area, or prior to the final inspection for the parking lot.
 6. **Green Parking Exemptions.** Parking lots that incorporate solar panels, bioswales, and other similar green features not otherwise required by post construction stormwater requirements are eligible for reduced parking lot landscaping requirements with the approval of a conditional use permit.
 7. **Exterior Parking Lot Lighting:** For projects with more than six parking spaces, detailed lighting information is provided in compliance with Section 18.72.060.G of the Morgan Hill Municipal Code. Lights shall use cut-off shields and be downward directed and shall not overlap with landscaping which will block and reduce the effectiveness and purpose of the lighting.
- B. **Planting and Irrigation Working Drawings:** Detailed landscape planting and irrigation working drawings shall be submitted to the Development Services Director for approval prior to issuance of building permits. Landscape plans for streets and landscape easements shall be part of the improvement plan submittal.
- C. **Lighting:** Walkways and pedestrian pathways in landscaped areas or common areas not considered building entrances or a part of parking lot areas shall be illuminated with a minimum of one (1) foot-candle to ensure safe nighttime conditions. (MHARH p.30, 67, 108)

- D. **Trash Enclosures:** Trash enclosures shall be separated from adjacent parking stalls with a minimum three (3) foot wide planter and a 12-inch-wide paved surface behind the curb (consistent with planter island standards). Trash enclosures shall be screened with landscape materials subject to the review and approval of the Development Services Director.
- E. **Maintenance of Landscaping:** The landscaping installed and accepted with this project shall be maintained on the site as stated within the approved plans. Any alteration or modification to the landscaping shall not be permitted unless otherwise approved by the Development Services Director.
- F. **Water Conserving Landscaping Ordinance:** The landscape plans shall be in conformance with the City's Water Conserving Landscape Ordinance that was developed in accordance with California law. This Ordinance restricts landscaping turf to certain areas, specifies plant selection, requires certain types of irrigation equipment, and calls for the development of comprehensive water use calculations as an aspect of the submitted landscape plans. **(MHMC 18.64)**

SIGNS

- A. **Separate Application Required for Sign Approval:** Signs proposed for this development shall be designed in conformance with the Sign Ordinance and shall require separate application and approval by the Planning Division prior to installation of any signs.

HABITAT PLAN

- A. **Fees:** The approved project is covered pursuant to the Santa Clara Valley Habitat Plan (Habitat Plan) and subject to fees and conditions contained in the Habitat Plan.
- B. **Application Package:** Prior to issuance of a grading permit, the project shall complete and submit a Habitat Plan Application Package. All fees shall be paid prior to issuance of a grading permit. **(MHMC 18.132)**
- C. **Conditions:** Any additional conditions or mitigations required by the Habitat Plan shall be clearly stated on all plans that involve any ground disturbing activity (i.e. grading plans, improvement plans, paving plans, demolition plans or other plans for site clearing or temporary stockpile of dirt). **(MHMC 18.132)**

AIR QUALITY

- A. **Dust, Noise, Vibration and Materials Management Plan:** A management plan detailing strategies for control of noise, dust and vibration, and storage of hazardous materials during construction of the project shall be submitted for review prior issuance of a grading permit and requirements shall be included on all site development and grading plans. The intent of this condition is to minimize construction related disturbance of residents of the nearby or adjacent properties. **(MHMC 18.76)**
1. All exposed surfaces shall be watered at a frequency adequate to maintain minimum soil moisture of 12 percent. Moisture content can be verified by lab samples or moisture probe.
 2. All excavation, grading, and/or demolition activities shall be suspended when average wind speeds exceed 20 mph.
 3. Wind breaks (e.g., trees, fences) shall be installed on the windward side(s) of actively disturbed areas of construction. Wind breaks should have at maximum 50 percent air porosity.
 4. Vegetative ground cover (e.g., fast-germinating native grass seed) shall be planted in disturbed areas as soon as possible and watered appropriately until vegetation is established.
 5. The simultaneous occurrence of excavation, grading, and ground disturbing construction activities on the same area at any one time shall be limited. Activities shall be phased to reduce the amount of disturbed surfaces at any one time.
 6. All trucks and equipment, including their tires, shall be washed off prior to leaving the site.
 7. Site accesses to a distance of 100 feet from the paved road shall be treated with a 6 to 12-inch compacted layer of wood chips, mulch, or gravel.
 8. Sandbags or other erosion control measures shall be installed to prevent silt runoff to public roadways from sites with a slope greater than one percent.
 9. Minimizing the idling time of diesel-powered construction equipment to two minutes.

10. The project shall develop a plan demonstrating that the off-road equipment (more than 50 horsepower) to be used in the construction project (i.e., owned, leased, and subcontractor vehicles) would achieve a project wide fleet-average 20 percent NOX reduction and 45 percent PM reduction compared to the most recent ARB fleet average. Acceptable options for reducing emissions include the use of late model engines, low emission diesel products, alternative fuels, engine retrofit technology, after-treatment products, add-on devices such as particulate filters, and/or other options as such become available.
11. Use low VOC (i.e., ROG) coatings beyond the local requirements (i.e., Regulation 8, Rule 3: Architectural Coatings).
12. Requiring that all construction equipment, diesel trucks, and generators be equipped with Best Available Control Technology for emission reductions of NOx and PM.
13. Requiring all contractors use equipment that meets CARB's most recent certification standard for off-road heavy-duty diesel engines.

CULTURAL RESOURCES

Significant Historic or Archaeological Materials: This project has been determined not to be in a site identified as archaeologically sensitive by the City's adopted archaeological sensitivity map, but nonetheless could adversely impact undocumented human remains or unintentionally discover significant historic or archaeological materials. The following policies and procedures for treatment and disposition of inadvertently discovered human remains or archaeological materials shall apply and should be provided as standard conditions on the building permit, grading permit, or improvement plans. If human remains are discovered, it is probable they are the remains of Native Americans.

1. If human remains are encountered they shall be treated with dignity and respect as due to them. Discovery of Native American remains is a very sensitive issue and serious concern. Information about such a discovery shall be held in confidence by all project personnel on a need to know basis. The rights of Native Americans to practice ceremonial observances on sites, in labs and around artifacts shall be upheld. Remains should not be held by human hands. Surgical gloves should be worn if remains need to be handled. Surgical mask should also be worn to prevent exposure to pathogens that may be associated with the remains.

2. In the event that known or suspected Native American remains are encountered or significant historic or archaeological materials are discovered, ground-disturbing activities shall be immediately stopped. Examples of significant historic or archaeological materials include, but are not limited to, concentrations of historic artifacts (e.g., bottles, ceramics) or prehistoric artifacts (chipped chert or obsidian, arrow points, groundstone mortars and pestles), culturally altered ash-stained midden soils associated with pre-contact Native American habitation sites, concentrations of fire-altered rock and/or burned or charred organic materials, and historic structure remains such as stone-lined building foundations, wells or privy pits. Ground-disturbing project activities may continue in other areas that are outside the discovery locale.
3. An “exclusion zone” where unauthorized equipment and personnel are not permitted shall be established (e.g., taped off) around the discovery area plus a reasonable buffer zone by the Contractor Foreman or authorized representative, or party who made the discovery and initiated these protocols, or if on-site at the time of discovery, by the Monitoring Archaeologist (typically 25-50ft for single burial or archaeological find).
4. The discovery locale shall be secured (e.g., 24-hour surveillance) as directed by the City or County if considered prudent to avoid further disturbances.
5. The Contractor Foreman or authorized representative, or party who made the discovery and initiated these protocols shall be responsible for immediately contacting by telephone the parties listed below to report the find and initiate the consultation process for treatment and disposition:
 - The City of Morgan Hill Development Services Director (408) 779-7247
 - The Contractor’s Point(s) of Contact
 - The Coroner of the County of Santa Clara (if human remains found) (408) 793-1900
 - The Native American Heritage Commission (NAHC) in Sacramento (916) 653-4082
 - The Amah Mutsun Tribal Band (916) 481-5785 (H) or (916) 743-5833 (C)
6. The Coroner has two working days to examine the remains after being notified of the discovery. If the remains are Native American the Coroner has 24 hours to notify the NAHC.

7. The NAHC is responsible for identifying and immediately notifying the Most Likely Descendant (MLD) from the Amah Mutsun Tribal Band. (Note: NAHC policy holds that the Native American Monitor will not be designated the MLD.)
8. Within 24 hours of their notification by the NAHC, the MLD will be granted permission to inspect the discovery site if they so choose.
9. Within 24 hours of their notification by the NAHC, the MLD may recommend to the City's Development Services Director the recommended means for treating or disposing, with appropriate dignity, the human remains and any associated grave goods. The recommendation may include the scientific removal and non-destructive or destructive analysis of human remains and items associated with Native American burials. Only those osteological analyses or DNA analyses recommended by the Amah Mutsun Tribal Band may be considered and carried out.
10. If the MLD recommendation is rejected by the City of Morgan Hill the parties will attempt to mediate the disagreement with the NAHC. If mediation fails then the remains and all associated grave offerings shall be reburied with appropriate dignity on the property in a location not subject to further subsurface disturbance.

GENERAL

- A. **Mitigation Fee Act:** Notice is hereby given that, pursuant to the Mitigation Fee Act, the City of Morgan Hill charges certain fees (as such term is defined in Government Code Section 66000) in connection with approval of this development project for the purpose of defraying all or a portion of the cost of public facilities related to this development project (Mitigation Fee Act Fees). These fees do not include fees for processing applications for governmental regulatory actions or approvals, fees collected as part of development agreements, or as a part of the application for the City's Residential Development Control System. The Mitigation Fee Act Fees applying to this project are listed in the schedule of fees to be provided at building permit stage. Notice is also hereby given that the Developer has an opportunity to protest the imposition of the Mitigation Fee Act Fees within 90 days of the approval or conditional approval of this development project and that the 90-day protest period has begun.

- B. **Signed Copies of Resolution with Conditions:** Submit two (2) signed copies of the resolution with conditions to the Planning Division prior to issuance of a building permit.
- C. **Traffic Analysis:** A traffic analysis shall be performed prior to each tenant occupying a building. Recommendations made in the traffic analysis to improve on-site or off-site conditions shall be incorporated as reviewed and approved by the Development Services Director and City Engineer prior to the tenant occupying the building.

ENGINEERING DIVISION

I. PROJECT SPECIFIC

A. Street and Utility Improvements:

1. Coordination with Adjacent Residential Project: The developer shall coordinate the De Paul Drive improvements and sanitary sewer improvements with the project known as "The Crosswinds Project" located on the east side of De Paul Drive (APNs: 728-30-001, -002, -003, & -004) and owned by Dividend Homes.
 - i. Prior to parcel map approval, the developer shall obtain the necessary right-of-way on De Paul Drive (and construction easement, if required) from Dividend Homes' Crosswinds Project.
2. De Paul Drive: Construct De Paul Drive to comply with the City's half street (2/3 street) standards along the west side of De Paul Drive from Cochrane Road to the proposed cul-de-sac next to Half Road (includes the frontage along the Lands of Lee with APN: 728-30-008) to the satisfaction of the City Engineer.
 - i. Install and dedicate the required street improvements at De Paul Drive to have a straight road alignment with a minimum 46' right-of-way width and a minimum 36' pavement width from face of curb along the unimproved section of De Paul Drive to the new cul-de-sac next to Half Road.
 - ii. The City will quitclaim approximately 19' of right-of-way along the De Paul Drive frontage of APN: 728-30-009.
 - iii. The developer shall dedicate 36' right-of-way width in fee to the City for public street purposes along the De Paul Drive frontage of APN: 728-31-014 and dedicate a 10' wide Public Service Easement (PSE) behind the proposed property line.
 - iv. The project's right-of-way dedication and quitclaim shall be shown on the parcel map.

- v. The street improvements shall include, but are not limited to, curb and gutter, sidewalk, landscaping, full cul-de-sac at the southerly end of De Paul Drive next to Half Road, street paving, utilities, undergrounding, stormwater post-construction facilities, and street lighting.
 - vi. The project shall construct City standard sidewalk along the west side of De Paul Drive from Cochrane Road to the proposed cul-de-sac next to Half Road to provide a continuous pedestrian connection from the project site to Cochrane Road.
 - 1) The project has an option to construct a temporary asphalt sidewalk along the frontages of the future Phase 2 Project and the Lands of Lee (APN: 728-30-008)
 - vii. The project's two northerly driveways at De Paul Drive are proposed to have widths that exceed the City standard maximum industrial driveway width of 36' to allow truck access/maneuvering.
 - 1) At improvement plan/building permit stage, submit an additional truck turning template using the ultimate street width of De Paul Drive for City Engineer review.
 - viii. At improvement plan/building permit stage, revise the De Paul Drive street cross-sections to match the 2/3 street width.
- 3. Half Road: The developer shall construct Half Road to comply with City standards along the north side of the project's Half Road frontage to the satisfaction of the City Engineer.
 - i. Install and dedicate the required street improvements at Half Road. The street improvements shall include, but are not limited to, curb and gutter, sidewalk, landscaping, street paving, utilities, stormwater post-construction facilities, and street lighting.
 - ii. The developer shall dedicate right-of-way in fee to the City for public street purposes at a width of 36' from centerline along the Half Road frontage of APN: 728-30-009 and dedicate a 10' wide PSE behind the proposed property line.
 - iii. Extend the new sidewalk along the project's Half Road frontage westerly up to the Madrone Channel/Trail entrance. The design of the sidewalk and compliance with Valley Water's access requirements to Madrone Channel will be reviewed at improvement plan/building permit stage.
- 4. Cochrane Road: Construct the ultimate width of Cochrane Road along the project's frontage to comply with the City's arterial street standards to the satisfaction of the City Engineer.
 - i. Install and dedicate the required street improvements at Cochrane Road. The street improvements shall include, but are not limited to, curb and gutter, sidewalk, dedicated right-turn pocket along eastbound Cochrane Road, landscaping, street paving, utilities, stormwater post-construction facilities, and street lighting.

- ii. The developer shall dedicate a minimum of 60' of right-of-way from the centerline of Cochrane Road for public street purposes along the Cochrane Road frontage of APN: 728-31-014 and dedicate a 10' wide PSE behind the proposed property line.
 - iii. At improvement plan//building permit stage, revise plans to show the number of streetlights and spacing along Cochrane Road to comply with City standards. Per City standards, streetlight spacing for arterials is 160' to 180' and streetlight location shall be directly opposite the existing streetlight on the north side of Cochrane Road.
 - iv. At improvement plan//building permit stage, submit a traffic signal modification plan for the Cochrane Road/De Paul Drive intersection. The plan shall include the relocation or replacement of the two existing traffic signal poles on the southwest corner of the intersection, signal phasing, and the proposed striping plans.
- 5. Utilities: The City's Water System Master Plan, Storm Drainage System Master Plan, and Sewer System Master Plan identified proposed improvements along De Paul Drive and Half Road.
 - i. Storm Improvements:
 - 1) The project shall construct a 48" to 54" storm main along the project's Half Road frontage per the City's Storm Master Plan.
 - 2) Provide a minimum 20' wide additional PSE centered over the portion of the proposed storm drain main located west of Condit Road. The PSE shall be reviewed at parcel map stage.
 - 3) The developer shall continue to work with the City and Valley Water to review the design conditions of the PL-566 project and shall revise the on-site drainage plans at improvement plan stage, as needed, to the satisfaction of the City Engineer.
 - 4) Per the notes on the project's Vesting Tentative Parcel Map, the site is in Flood Zone "X- Shaded" and Flood Zone "AE" as shown on the FEMA Flood Insurance Rate Maps. Depending on the results of Valley Water's updated hydrology model, the project may be required to submit a Letter of Map Revision (LOMR) to FEMA or other appropriate documentation to update the flood zone for the site and designate the entire site to be entirely within Flood Zone "X- Shaded", an area defined as outside the 100-year floodplain.
 - 5) A segment of the proposed 24" storm main along De Paul Drive shows a manhole spacing that exceeds the City standard maximum spacing of 400' for 15" to 30" storm pipe diameters. At improvement plan/building permit stage, revise storm manhole spacing to comply with City standards.
 - 6) At improvement plan/building permit stage, revise the pipe size of the following to the minimum size of 15-inch diameter per City standard:

- a) Proposed 12" storm main segment at De Paul Drive, between Sta. 16+00 and Sta. 18+00.
 - b) Proposed 12" storm lateral at Half Road, near Sta. 5+40.
 - c) Proposed 12" storm laterals at De Paul Drive.
- ii. Water Improvements: At improvement plan/building permit stage, revise the plans to comply with the following:
 - 1) Extend the existing 12" public water main from the southerly terminus of De Paul Drive to Half Road per the City's Water System Master Plan. The water main extension shall be public.
 - 2) At improvement plan/building permit stage, show each of the five buildings with a dedicated domestic, irrigation and fire services connected to a public water main.
 - 3) The Utility Plans show the domestic water service for two parcels (Parcels C & D) crossing other parcels. Service for Parcel D crosses Parcel A and service for Parcel C crosses Parcel B. At parcel map review stage, add private utility easements for the water services on Parcels A and B.
 - 4) Detailed review of the water service configurations, water lateral, meter and backflow preventer locations will be performed at improvement plan/building permit stage and will be subject to City Engineer approval.
- iii. Sanitary Sewer Improvements: Based on the proposed amendment to the City's Sewer Master Plan, a sewer flow re-route into the Condit Road Sewer Trunk will be a required sewer master plan improvement for the project.
 - 1) Install a 10" sanitary sewer gravity main beginning at De Paul Drive, approximately 540' south of Cochrane Road; then continue in a southbound direction to Half Road; then west along Half Road up to Condit Road; then follow Condit Road and end at a connection to the existing 10" sewer main at Main Avenue.
 - 2) At improvement plan/building permit stage, revise the plans to comply with the following:
 - a) On Sheet 6.5 (Preliminary Street Improvement Sections - Sections G & H), show the new 10" sanitary sewer main at Half Road to be constructed by the project.
 - b) Show a minimum horizontal clearance of 10' from the existing Valley Water groundwater recharge line.
 - 3) Prior to parcel map approval/building permit issuance, the project shall enter into a Private Sanitary Sewer Maintenance Agreement with the City for maintenance of all private sanitary sewer facilities

which includes the private sewer mains, sewer laterals, force main and lift station.

- 4) A sanitary sewer test manhole shall be provided for each of the five buildings and shall be accessible to the Pretreatment Inspector. The sanitary sewer test manholes shall be located within private property but adjacent to the street right-of-way or as approved by the City Engineer in conjunction with Pretreatment Inspector review.

6. Reimbursement Agreement: Prior to parcel map approval, the developer shall enter into a Reimbursement Agreement with the City for the reimbursement of the applicable portions of the cost to construct the following improvements that are beyond the developer's responsibility as determined by the City Engineer:
 - i. De Paul Drive and Half Road street improvements
 - ii. Traffic signal improvements at the intersection of Cochrane Road & De Paul Drive
 - iii. Storm improvements at Half Road per City's Storm Master Plan including the proposed outfall to Madrone Channel. The developer will be reimbursed for the cost to upsize the storm main above 24" per the City's Storm Master Plan.
 - iv. Sanitary sewer improvements per the City's Sewer Master Plan with the cost based on a sewer cost allocation to be agreed upon by the City, project developer and by Dividend Homes for the Crosswinds Project. The developer will be reimbursed for the cost to upsize the sewer main from 8" (developer's responsibility) to 10" per the proposed amendment to City's Sewer Master Plan.
7. Permits/Approvals from Other Agencies:
 - i. At improvement plan/building permit stage, the developer shall submit the improvement plans to Valley Water for review and approval of the following work:
 - 1) Proposed improvements along Half Road due to the proximity of the work to the existing Valley Water groundwater recharge pipeline
 - 2) Proposed storm outfall to Madrone Channel
 - 3) Any required or proposed modifications to an existing storm outfall
 - 4) Proposed Madrone Channel access
 - ii. Prior to start of sanitary sewer construction at Half Road/Condit Road, the developer shall obtain an encroachment permit from County Roads & Airports for the installation of the sanitary sewer main extension along Condit Road.

- B. Stormwater Management: The project's Preliminary Stormwater and Hydrology Report dated January 29, 2021 was submitted for City review. At improvement

plan/building permit stage, submit the Final Stormwater and Hydrology Report that addresses all of the stormwater comments included in Land Development Engineering's supplemental comment letter dated February 26, 2021.

1. The developer/owner(s) of each of the five parcels will be required to enter into a formal written Stormwater BMP Operation and Maintenance Agreement with the City prior to building permit issuance. The draft agreement will be provided at improvement plan/building permit stage.
2. At improvement plan/building permit stage, the project shall revise the plans to meet the following design criteria for all loading/unloading dock areas:
 - i. Cover loading dock areas or design drainage to minimize run-on and runoff of stormwater.
 - ii. Direct connections to storm drains from depressed loading docks (truck wells) are prohibited.

C. Grading:

1. At improvement plan/building permit stage, address the following grading comments:
 - i. The Section Details on Sheets C3.1, 3.2, & 3.3 include high points, such as the location of the proposed landscape screening in Section Detail A. Provide spot grades on the grading and drainage plans at these locations and label as high points.
 - ii. Revise the callouts or the section details to match.
 - iii. Sheet C2.2 calls out a 6' clearance between curb and building E while the clearance shown in Section N on Sheet C3.4 is 8'. Revise to match.

D. Landscaping:

1. At improvement plan/building permit stage, revise the proposed street tree species to comply with the list of Zone 1 street tree species in the City's Master Street Tree Plan.
2. The project shall comply with the City's adopted Santa Clara Valley Water Resource Protection Collaborative's "Guidelines and Standards for Land Use Near Streams. A copy of the guidelines and standards can be found at <https://www.valleywater.org/contractors/doing-businesses-with-the-district/permits-for-working-on-district-land-or-easement/guidelines-and-standards-for-land-use-near-streams>."
 - i. Verify that the proposed landscaping along the project's westerly property line, adjacent to Madrone Channel, complies with the Guidelines and Standards (See Chapters 3 & 4).
3. There is a small, unimproved area behind the new cul-de-sac, next to Half Road, with no improvement proposed. At improvement plan/building permit

stage, add a note stating the temporary or permanent landscaping or hardscape proposed for this area.

ENGINEERING STANDARD CONDITIONS

I. GENERAL

- A. The applicant shall cause the construction of all public and private improvements in accordance with the latest City Standard Drawings and Specifications. **(MHMC 12.02.090 A; 17.32.010 A)**
- B. The applicant shall submit as part of the improvement drawings for the project, profiles of all improvements in the project and typical cross-sections of all streets and details of curbs, gutters, and sidewalks, to be accomplished to the satisfaction of the City Engineer prior to submittal of Parcel Map. **(MHMC Sec 17.32.060 B; 17.32.070; 17.32.080 A)**
- C. Obtain necessary encroachment permits from:
 - ☒ City of Morgan Hill
 - ☒ County of Santa Clara Roads & Airports
 - ☒ Santa Clara Valley Water District (Valley Water)
 and provide guarantee covering off-site improvements. **(MHMC 12.08.040 A; 12.08.090)**
- D. Improvement plans are to show water lines, sanitary sewer, storm drain system, pavement widths, curve radius, and existing utilities.
- E. Enter into a Subdivision Improvement Agreement (SIA) with the City of Morgan Hill to cover required improvements. **(MHMC 12.02.150; 17.32.010 B; 17.32.160)**
- F. Reciprocal access easements and maintenance agreements ensuring access to all parcels and joint maintenance of all common roads, drives or parking areas shall be provided by CC&R's and by deed and shall be recorded concurrent with the map, or prior to issuance of building permit where no map is involved. **(MHMC 17.20.350 H)**
- G. **Impact Fees:** The City of Morgan Hill, pursuant to City Code Chapter 3.56 has established impact fees to finance the cost of improvements required by new development. City Code Chapter 3.56.050 provides for automatic annual (July 1st) adjustment of those fees in existence utilizing the Engineering News Record Index for the preceding twelve months. The City maintains historical records on the Engineering News Record Index. These records are available

for inspection during normal business hours. **(MHMC 3.56.010; 3.56.030; 3.56.050)**

II. STREET IMPROVEMENTS

- A. **Public and Private Streets:** The applicant shall cause the design and construction of all new public and private streets serving the project. The design of all new public and private streets shall be consistent with the General Plan Land Use and Circulation Element as well as the Street Standard Details as contained within the Public Works Standards Details. The construction of the streets shall be undertaken to the lines and grades and in a manner satisfactory to the City Engineer. All street improvements shall be constructed to the satisfaction of the City Engineer. The timing of the improvements will be determined by the City. **(MHMC 12.02.010; 12.02.090; 17.32.060 B; CMH General Plan; CMH Design Standards and Standard Details for Construction)**
- B. **Installation and Dedication of Streets:** The project shall install and dedicate street improvement including, but not limited to, curb and gutter, sidewalk, compaction, street paving, oiling, storm drainage facilities, sewer and water, fire protection, undergrounding of utilities and street lighting in conformance with City of Morgan Hill requirements. **(MHMC 12.02.010; 12.02.50; 12.02.080; 12.02.100; 17.28.010; 17.32.060)**
- C. **Underground existing utilities:** All existing overhead utilities adjacent to any site boundary or along any street frontage of site shall be placed underground in accordance with City standards and affected utility company guidelines. **(MHMC 12.02.090 B; 17.32.020 E.1)**

III. SANITARY SEWER SYSTEM

- A. **Design of Sewer Improvements:** The applicant shall cause to be undertaken the design and construction of sanitary sewer improvements including, but not limited to installation of sewer line extension on the proposed public street(s) or private street(s)/drive aisle(s). The sanitary collection system shall include, but not be limited to manholes with manhole frames and covers, cleanouts, wye-branches and laterals, and separate sewer taps to each parcel. These are to be installed by the developer. **(MHMC 13.20.355; 17.32.020 C; CMH Sewer System Master Plan; CMH Design Standards and Standard Details for Construction)**
- B. All existing and future sewer lines shall be tied into the City's system and existing septic systems shall be abandoned in accordance with City requirements. **(MHMC 13.24.060; 17.32.20 C)**

IV. STORM DRAIN SYSTEM

- A. **Storm Drainage Study:** A complete storm drainage study of the proposed development must be submitted showing amount of run-off, and existing and proposed drainage structure capacities. This study shall be subject to review and approval by the City Engineer. All needed improvements will be made by the applicant. No overloading of the existing system will be permitted. **(MHMC 17.32.020 B; 17.32.090; CMH Design Standards and Standard Details for Construction)**
- B. **Storm Drainage Design:** The applicant shall cause the design and construction to be undertaken for a storm drainage collection system shown on the Tentative Map/Design Review plans. All storm drain improvements shall be constructed to the satisfaction of the City Engineer. **(MHMC 17.32.020 A & B)**
- C. **Storm Drainage Capacity:** Collection system shall be designed to be capable of handling a 10-year storm without local flooding. On-site detention facilities shall be designed to a 25-year storm capacity. Streets shall be designed to carry 100-year storm. Items of construction shall include, but not be limited to installation of storm line extension on proposed public street(s), surface and subsurface storm drain facilities, manholes with manhole frames and covers, catch basins and laterals. Note: the project may be required to **retain** stormwater runoff as part of resolution R3-2013-0032 prior to releasing discharge rates at pre-development flows. **(MHMC 17.32.020 B; 18.74.440; CMH Design Standards and Standard Details for Construction; CMH Storm Drainage System Master Plan)**
- D. **Storm Drainage General Requirements:** Prior to issuance of a grading permit, the applicant shall complete the following to the satisfaction of the City Engineer.
 1. Storm drain calculations to determine detention/retention pond sizing and operations.
 2. Plan describing how material excavated during construction will be controlled to prevent this material from entering the storm drain system.
 3. Water Pollution Control Drawings (WPCD) for Sediment and Erosion Control.**(CMH Design Standards and Standard Details for Construction)**
- E. **Valley Water Dedications:** Where the project adjoins existing Valley Water storm drain facilities, applicant shall obtain dedication(s) of all necessary easement or right-of-way to accommodate established ultimate facilities master plan.
- F. **Tree Protection:** BMP Tree protection shall be part of the SWPPP inspections.

G. NPDES Construction Activity General Permit/SWPPP Requirements: As required by the State Water Resources Control Board (SWRCB) Order No. 2009-0009-DWQ, construction activity resulting in a land disturbance of one (1) acre or more of soil, or whose projects are part of a larger common plan of development that in total disturbs more than one (1) acre, are required to obtain coverage under the National Pollutant Discharge Elimination System (NPDES) General Permit No. CAS000002 for Discharges of Storm Water Associated with Construction Activity (General Permit). To be permitted with the SWRCB under the General Permit, owners must file a complete Notice of Intent (NOI) ONLINE at: <http://smarts.waterboards.ca.gov/smarts/faces/SwSmartsLogin.jsp> and develop a Storm Water Pollution Prevention Plan (SWPPP) Manual in accordance with the General Permit. The SWPPP Manual shall follow the CASQA SWPPP template/format at <https://www.casqa.org/store/products/tabid/154/p-167-construction-handbookportal-initial-subscription.aspx> and shall be approved by Public Works Engineering. A Waste Discharger Identification (WDID) number to be issued to the construction site after the SWRCB receives and verifies the submitted ONLINE NOI information. The WDID number and approved SWPPP Manual shall be provided to Public Works and the Building Department prior to any approval of grading activities (**SWRCB NPDES General Permit CA000002**).

H. NPDES GENERAL PERMIT SITE SWPPP INSPECTIONS AND COMPLIANCE:

1. ALL project onsite and offsite construction activity shall have the site inspected by a **qualified third party SWPPP Inspector (QSD or QSP or RCE)**.
2. SWPPP Inspections shall occur weekly during the rainy season (September 15th thru May 1st).
3. SWPPP Inspections shall occur bi-weekly during the non-rainy season.
4. 48 hours prior to and following a forecasted rain event, SWPPP Inspections shall occur in addition to those of items 2 or 3 above.
5. Per each of the inspection conditions 2, 3, or 4, the NPDES SWPPP Inspector shall certify in writing to the Building and Public Works Department if the site is in compliance or non-compliance with the NPDES General Permit for Stormwater, site SWPPP Manual, and Water Pollution Control Drawings (per the CMH-SWPPP Inspection Check List to be provided by Public Works). QSD/QSP SWPPP Inspectors shall forward onsite and offsite information/certification to the Building (on-site private property issues) and Public Works (public right-of-way issues) inspectors, respectively.
6. Prior to rain events, BMPs not in compliance will need to be corrected immediately.
7. Illicit discharges per the NPDES General Permit, non-compliance of tracking control, and inlet protection within the public right of way shall be address immediately.

8. Other non-compliance issues need to be addressed within a 24-hour period.
9. Non-compliance issues which have been corrected shall be verified by NPDES SWPPP Inspector by a follow up inspection.
10. BMPs maintenance/inspections shall include tree protection if applicable.

V. WATER SYSTEM

- A. **Domestic Water System:** The applicant shall cause the design and construction to be undertaken of a domestic water system to the satisfaction of the City Engineer. The water system improvements shall be constructed within public easements or street rights-of-way to the satisfaction of the City Engineer and dedicated to the City. **(MHMC 17.32.020 A & D; CMH Design Standards and Standard Details for Construction; CMH Water System Master Plan)**
- B. **Water well abandonment:** Abandonment of any existing water well shall be in conformance with Santa Clara Valley Water District (Valley Water) Ordinance 90-1. Location and disposition to be shown on the plan. Well(s) shall be properly registered with Valley Water and either be maintained or abandoned in accordance with Valley Water standards.
- C. **Water line extension:** Install water line extension on the proposed public streets and/or private streets. **(MHMC 17.32.020 A & D; CMH Water System Master Plan)**
- D. **Water Meters:** Provide separate water services and meters for each parcel. These are to be installed by developer. **(MHMC 17.32.020 D)**
- E. Provide separate fire service and double detector check with FDC per City standard detail W-8 for each parcel.

VI. OTHER CONDITIONS

- A. **Easement Dedications:** The owner shall dedicate all necessary utility easements. **(MHMC 12.02.080 D; 17.28.010 A)**
- B. **Undergrounding new utilities:** The applicant shall cause the design and construction required to underground all electric, gas, Cable TV and communication lines within the development. Such design and construction shall be to the satisfaction of the affected utilities and the City Engineer. **(MHMC 17.32.020 E.1)**
- C. **Parcel Map:** For minor subdivision (4 lots or less), the parcel map shall be signed by the City Engineer and the Planning Commission Secretary prior to issuance of a grading permit. **(MHMC 17.20.390; 17.24.210)**

- D. **Landscaping and Irrigation Systems:** Landscaping and irrigation systems serving common areas that are required to be installed in the public right-of-way on the perimeter of this project shall be continuously maintained by the property owner or designated maintenance entity.
- E. **Final Landscape Plans:** Final landscape plans shall be submitted with and included as part of the improvement plans for the project. **(MHMC 17.08.090)**
- F. **Pre-construction Meeting:** Prior to the approval of any building permit for grading activity, the developer shall schedule a pre-construction meeting with the Public Works Inspection Division with the following project team members:
 - 1. Civil Engineer of record
 - 2. Geotechnical Engineer of record
 - 3. Third Party QSD/QSP SWPPP Inspector
 - 4. General Contractor
 - 5. Sub-Contractors

VII. NPDES WATER QUALITY STORMWATER MANAGEMENT DEVELOPMENT STANDARDS

- A. **Stormwater Management Guidance Manual for Low Impact Development State Water Resources Control Board Post Construction Requirements (PCRs):** Project shall comply with the California Regional Water Quality Control Board Central Coast Region Resolution No. R3-2013-0032 as documented by the **Stormwater Management Guidance Manual for Low Impact Development and Post-Construction Requirements** (developed from Resolution No. R-2013-0032 Attachment 1 and 2 at: http://www.waterboards.ca.gov/centralcoast/water_issues/programs/stormwater/docs/lid/lid_hydromod_charette_index.shtml). A copy of the guidance manual can be obtained through the Land Development Engineering webpage. Project shall provide Stormwater Runoff Management Plan, Stormwater Control Plan Checklist and applicable calculations per the Stormwater Management Guidance Manual for Low Impact Development and Post-Construction Requirements. Project shall meet the applicable requirements of the Stormwater Management Guidance Manual for Low Impact Development and Post-Construction Requirements:
 - 1. Performance Requirement 1: Site Design and Runoff Reduction
 - 2. Performance Requirement 2: Water Quality Treatment
 - 3. Performance Requirement 3: Runoff Retention
 - 4. Performance Requirement 4: Peak Management
- B. **Peak Storm Water Runoff Discharge Rates:** Post-development peak storm water runoff discharge rates shall not exceed the estimated pre-development rate for developments where the increased peak storm water discharge rate will

result in increased potential for downstream erosion. Note: the project may be required to **retain** stormwater runoff as part of resolution R3-2013-0032 prior to releasing discharge rates at pre-development flows.

- C. **Provide Storm Drain System Stenciling and Signage:** Storm drain stencils are highly visible source controls that are typically placed directly adjacent to storm drain inlets. The stencil contains a brief statement that prohibits the dumping of improper materials into the storm water conveyance system. Graphical icons, either illustrating anti-dumping symbols or images of receiving water fauna, are effective supplements to the anti-dumping message. All storm drain inlets and catch basins within the project area must be stenciled with prohibitive language (such as: "NO DUMPING – DRAINS TO CREEK") and/or graphical icons to discourage illegal dumping. Signs and prohibitive language and/or graphical icons, which prohibit illegal dumping, must be posted at public access points along channels and creeks within the project area. Legibility of stencils and signs must be maintained.
- D. **Properly Design Trash Enclosure Areas:** All trash enclosure areas must meet the following Structural or Treatment Control BMP requirements:
1. Roof Required: Trash enclosure areas shall have an all-weather noncombustible solid roof to prevent rainwater from mixing with the enclosure's contents.
 2. Walls Required: Trash enclosure shall have structural walls to prevent unauthorized off-site transport of trash.
 3. Doors: Trash enclosure shall have door(s) which can be secured when closed.
 4. Grades: The pad for the enclosure shall be designed to not drain outward, and the grade surrounding the enclosure shall be designed to not drain into the enclosure.
 5. Drain Inlet: Within the enclosure, an area drain with an approved (Zurn) vandal proof drain shall be installed and shall be plumbed to the sanitary sewer system with grease trap. Grease trap shall be located within the trash enclosure footprint.
- E. **Design Standards for Structural or Treatment Control BMPs:** The post-construction treatment control BMPs shall incorporate, at a minimum, either a volumetric or flow- based treatment control design standard, or both, as identified below to mitigate (infiltrate, filter or treat) storm water runoff:
1. Volumetric Treatment Control BMP
 - a. The 85th percentile 24-hour runoff event determined as the maximized capture storm water volume for the area, from the formula recommended in Urban Runoff Quality Management, WEF Manual of Practice No. 23/ASCE Manual of Practice No. 87, (1998); or
 - b. The volume of annual runoff based on unit basin storage water quality volume, to achieve 80 percent or more volume treatment by the method

- recommended in California Stormwater Best Management Practices Handbook – Industrial/ Commercial, (2003); or
- c. The volume of runoff produced from a historical-record based reference 24-hour rainfall criterion for “treatment” that achieves approximately the same reduction in pollutant loads achieved by the 85th percentile 24-hour runoff event.
2. Flow Based Treatment Control BMP
 - a. The flow of runoff produced from a rain event equal to at least two times the 85th percentile hourly rainfall intensity for the area; or
 - b. The flow of runoff produced from a rain event that will result in treatment of the same portion of runoff as treated using volumetric standards above.
- F. **Stormwater Runoff Management Plan (SWRMP) required:** The stormwater runoff management plan shall include sufficient information to evaluate the environmental characteristics of affected areas, the potential impacts of the proposed development on water resources, and the effectiveness and acceptability of measures (post construction BMPs) proposed for managing stormwater runoff.
1. The stormwater runoff management plan shall be prepared under the direction of a professional civil engineer registered in the State of California. The responsible professional civil engineer shall stamp and sign the approved stormwater runoff management plan.
 2. The City Engineer or designee may require a developer to provide a signed certification from the civil engineer responsible for preparing the stormwater runoff management plan that all stormwater best management practices have been designed to meet the requirements of this chapter.
 3. Each certifying civil engineer shall establish to the City's satisfaction that such person has been trained on the design of stormwater quality best management practices not more than three years prior to the certification signature date.
 4. Qualifying training shall be conducted by an organization with stormwater quality management expertise, such as a university, the Bay Area Stormwater Management Agencies Association, the American Society of Civil Engineers, the American Public Works Association, or the California Water Environment Association.
- G. **Stormwater BMP operation, maintenance, and replacement responsibility**
1. All on-site stormwater management facilities shall be operated and maintained in good condition and promptly repaired/replaced by the property owner(s), an owners' association or other legal entity approved by the city.
 2. Any repairs or restoration/replacement and maintenance shall be in accordance with city-approved plans.
 3. The property owner(s) shall develop a maintenance schedule for the life of any stormwater management facility and shall describe the maintenance to

be completed, the time period for completion, and who shall perform the maintenance. This maintenance schedule shall be included with the approved stormwater runoff management plan.

H. Stormwater BMP operation and Maintenance Agreement (SWBOMA)

required: Prior to the issuance of any building permit requiring stormwater management BMPs, the owner(s) of the site shall enter into a formal written stormwater BMP operation and maintenance agreement with the city. The City shall record this agreement, against the property or properties involved, with the County of Santa Clara and it shall be binding on all subsequent owners of land served by the storm water management treatment BMPs (City standard Stormwater BMP Operation and Maintenance Agreement to be provided by Land Development Engineering at improvement plan/building permit stage).

I. Stormwater BMP inspection responsibility

1. The property owner(s) shall be responsible for having all stormwater management facilities inspected for condition and function by a **Registered Civil Engineer (RCE)**.
2. Unless otherwise required by the City Engineer or designee, stormwater facility inspections shall be done at least twice per year (April 15th and September 15th) by the RCE. Written records shall be kept of all inspections and shall include, at minimum, the following information:
 - a. Site address;
 - b. Date and time of inspection;
 - c. Name of the person conducting the inspection;
 - d. List of stormwater facilities inspected;
 - e. Condition of each stormwater facility inspected;
 - f. Description of any needed maintenance or repairs; and
 - g. As applicable, the need for site re-inspection.
3. Upon completion of each inspection, an inspection report shall be submitted to Land Development Engineering.

J. Records of maintenance and inspection activities: On or before April 15th and September 15th of each year, the party responsible for the operation and maintenance of on-site stormwater management facilities under the BMP operation and maintenance agreement shall provide the City Engineer or designee with records of all inspections, maintenance and repairs.

K. Annual Certification of SWRMP: On or before September 30th of each year, a Registered Civil Engineer (RCE) shall provide written certification that the developments stormwater quality design standards are properly maintained and functioning as required by the SWRMP.

BUILDING DIVISION

- A. Trash enclosures shall be connected to an accessible route.
- B. Trash enclosures shall have a solid noncombustible roof structure to prevent storm water from entering the sanitary sewer system. See Pretreatment requirements regarding the required connection to sanitary sewer.
- C. All building entrances shall be on an accessible route, CBC 11B-206.4. CBC 1028.5 requires the exit discharge shall provide a direct and unobstructed access to a public way.
- D. **California Code of Regulations:** Project shall be designed to comply with the most current California Code of Regulations as amended by Morgan Hill Municipal Code Title 15. Building Permit applications submitted after January 1, 2020 shall be designed to comply with the 2019 California Codes of Regulations.
- E. **Compliance with Morgan Hill Municipal Code:** Project shall comply with the Morgan Hill Municipal Code (MHMC) including but not limited to:
 - 1. MHMC 15.65 Sustainable Building Regulations.
 - 2. MHMC 18.72.040 C. Electric Vehicle Charging.
 - i When Required. Electric vehicle charging stations shall be provided:
 - (a) For new structures or uses required to provide at least twenty-five parking spaces; and
 - (b) Additions or remodels that increase an existing parking lot of fifty or more spaces by ten percent or more.
 - ii Number of Charging Stations. The number of required charging stations shall be as follows:
 - (a) Twenty-five to forty-nine parking spaces: One charging station.
 - (b) Fifty to one hundred parking spaces: Two charging stations, plus one for each additional fifty parking spaces.
 - 3. MHMC 15.40 Building Security
 - 4. MHMC 15.38 Wage Theft Preventions
 - 5. MHMC 18.148 Water Conservation
 - 6. MHMC 15.63 Prohibition of Natural Gas Infrastructure in New Buildings

FIRE DIVISION

- A. **Preliminary Review Only:** The requirements and conditions stated in this review are preliminary and are intended to be used for the purposes of project planning. An official Fire Department review of the project will be conducted upon receipt of a complete plan submittal application that clearly shows all intended grading, demolition, construction or building modifications.

- B. **Proposal limited to:** Review of this Development proposal is limited to acceptability of site access as they pertain to fire department operations, and shall not be construed as a substitute for formal plan review to determine compliance with adopted model codes. Prior to performing any work, the applicant shall make application to, and receive from, the Building Department all applicable construction permits.
- C. Underground fire service, fire sprinklers, and fire alarm shall all be deferred submittals under a separate permit.

SANTA CLARA VALLEY WATER DISTRICT

- A. Proposed outfalls to the Madrone Channel shall require permits from Valley Water, the Central Coast Regional Water Quality Control Board, US Army Corps of Engineers and the California Department of Fish and Wildlife.
- B. The proposed location of the outfall to the Madrone Channel shall be reviewed and approved by Valley Water.
- C. Grading adjacent to Madrone Channel shall be at a maximum 4:1 slope along the property line, for the minimum amount necessary, per the Guidelines and Standards for Land Use Near Streams. All site drainage should be directed to the City storm drain system, not overbank towards Madrone Channel. Bio-swales should be designed to overflow into the site drainage system, not overbank into Madrone Channel.
- D. Any road work, grading, paving and proposed utility (sewer or water, etc.) crossing over Valley Water's Main-Madrone Pipeline in Half Road shall require a Valley Water Permit.
- E. Landscaping shall be setback such that there are no overhanging branches in Valley Water right of way during and at full growth. Species selection should be in accordance with the Guidelines and Standards for Land Use Near Streams.
- F. The proposed storm drain outfall manhole shall be located outside Valley Water right-of-way.
- G. Improvement plans shall be submitted to Valley Water for review and approval of the proposed Madrone Channel access.

RESOLUTION NO. 21-05

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MORGAN HILL APPROVING OF A VESTING TENTATIVE PARCEL MAP FOR A 4-LOT PARCEL MAP ON A 29-ACRE SITE LOCATED ON THE NORTHERN INTERSECTION OF CONDIT ROAD AND HALF ROAD (DE PAUL – TC MORGAN HILL VENTURE (REDWOOD TECH AT 101)) (APNS 728-30-006 AND 728-30-009)

WHEREAS, on December 15, 2020, TC Morgan Hill Venture submitted an application for a vesting tentative parcel map (SD2020-0011: De Paul – TC Morgan Hill Venture) for the Redwood Tech at 101 project; and

WHEREAS, such request was considered by the Planning Commission at its meeting of May 25, 2021; and

WHEREAS, this project is consistent with the development projections analyzed in the Morgan Hill 2035 General Plan program EIR for the project site. The project also is designed to be consistent with the development standards in the General Plan and Zoning Code. No further environmental assessment is required; and

WHEREAS, testimony received at a duly-noticed public hearing, along with exhibits and drawings and other materials have been considered in the review process.

NOW, THEREFORE, THE MORGAN HILL PLANNING COMMISSION DOES RESOLVE AS FOLLOWS:

SECTION 1. The Vesting Tentative Parcel Map, together with its provisions for its design and improvements, is consistent with the General Plan and the zoning code.

SECTION 2. The Vesting Tentative Parcel Map as described herein is hereby approved. The proposed project shall be subject to the conditions as identified in the set of standard conditions attached hereto, as Exhibit A, and by this reference incorporated herein.

PASSED AND ADOPTED THIS 25th DAY OF MAY 2021, AT A SPECIAL MEETING OF THE PLANNING COMMISSION BY THE FOLLOWING VOTE:

AYES:	COMMISSIONERS:	HABIB, KUMAR, TANDA, GONZALEZ-ESCOTO, DOWNEY, MUNOZ-MORRIS
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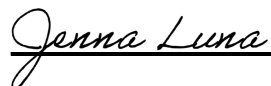
NOES:	COMMISSIONERS:	MUELLER
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City of Morgan Hill
Resolution No. 21-05
Page 2 of 19

ABSTAIN: **COMMISSIONERS:** **NONE**

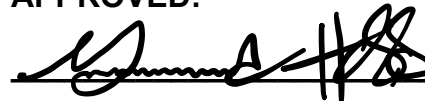
ABSENT: **COMMISSIONERS:** **NONE**

ATTEST:



JENNA LUNA, Deputy City Clerk

APPROVED:



MOHAMMAD HABIB, Chair

Date: 05/28/2021

EXHIBIT "A" STANDARD CONDITIONS

**APPLICATION NO: SD2020-0011: DE PAUL – TC MORGAN HILL VENTURE
(REDWOOD TECH AT 101)**

**THE FOLLOWING APPROVAL REQUIREMENTS AND ANY SPECIAL CONDITIONS
SHALL BE APPLIED THROUGH THE DEVELOPMENT APPROVAL PROCESS.**

Legend

MHMC= Morgan Hill Municipal Code
MHARH= Morgan Hill Architectural Review Handbook
CMH= City of Morgan Hill
CFC= California Fire Code

I. PROJECT DESCRIPTION

The project includes a Vesting Tentative Parcel Map to subdivide the project site into four parcels.

The project shall comply with all requirements of related project approvals granted by the City, including all of the following:

II. PROJECT CONDITIONS OF APPROVAL

This Tentative Parcel Map approval is limited to the plan set dated January 2021 on file (File Number SD2020-0011) with the Development Services Department. These documents, as amended by Design Review approval, show the location and sizes of all lots in this development, the location and dimensions of all vehicle and pedestrian circulation ways (ingress/egress), common areas, and other easement areas.

The Parcel Map shall be in substantial compliance with the approved Tentative Map as determined by the City Engineer and Development Services Director.

PLANNING DIVISION

DEFENSE AND INDEMNITY

- A. As part of, and in connection, with this application to the City of Morgan Hill, Applicant agrees to defend, indemnify, and hold harmless the City of Morgan Hill, its officers, agents, employees, officials and representatives (Indemnitees) from and against any and all claims, actions, or proceedings arising from any suit for damages or for equitable or injunctive relief which is filed against City to attack, set aside, void or annul its approval of this application or any related decision, or the adoption of any environmental documents which relates to said approval. The

City shall promptly notify the Applicant of any such claim, action or proceeding and the City shall cooperate fully in the defense thereof. In the event that Applicant is required to defend Indemnitees in connection with the proceeding, Indemnitees shall retain the right to approve (a) the counsel to so defend Indemnitees; (b) all significant decisions concerning the manner in which the defense is conducted; and (c) any and all settlements, which approval shall not be unreasonably withheld. This indemnification shall include, but is not limited to, (a) all pre-tender litigation costs incurred on behalf of the City, including City's attorney's fees and all other litigation costs and expenses, including expert witnesses, required to defend against any lawsuit brought as a result of City's approval or approvals; (b) reasonable internal City administrative costs, including but not limited to staff time and expense spent on the litigation, after tender is accepted; and (c) all damages, costs, expenses, attorney fees or expert witness fees that may be awarded to the prevailing party arising out of or in connection with the approval of the application or related decision. City may, in its sole discretion, participate in the defense of such action; but such participation shall not relieve Applicant of its obligations under this condition. The undersigned hereby represents that they are the Applicant or are fully empowered by the Applicant as their agent to agree to provide the indemnification, defense and hold harmless obligations, and the signature below represents the unconditional agreement by Applicant to be bound by such conditions.

TIME LIMITS

- A. **Term:** The Tentative Parcel Map approval granted pursuant to this Resolution shall remain in effect for two years to May 25, 2023. Failure to apply for Parcel Map approval with the City Engineer within this term shall result in expiration of approval unless an extension of time is granted by the Development Services Department/Planning Commission prior to the expiration date. **(MHMC 17.20.170; 17.24.110)**

SITE DEVELOPMENT

- A. **Street Names:** Street names, private or otherwise, used to identify building locations shall be submitted to the Planning Division for approval. Proposed street names shall comply with the Street Naming Policy approved by City Council (Resolution No. 4601) and CP 94-13.

HABITAT PLAN

- A. **Fees:** The approved project is covered pursuant to the Santa Clara Valley Habitat Plan (Habitat Plan) and subject to fees and conditions contained in the Habitat Plan.
- B. **Application Package:** Prior to issuance of a grading permit, the project shall complete and submit a Habitat Plan Application Package. All fees shall be paid prior to issuance of a grading permit. **(MHMC 18.132)**

- C. **Conditions:** Any additional conditions or mitigations required by the Habitat Plan shall be clearly stated on all plans that involve any ground disturbing activity (i.e. grading plans, improvement plans, paving plans, demolition plans or other plans for site clearing or temporary stockpile of dirt). **(MHMC 18.132)**

CULTURAL RESOURCES

- A. **Significant historic or archaeological materials:** This project has been determined not to be in a site identified as archaeologically sensitive by the City's adopted archaeological sensitivity map, but nonetheless could adversely impact undocumented human remains or unintentionally discover significant historic or archaeological materials. The following policies and procedures for treatment and disposition of inadvertently discovered human remains or archaeological materials shall apply and should be provided as standard conditions on the building permit, grading permit, or improvement plans. If human remains are discovered, it is probable they are the remains of Native Americans.
1. If human remains are encountered, they shall be treated with dignity and respect as due to them. Discovery of Native American remains is a very sensitive issue and serious concern. Information about such a discovery shall be held in confidence by all project personnel on a need to know basis. The rights of Native Americans to practice ceremonial observances on sites, in labs and around artifacts shall be upheld. Remains should not be held by human hands. Surgical gloves should be worn if remains need to be handled. Surgical mask should also be worn to prevent exposure to pathogens that may be associated with the remains.
 2. In the event that known or suspected Native American remains are encountered, or significant historic or archaeological materials are discovered, ground-disturbing activities shall be immediately stopped. Examples of significant historic or archaeological materials include, but are not limited to, concentrations of historic artifacts (e.g., bottles, ceramics) or prehistoric artifacts (chipped chert or obsidian, arrow points, ground-stone mortars and pestles), culturally altered ash-stained midden soils associated with pre-contact Native American habitation sites, concentrations of fire-altered rock and/or burned or charred organic materials, and historic structure remains such as stone-lined building foundations, wells or privy pits. Ground-disturbing project activities may continue in other areas that are outside the discovery locale.
 3. An "exclusion zone" where unauthorized equipment and personnel are not permitted shall be established (e.g., taped off) around the discovery area plus a reasonable buffer zone by the Contractor Foreman or authorized representative, or party who made the discovery and initiated these

protocols, or if on-site at the time of discovery, by the Monitoring Archaeologist (typically 25-50ft for single burial or archaeological find).

4. The discovery locale shall be secured (e.g., 24-hour surveillance) as directed by the City or County if considered prudent to avoid further disturbances.
5. The Contractor Foreman or authorized representative, or party who made the discovery and initiated these protocols shall be responsible for immediately contacting by telephone the parties listed below to report the find and initiate the consultation process for treatment and disposition:
 - The City of Morgan Hill Development Services Director (408) 779-7247
 - The Contractor's Point(s) of Contact
 - The Coroner of the County of Santa Clara (if human remains found) (408) 793-1900
 - The Native American Heritage Commission (NAHC) in Sacramento (916) 653-4082
 - The Amah Mutsun Tribal Band (916) 481-5785 (H) or (916) 743-5833 (C)
6. The Coroner has two working days to examine the remains after being notified of the discovery. If the remains are Native American, the Coroner has 24 hours to notify the NAHC.
7. The NAHC is responsible for identifying and immediately notifying the Most Likely Descendant (MLD) from the Amah Mutsun Tribal Band. (Note: NAHC policy holds that the Native American Monitor will not be designated the MLD.)
8. Within 24 hours of their notification by the NAHC, the MLD will be granted permission to inspect the discovery site if they so choose.
9. Within 24 hours of their notification by the NAHC, the MLD may recommend to the City's Development Services Director the recommended means for treating or disposing, with appropriate dignity, the human remains and any associated grave goods. The recommendation may include the scientific removal and non-destructive or destructive analysis of human remains and items associated with Native American burials. Only those osteological analyses or DNA analyses recommended by the Amah Mutsun Tribal Band may be considered and carried out.
10. If the MLD recommendation is rejected by the City of Morgan Hill the parties will attempt to mediate the disagreement with the NAHC. If

mediation fails, then the remains and all associated grave offerings shall be reburied with appropriate dignity on the property in a location not subject to further subsurface disturbance.

GENERAL

- A. Recordation of Map: The recordation of the parcel map shall not be completed until approval of the Design Review Permit is completed.
- B. Signed copies of Resolution: Submit two (2) signed copies of this Resolution to the Planning Division prior to issuance of building permits.

ENGINEERING DIVISION

PROJECT SPECIFIC ENGINEERING CONDITIONS

- A. Street and Utility Improvements:
 - 1. Coordination with Adjacent Residential Project: The developer shall coordinate the De Paul Drive improvements and sanitary sewer improvements with the project known as "The Crosswinds Project" located on the east side of De Paul Drive (APNs: 728-30-001, -002, -003, & -004) and owned by Dividend Homes.
 - i. Prior to parcel map approval, the developer shall obtain the necessary right-of-way on De Paul Drive (and construction easement, if required) from Dividend Homes' Crosswinds Project.
 - 2. De Paul Drive: Construct De Paul Drive to comply with the City's half street (2/3 street) standards along the west side of De Paul Drive from Cochrane Road to the proposed cul-de-sac next to Half Road (includes the frontage along the Lands of Lee with APN: 728-30-008) to the satisfaction of the City Engineer.
 - i. Install and dedicate the required street improvements at De Paul Drive to have a straight road alignment with a minimum 46' right-of-way width and a minimum 36' pavement width from face of curb along the unimproved section of De Paul Drive to the new cul-de-sac next to Half Road.
 - ii. The City will quitclaim approximately 19' of right-of-way along the De Paul Drive frontage of APN: 728-30-009.
 - iii. The developer shall dedicate 36' right-of-way width in fee to the City for public street purposes along the De Paul Drive frontage of APN: 728-31-014 and dedicate a 10' wide Public Service Easement (PSE) behind the proposed property line.
 - iv. The project's right-of-way dedication and quitclaim shall be shown on the parcel map.
 - v. The street improvements shall include, but are not limited to, curb and gutter, sidewalk, landscaping, full cul-de-sac at the southerly end of De

- Paul Drive next to Half Road, street paving, utilities, undergrounding, stormwater post-construction facilities, and street lighting.
- vi. The project shall construct City standard sidewalk along the west side of De Paul Drive from Cochrane Road to the proposed cul-de-sac next to Half Road to provide a continuous pedestrian connection from the project site to Cochrane Road.
 - 1) The project has an option to construct a temporary asphalt sidewalk along the frontages of the future Phase 2 Project and the Lands of Lee (APN: 728-30-008)
 - vii. The project's two northerly driveways at De Paul Drive are proposed to have widths that exceed the City standard maximum industrial driveway width of 36' to allow truck access/maneuvering.
 - 1) At improvement plan/building permit stage, submit an additional truck turning template using the ultimate street width of De Paul Drive for City Engineer review.
 - viii. At improvement plan/building permit stage, revise the De Paul Drive street cross-sections to match the 2/3 street width.
3. Half Road: The developer shall construct Half Road to comply with City standards along the north side of the project's Half Road frontage to the satisfaction of the City Engineer.
- i. Install and dedicate the required street improvements at Half Road. The street improvements shall include, but are not limited to, curb and gutter, sidewalk, landscaping, street paving, utilities, stormwater post-construction facilities, and street lighting.
 - ii. The developer shall dedicate right-of-way in fee to the City for public street purposes at a width of 36' from centerline along the Half Road frontage of APN: 728-30-009 and dedicate a 10' wide PSE behind the proposed property line.
 - iii. Extend the new sidewalk along the project's Half Road frontage westerly up to the Madrone Channel/Trail entrance. The design of the sidewalk and compliance with Valley Water's access requirements to Madrone Channel will be reviewed at improvement plan/building permit stage.
4. Cochrane Road: Construct the ultimate width of Cochrane Road along the project's frontage to comply with the City's arterial street standards to the satisfaction of the City Engineer.
- i. Install and dedicate the required street improvements at Cochrane Road. The street improvements shall include, but are not limited to, curb and gutter, sidewalk, dedicated right-turn pocket along eastbound Cochrane Road, landscaping, street paving, utilities, stormwater post-construction facilities, and street lighting.
 - ii. The developer shall dedicate a minimum of 60' of right-of-way from the centerline of Cochrane Road for public street purposes along the

Cochrane Road frontage of APN: 728-31-014 and dedicate a 10' wide PSE behind the proposed property line.

- iii. At improvement plan//building permit stage, revise plans to show the number of streetlights and spacing along Cochrane Road to comply with City standards. Per City standards, streetlight spacing for arterials is 160' to 180' and streetlight location shall be directly opposite the existing streetlight on the north side of Cochrane Road.
 - iv. At improvement plan//building permit stage, submit a traffic signal modification plan for the Cochrane Road/De Paul Drive intersection. The plan shall include the relocation or replacement of the two existing traffic signal poles on the southwest corner of the intersection, signal phasing, and the proposed striping plans.
5. Utilities: The City's Water System Master Plan, Storm Drainage System Master Plan, and Sewer System Master Plan identified proposed improvements along De Paul Drive and Half Road.
- i. Storm Improvements:
 - 1) The project shall construct a 48" to 54" storm main along the project's Half Road frontage per the City's Storm Master Plan.
 - 2) Provide a minimum 20' wide additional PSE centered over the portion of the proposed storm drain main located west of Condit Road. The PSE shall be reviewed at parcel map stage.
 - 3) The developer shall continue to work with the City and Valley Water to review the design conditions of the PL-566 project and shall revise the on-site drainage plans at improvement plan stage, as needed, to the satisfaction of the City Engineer.
 - 4) Per the notes on the project's Vesting Tentative Parcel Map, the site is in Flood Zone "X- Shaded" and Flood Zone "AE" as shown on the FEMA Flood Insurance Rate Maps. Depending on the results of Valley Water's updated hydrology model, the project may be required to submit a Letter of Map Revision (LOMR) to FEMA or other appropriate documentation to update the flood zone for the site and designate the entire site to be entirely within Flood Zone "X-Shaded", an area defined as outside the 100-year floodplain.
 - 5) A segment of the proposed 24" storm main along De Paul Drive shows a manhole spacing that exceeds the City standard maximum spacing of 400' for 15" to 30" storm pipe diameters. At improvement plan/building permit stage, revise storm manhole spacing to comply with City standards.
 - 6) At improvement plan/building permit stage, revise the pipe size of the following to the minimum size of 15-inch diameter per City standard:
 - a) Proposed 12" storm main segment at De Paul Drive, between Sta. 16+00 and Sta. 18+00.
 - b) Proposed 12" storm lateral at Half Road, near Sta. 5+40.
 - c) Proposed 12" storm laterals at De Paul Drive.

- ii. Water Improvements: At improvement plan/building permit stage, revise the plans to comply with the following:
 - 1) Extend the existing 12" public water main from the southerly terminus of De Paul Drive to Half Road per the City's Water System Master Plan. The water main extension shall be public.
 - 2) At improvement plan/building permit stage, show each of the five buildings with a dedicated domestic, irrigation and fire services connected to a public water main.
 - 3) The Utility Plans show the domestic water service for two parcels (Parcels C & D) crossing other parcels. Service for Parcel D crosses Parcel A and service for Parcel C crosses Parcel B. At parcel map review stage, add private utility easements for the water services on Parcels A and B.
 - 4) Detailed review of the water service configurations, water lateral, meter and backflow preventer locations will be performed at improvement plan/building permit stage and will be subject to City Engineer approval.

- iii. Sanitary Sewer Improvements: Based on the proposed amendment to the City's Sewer Master Plan, a sewer flow re-route into the Condit Road Sewer Trunk will be a required sewer master plan improvement for the project.
 - 1) Install a 10" sanitary sewer gravity main beginning at De Paul Drive, approximately 540' south of Cochrane Road; then continue in a southbound direction to Half Road; then west along Half Road up to Condit Road; then follow Condit Road and end at a connection to the existing 10" sewer main at Main Avenue.
 - 2) At improvement plan/building permit stage, revise the plans to comply with the following:
 - a) On Sheet 6.5 (Preliminary Street Improvement Sections - Sections G & H), show the new 10" sanitary sewer main at Half Road to be constructed by the project.
 - b) Show a minimum horizontal clearance of 10' from the existing Valley Water groundwater recharge line.
 - 3) Prior to parcel map approval/building permit issuance, the project shall enter into a Private Sanitary Sewer Maintenance Agreement with the City for maintenance of all private sanitary sewer facilities which includes the private sewer mains, sewer laterals, force main and lift station.
 - 4) A sanitary sewer test manhole shall be provided for each of the five buildings and shall be accessible to the Pretreatment Inspector. The

sanitary sewer test manholes shall be located within private property but adjacent to the street right-of-way or as approved by the City Engineer in conjunction with Pretreatment Inspector review.

6. Reimbursement Agreement: Prior to parcel map approval, the developer shall enter into a Reimbursement Agreement with the City for the reimbursement of the applicable portions of the cost to construct the following improvements that are beyond the developer's responsibility as determined by the City Engineer:
- i. De Paul Drive and Half Road street improvements
 - ii. Traffic signal improvements at the intersection of Cochrane Road & De Paul Drive
 - iii. Storm improvements at Half Road per City's Storm Master Plan including the proposed outfall to Madrone Channel. The developer will be reimbursed for the cost to upsize the storm main above 24" per the City's Storm Master Plan.
 - iv. Sanitary sewer improvements per the City's Sewer Master Plan with the cost based on a sewer cost allocation to be agreed upon by the City, project developer and by Dividend Homes for the Crosswinds Project. The developer will be reimbursed for the cost to upsize the sewer main from 8" (developer's responsibility) to 10" per the proposed amendment to City's Sewer Master Plan.

STANDARD ENGINEERING CONDITIONS

I. GENERAL

- A. The applicant shall cause the construction of all public and private improvements in accordance with the latest City Standard Drawings and Specifications. **(MHMC 12.02.090 A; 17.32.010 A)**
- B. The applicant shall submit as part of the improvement drawings for the project, profiles of all improvements in the project and typical cross-sections of all streets and details of curbs, gutters, and sidewalks, to be accomplished to the satisfaction of the City Engineer prior to submittal of Parcel Map. **(MHMC Sec 17.32.060 B; 17.32.070; 17.32.080 A)**
- C. Obtain necessary encroachment permits from:
 - ☒ City of Morgan Hill
 - ☒ County of Santa Clara Roads & Airports
 - ☒ Santa Clara Valley Water District (Valley Water)
 and provide guarantee covering off-site improvements. **(MHMC 12.08.040 A; 12.08.090)**
- D. Improvement plans are to show water lines, sanitary sewer, storm drain system, pavement widths, curve radius, and existing utilities.

- E. Enter into a Subdivision Improvement Agreement (SIA) with the City of Morgan Hill to cover required improvements. **(MHMC 12.02.150; 17.32.010 B; 17.32.160)**
- F. Reciprocal access easements and maintenance agreements ensuring access to all parcels and joint maintenance of all common roads, drives or parking areas shall be provided by CC&R's and by deed and shall be recorded concurrent with the map, or prior to issuance of building permit where no map is involved. **(MHMC 17.20.350 H)**
- G. **Impact Fees:** The City of Morgan Hill, pursuant to City Code Chapter 3.56 has established impact fees to finance the cost of improvements required by new development. City Code Chapter 3.56.050 provides for automatic annual (July 1st) adjustment of those fees in existence utilizing the Engineering News Record Index for the preceding twelve months. The City maintains historical records on the Engineering News Record Index. These records are available for inspection during normal business hours. **(MHMC 3.56.010; 3.56.030; 3.56.050)**

II. STREET IMPROVEMENTS

- A. **Public and Private Streets:** The applicant shall cause the design and construction of all new public and private streets serving the project. The design of all new public and private streets shall be consistent with the General Plan Land Use and Circulation Element as well as the Street Standard Details as contained within the Public Works Standards Details. The construction of the streets shall be undertaken to the lines and grades and in a manner satisfactory to the City Engineer. All street improvements shall be constructed to the satisfaction of the City Engineer. The timing of the improvements will be determined by the City. **(MHMC 12.02.010; 12.02.090; 17.32.060 B; CMH General Plan; CMH Design Standards and Standard Details for Construction)**
- B. **Installation and Dedication of Streets:** The project shall install and dedicate street improvement including, but not limited to, curb and gutter, sidewalk, compaction, street paving, oiling, storm drainage facilities, sewer and water, fire protection, undergrounding of utilities and street lighting in conformance with City of Morgan Hill requirements. **(MHMC 12.02.010; 12.02.50; 12.02.080; 12.02.100; 17.28.010; 17.32.060)**
- C. **Underground existing utilities:** All existing overhead utilities adjacent to any site boundary or along any street frontage of site shall be placed underground in accordance with City standards and affected utility company guidelines. **(MHMC 12.02.090 B; 17.32.020 E.1)**

III. SANITARY SEWER SYSTEM

- A. **Design of Sewer Improvements:** The applicant shall cause to be undertaken the design and construction of sanitary sewer improvements including, but not limited to installation of sewer line extension on the proposed public street(s) or private street(s)/drive aisle(s). The sanitary collection system shall include, but not be limited to manholes with manhole frames and covers, cleanouts, wye-branches and laterals, and separate sewer taps to each parcel. These are to be installed by the developer. **(MHMC 13.20.355; 17.32.020 C; CMH Sewer System Master Plan; CMH Design Standards and Standard Details for Construction)**
- B. All existing and future sewer lines shall be tied into the City's system and existing septic systems shall be abandoned in accordance with City requirements. **(MHMC 13.24.060; 17.32.20 C)**

IV. STORM DRAIN SYSTEM

- A. **Storm Drainage Study:** A complete storm drainage study of the proposed development must be submitted showing amount of run-off, and existing and proposed drainage structure capacities. This study shall be subject to review and approval by the City Engineer. All needed improvements will be made by the applicant. No overloading of the existing system will be permitted. **(MHMC 17.32.020 B; 17.32.090; CMH Design Standards and Standard Details for Construction)**
- B. **Storm Drainage Design:** The applicant shall cause the design and construction to be undertaken for a storm drainage collection system shown on the Tentative Map/Design Review plans. All storm drain improvements shall be constructed to the satisfaction of the City Engineer. **(MHMC 17.32.020 A & B)**
- C. **Storm Drainage Capacity:** Collection system shall be designed to be capable of handling a 10-year storm without local flooding. On-site detention facilities shall be designed to a 25-year storm capacity. Streets shall be designed to carry 100-year storm. Items of construction shall include, but not be limited to installation of storm line extension on proposed public street(s), surface and subsurface storm drain facilities, manholes with manhole frames and covers, catch basins and laterals. Note: the project may be required to **retain** stormwater runoff as part of resolution R3-2013-0032 prior to releasing discharge rates at pre-development flows. **(MHMC 17.32.020 B; 18.74.440; CMH Design Standards and Standard Details for Construction; CMH Storm Drainage System Master Plan)**
- D. **Storm Drainage General Requirements:** Prior to issuance of a grading permit, the applicant shall complete the following to the satisfaction of the City Engineer.

1. Storm drain calculations to determine detention/retention pond sizing and operations.
2. Plan describing how material excavated during construction will be controlled to prevent this material from entering the storm drain system.
3. Water Pollution Control Drawings (WPCD) for Sediment and Erosion Control. **(CMH Design Standards and Standard Details for Construction)**

- E. **Valley Water Dedications:** Where the project adjoins existing Valley Water storm drain facilities, applicant shall obtain dedication(s) of all necessary easement or right-of-way to accommodate established ultimate facilities master plan.
- F. **Tree Protection:** BMP Tree protection shall be part of the SWPPP inspections.
- G. **NPDES Construction Activity General Permit/SWPPP Requirements:** As required by the State Water Resources Control Board (SWRCB) Order No. 2009-0009-DWQ, construction activity resulting in a land disturbance of one (1) acre or more of soil, or whose projects are part of a larger common plan of development that in total disturbs more than one (1) acre, are required to obtain coverage under the National Pollutant Discharge Elimination System (NPDES) General Permit No. CAS000002 for Discharges of Storm Water Associated with Construction Activity (General Permit). To be permitted with the SWRCB under the General Permit, owners must file a complete Notice of Intent (NOI) ONLINE at: <http://smarts.waterboards.ca.gov/smarts/faces/SwSmartsLogin.jsp> and develop a Storm Water Pollution Prevention Plan (SWPPP) Manual in accordance with the General Permit. The SWPPP Manual shall follow the CASQA SWPPP template/format at <https://www.casqa.org/store/products/tabid/154/p-167-construction-handbookportal-initial-subscription.aspx> and shall be approved by Public Works Engineering. A Waste Discharger Identification (WDID) number to be issued to the construction site after the SWRCB receives and verifies the submitted ONLINE NOI information. The WDID number and approved SWPPP Manual shall be provided to Public Works and the Building Department prior to any approval of grading activities **(SWRCB NPDES General Permit CA000002)**.
- H. **NPDES GENERAL PERMIT SITE SWPPP INSPECTIONS AND COMPLIANCE:**
1. ALL project onsite and offsite construction activity shall have the site inspected by a **qualified third party SWPPP Inspector (QSD or QSP or RCE)**.
 2. SWPPP Inspections shall occur weekly during the rainy season (September 15th thru May 1st).
 3. SWPPP Inspections shall occur bi-weekly during the non-rainy season.
 4. 48 hours prior to and following a forecasted rain event, SWPPP Inspections shall occur in addition to those of items 2 or 3 above.

5. Per each of the inspection conditions 2, 3, or 4, the NPDES SWPPP Inspector shall certify in writing to the Building and Public Works Department if the site is in compliance or non-compliance with the NPDES General Permit for Stormwater, site SWPPP Manual, and Water Pollution Control Drawings (per the CMH-SWPPP Inspection Check List to be provided by Public Works). QSD/QSP SWPPP Inspectors shall forward onsite and offsite information/certification to the Building (on-site private property issues) and Public Works (public right-of-way issues) inspectors, respectively.
6. Prior to rain events, BMPs not in compliance will need to be corrected immediately.
7. Illicit discharges per the NPDES General Permit, non-compliance of tracking control, and inlet protection within the public right of way shall be address immediately.
8. Other non-compliance issues need to be addressed within a 24-hour period.
9. Non-compliance issues which have been corrected shall be verified by NPDES SWPPP Inspector by a follow up inspection.
10. BMPs maintenance/inspections shall include tree protection if applicable.

V. WATER SYSTEM

- A. **Domestic Water System:** The applicant shall cause the design and construction to be undertaken of a domestic water system to the satisfaction of the City Engineer. The water system improvements shall be constructed within public easements or street rights-of-way to the satisfaction of the City Engineer and dedicated to the City. **(MHMC 17.32.020 A & D; CMH Design Standards and Standard Details for Construction; CMH Water System Master Plan)**
- B. **Water well abandonment:** Abandonment of any existing water well shall be in conformance with Santa Clara Valley Water District (Valley Water) Ordinance 90-1. Location and disposition to be shown on the plan. Well(s) shall be properly registered with Valley Water and either be maintained or abandoned in accordance with Valley Water standards.
- C. **Water line extension:** Install water line extension on the proposed public streets and/or private streets. **(MHMC 17.32.020 A & D; CMH Water System Master Plan)**
- D. **Water Meters:** Provide separate water services and meters for each parcel. These are to be installed by developer. **(MHMC 17.32.020 D)**
- E. Provide separate fire service and double detector check with FDC per City standard detail W-8 for each parcel.

VI. OTHER CONDITIONS

- A. **Easement Dedications:** The owner shall dedicate all necessary utility easements. **(MHMC 12.02.080 D; 17.28.010 A)**
- B. **Undergrounding new utilities:** The applicant shall cause the design and construction required to underground all electric, gas, Cable TV, and communication lines within the development. Such design and construction shall be to the satisfaction of the affected utilities and the City Engineer. **(MHMC 17.32.020 E.1)**
- C. **Parcel Map:** For minor subdivision (4 lots or less), the parcel map shall be signed by the City Engineer and the Planning Commission Secretary prior to issuance of a grading permit. **(MHMC 17.20.390; 17.24.210)**

VII.NPDES WATER QUALITY STORMWATER MANAGEMENT DEVELOPMENT STANDARDS

- A. **Stormwater Management Guidance Manual for Low Impact Development State Water Resources Control Board Post Construction Requirements (PCRs):** Project shall comply with the California Regional Water Quality Control Board Central Coast Region Resolution No. R3-2013-0032 as documented by the **Stormwater Management Guidance Manual for Low Impact Development and Post-Construction Requirements** (developed from Resolution No. R-2013-0032 Attachment 1 and 2 at: http://www.waterboards.ca.gov/centralcoast/water_issues/programs/stormwater/docs/lid/lid_hydromod_charette_index.shtml). A copy of the guidance manual can be obtained through the Land Development Engineering webpage. Project shall provide Stormwater Runoff Management Plan, Stormwater Control Plan Checklist and applicable calculations per the Stormwater Management Guidance Manual for Low Impact Development and Post-Construction Requirements. Project shall meet the applicable requirements of the Stormwater Management Guidance Manual for Low Impact Development and Post-Construction Requirements:
 - 1. Performance Requirement 1: Site Design and Runoff Reduction
 - 2. Performance Requirement 2: Water Quality Treatment
 - 3. Performance Requirement 3: Runoff Retention
 - 4. Performance Requirement 4: Peak Management
- B. **Peak Storm Water Runoff Discharge Rates:** Post-development peak storm water runoff discharge rates shall not exceed the estimated pre-development rate for developments where the increased peak storm water discharge rate will result in increased potential for downstream erosion. Note: the project may be required to **retain** stormwater runoff as part of resolution R3-2013-0032 prior to releasing discharge rates at pre-development flows.
- C. **Provide Storm Drain System Stenciling and Signage:** Storm drain stencils are highly visible source controls that are typically placed directly adjacent to

storm drain inlets. The stencil contains a brief statement that prohibits the dumping of improper materials into the storm water conveyance system. Graphical icons, either illustrating anti-dumping symbols or images of receiving water fauna, are effective supplements to the anti-dumping message. All storm drain inlets and catch basins within the project area must be stenciled with prohibitive language (such as: "NO DUMPING – DRAINS TO CREEK") and/or graphical icons to discourage illegal dumping. Signs and prohibitive language and/or graphical icons, which prohibit illegal dumping, must be posted at public access points along channels and creeks within the project area. Legibility of stencils and signs must be maintained.

- D. Design Standards for Structural or Treatment Control BMPs:** The post-construction treatment control BMPs shall incorporate, at a minimum, either a volumetric or flow- based treatment control design standard, or both, as identified below to mitigate (infiltrate, filter or treat) storm water runoff:

1. Volumetric Treatment Control BMP

- a. The 85th percentile 24-hour runoff event determined as the maximized capture storm water volume for the area, from the formula recommended in Urban Runoff Quality Management, WEF Manual of Practice No. 23/ASCE Manual of Practice No. 87, (1998); or
- b. The volume of annual runoff based on unit basin storage water quality volume, to achieve 80 percent or more volume treatment by the method recommended in California Stormwater Best Management Practices Handbook – Industrial/ Commercial, (2003); or
- c. The volume of runoff produced from a historical-record based reference 24-hour rainfall criterion for "treatment" that achieves approximately the same reduction in pollutant loads achieved by the 85th percentile 24-hour runoff event.

2. Flow Based Treatment Control BMP

- a. The flow of runoff produced from a rain event equal to at least two times the 85th percentile hourly rainfall intensity for the area; or
- b. The flow of runoff produced from a rain event that will result in treatment of the same portion of runoff as treated using volumetric standards above.

- E. Stormwater Runoff Management Plan (SWRMP) required:** The stormwater runoff management plan shall include sufficient information to evaluate the environmental characteristics of affected areas, the potential impacts of the proposed development on water resources, and the effectiveness and acceptability of measures (post construction BMPs) proposed for managing stormwater runoff.

1. The stormwater runoff management plan shall be prepared under the direction of a professional civil engineer registered in the State of California. The responsible professional civil engineer shall stamp and sign the approved stormwater runoff management plan.

2. The City Engineer or designee may require a developer to provide a signed certification from the civil engineer responsible for preparing the stormwater runoff management plan that all stormwater best management practices have been designed to meet the requirements of this chapter.
3. Each certifying civil engineer shall establish to the City's satisfaction that such person has been trained on the design of stormwater quality best management practices not more than three years prior to the certification signature date.
4. Qualifying training shall be conducted by an organization with stormwater quality management expertise, such as a university, the Bay Area Stormwater Management Agencies Association, the American Society of Civil Engineers, the American Public Works Association, or the California Water Environment Association.

F. Stormwater BMP operation, maintenance, and replacement responsibility

1. All on-site stormwater management facilities shall be operated and maintained in good condition and promptly repaired/replaced by the property owner(s), an owners' association or other legal entity approved by the city.
2. Any repairs or restoration/replacement and maintenance shall be in accordance with city-approved plans.
3. The property owner(s) shall develop a maintenance schedule for the life of any stormwater management facility and shall describe the maintenance to be completed, the time period for completion, and who shall perform the maintenance. This maintenance schedule shall be included with the approved stormwater runoff management plan.

G. Stormwater BMP operation and Maintenance Agreement (SWBOMA)

required: Prior to the issuance of any building permit requiring stormwater management BMPs, the owner(s) of the site shall enter into a formal written stormwater BMP operation and maintenance agreement with the city. The City shall record this agreement, against the property or properties involved, with the County of Santa Clara and it shall be binding on all subsequent owners of land served by the storm water management treatment BMPs (City standard Stormwater BMP Operation and Maintenance Agreement to be provided by Land Development Engineering at improvement plan/building permit stage).

H. Stormwater BMP inspection responsibility

1. The property owner(s) shall be responsible for having all stormwater management facilities inspected for condition and function by a **Registered Civil Engineer (RCE)**.
2. Unless otherwise required by the City Engineer or designee, stormwater facility inspections shall be done at least twice per year (April 15th and September 15th) by the RCE. Written records shall be kept of all inspections and shall include, at minimum, the following information:
 - a. Site address;

- b. Date and time of inspection;
 - c. Name of the person conducting the inspection;
 - d. List of stormwater facilities inspected;
 - e. Condition of each stormwater facility inspected;
 - f. Description of any needed maintenance or repairs; and
 - g. As applicable, the need for site re-inspection.
3. Upon completion of each inspection, an inspection report shall be submitted to Land Development Engineering.
- I. **Records of maintenance and inspection activities:** On or before April 15th and September 15th of each year, the party responsible for the operation and maintenance of on-site stormwater management facilities under the BMP operation and maintenance agreement shall provide the City Engineer or designee with records of all inspections, maintenance and repairs.
- J. **Annual Certification of SWRMP:** On or before September 30th of each year, a Registered Civil Engineer (RCE) shall provide written certification that the developments stormwater quality design standards are properly maintained and functioning as required by the SWRMP.

ADAMS BROADWELL JOSEPH & CARDOZO

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

601 GATEWAY BOULEVARD, SUITE 1000
SOUTH SAN FRANCISCO, CA 94080-7037TEL: (650) 589-1660
FAX: (650) 589-5062

khartmann@adamsbroadwell.com

SACRAMENTO OFFICE

520 CAPITOL MALL, SUITE 350
SACRAMENTO, CA 95814-4721TEL: (916) 444-6201
FAX: (916) 444-6209DANIEL L. CARDOZO
KEVIN T. CARMICHAEL
CHRISTINA M. CARO
JAVIER J. CASTRO
THOMAS A. ENSLOW
KELILAH D. FEDERMAN
ANDREW J. GRAF
TANYA A. GULESSERIAN
KENDRA D. HARTMANN*
KYLE C. JONES
DARIEN K. KEY
RACHAEL E. KOSS
AIDAN P. MARSHALLMARC D. JOSEPH
Of Counsel*Not admitted in California.
Licensed in Colorado.

June 4, 2021

Via Electronic Submission OnlyMayor Constantine and City Council Members
c/o City Clerk Michelle Bigelow, MMC, CPMC
Morgan Hill City Council
City Hall
City of Morgan Hill
17575 Peak Avenue
Morgan Hill, CA 95037
Email: Michelle.Bigelow@morganhill.ca.gov;
general@morganhill.ca.govAdam Paszkowski, Principal Planner
Email: Adam.Paszkowski@morganhill.ca.gov[Joey Dinh, City Staff](mailto:Joey.Dinh@morganhill.ca.gov)
Email: Joey.Dinh@morganhill.ca.gov**Re: Notice of Appeal of Planning Commission Approvals for
Redwood Tech at 101 Project (SR2020-0029 through SR2020-0033
and SD2020-0011)**

Dear Mayor Constantine, City Council Members, Ms. Bigelow, Mr. Paszkowski, Mr. Dinh:

We are writing on behalf of Morgan Hill Residents for Responsible Development ("Residents")¹ to appeal the May 25, 2021 decision of the Morgan Hill Planning Commission to approve a Design Permit and Vesting Tentative Parcel Map, and all other related approvals, for the Redwood Tech at 101 Project, SR2020-

¹ Residents is an unincorporated association of individuals and labor organizations that may be adversely affected by the potential public and worker health and safety standards associated with Project development, as well as its potential environmental impacts.
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0029 through SR2020-0033 and SD2020-0011 (“Project”). City Staff previously determined that the Project was not required to undergo environmental review pursuant to the California Environmental Quality Act (“CEQA”) and that the only approvals required related to the Project’s design and proposed subdivision of the property’s existing 2 parcels into 4 legal lots.

This appeal is based on the City’s failure to comply with the requirements of CEQA to prepare a legally adequate Environmental Impact Report (“EIR”) for the Project, as well as violations of the Subdivision Map Act and State and local land use laws. The grounds for this appeal are set forth specifically in the attached comment letters that were submitted to the Planning Commission ahead of its hearing to consider the requested Project entitlements. Our comments were prepared with the assistance of environmental health, air quality, and GHG expert Paul E. Rosenfeld, Ph.D., and hazardous materials expert Matt Hagemann, P.G., C.Hg. of Soil Water Air Protection Enterprise (“SWAPE”), transportation expert Dan Smith, and noise expert Deborah Jue, INCE-USA (collectively, “Comment Letter”).

Residents’ Comment Letter demonstrated that the Morgan Hill 2035 General Plan EIR, which the City relied upon as a program EIR, was not intended to be used to evaluate individual future development and did not provide adequate analysis of any impacts specific to the Project. If a later project may cause significant effects on the environment that were not adequately addressed in the prior EIR, a project-level EIR must be prepared.²

Additionally, our Comment Letter established that discretionary actions such as approval of a Design Permit and Tentative Map require environmental review of Project impacts, without which the City could not make the necessary findings for those entitlements. We also established that the Project is a component of a reasonably foreseeable larger project, for which the City appears to be improperly seeking approval by breaking it up, piecemeal fashion, in order to take advantage of environmental exemptions or less rigorous CEQA review for smaller components, such as the proposed Project.

Finally, our Comment Letter provided substantial evidence that the Project may result in potentially significant, unmitigated impacts on air quality, public health, GHG emissions, noise, and transportation that must be disclosed and

² 14 C.C.R. § 15152(f).
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mitigated in an EIR. These unmitigated impacts also preclude the City from making the findings required to approve the Project under the Subdivision Map Act and the City land use codes.

Based on these legal deficiencies and potentially significant and unmitigated impacts, our comments concluded that the City, by failing to require preparation of an EIR, is in violation of CEQA's mandate to inform decision makers and the public about the potentially significant environmental impacts of a project before it is approved and implemented.

We request that the City Council review our Comment Letter in its entirety, vacate the Planning Commission's approvals, and require preparation of an EIR to adequately analyze and mitigate the Project's significant impacts.

We have included a credit card authorization form for \$627.60 for the appeal filing fee.³ Thank you for your attention to this important matter.

Sincerely,



Kendra Hartmann

Enclosures: Exhibit A: Comment Letters
Uniform Application
\$627.60 Credit Card Authorization for Appeal Filing Fee

KDH:acp

³ The City's appeal form, the "Uniform Application," includes an Indemnification Agreement which purports to obligate appellants to indemnify and defend the City by paying the City's costs, including City's attorney's fees and all other litigation costs and expenses, including expert witnesses, required to defend against any lawsuit brought as a result of City's approval or approvals of the Project. Residents presumes that the terms on the Indemnification Agreement are intended to apply to an applicant seeking entitlements from the City for a development project, and not to members of the public appealing a decision to approve the Project, as Residents do here. However, in the event that the City subsequently seeks to enforce the Indemnification Agreement against Residents, or to charge Residents or its representatives any of the costs described therein, Residents reserves its right to object as a violation of Residents' due process rights to petition the government, and/or to pay any subsequent fees under protest.

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EXHIBIT A

ADAMS BROADWELL JOSEPH & CARDOZO

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

601 GATEWAY BOULEVARD, SUITE 1000
SOUTH SAN FRANCISCO, CA 94080-7037TEL: (650) 589-1660
FAX: (650) 589-5062

khartmann@adamsbroadwell.com

SACRAMENTO OFFICE

520 CAPITOL MALL, SUITE 350
SACRAMENTO, CA 95814-4721TEL: (916) 444-6201
FAX: (916) 444-6209DANIEL L. CARDOZO
KEVIN T. CARMICHAEL
CHRISTINA M. CARO
JAVIER J. CASTRO
THOMAS A. ENSLOW
KELILAH D. FEDERMAN
ANDREW J. GRAF
TANYA A. GULESSERIAN
KENDRA D. HARTMANN*
KYLE C. JONES
DARIEN K. KEY
RACHAEL E. KOSS
AIDAN P. MARSHALLMARC D. JOSEPH
Of Counsel*Not admitted in California.
Licensed in Colorado.

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Via Email OnlyMohammad Habib, Chair
Members of the Planning Commission
City of Morgan Hill
c/o Minutes Clerk
17575 Peak Avenue
Morgan Hill, CA 95037
pcpubliccomment@morganhill.ca.govJennifer Carman, Community Development Director
jennifer.carman@morganhill.ca.gov
Adam Paszkowski
Adam.Paszkowski@morganhill.ca.gov**Re: Agenda Item No. 1: Redwood Tech at 101 Project (SR2020-0029 through SR2020-0033 and SD2020-0011)**

Dear Chair Habib, Commissioners, Minutes Clerk, Ms. Carman, Mr. Paszkowski:

We are writing on behalf of Morgan Hill Residents for Responsible Development ("Residents") to provide comments to the Morgan Hill Planning Commission ("Commission") on Agenda Item No. 1, the Redwood Tech at 101 Project, SR2020-0029 through SR2020-0033 and SD2020-0011 ("Project"). Proposed by Trammel Crow Morgan Hill Ventures ("Applicant"), the Project proposes approximately 501,314 square feet of flexible industrial/commercial space spread across 5 separate buildings on four separate lots in the approximately 29-acre lot south of the former Tree Farm site on Hwy 101 south of Cochrane Road in the City of Morgan Hill ("City").

The Applicant seeks a Design Permit and a Vesting Tentative Parcel Map, both discretionary approvals, to divide the property's existing 2 parcels into 4 legal lots. In accordance with Section 18.108.040.D of the City's Municipal Code, the size

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of the Project is considered significant and, as such, the Development Services Director has elevated the Project to the Planning Commission for review and consideration of the two proposed Project entitlements. The Project proposes to construct 5 buildings on the site, all designated for flexible industrial and commercial uses, including advanced manufacturing, warehouse, supporting office, and similar industrial and commercial uses. The property has a Commercial/Industrial General Plan designation and is zoned Light Industrial (IL). Access to the property will be provided via four driveways from the extension of De Paul Drive to the south from Cochrane Road. All street frontages will be improved to City Standards with sidewalk and landscaping.

The Applicant previously submitted to the City a different project titled the Morgan Hill Technology Center (“Technology Center”), which was withdrawn by the Applicant on September 18, 2020.¹ That previous project encompassed the proposed Project site and the parcels to the north. The original Technology Center proposed a mix of industrial, commercial, and residential uses on an 89-acre site. The industrial and commercial portions of the Technology Center project proposed 1.04 million square feet of light industrial uses contained in six buildings, 45,000 square feet of industrial office in one building situated between the industrial buildings on a 2.31-acre parcel, and 50,000 square feet of retail/commercial on a 2.92-acre parcel fronting Cochrane Road.

We reviewed the Staff Report and related Project documents with the assistance of environmental health, air quality, and GHG expert Paul E. Rosenfeld, Ph.D., and hazardous materials expert Matt Hagemann, P.G., C.Hg. of Soil Water Air Protection Enterprise (“SWAPE”), transportation expert Dan Smith, and noise expert Deborah Jue, INCE-USA. Comments and curriculum vitae of SWAPE are attached to this letter as Attachment A.² Mr. Smith’s comments and curriculum vitae are included as Attachment B,³ and Ms. Jue’s comments and curriculum vitae are attached as Attachment C.⁴ All expert comments are fully incorporated herein and submitted to the City herewith. Therefore, the City must separately respond to the technical comments in Attachments A, B and C.

¹ Staff Report, p. 6; see <http://www.morgan-hill.ca.gov/1966/Morgan-Hill-Technology-Park> (last visited 5/25/21).

² **Attachment A:** Comments on Redwood Tech at 101 Project (May 21, 2021) (“SWAPE Comments”).

³ **Attachment B:** Transportation Comments re Redwood Tech@101 Project by Smith Engineering & Management (May 20, 2021) (“Smith Comments”).

⁴ **Attachment C:** Redwood Tech @ 101 Comments, Wilson Ihrig (May 25, 2021) (“Jue Comments”).
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Based on our review, it is clear that the City has not complied with the California Environmental Quality Act (“CEQA”)⁵, the Subdivision Map Act, or with local and State land use laws in its review of the Project and its proposed entitlements.

The City initially prepared a draft environmental impact report (“DEIR”) for the Technology Center Project, which found that the Technology Center Project (which included the instant Project plus the additional components) would have significant impacts on air quality, biological resources, cultural resources, greenhouse gas (“GHG”) emissions, hazardous materials, noise, and transportation which required mitigation.⁶ Before the DEIR was certified, the Project application was withdrawn. The Applicant has now repropoed the industrial/commercial component of the Technology Center Project as the Redwood 101 Project, which the City now claims does not require CEQA review because it was previously analyzed in the 2035 General Plan EIR. As discussed below, the General Plan EIR was a planning-level CEQA document which did not analyze the Project’s environmental impacts with the degree of specificity required for project-level environmental review. Nor were the project-specific impacts that were identified in the Technology Center DEIR addressed in the General Plan EIR. An EIR is required for the Project for these reasons.⁷

The City is also improperly piecemealing its environmental review of the Project from other components of the original Technology Center Project. As the Staff Report explains, the residential component of the Technology Center Project has been reduced from 319 units to 269 units and is being concurrently developed by Dividend Homes under a separate application.⁸ Two of the original project components are being reviewed by the City for a second time, yet the City failed to prepare an EIR that analyzes the impacts of both developments.

Finally, as discussed below, the Redwood 101 Project has potentially significant, unmitigated impacts on air quality, public health, GHG emissions, noise, and transportation that must be disclosed and mitigated in an EIR. These unmitigated impacts also preclude the Planning Commission from making the

⁵ Pub. Res. Code §§ 21000 et seq; 14 Cal. Code Regs. (“CCR” or “CEQA Guidelines”) §§ 150000 et seq.

⁶ See Technology Center DEIR, pp. iv-xxx, available at <https://www.morgan-hill.ca.gov/DocumentCenter/View/36693/Draft-EIR-Morgan-Hill-Tech-Center-12-May-2020-webready> (last visited 5/25/21).

⁷ See 14 CCR § 15152.

⁸ Staff Report, p. 6.

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findings required to approve the Project under the Subdivision Map Act and the City land use codes. The Planning Commission should remand the Project to staff to prepare a legally adequate EIR before the Project can be considered for approval.⁹

I. STATEMENT OF INTEREST

Residents is an unincorporated association of individuals and labor organizations that may be adversely affected by the potential public and worker health and safety standards associated with Project development, as well as its potential environmental impacts. Residents includes local unions, their members and families, and other individuals that live and/or work in the City of Morgan Hill and Santa Clara County.

Individual members of Residents and the affiliated labor organizations live, work, recreate and raise their families in the City of Morgan Hill and Santa Clara County. They would be directly affected by the Project's environmental and health and safety impacts. Individual members, including Santa Clara County resident Fermin Layos, may also work on the Project itself. Accordingly, they will be first in line to be exposed to any health and safety hazards that exist onsite. Residents have a strong interest in enforcing the State's environmental laws that encourage sustainable development and ensure a safe working environment for its members. Environmentally detrimental projects can jeopardize future jobs by making it more difficult and more expensive for business and industry to expand in the region, and by making it less desirable for businesses to locate and people to live there.

II. LEGAL STANDARD

In an effort to ensure the long-term protection of the environment of the state, CEQA requires governmental agencies at all levels to develop standards and procedures necessary to protect environmental quality. To this end, CEQA requires preparation of an EIR whenever a public agency proposes to approve or to carry out a project that may have a significant effect on the environment.¹⁰ In this way, CEQA is designed to inform decision makers and the public about the potentially

⁹ We reserve the right to supplement these comments at later hearings and proceedings on this Project. Gov. Code § 65009(b); PRC § 21177(a); *Bakersfield Citizens for Local Control v. Bakersfield ("Bakersfield")* (2004) 124 Cal. App. 4th 1184, 1199-1203; see *Galante Vineyards v. Monterey Water Dist.* (1997) 60 Cal. App. 4th 1109, 1121.

¹⁰ *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 390. 5175-002acp

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significant environmental impacts of a project before it is approved and implemented.¹¹

Described as “an environmental ‘alarm bell’ whose purpose it is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return,”¹² an EIR’s purpose is to “inform the public and its responsible officials of the environmental consequences of their decisions *before* they are made. Thus, the EIR protects not only the environment, but also informed self-government.”¹³ To fulfill this purpose, the discussion of impacts in an EIR must be detailed, complete, and “reflect a good faith effort at full disclosure.”¹⁴ Furthermore, CEQA imposes an affirmative obligation on agencies to avoid or reduce environmental harm by adopting feasible project alternatives or mitigation measures to address all potentially significant impacts identified in the agency’s CEQA analysis.¹⁵ An adequate EIR must contain facts and analysis, not just an agency’s conclusions.¹⁶

CEQA “projects” include activities undertaken by public agencies that cause direct physical changes to the environment.¹⁷ Following preliminary review of a project to determine whether an activity is subject to CEQA, a lead agency is required to prepare an initial study to identify several key objectives, including whether to prepare an EIR or negative declaration, as well as the appropriate process to be used for analysis of the project’s environmental effects and potential mitigation.¹⁸ CEQA requires an agency to analyze the potential environmental impacts of its proposed actions in an EIR except in certain limited circumstances.¹⁹

¹¹ Cal. Code Regs., tit. 14, § 15002, subd. (a)(1) (“CEQA Guidelines”); *Berkeley Keep Jets Over the Bay v. Bd. of Port Comm’rs.* (2001) 91 Cal.App.4th 1344, 1354 (“*Berkeley Jets*”); *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810.

¹² *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810.

¹³ *Citizens of Goleta Valley v. Bd. of Supervisors* (1990) 52 Cal.3d 553, 564 (internal citations omitted).

¹⁴ CEQA Guidelines, § 15151; *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 721-722.

¹⁵ Pub. Resources Code, §§ 21002-21002.1.

¹⁶ See *Citizens of Goleta Valley v. Bd. of Supervisors* (1990) 52 Cal.3d 553, 568.

¹⁷ *County of Ventura v. City of Moorpark* (2018) 24 Cal.App.5th 377, 385.

¹⁸ CEQA Guidelines, §§ 15060, 15063, subd. (c).

¹⁹ See, e.g., Pub. Resources Code, § 21100.
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III. CEQA PROHIBITS PIECEMEALING OF A PROJECT

CEQA prohibits a project proponent from seeking approval of a project by breaking it up, piecemeal fashion, in order to take advantage of environmental exemptions or less rigorous CEQA review for smaller projects.²⁰ The law mandates that “environmental considerations do not become submerged by chopping a large project into many little ones—each with a minimal potential impact on the environment—which cumulatively may have disastrous consequences.”²¹ As courts have explained, “... [t]he CEQA process is intended to be a careful examination, fully open to the public, of the environmental consequences of a given project, covering the entire project, from start to finish.”²²

Specifically, the description of a project must describe a larger future project and analyze its effects if (1) the larger project is a reasonably foreseeable consequence of the initial project, and (2) the future project will be significant in that it will likely change the scope or nature of the initial project or its environmental effects.²³ This rule applies even if (1) the Lead Agency has not yet formally approved the larger future project, and (2) it is impossible to predict with precision the environmental effects of less-than-definite future plans, as long as these effects can be discussed at least in general terms.²⁴ Difficulty in describing the effects of less-than-definite future plans does not excuse an agency from CEQA compliance, especially since CEQA provides mechanisms, such as Program EIRs and tiering of EIRs, to facilitate environmental analysis of larger future projects.²⁵

Furthermore, “[t]iering does not excuse the lead agency from adequately analyzing reasonably foreseeable significant environmental impacts of the project and does not justify deferring such analysis to a later tier EIR or negative declaration.”²⁶ If a program-level EIR has been released, it is nonetheless still not appropriate to piecemeal later tiers in order to avoid environmental review.

²⁰ *Arviv Enterprises, Inc. v. South Valley Area Planning Com.* (2002) 101 Cal. App. 4th 1336, 1340.

²¹ *Bozung v. LAFCO* (1975) 13 Cal.3d 263, 283-84; *City of Santee v. County of San Diego*, (1989) 214 Cal.App.3d 1438, 1452; *Citizens Assn. for Sensible Development of Bishop Area v. County of Inyo* (1985) 172 Cal.App.3d 151, 165.

²² *Natural Resources Defense Council v. City of Los Angeles* (2002) 103 Cal.App.4th 268, (emphasis added).

²³ *Laurel Heights Improvement Assn. v. Regents of Univ. of California* (1988) 47 Cal. 3d 376, 396.

²⁴ *Id.* at 398-99.

²⁵ *Id.* at 399, n.8.

²⁶ 14 C.C.R. § 15152 (b); *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal. 4th 412, 431, 150 P.3d 709, 720.

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A. Development of Multiple Components of the Original Morgan Hill Technology Center Project is Reasonably Foreseeable and Cumulative Impacts Must be Analyzed Together in an EIR

Similar to *Laurel Heights*, in which the Court found that future development was reasonably foreseeable and the university had to include environmental analysis of the anticipated future uses of the site, the Project is just one fragment of anticipated development of the site, which was already analyzed in an EIR.²⁷ Though the Applicant abandoned the larger project in September 2020, the proposed Project is merely a selection excerpted from that larger development, pulled out to be considered on a smaller scale.

Considering the sequence of events associated with development at the site, it is difficult to imagine a scenario in which the Applicant and the City are not attempting to piecemeal a large project into several smaller ones that will require less rigorous CEQA review—or none at all, as the City alleges here. The larger project, the impacts of which the DEIR concluded would be numerous, significant and, in some cases, unavoidable, was abruptly abandoned by the Applicant after considerable pushback from the community.²⁸ When the Applicant submitted the much-abbreviated application for the currently proposed Project, the City pointed out that a Vesting Tentative Map of five or more parcels would require additional CEQA review, after which the Applicant immediately revised the Project, reconfiguring the proposed site into four parcels.²⁹

Moreover, the residential portion of the larger project had been evaluated in the Technology Center DEIR together with all project components. It is now being developed concurrently under a separate application—and separate environmental review.³⁰ As the court in *Laurel Heights* found, “this is not the type of situation where it is unclear as to whether a parcel of land will be developed or as to whether activity will commence.”³¹ In fact, though no formal land use entitlement applications had been filed with the City at the time, the Technology Center DEIR acknowledged that “[t]he future development of [the residential component] is

²⁷ *Id.* at 399.

²⁸ See, e.g., public comment letters, <https://www.morgan-hill.ca.gov/1966/Morgan-Hill-Technology-Park>.

²⁹ See City Letter of Application Incompleteness (Jan. 11, 2021), p. 3; Applicant Response Letter (Feb. 1, 2021), p. 8.

³⁰ Morgan Hill Planning Commission Staff Report, p. 6.

³¹ *Laurel Heights*, 47 Cal.3d at 395.

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reasonably foreseeable given the existing land use designation and zoning.”³² Now that that foreseeable development has come to pass, the adjacent development projects are being evaluated separately.

By now omitting from its environmental review the reasonably foreseeable development of all projects at the same sites originally analyzed in the EIR for the Technology Center Project, the City has impermissibly engaged in piecemealing and must prepare an EIR for the entire site which fully describes, analyzes and mitigates potentially significant impacts.

IV. TIERING

In preparing an initial study, a lead agency is required to identify the appropriate level of environmental review and must determine whether a previously prepared EIR could be used with the project.³³ Tiering, in which the analysis of general matters contained in a broader EIR, such as one prepared for a general plan, is used to frame the general discussion of a later, narrower project and its specific issues and impacts, can be appropriate when considering large-scale planning approval or separate but related projects. A later EIR shall be required when the initial study or other analysis finds that the later project may cause significant effects on the environment that were not adequately addressed in the prior EIR.³⁴

Where a program EIR has been prepared that could apply to a later project, CEQA requires the lead agency to conduct a two-step process to examine the later project to determine whether additional environmental review is required.³⁵ First, the agency must consider whether the project will result in environmental effects that were not examined in the program EIR.³⁶ Whether a later activity is within the scope of a program EIR is a factual question that the lead agency determines based on substantial evidence in the record.³⁷ If the agency finds the activity would have environmental effects that were not examined in the program EIR, it must

³² Technology Center DEIR, p. 17.

³³ CEQA Guidelines, §§ 15060, 15063, subd. (c).

³⁴ 14 C.C.R. § 15152(f).

³⁵ See CEQA Guidelines, 15168, subd. (c); S. Kostka & M. Zischke, Practice Under the California Environmental Quality Act 2d, § 10.16 (Mar. 2018).

³⁶ CEQA Guidelines, § 15168, subd. (c)(1).

³⁷ *Id.* at (c)(2).

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then prepare an initial study to determine whether to prepare an EIR or negative declaration to address those effects.³⁸

Second, if the agency determines the project is covered by the program EIR, it must then consider whether any new or more significant environmental effects could occur due to changes in circumstances or project scope, or new information that could not have been considered in the program EIR.³⁹ More specifically, pursuant CEQA Guidelines section 15162, subsequent or supplemental environmental review is required when one or more of the following events occur:

- (1) Substantial changes are proposed in the project which will require major revisions of the previous EIR due to the involvement of new significant effects or a substantial increase in the severity of previously identified effects;
- (2) Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or
- (3) New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the negative declaration was adopted, shows any of the following:
 - (A) The project will have one or more significant effects not discussed in the previous EIR or negative declaration;
 - (B) Significant effects previously examined will be substantially more severe than shown in the previous EIR;
 - (C) Mitigation measures or alternatives previously found not to be feasible would in fact be feasible, and would substantially reduce one or more significant effects of the

³⁸ CEQA Guidelines, § 15168, subd. (c)(1).

³⁹ CEQA Guidelines, § 15168, subd. (c)(2).

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project, but the project proponents decline to adopt the mitigation measure or alternative; or

- (D) Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.⁴⁰

The terms “supplement” and “subsequent” are not interchangeable. “A supplement to an EIR is a document that contains additions or changes needed to make the previous EIR adequate ... In contrast ... a subsequent EIR revises the previous EIR, rather than simply supplements it.”⁴¹ With subsequent review the “revised EIR must receive the same circulation and review as the original EIR.”⁴²

Similarly, Section 15183 provides a streamlined process for environmental review of projects that are “consistent with the development density established by existing zoning, community plan, or general plan policies for which an EIR was certified,” authorizing agencies to avoid duplicative environmental review “except as might be necessary to examine whether there are project-specific significant effects which are peculiar to the project or its site.”⁴³

Courts have held that if “no EIR has been prepared for a nonexempt project, but substantial evidence in the record supports a fair argument that the project may result in significant adverse impacts, the proper remedy is to order preparation of an EIR.”⁴⁴ The fair argument standard creates a “low threshold” favoring environmental review through an EIR, rather than through issuance of a negative declaration.⁴⁵ An agency’s decision not to require an EIR can be upheld only when there is no credible evidence to the contrary.⁴⁶

⁴⁰ CEQA Guidelines, § 15162, subd. (a)(1)-(3); see also Pub. Resources Code, § 21166.

⁴¹ S. Koskte & M. Zischke, Practice Under the Environmental Quality Act 2d., § 19.4, p. 19-8 (Mar. 2018).

⁴² S. Koskte & M. Zischke, Practice Under the Environmental Quality Act 2d., § 19.4, p. 19-8, (Mar. 2018), emphasis added; see also CEQA Guidelines, §§ 15162, 15163.

⁴³ 14 C.C.R. § 15183(a).

⁴⁴ See, e.g., *Communities for a Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal.4th 310, 319-320.

⁴⁵ *Citizens Action to Serve All Students v. Thornley* (1990) 222 Cal.App.3d 748, 754.

⁴⁶ *Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th, 1307, 1318; see also *Friends of B Street v. City of Hayward* (1980) 106 Cal.App.3d 988, 1002 (“If there was substantial evidence that the proposed

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A. The Project Was Not Analyzed by the 2035 General Plan EIR

In 2016, the Morgan Hill City Council certified the Morgan Hill 2035 General Plan EIR analyzing “land use, urban design, circulation, public services, natural resources, and safety goals, policies, and actions to guide investment and development” in the City over a 20-year period. Prepared as a program EIR pursuant to CEQA Guidelines Section 15168, the EIR states that its intended purpose is to serve as a long-term “policy document[] guiding future development activities and City actions.”⁴⁷

The Staff Report asserts that the General Plan EIR “adequately addressed the potential environmental impacts associated with the comprehensive update of the City’s constitution for growth including certain implementation activities and provided for streamlining of the environmental review process for projects proposed subsequent to the certification of the EIR.”⁴⁸ The Report’s entire analysis of the EIR’s evaluation of impacts from activities specific to the Project consists of the following paragraph:

The proposed project entails dividing the subject property and constructing buildings consistent with the General Plan. The division and development of parcels consistent with the General Plan was addressed in the program EIR for the 2035 General Plan and, therefore, pursuant to Section 15162 and Section 15183 of the State CEQA Guidelines, no additional review under the California Environmental Quality Act is required for the proposed project.⁴⁹

It is unclear from this description how the General Plan EIR’s analysis of development and population growth over the next 15 years applies to the Project’s specific impacts, let alone how those impacts are examined in enough detail as to make further environmental review unnecessary. The Staff Report appears to conclude that, in light of the Project’s proposal to divide “the subject property and construct[] buildings,” the General Plan EIR’s analysis of the “division and development of parcels” is sufficiently adequate that no further review is

project might have a significant environmental impact, evidence to the contrary is not sufficient to support a decision to dispense with preparation of an EIR and adopt a negative declaration, because it could be ‘fairly argued’ that the project might have a significant environmental impact”).

⁴⁷ General Plan EIR, p. 2-2.

⁴⁸ Staff Report, p. 19.

⁴⁹ Staff Report, p. 15.

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warranted. A thorough search of the General Plan EIR, however, reveals that it does not analyze impacts from specific subdivisions or construction whatsoever. In fact, specifics of any kind associated with the Project—environmental setting, baseline, potential impacts from development, subdivision or construction, mitigation—are nowhere to be found in the EIR.

In its insistence that the General Plan EIR’s analysis of future impacts renders any further environmental review unnecessary, the Staff Report seems to unequivocally reject the EIR’s stated objective with respect to its status as a program EIR. Recognizing the utility of program EIRs when a project “consists of a series of actions related to the issuance of rules, regulations, and other planning criteria,” the EIR distinguishes itself as a document that serves to guide policy and City actions over time, rather than as a benchmark for specific project impacts:

No specific development projects are proposed as part of the proposed Project. Therefore, this EIR is a program-level EIR that analyzes the potential significant environmental effects of the adoption of the proposed Project. As a program EIR, it is not project-specific, and does not evaluate the impacts of individual projects that may be proposed under the General Plan. Such subsequent projects will require a separate environmental review, when applicable as required by CEQA, which could be in the form of a Negative Declaration, Mitigated Negative Declaration, or a Subsequent EIR, to secure the necessary development permits. Therefore, while subsequent environmental review may be tiered from this EIR, this EIR is not intended to address project-specific impacts of individual projects.⁵⁰

The City had to make a significant effort to disregard this statement in the EIR, whose preparers went so far as to announce no less than 7 times that it was not to be used to evaluate individual projects.⁵¹ The City cannot do an about-face now to claim that its own General Plan EIR analyzed something which the City has previously and unequivocally stated it did not.

Section 15168’s two-step inquiry of a program EIR’s applicability to later activities holds that “if a later activity would have effects that were not examined in the program EIR, a new initial study would need to be prepared leading to either an

⁵⁰ General Plan EIR, p. 2-2.

⁵¹ See, e.g., pp. 2-2, 3-1fn.2, 3-42, 4.3-34, 4.3-37, 4.3-38, 4.3-53.
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EIR or a negative declaration.”⁵² The City insists that, pursuant to sections 15162 and 15183, the Project is within the scope of the program EIR and no subsequent EIR is required. “Whether a later activity is within the scope of a program EIR is a factual question that the lead agency determines based on substantial evidence in the record.”⁵³ The City does not offer any substantial evidence to support its dubious conclusion. At most, it suggests a vague association between the EIR’s illusory “division and development of parcels” and the Project’s subdivision and development.

In contrast, as demonstrated below and supported by substantial evidence, the Project is likely to result in significant impacts to transportation, air quality, and public health—impacts specific to its development and that were not contemplated by the General Plan EIR. Since the EIR, by its own admission, did not evaluate the impacts of any specific projects, a subsequent EIR to examine “project-specific significant effects which are peculiar to the project or its site” should be prepared.⁵⁴

V. ENVIRONMENTAL REVIEW IS REQUIRED FOR DISCRETIONARY ACTIONS

In addition to claiming that the program-level General Plan EIR adequately analyzed impacts of future development, including the Project, the City advised the Applicant that the Project was further excused from CEQA review because “Environmental Review is not required for Design Review or Tentative Parcel Map applications.”⁵⁵ This conclusion is patently false for the reasons that follow.

A. Design Review

The City’s conclusion that environmental review is not required for Design Review is incorrect. Per the City’s own Municipal Code, a Design Review permit, which is required for significant projects like the Applicant’s,⁵⁶ “is a discretionary action that enables the city to ensure that proposed development exhibits high

⁵² 14 C.C.R. § 15168(c)(1).

⁵³ *Id.*

⁵⁴ 14 C.C.R. § 15183(a).

⁵⁵ City of Morgan Hill Development Services Center Completeness Comment Letter, February 16, 2021, p. 3.

⁵⁶ Municipal Code 18.108.040(D)(2) states that “[a]ny structure with more than seventy-five thousand square feet of floor area is presumed significant.”

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quality design consistent with the general plan and any other applicable specific plan or area plan adopted by the city council.”⁵⁷ CEQA clearly requires environmental review of all “discretionary projects proposed to be carried out or approved by public agencies.”⁵⁸

The Staff Report notes the receipt of a letter on behalf of the Applicant asserting that the Planning Commission “lacks discretion to address potential environmental effects, making the Project ministerial for CEQA purposes.”⁵⁹ Analogizing to a case in which a court found that approval of a design review permit limited the reviewing agency to consideration of design-related issues, the letter attempts to establish that the Planning Commission has no discretion to consider the Project’s potential environmental impacts. This is because, as the letter contends, the discretion granted to the Commission by the Municipal Code refers only to discretionary review of a project’s design elements. The letter’s interpretation of the case law, however, suffers from two fundamental flaws: (1) it attempts to apply the court’s reasoning to an inapposite set of facts, and (2) it overlooks the other discretionary approval sought for this Project, the Vesting Tentative Parcel Map.

The letter attempts to draw parallels where they do not exist, asserting that “[l]ike the fourteen design review criteria applied by St. Helena in *McCorkle*, the City’s design review criteria are limited to design review and not environmental issues.”⁶⁰ In that case, the St. Helena City Council found the local design review ordinances prevented it from disapproving the project for non-design related matters. Those ordinances did not include any required findings related to CEQA review or otherwise allow the agency to “shape the project in any way which could respond to any of the concerns which might be identified in an environmental impact report.”⁶¹ Here, on the other hand, Morgan Hill’s design review ordinance requires a finding that a project has been reviewed in compliance with CEQA, as well as a determination that it will not be “detrimental to the public health, safety, or welfare or materially injurious to the properties or improvements in the vicinity”—distinctly discretionary actions that require consideration of the Project’s effects on the environment and potential mitigation.⁶²

⁵⁷ MHMC 18.108.040(A).

⁵⁸ Pub. Resources Code § 21080(a).

⁵⁹ Staff Report, p. 19.

⁶⁰ Staff Report, p. 72.

⁶¹ *McCorkle Eastside Neighborhood Group v. City of St. Helena* (2018) 31 Cal.App 5th 80, 90.

⁶² Zoning Code, § 18.108.040.

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Furthermore, even if a design permit did limit the Planning Commission to consideration only of design-related elements, the Project also seeks a Vesting Tentative Parcel Map, a discretionary permit subject to the provisions of CEQA.⁶³ As discussed above, it is well established that a project cannot be divided into smaller parts that individually will not have a significant effect on the environment. This rule is applicable even if one of the smaller parts might require only ministerial, rather than discretionary, approval.⁶⁴ Moreover, when a project “involves an approval that contains elements of both a ministerial action and a discretionary action, the project will be deemed to be discretionary.”⁶⁵

B. Vesting Tentative Parcel Map

The Project requires a Vesting Tentative Parcel Map to subdivide the existing two parcels into four separate parcels, approval of which requires that the Tentative Map is consistent with all applicable city ordinances, general and specific plans adopted by the city, and the State Subdivision Map Act (“Map Act”).⁶⁶ The Map Act, as well as the Morgan Hill Municipal Code, requires specific environmental findings before a parcel map can be approved. A map shall not be approved, for example, if its design or proposed improvements are “likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat,” or are “likely to cause serious public health problems.”⁶⁷ Regulating land subdivisions in Morgan Hill, according to the Municipal Code, is “necessary for the preservation of the public health, safety and general welfare, to promote orderly growth and development and to promote open space, conservation, protection and proper use of land and to insure provision for adequate traffic circulation, utilities and services.”⁶⁸

Once again, making these findings confers on the agency a discretionary duty to determine compliance with the statute.⁶⁹ This discretion, furthermore, involves

⁶³ See, e.g., Pub. Resources Code § 21080: “this division shall apply to discretionary projects proposed to be carried out or approved by public agencies, including, but not limited to, the enactment and amendment of zoning ordinances, the issuance of zoning variances, the issuance of conditional use permits, and the approval of tentative subdivision maps ...”

⁶⁴ *Orinda Assoc. v. Board of Supervisors* (1986) 182 Cal.App.3d 1145, 1171–1172.

⁶⁵ 14 C.C.R. § 15268(d).

⁶⁶ MHMC § 17.24.050 A; 17.24.070 A; .

⁶⁷ Gov. Code § 66474(e), (f); MHMC § 17.20.100.

⁶⁸ MHMC, § 17.04.020.

⁶⁹ Pub. Res. Code § 21080(a); *Rominger v. County of Colusa* (2014) 229 Cal.App.4th 690. 5175-002acp

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consideration of activities that have the “potential to cause a direct physical change or a reasonably foreseeable indirect physical change in the environment.”⁷⁰

The City, in an exercise of this discretionary duty, states in the Staff Report that the Project “will not be detrimental to the public health, safety, or welfare, and will not be materially injurious to the properties or improvements in the vicinity.”⁷¹ As it had previously concluded that no environmental review was required,⁷² however, it is unclear how it reached this determination, and no substantial evidence is offered in support of this conclusory statement. In addition, as discussed in Section VI. below, there is substantial evidence demonstrating that the Project is likely to have potentially significant and unmitigated impacts on air quality, public health, climate change, and traffic. As a result of these unmitigated impacts, the Project fails to comply with the Map Act and Municipal Code and the City cannot make the requisite findings to approve the Project’s Tentative Map.

VI. THE CITY MUST PREPARE AN EIR TO ANALYZE THE PROJECT’S POTENTIALLY SIGNIFICANT ENVIRONMENTAL IMPACTS THAT WERE NOT ANALYZED IN THE MORGAN HILL 2035 GENERAL PLAN EIR

Agencies must fully disclose all potentially significant impacts of a project, and must implement all feasible mitigation to reduce those impacts to less than significant levels. The lead agency’s significance determination with regard to each impact must be supported by accurate scientific and factual data.⁷³ An agency cannot conclude that an impact is less than significant unless it produces rigorous analysis and concrete substantial evidence justifying the finding.⁷⁴

Moreover, the failure to provide information required by CEQA is a failure to proceed in the manner required by CEQA.⁷⁵ Challenges to an agency’s failure to proceed in the manner required by CEQA, such as the failure to disclose

⁷⁰ *Id.*

⁷¹ Staff Report, p. 16.

⁷² Asserting that the Project “is consistent with the development projections analyzed in the Morgan Hill 2035 General Plan program EIR for the project site” and that it “is designed to be consistent with the development standards in the General Plan and Zoning Code” the City concluded that no further environmental review would be required. Staff Report, p. 52.

⁷³ 14 CCR § 15064(b).

⁷⁴ *Kings Cty. Farm Bur. v. Hanford* (1990) 221 Cal.App.3d 692, 732.

⁷⁵ *Sierra Club v. State Bd. Of Forestry* (1994) 7 Cal.4th 1215, 1236.
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information about a project's environmental effects or alternatives, are subject to a less deferential standard than challenges to an agency's factual conclusions.⁷⁶ In reviewing challenges to an agency's approval of an EIR based on a lack of substantial evidence, the court will "determine de novo whether the agency has employed the correct procedures, scrupulously enforcing all legislatively mandated CEQA requirements."⁷⁷

As explained above, where a program EIR has been prepared that can apply to a later project, CEQA requires the lead agency to conduct a two-step process to examine the later project to determine whether additional environmental review is required.⁷⁸ First, the agency must consider whether the project will result in environmental effects that were not examined in the program EIR.⁷⁹ If the later activity involves site-specific operations, as it does here, the City must evaluate the site and activity to determine whether the environmental effects were covered in the program EIR and document its findings by a checklist.⁸⁰ If the agency finds the activity would have environmental effects that were not examined in the program EIR, it must then prepare an initial study to determine whether to prepare an EIR or negative declaration to address those effects.⁸¹

Because the 2035 General Plan EIR did not address any project-specific impacts of future projects, significant effects resulting from the Project will be substantially more severe than anything analyzed in the General Plan EIR. Without completing additional environmental analysis, the Project cannot satisfy the requirements for disclosure and analysis under CEQA and must complete a subsequent EIR.

⁷⁶ *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 435.

⁷⁷ *Id.*, *Madera Oversight Coal., Inc. v. County of Madera* (2011) 199 Cal. App. 4th 48, 102.

⁷⁸ See CEQA Guidelines, 15168, subd. (c); S. Kostka & M. Zischke, Practice Under the California Environmental Quality Act 2d, § 10.16 (Mar. 2018).

⁷⁹ CEQA Guidelines, § 15168, subd. (c)(1).

⁸⁰ 14 CCR §15168(c)(4).

⁸¹ CEQA Guidelines, § 15168, subd. (c)(1).

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A. Air Quality

i. Updated Analysis Provides Substantial Evidence of Potentially Significant Air Quality Impacts

Using Project-specific information, as well as site-specific information such as land use type, meteorological data, total acreage, and typical equipment, experts from SWAPE estimated the Project's construction and operational emissions using the most updated version of CalEEMod.⁸² SWAPE found that emissions of VOCs from construction at the Project site would be 268.96 lb/day, nearly twice the BAAQMD threshold of 137 lb/day.⁸³

This is new information about significant impacts that were not analyzed in the General Plan EIR because this specific development project was not before the City at the time the General Plan was approved. The results substantiate the conclusion that impacts to air quality will be significant and must be analyzed and mitigated in a project-specific EIR.

ii. A Health Risk Analysis Must be Prepared

SWAPE found that potentially significant impacts to public health were undisclosed and the Project failed to provide sufficient information regarding the Project's potential health risk impacts.⁸⁴ The Project will produce emissions of diesel particulate matter ("DPM") through the exhaust stacks of construction equipment throughout its construction period, and will generate daily vehicle trips, which will generate additional exhaust emissions and continue to expose nearby sensitive receptors to DPM emissions.⁸⁵ The City, however, failed to make a reasonable effort to connect the Project's construction-related and operational toxic air contaminant ("TAC") emissions to the potential health risks posed to nearby receptors.⁸⁶ These pose a significant risk to public health, and should be disclosed and mitigated in an EIR.

⁸² SWAPE Comments, p. 3.

⁸³ Id.; California Environmental Quality Act Air Quality Guidelines. BAAQMD, May 2017, *available at*: https://www.baaqmd.gov/~media/files/planning-and-research/ceqa/ceqa_guidelines_may2017-pdf.pdf?la=en, p. 2-2, Table 2-1.

⁸⁴ SWAPE Comments, p. 4.

⁸⁵ *Id.*

⁸⁶ *Id.*

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CEQA requires that a lead agency analyze the human health effects of the air emissions generated by a development project.⁸⁷ Additionally, as SWAPE explained, the Office of Environmental Health Hazard Assessment (“OEHHA”), recommends that exposure from projects lasting more than 6 months be evaluated for the duration of the project and recommends that an exposure duration of 30 years be used to estimate individual cancer risk for the maximally exposed individual resident (“MEIR”).⁸⁸

SWAPE calculated the Project’s excess cancer risk to the MEIR using applicable HRA methodologies prescribed by OEHHA:

Consistent with the default CalEEMod construction schedule, the annualized average concentration for construction was used for the entire third trimester of pregnancy (0.25 years) and the first 1.28 years of the infantile stage of life (0 – 2 years). The annualized averaged concentration for operation was used for the remainder of the 30-year exposure period, which makes up the remainder of the infantile stage of life, and the entire child and adult stages of life (2 – 16 years) and (16 – 30 years), respectively.⁸⁹

Consistent with OEHHA, as recommended by SCAQMD, BAAQMD, and SJVAPCD guidance, we used Age Sensitivity Factors (“ASFs”) to account for the heightened susceptibility of young children to the

⁸⁷ CEQA Appendix G, Section III.D; CEQA Guidelines section 15126.2(a) (“health and safety problems caused by the physical changes” that the proposed project will precipitate); *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 516; *Berkeley Keep Jets. v. Bd. of Port Comrs.* (“*Berkeley Jets*”) (2001) 91 Cal.App.4th 1344, 1369; *Bakersfield*, 124 Cal.App.4th at 1219–1220.

⁸⁸ SWAPE Comments, p. 4; Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments. OEHHA, February 2015, available at: http://oehha.ca.gov/air/hot_spots/2015/2015GuidanceManual.pdf, p. 8-6, 8-15

⁸⁹ SWAPE Comments, p. 5.
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carcinogenic toxicity of air pollution.^{90, 91, 92, 93} According to this guidance, the quantified cancer risk should be multiplied by a factor of ten during the third trimester of pregnancy and during the first two years of life (infant) as well as multiplied by a factor of three during the child stage of life (2 – 16 years). Furthermore, in accordance with the guidance set forth by OEHHA, we used the 95th percentile breathing rates for infants.⁹⁴ Finally, according to BAAQMD guidance, we used a Fraction of Time At Home (“FAH”) value of 0.85 for the 3rd trimester and infant receptors, 0.72 for child receptors, and 0.73 for the adult receptors.⁹⁵ We used a cancer potency factor of 1.1 (mg/kg-day)⁻¹ and an averaging time of 25,550 days.

The resulting impacts, SWAPE found, were highly significant and demonstrate a high risk to the health and welfare of the public from the Project:

The excess cancer risk to adults, children, infants, and during the 3rd trimester of pregnancy at the MEIR located approximately 300 meters away, over the course of Project construction and operation, utilizing

⁹⁰ “Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments.” OEHHA, February 2015, *available at*:

<https://oehha.ca.gov/media/downloads/crn/2015guidancemanual.pdf>.

⁹¹ “Draft Environmental Impact Report (DEIR) for the Proposed The Exchange (SCH No. 2018071058).” SCAQMD, March 2019, *available at*: <http://www.aqmd.gov/docs/default-source/ceqa/comment-letters/2019/march/RVC190115-03.pdf?sfvrsn=8>, p. 4.

⁹² “California Environmental Quality Act Air Quality Guidelines.” BAAQMD, May 2017, *available at*: http://www.baaqmd.gov/~media/files/planning-and-research/ceqa/ceqa_guidelines_may2017-pdf.pdf?la=en, p. 56; see also “Recommended Methods for Screening and Modeling Local Risks and Hazards.” BAAQMD, May 2011, *available at*: <http://www.baaqmd.gov/~media/Files/Planning%20and%20Research/CEQA/BAAQMD%20Modeling%20Approach.ashx>, p. 65, 86.

⁹³ “Update to District’s Risk Management Policy to Address OEHHA’s Revised Risk Assessment Guidance Document.” SJVAPCD, May 2015, *available at*: <https://www.valleyair.org/busind/pto/staff-report-5-28-15.pdf>, p. 8, 20, 24.

⁹⁴ “Supplemental Guidelines for Preparing Risk Assessments for the Air Toxics ‘Hot Spots’ Information and Assessment Act,” June 5, 2015, *available at*: <http://www.aqmd.gov/docs/default-source/planning/risk-assessment/ab2588-risk-assessment-guidelines.pdf?sfvrsn=6>, p. 19. “Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments.” OEHHA, February 2015, *available at*:

<https://oehha.ca.gov/media/downloads/crn/2015guidancemanual.pdf>

⁹⁵ “Air Toxics NSR Program Health Risk Assessment (HRA) Guidelines.” BAAQMD, January 2016, *available at*: http://www.baaqmd.gov/~media/files/planning-and-research/rules-and-regs/workshops/2016/reg-2-5/hra-guidelines_clean_jan_2016-pdf.pdf?la=en
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ASFs, are approximately 2.4, 15, 23, and 1.1 in one million, respectively. We estimate an excess cancer risk of approximately 42 in one million over the course of a residential lifetime (30 years), utilizing ASFs. The infant, child, and lifetime cancer risks exceed the BAAQMD threshold of 10 in one million, thus resulting in a potentially significant impact.

Neither the General Plan EIR nor the Staff Report disclose this potentially significant health risk impact from the Project. This is new information about significant impacts that were not analyzed in the General Plan EIR because this specific development project was not before the City at the time the General Plan was approved. The City must prepare an EIR to fully disclose the health risk posed to nearby, existing receptors from Project construction and operation, and to require binding mitigation measures to reduce the health impacts from the Project's DPM emissions to less than significant levels.

iii. GHG Emissions Will be Significant

Because the City failed to conduct any project-specific impact analysis, the Staff Report and supporting documentation lack sufficient information regarding the Project's potentially significant GHG emissions.

SWAPE conducted an analysis of the Project's GHG emissions utilizing its CalEEMod model, with the 2030 "Substantial Progress" threshold of 660 metric tons of carbon dioxide equivalents per year ("MT CO₂e/year").⁹⁶ The CalEEMod output files, modeled by SWAPE with Project-specific information, showed "the Project's mitigated emissions, which include approximately 1,389 MT CO₂e of total construction emissions (sum of 2021 and 2022 emissions) and approximately 5,250 MT CO₂e/year of annual operational emissions (sum of area, energy, mobile, waste,

⁹⁶ SWAPE Comments, p. 9; See: JEFFERSON UNION HIGH SCHOOL DISTRICT FACULTY & STAFF HOUSING PROJECT AIR QUALITY & GREENHOUSE GAS ASSESSMENT. City of Daly City, June 2019, available at: https://files.ceqanet.opr.ca.gov/257215-2/attachment/k-aC8VdC7LV3xz75yuUmtGiiExH-Y7HEPQ-dU-YIxuhNp95Dx9bK_TbVP3sWar00-Zx87dh7ji80vbRH0, p. 7; "TO 20-01 PAPÉ MACHINERY AIR QUALITY & GREENHOUSE GAS EMISSIONS ASSESSMENT." City of Fremont, February 2020, available at: "SOLAR4AMERICA ICE FACILITY EXPANSION AIR QUALITY AND GREENHOUSE GAS EMISSION ASSESSMENT." City of San Jose, September 2019, available at: https://www.fremont.gov/DocumentCenter/View/44974/4_Appendix-1_Air-Quality-GHG-Assessment, p. 18; and <https://www.sanjoseca.gov/Home/ShowDocument?id=45200>, p. 6. 5175-002acp

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and water-related emissions). When compared to the Project's net annual GHG emissions of 853 MT CO₂e/year to the Bay Area Air Quality Management District's ("BAAQMD") 2030 "Substantial Progress" threshold of 660 MT CO₂e/year, SWAPE found a potentially significant GHG impact, exceeding the "Substantial Progress" threshold by eightfold.⁹⁷

The Project's potentially significant GHG impacts are new information that was not analyzed in the General Plan EIR which must be fully disclosed and mitigated in an EIR.

B. Transportation

The City asserts that CEQA review is not required for the Project because the General Plan EIR evaluated impacts specific enough to release the Applicant or agency from any duty to perform subsequent environmental review. As Mr. Smith points out, however, the projected 2035 impacts to the intersections surrounding the Project site that are listed in the General Plan EIR are far less significant than those anticipated as a result of the Morgan Hill Technology Center in that project's DEIR.⁹⁸ Some of the relevant intersections, meanwhile, were not evaluated at all in the General Plan EIR. Impacts resulting from specific development of the Project site were clearly not evaluated in the General Plan EIR, necessitating further environmental review.⁹⁹

⁹⁷ SWAPE Comments, p. 9; See: "JEFFERSON UNION HIGH SCHOOL DISTRICT FACULTY & STAFF HOUSING PROJECT AIR QUALITY & GREENHOUSE GAS ASSESSMENT." City of Daly City, June 2019, available at: https://files.ceqanet.opr.ca.gov/257215-2/attachment/k-aC8VdC7LV3xz75yuUmtGiiExH-Y7HEPQ-dU-YIxuhNp95Dx9bK_TbVP3sWar00-Zx87dh7ji80vbRH0, p. 7; "TO 20-01 PAPÉ MACHINERY AIR QUALITY & GREENHOUSE GAS EMISSIONS ASSESSMENT." City of Fremont, February 2020, available at: "SOLAR4AMERICA ICE FACILITY EXPANSION AIR QUALITY AND GREENHOUSE GAS EMISSION ASSESSMENT." City of San Jose, September 2019, available at: https://www.fremont.gov/DocumentCenter/View/44974/4_Appendix-1_Air-Quality-GHG-Assessment, p. 18; and <https://www.sanjoseca.gov/Home/ShowDocument?id=45200>, p. 6.

⁹⁸ The General Plan EIR estimated that the intersection of Cochrane Road and DePaul Drive would operate at average delays per vehicle of 18.6 seconds and 19.8 seconds in the morning and evening peak periods, respectively. It found that the intersection of Cochrane Road and Mission View Drive would operate at average delays per vehicle of 20.2 seconds and 19.0 seconds in the morning and evening peaks. These values are characteristic of what the Morgan Hill Technology Center DEIR reports as *existing conditions*. It estimates significantly higher impacts to the intersections as a result of that larger project. General Plan EIR 4.14-43.

⁹⁹ Smith Comments, p. 4.
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Furthermore, Mr. Smith explains, the DEIR prepared for the Morgan Hill Technology Center project acknowledged that the General Plan EIR did not contemplate the development at issue in that project.¹⁰⁰ As one of its project alternatives, it compared potential project impacts with those estimated in the General Plan EIR buildout of the site. A Traffic Analysis concluded that, using the City's Travel Demand Forecasting Model and the General Plan's 20-year estimation for buildout of the site, VMT would increase significantly with development of the Technology Park project.¹⁰¹ That project, the analysis determined, would result in nearly double the number of miles traveled.¹⁰² The DEIR, however, attempted to cast doubt on the veracity of this conclusion by asserting that the development projections included in the General Plan EIR were "significantly lower" in intensity and "not reflective of the maximum allowed uses under the existing General Plan designations and zoning districts."¹⁰³ The DEIR acknowledges, therefore, that the Technology Park project and its specific development could not have been under consideration in the General Plan's environmental review. Likewise, the General Plan could not have contemplated this Project, as the larger Technology Center encompassed this Project's development.¹⁰⁴

Mr. Smith examined the DEIR prepared for the larger project proposed at the site. The traffic analysis performed for that DEIR, he found, showed highly significant deteriorations at the intersections surrounding the project site, from LOS B or C to LOS F in one or the other of the peak hours:

- The intersection of Cochrane Road with DePaul Drive would deteriorate in the PM peak hour from 18.7 seconds average delay per vehicle and LOS B to 101 seconds per vehicle and LOS F.
- The intersection of Cochrane Road and Mission View Drive would deteriorate in the AM peak hour from 23.0 seconds average delay per vehicle and LOS C to 94.6 seconds per vehicle and LOS F.
- The intersection of Mission View Drive and Half Road would deteriorate from 22.6 seconds average delay per vehicle and LOS C in the PM peak hour to 136.9 seconds and LOS F.¹⁰⁵

¹⁰⁰ *Id.*

¹⁰¹ Technology Park DEIR, p. 160; Technology Park DEIR Traffic Impact Analysis, Appendix H, p. 79.

¹⁰² *Id.*

¹⁰³ Technology Park DEIR, p. 201; Smith Comments, p. 4.

¹⁰⁴ MHMC, Sustainable Building Regulations, § 17.32.040.

¹⁰⁵ Smith Comments, p. 3.

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He further explained: If one takes the trip generation for the RedwoodTech@101 Project as fairly calculated in the section above and assumes its share of responsibility for the delay increments disclosed in the Morgan Hill Technology Center Mixed-Use Project DEIR is proportional to the ratio of its trip generation to that of the whole Mixed-Use Project, then the following results are obtained:

- The RedwoodTech@101 Project would cause the intersection of Cochrane Road with DePaul Drive to deteriorate in the PM peak hour from 18.7 seconds average delay per vehicle and LOS B to approximately 63.55 seconds delay and LOS E in the PM peak.
- The intersection of Cochrane Road and Mission View Drive would deteriorate in the AM peak hour from 23.0 seconds average delay per vehicle and LOS C to approximately 78.99 seconds and LOS E in the AM peak.
- The intersection of Mission View Drive and Half Road would deteriorate from 22.6 seconds average delay per vehicle and LOS C in the PM peak hour to approximately 84.89 seconds and LOS F.¹⁰⁶

“The fact that the revised and renamed Project,” Mr. Smith stated, “could have effects on this scale should have been obvious to the City.”¹⁰⁷ This is new information about significant transportation impacts that were not analyzed in the General Plan EIR because this specific development project was not before the City at the time the General Plan was approved. The City must prepare an EIR to disclose and mitigate these impacts.

C. Noise

Noise expert Deborah Jue, in examining the DEIR prepared for the prior Technology Center Project, found that noise impacts were not properly identified, relying on incorrect distances between the noise sensitive land use and the project construction.¹⁰⁸ This error, she explained, may result in an inaccurate analysis of impacts for the Redwood 101 Project.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ Jue Comments, p. 1: “Construction noise analyses can be done using the shortest distance between the noise sensitive land use and the work area for the project, or it can be done using the distance from the noise sensitive land use to the center, or possibly the centroid of the project. Given 5175-002acp

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The prior analysis identified a significance threshold of 60 dBA hourly Leq for construction noise received at residential land use and 70 dBA hourly Leq received at commercial land use. Ambient noise in excess of these thresholds by at least 5 dBA for more than one year would constitute a significant temporary noise increase.¹⁰⁹

Ms. Jue explained the measurements contained in the prior analysis:

[O]nly a short-term noise measurement was made near the residential neighborhood on Tolusa Place (ST-1) measuring two short 10-minute periods ranging from 58 to 62 dBA Leq; given the location's distance from the main arterial and highway noise sources, it is expected that the ambient at the future residential project, which is being permitted concurrently, would be more similar to the noise measurement data collected at ST-2 near the medical facilities which yielded 64 dBA Leq. According to the prior analysis, construction noise which exceeds 60 dBA Leq and 63 dBA Leq over the course of a year would be significant at the Tolusa Place residents, and construction noise which exceeds 60 dBA Leq and 68 dBA Leq over the course of the year would be significant at the future residential project.¹¹⁰

Putting this one-year allowance into context, Ms. Jue pointed out that the Oakland Noise Ordinance limits long-term construction projects that last more than 10 days to 65 dBA at residential land use and 70 at commercial land use, regardless of the existing ambient conditions. From this perspective, Ms. Jue stated, "the one-year requirement to determine significance seems particularly lenient."¹¹¹

Since the Project is being permitted concurrently with the residential component of the Technology Center project, residents could experience a full year or more of cumulative construction noise. The noise levels at the east residential neighborhood would exceed 60 dBA Leq and the existing environment of 58 dBA would be increased by 5 dBA or more for a period of a year or more.¹¹²

that the extent of the prior project was so large (89 acres), using either of these distances would potentially over-estimate or under-estimate the actual impacts, respectively."

¹⁰⁹ Jue Comments, p. 1.

¹¹⁰ Jue Comments, pp. 1–2.

¹¹¹ Jue Comments, p. 2.

¹¹² Jue Comments, p. 2

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The concurrent residential project would be slightly closer to existing noise sources such as Hwy 101, but still within 50 ft of the project construction. If completed prior to the commercial project, Ms. Jue explained, “some number of homes within the future residential project would be exposed to a significant noise impact as shown in Table 3. The noise levels would exceed 60 dBA Leq and the existing environment of 64 dBA would be increased by 5 dBA or more for a period of a year or more.”¹¹³

Table 1 Construction Noise Impacts from Commercial Buildings at Future Residential Project

Construction Phase	Commercial Project Source to Future Residential	
	Distance to Center: 515 ft	Distance to nearest PL 50 ft
Site Preparation	64	84
Grading	65	85
Trenching	59	79
Build Exterior	63	83
Build Interior	55	75
Paving	63	83

CEQA impact analysis, Ms. Jue points out, is necessary to determine the best mitigation measures to address these temporary, substantial noise impacts. Such measures could include buffer distances and sound barriers. Adequate materials for such sound barriers, she explains, would include “temporary barriers using STC 20-25 blankets on a tubular steel frame or scaffolding or 3 PSF wood frame barriers (e.g., using ¾” thick plywood).”¹¹⁴ The material, she said, should overlap or otherwise be constructed to avoid gaps of any size, and should be high enough to block the line of sight between the construction noise sources and the affected windows.¹¹⁵ “The sound barrier has to interrupt the line of sight between the source(s) and the receiver(s) and the best placement to maximize the sound barrier benefit is close the source or close to the receiver.”¹¹⁶

¹¹³ Jue Comments, 3.

¹¹⁴ Jue Comments, p. 3.

¹¹⁵ *Id.*

¹¹⁶ *Id.*

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Ms. Jue concluded that, because the noise analysis prepared for the prior project appears to contain some errors “which could lead one to conclude that construction activities for the proposed project and the future residential project could be less than significant.”¹¹⁷ This is new information about significant impacts that were not analyzed in the General Plan EIR because this specific development project was not before the City at the time the General Plan was approved. An EIR must be prepared to disclose and mitigate these impacts.

VII. THE CITY CANNOT MAKE THE NECESSARY FINDINGS TO ISSUE A DESIGN PERMIT OR TENTATIVE MAP FOR THE PROJECT

Approval of the Project’s Design Permit and Tentative Map requires factual findings, supported by substantial evidence, pursuant to the Morgan Hill Municipal Code and the State Subdivision Map Act that a proposed subdivision is consistent with the City’s general plan and specific plans, and does not have any detrimental environmental or public health effects.¹¹⁸

The Staff Report claims that the Project is in compliance with the General Plan, Zoning Code and other City Codes as required by Section 17.50.030 of the Municipal Code, but nowhere does it make findings, or offer substantial evidence, that the Project will not have any detrimental environmental or public health effects.

As discussed in Section VI above, substantial evidence demonstrates that the Project is likely to have potentially significant impacts on air quality, public health, climate change, noise, and traffic. Silicon Valley Residents’ experts have provided ample evidence demonstrating the Project’s significant impacts, including:

- Emissions of VOCs and TACs from Project construction and operation will be significant.
- DPM emissions from construction and operation
- The cancer risk from the Project to nearby receptors would be 42 in one million over 30 years, exceeding the BAAQMD threshold of 10 in one million.¹¹⁹

¹¹⁷ Jue Comments, p. 4.

¹¹⁸ Gov Code §§66473.5, 66474; MHMC 18.108.040(A).

¹¹⁹ SWAPE Comments, p. 8.
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- Traffic and transportation in the Project vicinity could be significantly impacted by Project construction and operation.
- Nearby residents could experience significant impacts from noise for a year or more.

These effects have not been disclosed or analyzed by the City, which continues to claim that the General Plan EIR is sufficient to address any potential impacts, despite that document's repeated claim that it did not analyze any project-specific impacts. As a result, the Project fails to comply with mandatory Map Act requirements. The City, therefore, cannot make the requisite findings pursuant to Government Code Sections 66473.5 and 66474 and must deny the Project's Design Permit and Tentative Map.

VIII. CONCLUSION

The City has improperly tried to rely on the 2035 General Plan EIR as a program EIR with analysis sufficient to satisfy CEQA. That EIR, however, was never meant to serve as a review document for specific projects. Many of the impacts likely to result from the Project will be significantly more severe than what was evaluated in the General Plan EIR, while others were never analyzed at all.

Furthermore, the Design Review Permit and Vesting Tentative Map required for the Project cannot be issued. As supported by substantial evidence above and in expert comment letters attached herein, the Project will result in significant and unmitigated impacts that are not disclosed or analyzed by the General Plan EIR. Without further mitigation measures to reduce the Project's significant impacts, the City cannot find that it is not detrimental to public health, safety, or welfare, and thus cannot approve the permits necessary for the Project to move forward.

Sincerely,



Kendra Hartmann

KDH:acp
Attachments

5175-002acp

ATTACHMENT A



Technical Consultation, Data Analysis and
Litigation Support for the Environment

2656 29th Street, Suite 201
Santa Monica, CA 90405

Matt Hagemann, P.G., C.Hg.
(949) 887-9013
mhagemann@swape.com

Paul E. Rosenfeld, PhD
(310) 795-2335
prosenfeld@swape.com

May 24, 2021

Kendra Hartmann
Adams Broadwell Joseph & Cardozo
601 Gateway Blvd #1000
South San Francisco, CA 94080

Subject: Comments on the De Paul – TC Morgan Hill Venture (Redwood Tech at 101) Project

Dear Ms. Hartmann,

We have reviewed the February 2021 Completeness Comment Letter (“Completeness Letter”) for the De Paul – TC Morgan Hill Venture (Redwood Tech at 101) (“Project”) located in the City of Morgan Hill (“City”). The Project proposes to construct five buildings consisting of 501,314-SF of flexible industrial/commercial space and 854 parking spaces on the 28.96-acre site.

Our review concludes that the Completeness Letter fails to adequately evaluate the Project’s air quality, health risk, and greenhouse gas impacts. As a result, emissions and health risk impacts associated with construction and operation of the proposed Project are underestimated and inadequately addressed. An analysis should be prepared to adequately assess and mitigate the potential air quality, health risk, and greenhouse gas impacts that the project may have on the surrounding environment.

Air Quality & Greenhouse Gas

Failure to Evaluate Potential Environmental Impacts

Regarding the Project’s completeness of application, the Completeness Letter states:

“Pursuant to the Permit Streamlining Act (Government Code Chapter 4.5 of Title 7), your application is complete” (p. 1).

Furthermore, regarding the Project’s environmental impacts, the Completeness Letter states:

“Your application is consistent with the existing zoning and General Plan designation of the site. In addition, Environmental Review is not required for Design Review or Tentative Parcel Map

applications; therefore, Environmental Review is not required for the resubmitted project” (p. 3).

As demonstrated above, the Completeness Letter concludes that the Project does not require environmental review. However, this conclusion is unsubstantiated. According to the Permit Streamlining Act:

(a) The information compiled pursuant to Section 65940 shall also indicate the criteria which the agency will apply in order to determine the completeness of any application submitted to it for a development project.

(b) If a public agency is a lead or responsible agency for purposes of the California Environmental Quality Act, Division 13 (commencing with Section 21000) of the Public Resources Code, that criteria shall not require the applicant to submit the informational equivalent of an environmental impact report as part of a complete application, or to otherwise require proof of compliance with that act as a prerequisite to a permit application being deemed complete. However, that criteria may require sufficient information to permit the agency to make the determination required by Section 21080.1 of the Public Resources Code (emphasis added).¹

Section 21080.1 of the Public Resources Code states:

“The lead agency shall be responsible for determining whether an environmental impact report, a negative declaration, or a mitigated negative declaration shall be required for any project which is subject to this division.”²

As demonstrated in the excerpts above, the criteria required to determine the completeness of an application does not require the applicant to submit information equivalent to an environmental impact report pursuant to CEQA. However, sufficient information is necessary for a lead agency to determine whether an environmental impact report, a negative declaration, or a mitigated negative declaration is required for the project. Thus, as the Completeness Letter concludes that the Project does not require environmental review, sufficient information regarding the Project’s potential environmental impacts is not available, and the agency is unable to make an informed determination, as required by Section 21080.1 of the Public Resources Code.

¹ “TITLE 7. Planning and Land Use, DIVISION 1. Planning and Zoning, CHAPTER 4.5. Review and Approval of Development Projects, ARTICLE 3. Applications for Development Projects.” California Legislative Information, available at: https://leginfo.ca.gov/faces/codes_displayText.xhtml?lawCode=GOV&division=1.&title=7.&part=&chapter=4.5.&article=3.

² “PUBLIC RESOURCES CODE DIVISION 13 ENVIRONMENTAL QUALITY CHAPTER 2.6 General.” California Legislative Information, available at: https://leginfo.ca.gov/faces/codes_displaySection.xhtml?lawCode=PRC§ionNum=21080.1.

As such, we recommend that the Project not be approved until the preparation of an adequate environmental analysis evaluates the potential air quality, health risk, and greenhouse gas impacts the Project may have on the surrounding environment.

Updated Analysis Indicates a Potentially Significant Air Quality Impact

In an effort to estimate the Project's construction-related and operational emissions, we utilized CalEEMod.2016.3.2, as well as the Project-specific information provided by the Completeness Letter.³ CalEEMod provides recommended default values based on site-specific information, such as land use type, meteorological data, total lot acreage, project type and typical equipment associated with project type. In our model, we included 501,314-SF of "General Light Industry" and 854 spaces of "Parking Lot." We assumed that the Project would be located within Climate Zone 3⁴ and the Project's utilities would be provided by the Pacific Gas and Electric Company.⁵ All other values were left as default.

Our updated analysis estimates that the Project's construction-related VOC emissions exceed the applicable BAAQMD threshold of 54 pounds per day ("lbs/day") (see table below).⁶

Maximum Daily Construction-Related Emissions:

Model	ROG
SWAPE Construction	268.96
BAAQMD Threshold (lbs/day)	137
Threshold Exceeded?	Yes

As you can see in the excerpt above, the Project's construction-related VOC emissions, as estimated by SWAPE, exceed the applicable BAAQMD significance threshold. Thus, our model demonstrates that the Project would result in a potentially significant air quality impact that was not previously identified or addressed in the Completeness Letter. As a result, an EIR should be prepared to adequately assess and mitigate the potential air quality impacts that the Project may have on the surrounding environment.

Diesel Particulate Matter Health Risk Emissions Inadequately Evaluated

As previously stated, the Completeness Letter concludes the Project does not require environmental review. However, the Completeness Letter fails to provide sufficient information regarding the Project's potential health risk impacts. We recommend the Project conduct a quantified construction and operational health risk analysis ("HRA") for the following three reasons.

³ CAPCOA (November 2017) CalEEMod User's Guide, http://www.aqmd.gov/docs/default-source/caleemod/01_user-39-s-guide2016-3-2_15november2017.pdf?sfvrsn=4.

⁴ "Appendix F Climate Zones Lookup." CAPCOA, September 2016, available at: http://www.aqmd.gov/docs/default-source/caleemod/upgrades/2016.3/07_appendix-f2016-3-1.pdf?sfvrsn=2, p. F-17.

⁵ "Electric Service Area Maps." Pacific Gas and Electric Company, November 2014, available at: https://www.pge.com/tariffs/assets/pdf/tariffbook/ELEC_MAPS_Service%20Area%20Map.pdf, pp. 2.

⁶ "California Environmental Quality Act Air Quality Guidelines." BAAQMD, May 2017, available at: https://www.baaqmd.gov/~media/files/planning-and-research/ceqa/ceqa_guidelines_may2017-pdf.pdf?la=en, p. 2-2, Table 2-1.

First, construction of the proposed Project will produce emissions of diesel particulate matter (“DPM”) through the exhaust stacks of construction equipment throughout its construction period. Furthermore, the proposed land uses will generate daily vehicle trips, which will generate additional exhaust emissions and continue to expose nearby sensitive receptors to DPM emissions. However, the Completeness Letter fails to make a reasonable effort to connect the Project’s construction-related and operational toxic air contaminant (“TAC”) emissions to the potential health risks posed to nearby receptors. As a result, the Project fails to provide sufficient information regarding the Project’s potential health risk impacts.

Second, the Office of Environmental Health Hazard Assessment (“OEHHA”), the organization responsible for providing guidance on conducting HRAs in California, released its most recent *Risk Assessment Guidelines: Guidance Manual for Preparation of Health Risk Assessments* in February 2015.⁷ This guidance document describes the types of projects that warrant the preparation of an HRA. The OEHHA document recommends that all short-term projects lasting at least two months be evaluated for cancer risks to nearby sensitive receptors.⁸ As Project construction would last approximately 13 months, the anticipated construction duration would exceed the 2-month recommendation set forth by OEHHA, thus meeting the threshold warranting a quantified HRA under OEHHA guidance (Project Description, p. 3).

Furthermore, the OEHHA document recommends that exposure from projects lasting more than 6 months be evaluated for the duration of the project and recommends that an exposure duration of 30 years be used to estimate individual cancer risk for the maximally exposed individual resident (“MEIR”).⁹ Even though we were not provided with the expected lifetime of the Project, we can reasonably assume that the Project will operate for at least 30 years, if not more. Therefore, we recommend that health risk impacts from Project operation also be evaluated, as a 30-year exposure duration vastly exceeds the 6-month recommendation set forth by OEHHA. These recommendations reflect the most recent state health risk policies, and as such, we recommend the Project not be approved until an adequate analysis of the health risk impacts posed to nearby sensitive receptors from Project construction and operation is prepared.

Third, the Project fails to compare the excess health risk impact to the applicable BAAQMD numeric threshold of 10 in one million.¹⁰ Thus, an analysis of the health risk posed to nearby, existing receptors from Project construction and operation should be conducted.

⁷ “Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments.” OEHHA, February 2015, available at: http://oehha.ca.gov/air/hot_spots/hotspots2015.html

⁸ “Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments.” OEHHA, February 2015, available at: http://oehha.ca.gov/air/hot_spots/2015/2015GuidanceManual.pdf, p. 8-18

⁹ “Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments.” OEHHA, February 2015, available at: http://oehha.ca.gov/air/hot_spots/2015/2015GuidanceManual.pdf, p. 8-6, 8-15

¹⁰ “California Environmental Quality Act Air Quality Guidelines.” BAAQMD, May 2017, available at: https://www.baaqmd.gov/~/media/files/planning-and-research/ceqa/ceqa_guidelines_may2017-pdf.pdf?la=en, p. 2-2, Table 2-1.

Screening-Level Analysis Demonstrates Significant Impacts

In order to conduct our screening-level risk assessment we relied upon AERSCREEN, which is a screening level air quality dispersion model.¹¹ The model replaced SCREEN3, and AERSCREEN is included in the OEHHA¹² and the California Air Pollution Control Officers Associated (“CAPCOA”)¹³ guidance as the appropriate air dispersion model for Level 2 health risk screening assessments (“HRSAs”). A Level 2 HRSA utilizes a limited amount of site-specific information to generate maximum reasonable downwind concentrations of air contaminants to which nearby sensitive receptors may be exposed. If an unacceptable air quality hazard is determined to be possible using AERSCREEN, a more refined modeling approach is required prior to approval of the Project.

We prepared a preliminary HRA of the Project’s construction and operational health-related impact to residential sensitive receptors using the annual PM₁₀ exhaust estimates from SWAPE’s air model. Consistent with recommendations set forth by OEHHA, we assumed residential exposure begins during the third trimester stage of life. SWAPE’s CalEEMod output files indicate that construction activities will generate approximately 299 pounds of DPM over the CalEEMod default 559-day construction period. The AERSCREEN model relies on a continuous average emission rate to simulate maximum downward concentrations from point, area, and volume emission sources. To account for the variability in equipment usage and truck trips over Project construction, we calculated an average DPM emission rate by the following equation:

$$\text{Emission Rate} \left(\frac{\text{grams}}{\text{second}} \right) = \frac{298.6 \text{ lbs}}{559 \text{ days}} \times \frac{453.6 \text{ grams}}{\text{lbs}} \times \frac{1 \text{ day}}{24 \text{ hours}} \times \frac{1 \text{ hour}}{3,600 \text{ seconds}} = \mathbf{0.0028 \text{ g/s}}$$

Using this equation, we estimated a construction emission rate of 0.0028 grams per second (“g/s”). Subtracting the 559-day construction period from the total residential duration of 30 years, we assumed that after Project construction, the sensitive receptor would be exposed to the Project’s operational DPM for an additional 28.47 years, approximately. SWAPE’s CalEEMod output indicate that operational activities will generate approximately 123 pounds of DPM per year throughout operation. Applying the same equation used to estimate the construction DPM rate, we estimated the following emission rate for Project operation:

$$\text{Emission Rate} \left(\frac{\text{grams}}{\text{second}} \right) = \frac{123.4 \text{ lbs}}{365 \text{ days}} \times \frac{453.6 \text{ grams}}{\text{lbs}} \times \frac{1 \text{ day}}{24 \text{ hours}} \times \frac{1 \text{ hour}}{3,600 \text{ seconds}} = \mathbf{0.00177 \text{ g/s}}$$

Using this equation, we estimated an operational emission rate of 0.00177 g/s. Construction and operational activity was simulated as a 29-acre rectangular area source in AERSCREEN with dimensions of 500 by 235 meters. A release height of three meters was selected to represent the height of exhaust stacks on operational equipment and other heavy-duty vehicles, and an initial vertical dimension of one-

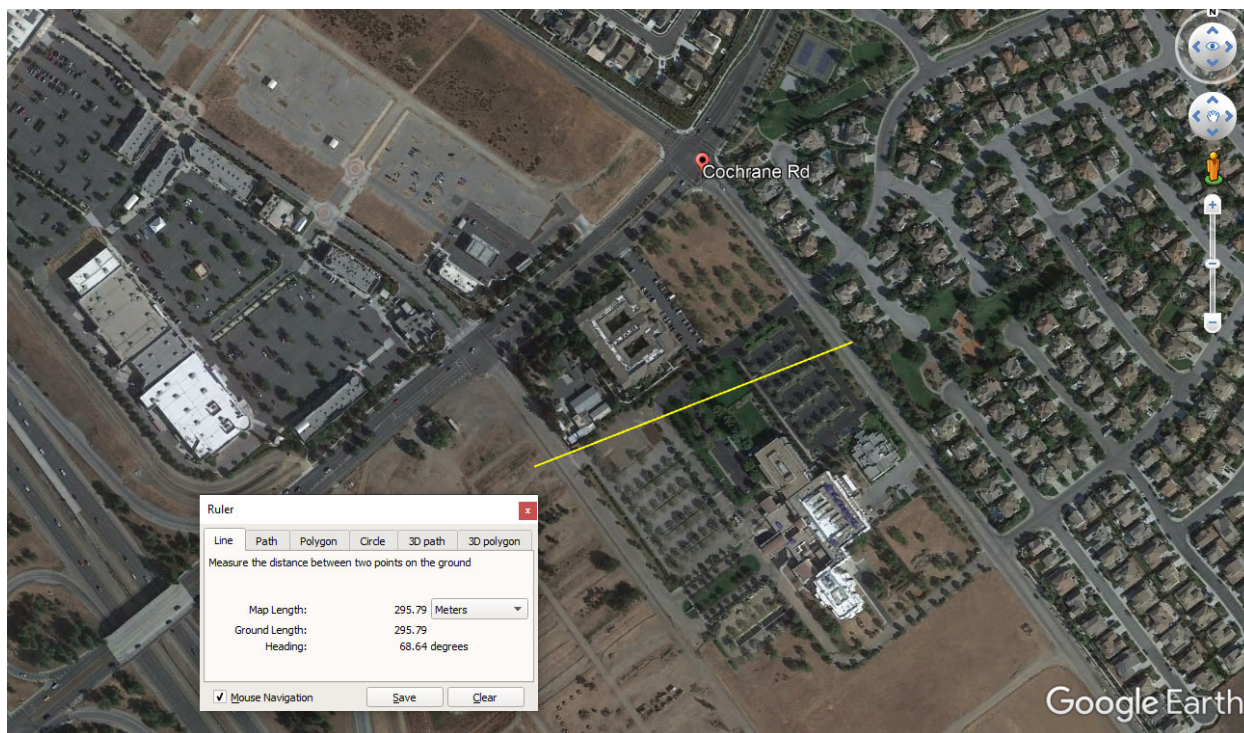
¹¹ U.S. EPA (April 2011) AERSCREEN Released as the EPA Recommended Screening Model, http://www.epa.gov/ttn/scram/guidance/clarification/20110411_AERSCREEN_Release_Memo.pdf

¹² OEHHA (February 2015) Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments, <https://oehha.ca.gov/media/downloads/cnr/2015guidancemanual.pdf>.

¹³ CAPCOA (July 2009) Health Risk Assessments for Proposed Land Use Projects, http://www.capcoa.org/wp-content/uploads/2012/03/CAPCOA_HRA_LU_Guidelines_8-6-09.pdf.

and-a-half meters was used to simulate instantaneous plume dispersion upon release. An urban meteorological setting was selected with model-default inputs for wind speed and direction distribution.

The AERSCREEN model generates maximum reasonable estimates of single-hour DPM concentrations from the Project site. EPA guidance suggests that in screening procedures, the annualized average concentration of an air pollutant be estimated by multiplying the single-hour concentration by 10%.¹⁴ Google Earth demonstrates that the closest sensitive receptors are located approximately 300 meters from the Project site (see excerpt below).



Thus, the single-hour concentration estimated by AERSCREEN for Project construction is approximately $0.934 \mu\text{g}/\text{m}^3$ DPM at approximately 300 meters downwind. Multiplying this single-hour concentration by 10%, we get an annualized average concentration of $0.0934 \mu\text{g}/\text{m}^3$ for Project construction at the MEIR. For Project operation, the single-hour concentration estimated by AERSCREEN is $0.5913 \mu\text{g}/\text{m}^3$ DPM at approximately 300 meters downwind. Multiplying this single-hour concentration by 10%, we get an annualized average concentration of $0.05913 \mu\text{g}/\text{m}^3$ for Project operation at the MEIR.

We calculated the excess cancer risk to the MEIR using applicable HRA methodologies prescribed by OEHHA. Consistent with the default CalEEMod construction schedule, the annualized average concentration for construction was used for the entire third trimester of pregnancy (0.25 years) and the first 1.28 years of the infantile stage of life (0 – 2 years). The annualized averaged concentration for

¹⁴ "Screening Procedures for Estimating the Air Quality Impact of Stationary Sources Revised." EPA, 1992, available at: http://www.epa.gov/ttn/scram/guidance/guide/EPA-454R-92-019_OCR.pdf; see also "Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments." OEHHA, February 2015, available at: <https://oehha.ca.gov/media/downloads/cnr/2015guidancemanual.pdf> p. 4-36.

operation was used for the remainder of the 30-year exposure period, which makes up the remainder of the infantile stage of life, and the entire child and adult stages of life (2 – 16 years) and (16 – 30 years), respectively.

Consistent with OEHHA, as recommended by SCAQMD, BAAQMD, and SJVAPCD guidance, we used Age Sensitivity Factors (“ASFs”) to account for the heightened susceptibility of young children to the carcinogenic toxicity of air pollution.^{15, 16, 17, 18} According to this guidance, the quantified cancer risk should be multiplied by a factor of ten during the third trimester of pregnancy and during the first two years of life (infant) as well as multiplied by a factor of three during the child stage of life (2 – 16 years). Furthermore, in accordance with the guidance set forth by OEHHA, we used the 95th percentile breathing rates for infants.¹⁹ Finally, according to BAAQMD guidance, we used a Fraction of Time At Home (“FAH”) value of 0.85 for the 3rd trimester and infant receptors, 0.72 for child receptors, and 0.73 for the adult receptors.²⁰ We used a cancer potency factor of 1.1 (mg/kg-day)⁻¹ and an averaging time of 25,550 days. The results of our calculations are shown below.

¹⁵ “Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments.” OEHHA, February 2015, available at: <https://oehha.ca.gov/media/downloads/cnr/2015guidancemanual.pdf>.

¹⁶ “Draft Environmental Impact Report (DEIR) for the Proposed The Exchange (SCH No. 2018071058).” SCAQMD, March 2019, available at: <http://www.aqmd.gov/docs/default-source/ceqa/comment-letters/2019/march/RVC190115-03.pdf?sfvrsn=8>, p. 4.

¹⁷ “California Environmental Quality Act Air Quality Guidelines.” BAAQMD, May 2017, available at: http://www.baaqmd.gov/~media/files/planning-and-research/ceqa/ceqa_guidelines_may2017-pdf.pdf?la=en, p. 56; see also “Recommended Methods for Screening and Modeling Local Risks and Hazards.” BAAQMD, May 2011, available at: <http://www.baaqmd.gov/~media/Files/Planning%20and%20Research/CEQA/BAAQMD%20Modeling%20Approach.ashx>, p. 65, 86.

¹⁸ “Update to District’s Risk Management Policy to Address OEHHA’s Revised Risk Assessment Guidance Document.” SJVAPCD, May 2015, available at: <https://www.valleyair.org/busind/pto/staff-report-5-28-15.pdf>, p. 8, 20, 24.

¹⁹ “Supplemental Guidelines for Preparing Risk Assessments for the Air Toxics ‘Hot Spots’ Information and Assessment Act,” June 5, 2015, available at: <http://www.aqmd.gov/docs/default-source/planning/risk-assessment/ab2588-risk-assessment-guidelines.pdf?sfvrsn=6>, p. 19.

“Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments.” OEHHA, February 2015, available at: <https://oehha.ca.gov/media/downloads/cnr/2015guidancemanual.pdf>

²⁰ “Air Toxics NSR Program Health Risk Assessment (HRA) Guidelines.” BAAQMD, January 2016, available at: http://www.baaqmd.gov/~media/files/planning-and-research/rules-and-regs/workshops/2016/reg-2-5/hra-guidelines_clean_jan_2016-pdf.pdf?la=en

The Closest Exposed Individual at an Existing Residential Receptor

Activity	Duration (years)	Concentration (ug/m3)	Breathing Rate (L/kg-day)	Cancer Risk without ASFs*	ASF	Cancer Risk with ASFs*
Construction	0.25	0.0934	361	1.1E-07	10	1.1E-06
3rd Trimester Duration	0.25			1.1E-07	3rd Trimester Exposure	1.1E-06
Construction	1.28	0.0934	1090	1.7E-06	10	1.7E-05
Operation	0.72	0.05913	1090	7.0E-07	10	5.9E-06
Infant Exposure Duration	2.00			2.4E-06	Infant Exposure	2.3E-05
Operation	14.00	0.05913	572	5.1E-06	3	1.5E-05
Child Exposure Duration	14.00			5.1E-06	Child Exposure	1.5E-05
Operation	14.00	0.05913	261	2.4E-06	1	2.4E-06
Adult Exposure Duration	14.00			2.4E-06	Adult Exposure	2.4E-06
Lifetime Exposure Duration	30.00			1.0E-05	Lifetime Exposure	4.2E-05

* We, along with CARB and BAAQMD, recommend using the more updated and health protective 2015 OEHHA guidance, which includes ASFs.

As demonstrated in the table above, the excess cancer risk to adults, children, infants, and during the 3rd trimester of pregnancy at the MEIR located approximately 300 meters away, over the course of Project construction and operation, utilizing ASFs, are approximately 2.4, 15, 23, and 1.1 in one million, respectively. We estimate an excess cancer risk of approximately 42 in one million over the course of a residential lifetime (30 years), utilizing ASFs. The infant, child, and lifetime cancer risks exceed the BAAQMD threshold of 10 in one million, thus resulting in a potentially significant impact.

Utilizing ASFs is the most conservative, health-protective analysis according to the most recent guidance by OEHHA and reflects recommendations from the air district. Results without ASFs are presented in the table above, although we **do not** recommend utilizing these values for health risk analysis. Regardless, the estimated excess cancer risk to adults, children, infants, and during the 3rd trimester of pregnancy at the MEIR located approximately 300 meters away, over the course of Project construction and operation, without ASFs, are approximately 2.4, 5.1, 2.4, and 0.11 in one million, respectively. The estimated excess cancer risk over the course of a residential lifetime (30 years), without ASFs, is approximately 10 in one million.

An agency must include an analysis of health risks that connects the Project's air emissions with the health risk posed by those emissions. Our analysis represents a screening-level HRA, which is known to

be conservative and tends to err on the side of health protection.²¹ The purpose of the screening-level construction and operational HRA shown above is to demonstrate the link between the proposed Project's emissions and the potential health risk. Our screening-level HRA demonstrates that construction and operation of the Project could result in a potentially significant health risk impact, when correct exposure assumptions and up-to-date, applicable guidance are used. Thus, the City should prepare a quantified air pollution model as well as a quantified refined HRA that adequately and accurately evaluates health risk impacts associated with both Project construction and operation.

Screening-Level Assessment Indicates Significant Greenhouse Gas Impacts

As discussed above, the Completeness Letter concludes the Project does not require environmental review. As a result, the Completeness Letter fails to provide sufficient information regarding the Project's potential greenhouse gas ("GHG") impacts. However, as discussed above, the Project would result in potentially significant air quality and health risk impacts. Thus, we recommend that a full environmental analysis, including estimated GHG emissions, be prepared for the Project, prior to approval.

In an effort to evaluate the Project's GHG impacts, we conducted an analysis of the Project's GHG emissions utilizing SWAPE's CalEEMod model, as previously described. To evaluate the Project's estimated GHG emissions, we recommend the use of the widely used 2030 "Substantial Progress" threshold of 660 metric tons of carbon dioxide equivalents per year ("MT CO₂e/year").²² The CalEEMod output files, modeled by SWAPE with Project-specific information, disclose the Project's mitigated emissions, which include approximately 1,389 MT CO₂e of total construction emissions (sum of 2021 and 2022 emissions) and approximately 5,250 MT CO₂e/year of annual operational emissions (sum of area, energy, mobile, waste, and water-related emissions). When we compare the Project's net annual GHG emissions of 853 MT CO₂e/year to the 2030 "Substantial Progress" threshold of 660 MT CO₂e/year, we find a potentially significant GHG impact (see table below).²³

²¹ "Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments." OEHHA, February 2015, available at: <https://oehha.ca.gov/media/downloads/crn/2015guidancemanual.pdf>, p. 1-5

²² See: "JEFFERSON UNION HIGH SCHOOL DISTRICT FACULTY & STAFF HOUSING PROJECT AIR QUALITY & GREENHOUSE GAS ASSESSMENT." City of Daly City, June 2019, available at: https://files.ceganet.opr.ca.gov/257215-2/attachment/k-aC8VdC7LV3xz75yuUmtGiiExH-Y7HEPQ-dU-YlxuhNp95Dx9bK_TbVP3sWar00-Zx87dh7ji80vbRH0, p. 7; "TO 20-01 PAPÉ MACHINERY AIR QUALITY & GREENHOUSE GAS EMISSIONS ASSESSMENT." City of Fremont, February 2020, available at: "SOLAR4AMERICA ICE FACILITY EXPANSION AIR QUALITY AND GREENHOUSE GAS EMISSION ASSESSMENT." City of San Jose, September 2019, available at: https://www.fremont.gov/DocumentCenter/View/44974/4_Appendix-1_Air-Quality-GHG-Assessment, p. 18; and <https://www.sanjoseca.gov/Home/ShowDocument?id=45200>, p. 6.

²³ See: "JEFFERSON UNION HIGH SCHOOL DISTRICT FACULTY & STAFF HOUSING PROJECT AIR QUALITY & GREENHOUSE GAS ASSESSMENT." City of Daly City, June 2019, available at: https://files.ceganet.opr.ca.gov/257215-2/attachment/k-aC8VdC7LV3xz75yuUmtGiiExH-Y7HEPQ-dU-YlxuhNp95Dx9bK_TbVP3sWar00-Zx87dh7ji80vbRH0, p. 7; "TO 20-01 PAPÉ MACHINERY AIR QUALITY & GREENHOUSE GAS EMISSIONS ASSESSMENT." City of Fremont, February 2020, available at: "SOLAR4AMERICA ICE FACILITY EXPANSION AIR QUALITY AND GREENHOUSE GAS EMISSION ASSESSMENT." City of San Jose, September 2019, available at: https://www.fremont.gov/DocumentCenter/View/44974/4_Appendix-1_Air-Quality-GHG-Assessment, p. 18; and <https://www.sanjoseca.gov/Home/ShowDocument?id=45200>, p. 6.

SWAPE Greenhouse Gas Emissions	
Project Phase	Proposed Project (MT CO ₂ e/year)
Construction (amortized over 30 years)	46.29
Area	0.03
Energy	1,887.88
Mobile	2,708.28
Waste	312.61
Water	341.00
Net Annual GHG Emissions	5,296
Threshold	660
<i>Exceed?</i>	<i>Yes</i>

As the table above demonstrates, the Project's net annual GHG emissions, as estimated by SWAPE, exceed the 2030 "Substantial Progress" bright-line threshold, thus demonstrating a potentially significant impact. Therefore, since our screening-level quantitative GHG analysis indicates a potentially significant impact, the City should prepare a Project-specific environmental analysis in order to further evaluate the Project's GHG impacts.

Feasible Mitigation Measures Available to Reduce Emissions

Our analysis demonstrates that the Project would result in potentially significant air quality, health risk, and GHG impacts that should be mitigated further. In an effort to reduce the Project's emissions, we identified several mitigation measures that are applicable to the proposed Project. Feasible mitigation measures can be found in the Department of Justice Warehouse Project Best Practices document.²⁴ Therefore, to reduce the Project's emissions, consideration of the following measures should be made:

- Requiring off-road construction equipment to be zero-emission, where available, and all diesel-fueled off-road construction equipment, to be equipped with CARB Tier IV-compliant engines or better, and including this requirement in applicable bid documents, purchase orders, and contracts, with successful contractors demonstrating the ability to supply the compliant construction equipment for use prior to any ground-disturbing and construction activities.
- Prohibiting off-road diesel-powered equipment from being in the "on" position for more than 10 hours per day.
- Requiring on-road heavy-duty haul trucks to be model year 2010 or newer if diesel-fueled.
- Providing electrical hook ups to the power grid, rather than use of diesel-fueled generators, for electric construction tools, such as saws, drills and compressors, and using electric tools whenever feasible.
- Limiting the amount of daily grading disturbance area.

²⁴ "Warehouse Projects: Best Practices and Mitigation Measures to Comply with the California Environmental Quality Act." State of California Department of Justice.

- Prohibiting grading on days with an Air Quality Index forecast of greater than 100 for particulates or ozone for the project area.
- Forbidding idling of heavy equipment for more than two minutes.
- Keeping onsite and furnishing to the lead agency or other regulators upon request, all equipment maintenance records and data sheets, including design specifications and emission control tier classifications.
- Conducting an on-site inspection to verify compliance with construction mitigation and to identify other opportunities to further reduce construction impacts.
- Using paints, architectural coatings, and industrial maintenance coatings that have volatile organic compound levels of less than 10 g/L.
- Providing information on transit and ridesharing programs and services to construction employees.
- Providing meal options onsite or shuttles between the facility and nearby meal destinations for construction employees.
- Requiring that all facility-owned and operated fleet equipment with a gross vehicle weight rating greater than 14,000 pounds accessing the site meet or exceed 2010 model-year emissions equivalent engine standards as currently defined in California Code of Regulations Title 13, Division 3, Chapter 1, Article 4.5, Section 2025. Facility operators shall maintain records on-site demonstrating compliance with this requirement and shall make records available for inspection by the local jurisdiction, air district, and state upon request.
- Requiring all heavy-duty vehicles entering or operated on the project site to be zero-emission beginning in 2030.
- Requiring on-site equipment, such as forklifts and yard trucks, to be electric with the necessary electrical charging stations provided.
- Requiring tenants to use zero-emission light- and medium-duty vehicles as part of business operations.
- Forbidding trucks from idling for more than two minutes and requiring operators to turn off engines when not in use.
- Posting both interior- and exterior-facing signs, including signs directed at all dock and delivery areas, identifying idling restrictions and contact information to report violations to CARB, the air district, and the building manager.

These measures offer a cost-effective, feasible way to incorporate lower-emitting design features into the proposed Project, which subsequently, reduce emissions released during Project construction and operation. An adequate environmental review should be prepared to include all feasible mitigation measures, as well as include an updated air quality, health risk, and GHG analysis to ensure that the necessary mitigation measures are implemented to reduce emissions to below thresholds.

Disclaimer

SWAPE has received limited discovery regarding this project. Additional information may become available in the future; thus, we retain the right to revise or amend this report when additional information becomes available. Our professional services have been performed using that degree of

care and skill ordinarily exercised, under similar circumstances, by reputable environmental consultants practicing in this or similar localities at the time of service. No other warranty, expressed or implied, is made as to the scope of work, work methodologies and protocols, site conditions, analytical testing results, and findings presented. This report reflects efforts which were limited to information that was reasonably accessible at the time of the work, and may contain informational gaps, inconsistencies, or otherwise be incomplete due to the unavailability or uncertainty of information obtained or provided by third parties.

Sincerely,



Matt Hagemann, P.G., C.Hg.



Paul E. Rosenfeld, Ph.D.

Attachment A:	SWAPE Health Risk Calculations
Attachment B:	SWAPE Project CalEEMod Modeling
Attachment C:	SWAPE Project AERSCREEN Modeling
Attachment D:	Paul Rosenfeld CV
Attachment E:	Matt Hagemann CV

Tel: (949) 887-9013

Email: mhagemann@swape.com

Matthew F. Hagemann, P.G., C.Hg., QSD, QSP

**Geologic and Hydrogeologic Characterization
Investigation and Remediation Strategies
Litigation Support and Testifying Expert
Industrial Stormwater Compliance
CEQA Review**

Education:

M.S. Degree, Geology, California State University Los Angeles, Los Angeles, CA, 1984.

B.A. Degree, Geology, Humboldt State University, Arcata, CA, 1982.

Professional Certifications:

California Professional Geologist

California Certified Hydrogeologist

Qualified SWPPP Developer and Practitioner

Professional Experience:

Matt has 30 years of experience in environmental policy, contaminant assessment and remediation, stormwater compliance, and CEQA review. He spent nine years with the U.S. EPA in the RCRA and Superfund programs and served as EPA's Senior Science Policy Advisor in the Western Regional Office where he identified emerging threats to groundwater from perchlorate and MTBE. While with EPA, Matt also served as a Senior Hydrogeologist in the oversight of the assessment of seven major military facilities undergoing base closure. He led numerous enforcement actions under provisions of the Resource Conservation and Recovery Act (RCRA) and directed efforts to improve hydrogeologic characterization and water quality monitoring. For the past 15 years, as a founding partner with SWAPE, Matt has developed extensive client relationships and has managed complex projects that include consultation as an expert witness and a regulatory specialist, and a manager of projects ranging from industrial stormwater compliance to CEQA review of impacts from hazardous waste, air quality and greenhouse gas emissions.

Positions Matt has held include:

- Founding Partner, Soil/Water/Air Protection Enterprise (SWAPE) (2003 – present);
- Geology Instructor, Golden West College, 2010 – 2014, 2017;
- Senior Environmental Analyst, Komex H2O Science, Inc. (2000 -- 2003);

- Executive Director, Orange Coast Watch (2001 – 2004);
- Senior Science Policy Advisor and Hydrogeologist, U.S. Environmental Protection Agency (1989–1998);
- Hydrogeologist, National Park Service, Water Resources Division (1998 – 2000);
- Adjunct Faculty Member, San Francisco State University, Department of Geosciences (1993 – 1998);
- Instructor, College of Marin, Department of Science (1990 – 1995);
- Geologist, U.S. Forest Service (1986 – 1998); and
- Geologist, Dames & Moore (1984 – 1986).

Senior Regulatory and Litigation Support Analyst:

With SWAPE, Matt's responsibilities have included:

- Lead analyst and testifying expert in the review of over 300 environmental impact reports and negative declarations since 2003 under CEQA that identify significant issues with regard to hazardous waste, water resources, water quality, air quality, greenhouse gas emissions, and geologic hazards. Make recommendations for additional mitigation measures to lead agencies at the local and county level to include additional characterization of health risks and implementation of protective measures to reduce worker exposure to hazards from toxins and Valley Fever.
- Stormwater analysis, sampling and best management practice evaluation at more than 100 industrial facilities.
- Expert witness on numerous cases including, for example, MTBE litigation, air toxins at hazards at a school, CERCLA compliance in assessment and remediation, and industrial stormwater contamination.
- Technical assistance and litigation support for vapor intrusion concerns.
- Lead analyst and testifying expert in the review of environmental issues in license applications for large solar power plants before the California Energy Commission.
- Manager of a project to evaluate numerous formerly used military sites in the western U.S.
- Manager of a comprehensive evaluation of potential sources of perchlorate contamination in Southern California drinking water wells.
- Manager and designated expert for litigation support under provisions of Proposition 65 in the review of releases of gasoline to sources drinking water at major refineries and hundreds of gas stations throughout California.

With Komex H2O Science Inc., Matt's duties included the following:

- Senior author of a report on the extent of perchlorate contamination that was used in testimony by the former U.S. EPA Administrator and General Counsel.
- Senior researcher in the development of a comprehensive, electronically interactive chronology of MTBE use, research, and regulation.
- Senior researcher in the development of a comprehensive, electronically interactive chronology of perchlorate use, research, and regulation.
- Senior researcher in a study that estimates nationwide costs for MTBE remediation and drinking water treatment, results of which were published in newspapers nationwide and in testimony against provisions of an energy bill that would limit liability for oil companies.
- Research to support litigation to restore drinking water supplies that have been contaminated by MTBE in California and New York.

- Expert witness testimony in a case of oil production-related contamination in Mississippi.
- Lead author for a multi-volume remedial investigation report for an operating school in Los Angeles that met strict regulatory requirements and rigorous deadlines.
- Development of strategic approaches for cleanup of contaminated sites in consultation with clients and regulators.

Executive Director:

As Executive Director with Orange Coast Watch, Matt led efforts to restore water quality at Orange County beaches from multiple sources of contamination including urban runoff and the discharge of wastewater. In reporting to a Board of Directors that included representatives from leading Orange County universities and businesses, Matt prepared issue papers in the areas of treatment and disinfection of wastewater and control of the discharge of grease to sewer systems. Matt actively participated in the development of countywide water quality permits for the control of urban runoff and permits for the discharge of wastewater. Matt worked with other nonprofits to protect and restore water quality, including Surfrider, Natural Resources Defense Council and Orange County CoastKeeper as well as with business institutions including the Orange County Business Council.

Hydrogeology:

As a Senior Hydrogeologist with the U.S. Environmental Protection Agency, Matt led investigations to characterize and cleanup closing military bases, including Mare Island Naval Shipyard, Hunters Point Naval Shipyard, Treasure Island Naval Station, Alameda Naval Station, Moffett Field, Mather Army Airfield, and Sacramento Army Depot. Specific activities were as follows:

- Led efforts to model groundwater flow and contaminant transport, ensured adequacy of monitoring networks, and assessed cleanup alternatives for contaminated sediment, soil, and groundwater.
- Initiated a regional program for evaluation of groundwater sampling practices and laboratory analysis at military bases.
- Identified emerging issues, wrote technical guidance, and assisted in policy and regulation development through work on four national U.S. EPA workgroups, including the Superfund Groundwater Technical Forum and the Federal Facilities Forum.

At the request of the State of Hawaii, Matt developed a methodology to determine the vulnerability of groundwater to contamination on the islands of Maui and Oahu. He used analytical models and a GIS to show zones of vulnerability, and the results were adopted and published by the State of Hawaii and County of Maui.

As a hydrogeologist with the EPA Groundwater Protection Section, Matt worked with provisions of the Safe Drinking Water Act and NEPA to prevent drinking water contamination. Specific activities included the following:

- Received an EPA Bronze Medal for his contribution to the development of national guidance for the protection of drinking water.
- Managed the Sole Source Aquifer Program and protected the drinking water of two communities through designation under the Safe Drinking Water Act. He prepared geologic reports, conducted

public hearings, and responded to public comments from residents who were very concerned about the impact of designation.

- Reviewed a number of Environmental Impact Statements for planned major developments, including large hazardous and solid waste disposal facilities, mine reclamation, and water transfer.

Matt served as a hydrogeologist with the RCRA Hazardous Waste program. Duties were as follows:

- Supervised the hydrogeologic investigation of hazardous waste sites to determine compliance with Subtitle C requirements.
- Reviewed and wrote "part B" permits for the disposal of hazardous waste.
- Conducted RCRA Corrective Action investigations of waste sites and led inspections that formed the basis for significant enforcement actions that were developed in close coordination with U.S. EPA legal counsel.
- Wrote contract specifications and supervised contractor's investigations of waste sites.

With the National Park Service, Matt directed service-wide investigations of contaminant sources to prevent degradation of water quality, including the following tasks:

- Applied pertinent laws and regulations including CERCLA, RCRA, NEPA, NRDA, and the Clean Water Act to control military, mining, and landfill contaminants.
- Conducted watershed-scale investigations of contaminants at parks, including Yellowstone and Olympic National Park.
- Identified high-levels of perchlorate in soil adjacent to a national park in New Mexico and advised park superintendent on appropriate response actions under CERCLA.
- Served as a Park Service representative on the Interagency Perchlorate Steering Committee, a national workgroup.
- Developed a program to conduct environmental compliance audits of all National Parks while serving on a national workgroup.
- Co-authored two papers on the potential for water contamination from the operation of personal watercraft and snowmobiles, these papers serving as the basis for the development of nation-wide policy on the use of these vehicles in National Parks.
- Contributed to the Federal Multi-Agency Source Water Agreement under the Clean Water Action Plan.

Policy:

Served senior management as the Senior Science Policy Advisor with the U.S. Environmental Protection Agency, Region 9.

Activities included the following:

- Advised the Regional Administrator and senior management on emerging issues such as the potential for the gasoline additive MTBE and ammonium perchlorate to contaminate drinking water supplies.
- Shaped EPA's national response to these threats by serving on workgroups and by contributing to guidance, including the Office of Research and Development publication, Oxygenates in Water: Critical Information and Research Needs.
- Improved the technical training of EPA's scientific and engineering staff.
- Earned an EPA Bronze Medal for representing the region's 300 scientists and engineers in negotiations with the Administrator and senior management to better integrate scientific

principles into the policy-making process.

- Established national protocol for the peer review of scientific documents.

Geology:

With the U.S. Forest Service, Matt led investigations to determine hillslope stability of areas proposed for timber harvest in the central Oregon Coast Range. Specific activities were as follows:

- Mapped geology in the field, and used aerial photographic interpretation and mathematical models to determine slope stability.
- Coordinated his research with community members who were concerned with natural resource protection.
- Characterized the geology of an aquifer that serves as the sole source of drinking water for the city of Medford, Oregon.

As a consultant with Dames and Moore, Matt led geologic investigations of two contaminated sites (later listed on the Superfund NPL) in the Portland, Oregon, area and a large hazardous waste site in eastern Oregon. Duties included the following:

- Supervised year-long effort for soil and groundwater sampling.
- Conducted aquifer tests.
- Investigated active faults beneath sites proposed for hazardous waste disposal.

Teaching:

From 1990 to 1998, Matt taught at least one course per semester at the community college and university levels:

- At San Francisco State University, held an adjunct faculty position and taught courses in environmental geology, oceanography (lab and lecture), hydrogeology, and groundwater contamination.
- Served as a committee member for graduate and undergraduate students.
- Taught courses in environmental geology and oceanography at the College of Marin.

Matt is currently a part time geology instructor at Golden West College in Huntington Beach, California where he taught from 2010 to 2014 and in 2017.

Invited Testimony, Reports, Papers and Presentations:

Hagemann, M.F., 2008. Disclosure of Hazardous Waste Issues under CEQA. Presentation to the Public Environmental Law Conference, Eugene, Oregon.

Hagemann, M.F., 2008. Disclosure of Hazardous Waste Issues under CEQA. Invited presentation to U.S. EPA Region 9, San Francisco, California.

Hagemann, M.F., 2005. Use of Electronic Databases in Environmental Regulation, Policy Making and Public Participation. Brownfields 2005, Denver, Colorado.

Hagemann, M.F., 2004. Perchlorate Contamination of the Colorado River and Impacts to Drinking Water in Nevada and the Southwestern U.S. Presentation to a meeting of the American Groundwater Trust, Las Vegas, NV (served on conference organizing committee).

Hagemann, M.F., 2004. Invited testimony to a California Senate committee hearing on air toxins at schools in Southern California, Los Angeles.

Brown, A., Farrow, J., Gray, A. and **Hagemann, M.**, 2004. An Estimate of Costs to Address MTBE Releases from Underground Storage Tanks and the Resulting Impact to Drinking Water Wells. Presentation to the Ground Water and Environmental Law Conference, National Groundwater Association.

Hagemann, M.F., 2004. Perchlorate Contamination of the Colorado River and Impacts to Drinking Water in Arizona and the Southwestern U.S. Presentation to a meeting of the American Groundwater Trust, Phoenix, AZ (served on conference organizing committee).

Hagemann, M.F., 2003. Perchlorate Contamination of the Colorado River and Impacts to Drinking Water in the Southwestern U.S. Invited presentation to a special committee meeting of the National Academy of Sciences, Irvine, CA.

Hagemann, M.F., 2003. Perchlorate Contamination of the Colorado River. Invited presentation to a tribal EPA meeting, Pechanga, CA.

Hagemann, M.F., 2003. Perchlorate Contamination of the Colorado River. Invited presentation to a meeting of tribal representatives, Parker, AZ.

Hagemann, M.F., 2003. Impact of Perchlorate on the Colorado River and Associated Drinking Water Supplies. Invited presentation to the Inter-Tribal Meeting, Torres Martinez Tribe.

Hagemann, M.F., 2003. The Emergence of Perchlorate as a Widespread Drinking Water Contaminant. Invited presentation to the U.S. EPA Region 9.

Hagemann, M.F., 2003. A Deductive Approach to the Assessment of Perchlorate Contamination. Invited presentation to the California Assembly Natural Resources Committee.

Hagemann, M.F., 2003. Perchlorate: A Cold War Legacy in Drinking Water. Presentation to a meeting of the National Groundwater Association.

Hagemann, M.F., 2002. From Tank to Tap: A Chronology of MTBE in Groundwater. Presentation to a meeting of the National Groundwater Association.

Hagemann, M.F., 2002. A Chronology of MTBE in Groundwater and an Estimate of Costs to Address Impacts to Groundwater. Presentation to the annual meeting of the Society of Environmental Journalists.

Hagemann, M.F., 2002. An Estimate of the Cost to Address MTBE Contamination in Groundwater (and Who Will Pay). Presentation to a meeting of the National Groundwater Association.

Hagemann, M.F., 2002. An Estimate of Costs to Address MTBE Releases from Underground Storage Tanks and the Resulting Impact to Drinking Water Wells. Presentation to a meeting of the U.S. EPA and State Underground Storage Tank Program managers.

Hagemann, M.F., 2001. From Tank to Tap: A Chronology of MTBE in Groundwater. Unpublished report.

Hagemann, M.F., 2001. Estimated Cleanup Cost for MTBE in Groundwater Used as Drinking Water. Unpublished report.

Hagemann, M.F., 2001. Estimated Costs to Address MTBE Releases from Leaking Underground Storage Tanks. Unpublished report.

Hagemann, M.F., and VanMouwerik, M., 1999. Potential Water Quality Concerns Related to Snowmobile Usage. Water Resources Division, National Park Service, Technical Report.

VanMouwerik, M. and **Hagemann, M.F.** 1999, Water Quality Concerns Related to Personal Watercraft Usage. Water Resources Division, National Park Service, Technical Report.

Hagemann, M.F., 1999, Is Dilution the Solution to Pollution in National Parks? The George Wright Society Biannual Meeting, Asheville, North Carolina.

Hagemann, M.F., 1997, The Potential for MTBE to Contaminate Groundwater. U.S. EPA Superfund Groundwater Technical Forum Annual Meeting, Las Vegas, Nevada.

Hagemann, M.F., and Gill, M., 1996, Impediments to Intrinsic Remediation, Moffett Field Naval Air Station, Conference on Intrinsic Remediation of Chlorinated Hydrocarbons, Salt Lake City.

Hagemann, M.F., Fukunaga, G.L., 1996, The Vulnerability of Groundwater to Anthropogenic Contaminants on the Island of Maui, Hawaii. Hawaii Water Works Association Annual Meeting, Maui, October 1996.

Hagemann, M. F., Fukunaga, G. L., 1996, Ranking Groundwater Vulnerability in Central Oahu, Hawaii. Proceedings, Geographic Information Systems in Environmental Resources Management, Air and Waste Management Association Publication VIP-61.

Hagemann, M.F., 1994. Groundwater Characterization and Cleanup at Closing Military Bases in California. Proceedings, California Groundwater Resources Association Meeting.

Hagemann, M.F. and Sabol, M.A., 1993. Role of the U.S. EPA in the High Plains States Groundwater Recharge Demonstration Program. Proceedings, Sixth Biennial Symposium on the Artificial Recharge of Groundwater.

Hagemann, M.F., 1993. U.S. EPA Policy on the Technical Impracticability of the Cleanup of DNAPL-contaminated Groundwater. California Groundwater Resources Association Meeting.

Hagemann, M.F., 1992. Dense Nonaqueous Phase Liquid Contamination of Groundwater: An Ounce of Prevention... Proceedings, Association of Engineering Geologists Annual Meeting, v. 35.

Other Experience:

Selected as subject matter expert for the California Professional Geologist licensing examinations, 2009-2011.



Technical Consultation, Data Analysis and
Litigation Support for the Environment

SOIL WATER AIR PROTECTION ENTERPRISE

1640 Fifth Street, Suite 204
Santa Monica, California 90401
Attn: Paul Rosenfeld, Ph.D.
Mobil: (310) 795-2335
Office: (310) 434-0110
Fax: (310) 434-0011
Email: prosenfeld@swape.com

Paul Rosenfeld, Ph.D.

Principal Environmental Chemist

Chemical Fate and Transport & Air Dispersion Modeling

Risk Assessment & Remediation Specialist

Education

Ph.D. Soil Chemistry, University of Washington, 1999. Dissertation on VOC filtration.

M.S. Environmental Science, U.C. Berkeley, 1995. Thesis on organic waste economics.

B.A. Environmental Studies, U.C. Santa Barbara, 1991. Thesis on wastewater treatment.

Professional Experience

Dr. Rosenfeld is the Co-Founder and Principal Environmental Chemist at Soil Water Air Protection Enterprise (SWAPE). His focus is the fate and transport of environmental contaminants, risk assessment, and ecological restoration. His project experience ranges from monitoring and modeling of pollution sources as they relate to human and ecological health. Dr. Rosenfeld has investigated and designed remediation programs and risk assessments for contaminated sites containing, petroleum, MtBE and fuel oxygenates, chlorinated solvents, pesticides, radioactive waste, PCBs, PAHs, dioxins, furans, volatile organics, semi-volatile organics, perchlorate, heavy metals, asbestos, PFOA, unusual polymers, and odor. Significant projects performed by Dr. Rosenfeld include the following:

Litigation Support

Client: Missouri Department of Natural Resources (Jefferson City, Missouri)

Serving as an expert in evaluating air pollution and odor emissions from a Republic Landfill in St. Louis, Missouri. Conducted. Project manager overseeing daily, weekly and comprehensive sampling of odor and chemicals.

Client: Louisiana Department of Transportation and Development (Baton Rouge, Louisiana)

Serving as an expert witness, conducting groundwater modeling of an ethylene dichloride DNAPL and soluble plume resulting from spill caused by Conoco Phillips.

Client: Missouri Department of Natural Resources (St. Louis, Missouri)

Serving as a consulting expert and potential testifying expert regarding a landfill fire directly adjacent to another landfill containing radioactive waste. Implemented an air monitoring program testing for over 100 different compounds using approximately 12 different analytical methods.

Client: Baron & Budd, P.C. (Dallas, Texas) and Weitz & Luxenberg (New York, New York)

Served as a consulting expert in MTBE Federal Multi District Litigation (MDL) in New York. Consolidated ground water data, created maps for test cases, constructed damage model, evaluated taste and odor threshold levels. Resulted in a settlement of over \$440 million.

Client: The Buzbee Law Firm (Houston, Texas)

Served as a as an expert in ongoing litigation involving over 50,000+ plaintiffs who are seeking compensation for chemical exposure and reduction in property value resulting from chemicals released from the BP facility.

Client: Environmental Litigation Group (Birmingham, Alabama)

Serving as an expert on property damage, medical monitoring and toxic tort claims that have been filed on behalf of over 13,000 plaintiffs who were exposed to PCBs and dioxins/furans resulting from emissions from Monsanto and Cerro Copper's operations in Sauget, Illinois. Developed AERMOD models to demonstrate plaintiff's exposure.

Client: Baron & Budd P.C. (Dallas Texas) and Korein Tillery (St. Louis, Missouri)

Served as a consulting expert for a Class Action defective product claim filed in Madison County, Illinois against Syngenta and five other manufacturers for atrazine. Evaluated health issues associated with atrazine and determined treatment cost for filtration of public drinking water supplies. Resulted in \$105 million dollar settlement.

Client: The Buzbee Law Firm (Houston, Texas)

Served as a consulting expert in catalyst release and refinery emissions cases against the BP Refinery in Texas City. A jury verdict for 10 employees exposed to catalyst via BP's irresponsible behavior.

Client: Baron & Budd, P.C. (Dallas, Texas)

Served as a consulting expert to calculate the Maximum Allowable Dose Level (MADL) and No Significant Risk Level (NSRL), based on Cal EPA and OEHHA guidelines, for Polychlorinated Biphenyls (PCBs) in fish oil dietary supplements.

Client: Girardi Keese (Los Angeles, California)

Served as an expert testifying on hydrocarbon exposure of a woman who worked on a fuel barge operated by Chevron. Demonstrated that the plaintiff was exposed to excessive amounts of benzene.

Client: Mason & Cawood (Annapolis, Maryland) and Girardi & Keese (Los Angeles, California)

Serving as an expert consultant on the Battlefield Golf Club fly ash disposal site in Chesapeake, VA, where arsenic, other metals and radionuclides are leaching into groundwater, and ash is blowing off-site onto the surrounding communities.

Client: California Earth Mineral Corporation (Culver City, California)

Evaluating the montmorillonite clay deposit located near El Centro, California. Working as a Defense Expert representing an individual who owns a 2,500 acre parcel that will potentially be seized by the United States Navy via eminent domain.

Client: Matthews & Associates (Houston, Texas)

Serving as an expert witness, preparing air model demonstrating residential exposure via emissions from fracking in natural gas wells in Duncan, Texas.

Client: Baron & Budd P.C. (Dallas, Texas) and Korein Tillery (St. Louis, Missouri)

Served as a consulting expert for analysis of private wells relating to litigation regarding compensation of private well owners for MTBE testing. Coordinated data acquisition and GIS analysis evaluating private well proximity to leaking underground storage tanks.

Client: Lurie & Park LLP (Los Angeles, California)

Served as an expert witness evaluating a vapor intrusion toxic tort case that resulted in a settlement. The Superfund site is a 4 ½ mile groundwater plume of chlorinated solvents in Whittier, California.

Client: Mason & Cawood (Annapolis, Maryland)

Evaluated data from the Hess Gasoline Station in northern Baltimore, Maryland that had a release resulting in flooding of plaintiff's homes with gasoline-contaminated water, foul odor, and biofilm growth.

Client: The Buzbee Law Firm (Houston, Texas)

Evaluated air quality resulting from grain processing emissions in Muscatine, Iowa.

Client: Anderson Kill & Olick, P.C. (Ventura, California)

Evaluated historical exposure and lateral and vertical extent of contamination resulting from a ~150 million gallon Exxon Mobil tank farm located near Watts, California.

Client: Packard Law Firm (Petaluma, California)

Served as an expert witness, evaluated lead in Proposition 65 Case where various products were found to have elevated lead levels.

Client: The Buzbee Law Firm (Houston, Texas)

Evaluated data resulting from an oil spill in Port Arthur, Texas.

Client: Nexsen Pruet, LLC (Charleston, South Carolina)

Serving as expert in chlorine exposure in a railroad tank car accident where approximately 120,000 pounds of chlorine were released.

Client: Girardi & Keese (Los Angeles, California)

Serving as an expert investigating hydrocarbon exposure and property damage for ~600 individuals and ~280 properties in Carson, California where homes were constructed above a large tank farm formerly owned by Shell.

Client: Brent Coon Law Firm (Cleveland, Ohio)

Served as an expert, calculating an environmental exposure to benzene, PAHs, and VOCs from a Chevron Refinery in Hooven, Ohio. Conducted AERMOD modeling to determine cumulative dose.

Client: Lundy Davis (Lake Charles, Louisiana)

Served as consulting expert on an oil field case representing the lease holder of a contaminated oil field. Conducted field work evaluating oil field contamination in Sulphur, Louisiana. Property is owned by Conoco Phillips, but leased by Yellow Rock, a small oil firm.

Client: Cox Cox Filo (Lake Charles, Louisiana)

Served as testifying expert on a multimillion gallon oil spill in Lake Charles which occurred on June 19, 2006, resulting in hydrocarbon vapor exposure to hundreds of workers and residents. Prepared air model and calculated exposure concentration. Demonstrated that petroleum odor alone can result in significant health harms.

Client: Cotchett Pitre & McCarthy (San Francisco, California)

Served as testifying expert representing homeowners who unknowingly purchased homes built on an old oil field in Santa Maria, California. Properties have high concentrations of petroleum hydrocarbons in subsurface soils resulting in diminished property value.

Client: Law Offices Of Anthony Liberatore P.C. (Los Angeles, California)

Served as testifying expert representing individuals who rented homes on the Inglewood Oil Field in California. Plaintiffs were exposed to hydrocarbon contaminated water and air, and experienced health harms associated with the petroleum exposure.

Client: Orange County District Attorney (Orange County, California)

Coordinated a review of 143 ARCO gas stations in Orange County to assist the District Attorney's prosecution of CCR Title 23 and California Health and Safety Code violators.

Client: Environmental Litigation Group (Birmingham, Alabama)

Served as a testifying expert in a health effects case against ABC Coke/Drummond Company for polluting a community with PAHs, benzene, particulate matter, heavy metals, and coke oven emissions. Created air dispersion models and conducted attic dust sampling, exposure modeling, and risk assessment for plaintiffs.

Client: Masry & Vitatoe (Westlake Village, California), Engstrom Lipscomb Lack (Los Angeles, California) and Baron & Budd P.C. (Dallas, Texas)

Served as a consulting expert in Proposition 65 lawsuit filed against major oil companies for benzene and toluene releases from gas stations and refineries resulting in contaminated groundwater. Settlement included over \$110 million dollars in injunctive relief.

Client: Tommy Franks Law Firm (Austin, Texas)

Served as expert evaluating groundwater contamination which resulted from the hazardous waste injection program and negligent actions of Morton Thiokol and Rohm Hass. Evaluated drinking water contamination and community exposure.

Client: Baron & Budd P.C. (Dallas, Texas) and Sher Leff (San Francisco, California)

Served as consulting expert for several California cities that filed defective product cases against Dow Chemical and Shell for 1,2,3-trichloropropane groundwater contamination. Generated maps showing capture zones of impacted wells for various municipalities.

Client: Weitz & Luxenberg (New York, New York)

Served as expert on Property Damage and Nuisance claims resulting from emissions from the Countywide Landfill in Ohio. The landfill had an exothermic reaction or fire resulting from aluminum dross dumping, and the EPA fined the landfill \$10,000,000 dollars.

Client: Baron & Budd P.C. (Dallas, Texas)

Served as a consulting expert for a groundwater contamination case in Pensacola, Florida where fluorinated compounds contaminated wells operated by Escambia County.

Client: Environmental Litigation Group (Birmingham, Alabama)

Served as an expert on groundwater case where Exxon Mobil and Helena Chemical released ethylene dichloride into groundwater resulting in a large plume. Prepared report on the appropriate treatment technology and cost, and flaws with the proposed on-site remediation.

Client: Environmental Litigation Group (Birmingham, Alabama)

Served as an expert on air emissions released when a Bartlo Packaging Incorporated facility in West Helena, Arkansas exploded resulting in community exposure to pesticides and smoke from combustion of pesticides.

Client: Omara & Padilla (San Diego, California)

Served as a testifying expert on nuisance case against Nutro Dogfood Company that constructed a large dog food processing facility in the middle of a residential community in Victorville, California with no odor control devices. The facility has undergone significant modifications, including installation of a regenerative thermal oxidizer.

Client: Environmental Litigation Group (Birmingham, Alabama)

Serving as an expert on property damage and medical monitoring claims that have been filed against International Paper resulting from chemical emissions from facilities located in Bastrop, Louisiana; Prattville, Alabama; and Georgetown, South Carolina.

Client: Estep and Shafer L.C. (Kingwood, West Virginia)

Served as expert calculating acid emissions doses to residents resulting from coal-fired power plant emissions in West Virginia using various air models.

Client: Watts Law Firm (Austin, Texas), Woodfill & Pressler (Houston, Texas) and Woska & Associates (Oklahoma City, Oklahoma)

Served as testifying expert on community and worker exposure to CCA, creosote, PAHs, and dioxins/furans from a BNSF and Koppers Facility in Somerville, Texas. Conducted field sampling, risk assessment, dose assessment and air modeling to quantify exposure to workers and community members.

Client: Environmental Litigation Group (Birmingham, Alabama)

Served as expert regarding community exposure to CCA, creosote, PAHs, and dioxins/furans from a Louisiana Pacific wood treatment facility in Florala, Alabama. Conducted blood sampling and environmental sampling to determine environmental exposure to dioxins/furans and PAHs.

Client: Sanders Law Firm (Colorado Springs, Colorado) and Vamvoras & Schwartzberg (Lake Charles, Louisiana)

Served as an expert calculating chemical exposure to over 500 workers from large ethylene dichloride spill in Lake Charles, Louisiana at the Conoco Phillips Refinery.

Client: Baron & Budd P.C. (Dallas, Texas)

Served as consulting expert in a defective product lawsuit against Dow Agroscience focusing on Clopyralid, a recalcitrant herbicide that damaged numerous compost facilities across the United States.

Client: Sullivan Papain Block McGrath & Cannavo (New York, New York) and The Cochran Firm (Dothan, Mississippi)

Served as an expert regarding community exposure to metals, PAHs PCBs, and dioxins/furans from the burning of Ford paint sludge and municipal solid waste in Ringwood, New Jersey.

Client: Rose, Klein & Marias LLP (Los Angeles, California)

Served as an expert in 55 Proposition 65 cases against individual facilities in the Port of Los Angeles and Port of Long Beach. Prepared air dispersion and risk models to demonstrate that each facility emits diesel particulate matter that results in risks exceeding 1/100,000, hence violating the Proposition 65 Statute.

Client: Rose, Klein & Marias LLP (Los Angeles, California) and Environmental Law Foundation (San Francisco, California)

Served as an expert in a Proposition 65 case against potato chip manufacturers. Conducted an analysis of several brands of potato chips for acrylamide concentrations and found that all samples exceeded Proposition 65 No Significant Risk Levels.

Client: Gonzales & Robinson (Westlake Village, California)

Served as a testifying expert in a toxic tort case against Chevron (Ortho) for allowing a community to be contaminated with lead arsenate pesticide. Created air dispersion and soil vadose zone transport models, and evaluated bioaccumulation of lead arsenate in food.

Client: Environment Now (Santa Monica, California)

Served as expert for Environment Now to convince the State of California to file a nuisance claim against automobile manufactures to recover MediCal damages from expenditures on asthma-related health care costs.

Client: Trutanich Michell (Long Beach, California)

Served as expert representing San Pedro Boat Works in the Port of Los Angeles. Prepared air dispersion, particulate air dispersion, and storm water discharge models to demonstrate that Kaiser Bulk Loading is responsible for copper concentrate accumulating in the bay sediment.

Client: Azurix of North America (Fort Myers, Florida)

Provided expert opinions, reports and research pertaining to a proposed County Ordinance requiring biosolids applicators to measure VOC and odor concentrations at application sites' boundaries.

Client: MCP Polyurethane (Pittsburg, Kansas)

Provided expert opinions and reports regarding metal-laden landfill runoff that damaged a running track by causing the reversion of the polyurethane due to its catalytic properties.

Risk Assessment And Air Modeling

Client: Hager, Dewick & Zuengler, S.C. (Green Bay, Wisconsin)

Conducted odor audit of rendering facility in Green Bay, Wisconsin.

Client: ABT-Haskell (San Bernardino, California)

Prepared air dispersion model for a proposed state-of-the-art enclosed compost facility. Prepared a traffic analysis and developed odor detection limits to predict 1, 8, and 24-hour off-site concentrations of sulfur, ammonia, and amine.

Client: Jefferson PRP Group (Los Angeles, California)

Evaluated exposure pathways for chlorinated solvents and hexavalent chromium for human health risk assessment of Los Angeles Academy (formerly Jefferson New Middle School) operated by Los Angeles Unified School District.

Client: Covanta (Susanville, California)

Prepared human health risk assessment for Covanta Energy focusing on agricultural worker exposure to caustic fertilizer.

Client: CIWMB (Sacramento, California)

Used dispersion models to estimate traveling distance and VOC concentrations downwind from a composting facility for the California Integrated Waste Management Board.

Client: Carboquimeca (Bogotá, Columbia)

Evaluated exposure pathways for human health risk assessment for a confidential client focusing on significant concentrations of arsenic and chlorinated solvents present in groundwater used for drinking water.

Client: Navy Base Realignment and Closure Team (Treasure Island, California)

Used Johnson-Ettinger model to estimate indoor air PCB concentrations and compared estimated values with empirical data collected in homes.

Client: San Diego State University (San Diego, California)

Measured CO₂ flux from soils amended with different quantities of biosolids compost at Camp Pendleton to determine CO₂ credit values for coastal sage under fertilized and non-fertilized conditions.

Client: Navy Base Realignment and Closure Team (MCAS Tustin, California)

Evaluated cumulative risk of a multiple pathway scenario for a child resident and a construction worker. Evaluated exposure to air and soil via particulate and vapor inhalation, incidental soil ingestion, and dermal contact with soil.

Client: MCAS Miramar (San Diego, California)

Evaluated exposure pathways of metals in soil by comparing site data to background data. Risk assessment incorporated multiple pathway scenarios assuming child resident and construction worker particulate and vapor inhalation, soil ingestion, and dermal soil contact.

Client: Naval Weapons Station (Seal Beach, California)

Used a multiple pathway model to generate dust emission factors from automobiles driving on dirt roads. Calculated bioaccumulation of metals, PCBs, dioxin congeners and pesticides to estimate human and ecological risk.

Client: King County, Douglas County (Washington State)

Measured PM₁₀ and PM_{2.5} emissions from windblown soil treated with biosolids and a polyacrylamide polymer in Douglas County, Washington. Used Pilat Mark V impactor for measurement and compared data to EPA particulate regulations.

Client: King County (Seattle, Washington)

Created emission inventory for several compost and wastewater facilities comparing VOC, particulate, and fungi concentrations to NIOSH values estimating risk to workers and individuals at neighboring facilities.

Air Pollution Investigation and Remediation**Client: Republic Landfill (Santa Clarita, California)**

Managed a field investigation of odor around a landfill during 30+ events. Used hedonic tone, butanol scale, dilution-to-threshold values, and odor character to evaluate odor sources and character and intensity.

Client: California Biomass (Victorville, California)

Managed a field investigation of odor around landfill during 9+ events. Used hedonic tone, butanol scale, dilution-to-threshold values, and odor character to evaluate odor sources, character and intensity.

Client: ABT-Haskell (Redlands, California)

Assisted in permitting a compost facility that will be completely enclosed with a complex scrubbing system using acid scrubbers, base scrubbers, biofilters, heat exchangers and chlorine to reduce VOC emissions by 99 percent.

Client: Synagro (Corona, California)

Designed and monitored 30-foot by 20-foot by 6-foot biofilter for VOC control at an industrial composting facility in Corona, California to reduce VOC emissions by 99 percent.

Client: Jeff Gage (Tacoma, Washington)

Conducted emission inventory at industrial compost facility using GC/MS analyses for VOCs. Evaluated effectiveness of VOC and odor control systems and estimated human health risk.

Client: Daishowa America (Port Angeles Mill, Washington)

Analyzed industrial paper sludge and ash for VOCs, heavy metals and nutrients to develop a land application program. Metals were compared to federal guidelines to determine maximum allowable land application rates.

Client: Jeff Gage (Puyallup, Washington)

Measured effectiveness of biofilters at composting facility and conducted EPA dispersion models to estimate traveling distance of odor and human health risk from exposure to volatile organics.

Surface Water, Groundwater, and Wastewater Investigation/Remediation**Client: Confidential (Downey, California)**

Managed groundwater investigation to determine horizontal extent of 1,000 foot TCE plume associated with a metal finishing shop.

Client: Confidential (West Hollywood, California)

Designing soil vapor extraction system that is currently being installed for confidential client. Managing groundwater investigation to determine horizontal extent of TCE plume associated with dry cleaning.

Client: Synagro Technologies (Sacramento, California)

Managed groundwater investigation to determine if biosolids application impacted salinity and nutrient concentrations in groundwater.

Client: Navy Base Realignment and Closure Team (Treasure Island, California)

Assisted in the design and remediation of PCB, chlorinated solvent, hydrocarbon and lead contaminated groundwater and soil on Treasure Island. Negotiated screening levels with DTSC and Water Board. Assisted in the preparation of FSP/QAPP, RI/FS, and RAP documents and assisted in CEQA document preparation.

Client: Navy Base Realignment and Closure Team (MCAS Tustin, California)

Assisted in the design of groundwater monitoring systems for chlorinated solvents at Tustin MCAS. Contributed to the preparation of FS for groundwater treatment.

Client: Mission Cleaning Facility (Salinas, California)

Prepared a RAP and cost estimate for using an oxygen releasing compound (ORC) and molasses to oxidize diesel fuel in soil and groundwater at Mission Cleaning in Salinas.

Client: King County (Washington)

Established and monitored experimental plots at a US EPA Superfund Site in wetland and upland mine tailings contaminated with zinc and lead in Smelterville, Idaho. Used organic matter and pH adjustment for wetland remediation and erosion control.

Client: City of Redmond (Richmond, Washington)

Collected storm water from compost-amended and fertilized turf to measure nutrients in urban runoff. Evaluated effectiveness of organic matter-lined detention ponds on reduction of peak flow during storm events. Drafted compost amended landscape installation guidelines to promote storm water detention and nutrient runoff reduction.

Client: City of Seattle (Seattle, Washington)

Measured VOC emissions from Renton wastewater treatment plant in Washington. Ran GC/MS, dispersion models, and sensory panels to characterize, quantify, control and estimate risk from VOCs.

Client: Plumas County (Quincy, California)

Installed wetland to treat contaminated water containing 1% copper in an EPA Superfund site. Revegetated 10 acres of acidic and metal laden sand dunes resulting from hydraulic mining. Installed and monitored piezometers in wetland estimating metal loading.

Client: Adams Egg Farm (St. Kitts, West Indies)

Designed, constructed, and maintained 3 anaerobic digesters at Springfield Egg Farm, St. Kitts. Digesters treated chicken excrement before effluent discharged into sea. Chicken waste was converted into methane cooking gas.

Client: BLM (Kremmling, Colorado)

Collected water samples for monitoring program along upper stretch of the Colorado River. Rafted along river and protected water quality by digging and repairing latrines.

Soil Science and Restoration Projects

Client: Hefner, Stark & Marois, LLP (Sacramento, California)

Facilitated in assisting Hefner, Stark & Marois, LLP in working with the Regional Water Quality board to determine how to utilize Calcium Particulate as a by-product of processing sugar beets.

Client: Kinder Morgan (San Diego County, California)

Designed and monitored the restoration of a 110-acre project on Camp Pendleton along a 26-mile pipeline. Managed crew of 20, planting coastal sage, riparian, wetland, native grassland, and marsh ecosystems. Negotiated with the CDFW concerning species planting list and success standards.

Client: NAVY BRAC (Orote Landfill, Guam)

Designed and monitored pilot landfill cap mimicking limestone forest. Measured different species' root-penetration into landfill cap. Plants were used to evapotranspire water, reducing water leaching through soil profile.

Client: LA Sanitation District Puente Hills Landfill (Whittier, California)

Monitored success of upland and wetland mitigation at Puente Hills Landfill operated by Sanitation Districts of Los Angeles. Negotiated with the Army Corps of Engineers and CDFG to obtain an early sign-off.

Client: City of Escondido (Escondido, California)

Designed, managed, installed, and monitored a 20-acre coastal sage scrub restoration project at Kit Carson Park, Escondido, California.

Client: Home Depot (Encinitas, California)

Designed, managed, installed and monitored a 15-acre coastal sage scrub and wetland restoration project at Home Depot in Encinitas, California.

Client: Alvarado Water Filtration Plant (San Diego, California)

Planned, installed and monitored 2-acre riparian and coastal sage scrub mitigation in San Diego California.

Client: Monsanto and James River Corporation (Clatskanie, Oregon)

Served as a soil scientist on a 50,000-acre hybrid poplar farm. Worked on genetically engineering study of Poplar trees to see if glyphosate resistant poplar clones were economically viable.

Client: World Wildlife Fund (St. Kitts, West Indies)

Managed 2-year biodiversity study, quantifying and qualifying the various flora and fauna in St. Kitts' expanding volcanic rainforest. Collaborated with skilled botanists, ornithologists and herpetologists.

Publications

Chen, J. A., Zapata, A R., Sutherland, A. J., Molmen, D. R., Chow, B. S., Wu, L. E., **Rosenfeld, P. E.**, Hesse, R. C., (2012) Sulfur Dioxide and Volatile Organic Compound Exposure To A Community In Texas City Texas Evaluated Using Aermid and Empirical Data. American Journal of Environmental Science, 2012, 8 (6), 622-632

Rosenfeld, P.E. & Feng, L. (2011). *The Risks of Hazardous Waste*, Amsterdam: Elsevier Publishing.

Cheremisinoff, N.P., & **Rosenfeld, P.E.** (2011). *Handbook of Pollution Prevention and Cleaner Production: Best Practices in the Agrochemical Industry*, Amsterdam: Elsevier Publishing.

Gonzalez, J., Feng, L., Sutherland, A., Waller, C., Sok, H., Hesse, R., **Rosenfeld, P.** (2011). PCBs and Dioxins/Furans in Attic Dust Collected Near Former PCB Production and Secondary Copper Facilities in Sauget, IL. *Procedia Environmental Sciences* 4(2011):113-125.

Feng, L., Wu, C., Tam, L., Sutherland, A.J., Clark, J.J., **Rosenfeld, P.E.**, (2010). Dioxin and Furan Blood Lipid and Attic Dust Concentrations in Populations Living Near Four Wood Treatment Facilities in the United States. *Journal of Environmental Health* 73(6):34-46.

Cheremisinoff, N.P., & **Rosenfeld, P.E.** (2010). *Handbook of Pollution Prevention and Cleaner Production: Best Practices in the Wood and Paper Industries*, Amsterdam: Elsevier Publishing.

Cheremisinoff, N.P., & **Rosenfeld, P.E.** (2009). *Handbook of Pollution Prevention and Cleaner Production: Best Practices in the Petroleum Industry*, Amsterdam: Elsevier Publishing.

Wu, C., Tam, L., Clark, J., **Rosenfeld, P.** (2009). 'Dioxin and furan blood lipid concentrations in populations living near four wood treatment facilities in the United States', in Brebbia, C.A. and Popov, V., eds., *Air Pollution XVII: Proceedings of the Seventeenth International Conference on Modelling, Monitoring and Management of Air Pollution*, Tallinn, Estonia. 20-22 July, 2009, Southampton, Boston. WIT Press.

Tam L. K., Wu C. D., Clark J. J. and **Rosenfeld, P.E.** (2008) A Statistical Analysis Of Attic Dust And Blood Lipid Concentrations Of Tetrachloro-p-Dibenzodioxin (TCDD) Toxicity Equivalency Quotients (TEQ) In Two Populations Near Wood Treatment Facilities. *Organohalogen Compounds*, Volume 70 (2008) page 002254.

Tam L. K., Wu C. D., Clark J. J. and **Rosenfeld, P.E.** (2008) Methods For Collect Samples For Assessing Dioxins And Other Environmental Contaminants In Attic Dust: A Review. *Organohalogen Compounds*, Volume 70 (2008) page 000527.

Hensley, A.R. A. Scott, J. J. J. Clark, **P. E. Rosenfeld** (2007) "Attic Dust and Human Blood Samples Collected near a Former Wood Treatment Facility" *Environmental Research*. 105, pp 194-197.

Rosenfeld, P.E., J. J. J. Clark, A. R. Hensley, M. Suffet. (2007) "The Use of an Odor Wheel Classification for Evaluation of Human Health Risk Criteria for Compost Facilities" –*Water Science & Technology* 55(5): 345-357.

Rosenfeld, P. E., M. Suffet. (2007) "The Anatomy Of Odour Wheels For Odours Of Drinking Water, Wastewater, Compost And The Urban Environment " *Water Science & Technology* 55(5): 335-344.

Sullivan, P. J. Clark, J.J.J., Agardy, F. J., **Rosenfeld, P.E.**, (2007) "Toxic Legacy, Synthetic Toxins in the Food, Water, and Air in American Cities," Elsevier Publishing, Boston Massachusetts.

Rosenfeld P.E., and Suffet, I.H. (Mel) (2007) "Anatomy Of An Odor Wheel" *Water Science and Technology*, In Press.

Rosenfeld, P.E., Clark, J.J.J., Hensley A.R., Suffet, I.H. (Mel) (2007) "The use of an odor wheel classification for evaluation of human health risk criteria for compost facilities." *Water Science And Technology*, In Press.

Hensley A.R., Scott, A., **Rosenfeld P.E.**, Clark, J.J.J. (2006) "Dioxin Containing Attic Dust And Human Blood Samples Collected Near A Former Wood Treatment Facility." The 26th International Symposium on Halogenated Persistent Organic Pollutants – DIOXIN2006, August 21 – 25, 2006. Radisson SAS Scandinavia Hotel in Oslo Norway.

Rosenfeld, P.E., and Suffet I.H. (2004) "Control of Compost Odor Using High Carbon Wood Ash", Water Science and Technology, Vol. 49, No. 9. pp. 171-178.

Rosenfeld, P.E., Clark J. J. and Suffet, I.H. (2004) "Value of and Urban Odor Wheel." (2004). WEFTEC 2004. New Orleans, October 2 - 6, 2004.

Rosenfeld, P.E., and Suffet, I.H. (2004) "Understanding Odorants Associated With Compost, Biomass Facilities, and the Land Application of Biosolids" Water Science and Technology. Vol. 49, No. 9. pp 193-199.

Rosenfeld, P.E., and Suffet I.H. (2004) "Control of Compost Odor Using High Carbon Wood Ash", Water Science and Technology, Vol. 49, No. 9. pp. 171-178.

Rosenfeld, P. E., Grey, M. A., Sellew, P. (2004) Measurement of Biosolids Odor and Odorant Emissions from Windrows, Static Pile and Biofilter. Water Environment Research. 76 (4): 310-315 JUL-AUG 2004.

Rosenfeld, P. E., Grey, M., (2003) Two stage biofilter for biosolids composting odor control. Seventh International In Situ And On Site Bioremediation Symposium. Batelle Conference Orlando Florida. June 2 and June 6, 2003.

Rosenfeld, P.E., Grey, M and Suffet, M. 2002. "Controlling Odors Using High Carbon Wood Ash." Biocycle, March 2002, Page 42.

Rosenfeld, P.E., Grey, M and Suffet, M. (2002). "Compost Demonstration Project, Sacramento, California Using High-Carbon Wood Ash to Control Odor at a Green Materials Composting Facility Integrated Waste Management Board Public Affairs Office, Publications Clearinghouse (MS-6), Sacramento, CA Publication #442-02-008. April 2002.

Rosenfeld, P.E., and C.L. Henry. 2001. Characterization of odor emissions from three different biosolids. Water Soil and Air pollution. Vol. 127 Nos. 1-4, pp. 173-191.

Rosenfeld, P.E., and Henry C. L., 2000. Wood ash control of odor emissions from biosolids application. Journal of Environmental Quality. 29:1662-1668.

Rosenfeld, P.E., C.L. Henry and D. Bennett. 2001. Wastewater dewatering polymer affect on biosolids odor emissions and microbial activity. Water Environment Research. 73: 363-367.

Rosenfeld, P.E., and C.L. Henry. 2001. Activated Carbon and Wood Ash Sorption of Wastewater, Compost, and Biosolids Odorants Water Environment Research, 73: 388-392.

Rosenfeld, P.E., and Henry C. L., 2001. High carbon wood ash effect on biosolids microbial activity and odor. Water Environment Research. Volume 131 No. 1-4, pp. 247-262.

Rosenfeld, P.E., C.L. Henry, R. Harrison. 1998. Oat and Grass Seed Germination and Nitrogen and Sulfur Emissions Following Biosolids Incorporation With High-Carbon Wood-Ash. Water Environment Federation 12th Annual Residuals and Biosolids Management Conference Proceedings. Bellevue Washington.

Chollack, T. and **P. Rosenfeld.** 1998. Compost Amendment Handbook For Landscaping. Prepared for and distributed by the City of Redmond, Washington State.

P. Rosenfeld. 1992. The Mount Liamuiga Crater Trail. Heritage Magazine of St. Kitts, Vol. 3 No. 2.

P. Rosenfeld. 1993. High School Biogas Project to Prevent Deforestation On St. Kitts. Biomass Users Network, Vol. 7, No. 1, 1993.

P. Rosenfeld. 1992. British West Indies, St. Kitts. Surf Report, April issue.

P. Rosenfeld. 1998. Characterization, Quantification, and Control of Odor Emissions From Biosolids Application To Forest Soil. Doctoral Thesis. University of Washington College of Forest Resources.

P. Rosenfeld. 1994. Potential Utilization of Small Diameter Trees On Sierra County Public Land. Masters thesis reprinted by the Sierra County Economic Council. Sierra County, California.

P. Rosenfeld. 1991. How to Build a Small Rural Anaerobic Digester & Uses Of Biogas In The First And Third World. Bachelors Thesis. University of California.

England Environmental Agency, 2002. Landfill Gas Control Technologies. Publishing Organization Environment Agency, Rio House, Waterside Drive, Aztec West, Almondsbury BRISTOL, BS32 4UD.

Presentations

Sok, H.L.; Waller, C.C.; Feng, L.; Gonzalez, J.; Sutherland, A.J.; Wisdom-Stack, T.; Sahai, R.K.; Hesse, R.C.; **Rosenfeld, P.E.** "Atrazine: A Persistent Pesticide in Urban Drinking Water." Urban Environmental Pollution, Boston, MA, June 20-23, 2010.

Feng, L.; Gonzalez, J.; Sok, H.L.; Sutherland, A.J.; Waller, C.C.; Wisdom-Stack, T.; Sahai, R.K.; La, M.; Hesse, R.C.; **Rosenfeld, P.E.** "Bringing Environmental Justice to East St. Louis, Illinois." Urban Environmental Pollution, Boston, MA, June 20-23, 2010.

Rosenfeld, P.E. (2009) "Perfluorooctanoic Acid (PFOA) and Perfluorooctane Sulfonate (PFOS) Contamination in Drinking Water From the Use of Aqueous Film Forming Foams (AFFF) at Airports in the United States" Presentation at the 2009 Ground Water Summit and 2009 Ground Water Protection Council Spring Meeting, April 19-23, 2009. Tuscon, AZ.

Rosenfeld, P.E. (2009) "Cost to Filter Atrazine Contamination from Drinking Water in the United States" Contamination in Drinking Water From the Use of Aqueous Film Forming Foams (AFFF) at Airports in the United States" Presentation at the 2009 Ground Water Summit and 2009 Ground Water Protection Council Spring Meeting, April 19-23, 2009. Tuscon, AZ.

Rosenfeld, P. E. (2007) "Moss Point Community Exposure To Contaminants From A Releasing Facility" Platform Presentation at the 23rd Annual International Conferences on Soils Sediment and Water, October 15-18, 2007. University of Massachusetts, Amherst MA.

Rosenfeld, P. E. (2007) "The Repeated Trespass of Tritium-Contaminated Water Into A Surrounding Community Form Repeated Waste Spills From A Nuclear Power Plant" Platform Presentation at the 23rd Annual International Conferences on Soils Sediment and Water, October 15-18, 2007. University of Massachusetts, Amherst MA.

Rosenfeld, P. E. (2007) "Somerville Community Exposure To Contaminants From Wood Treatment Facility Emissions" Poster Presentation at the 23rd Annual International Conferences on Soils Sediment and Water, October 15-18, 2007. University of Massachusetts, Amherst MA.

Rosenfeld P. E. "Production, Chemical Properties, Toxicology, & Treatment Case Studies of 1,2,3-Trichloropropane (TCP)" – Platform Presentation at the Association for Environmental Health and Sciences (AEHS) Annual Meeting, San Diego, CA, 3/2007.

Rosenfeld P. E. "Blood and Attic Sampling for Dioxin/Furan, PAH, and Metal Exposure in Florala, Alabama" – Platform Presentation at the AEHS Annual Meeting, San Diego, CA, 3/2007.

Hensley A.R., Scott, A., **Rosenfeld P.E.**, Clark, J.J.J. (2006) "Dioxin Containing Attic Dust And Human Blood Samples Collected Near A Former Wood Treatment Facility." APHA 134 Annual Meeting & Exposition, Boston Massachusetts. November 4 to 8th, 2006.

Paul Rosenfeld Ph.D. “Fate, Transport and Persistence of PFOA and Related Chemicals.” Mealey’s C8/PFOA Science, Risk & Litigation Conference” October 24, 25. The Rittenhouse Hotel, Philadelphia.

Paul Rosenfeld Ph.D. “Brominated Flame Retardants in Groundwater: Pathways to Human Ingestion, Toxicology and Remediation PEMA Emerging Contaminant Conference. September 19. Hilton Hotel, Irvine California.

Paul Rosenfeld Ph.D. “Fate, Transport, Toxicity, And Persistence of 1,2,3-TCP.” PEMA Emerging Contaminant Conference. September 19. Hilton Hotel in Irvine, California.

Paul Rosenfeld Ph.D. “Fate, Transport and Persistence of PDBEs.” Mealey’s Groundwater Conference. September 26, 27. Ritz Carlton Hotel, Marina Del Ray, California.

Paul Rosenfeld Ph.D. “Fate, Transport and Persistence of PFOA and Related Chemicals.” International Society of Environmental Forensics: Focus On Emerging Contaminants. June 7,8. Sheraton Oceanfront Hotel, Virginia Beach, Virginia.

Paul Rosenfeld Ph.D. “Rate Transport, Persistence and Toxicology of PFOA and Related Perfluorochemicals”. 2005 National Groundwater Association Ground Water And Environmental Law Conference. July 21-22, 2005. Wyndham Baltimore Inner Harbor, Baltimore Maryland.

Paul Rosenfeld Ph.D. “Brominated Flame Retardants in Groundwater: Pathways to Human Ingestion, Toxicology and Remediation.” 2005 National Groundwater Association Ground Water And Environmental Law Conference. July 21-22, 2005. Wyndham Baltimore Inner Harbor, Baltimore Maryland.

Paul Rosenfeld, Ph.D. and James Clark Ph.D. and Rob Hesse R.G. Tert-butyl Alcohol Liability and Toxicology, A National Problem and Unquantified Liability. National Groundwater Association. Environmental Law Conference. May 5-6, 2004. Congress Plaza Hotel, Chicago Illinois.

Paul Rosenfeld, Ph.D., 2004. Perchlorate Toxicology. Presentation to a meeting of the American Groundwater Trust. March 7th, 2004. Pheonix Arizona.

Hagemann, M.F., **Paul Rosenfeld, Ph.D.** and Rob Hesse, 2004. Perchlorate Contamination of the Colorado River. Invited presentation to a meeting of tribal representatives, Parker, AZ.

Paul Rosenfeld, Ph.D. A National Damage Assessment Model For PCE and Dry Cleaners. Drycleaner Symposium. California Ground Water Association. Radison Hotel, Sacramento, California. April 7, 2004.

Paul Rosenfeld, Ph.D. and James Clark Ph.D. Understanding Historical Use, Chemical Properties, Toxicity and Regulatory Guidance of 1,4 Dioxane. National Groundwater Association. Southwest Focus Conference. Water Supply and Emerging Contaminants. February 20-21, 2003. Hyatt Regency Phoenix Arizona.

Paul Rosenfeld, Ph.D. Underground Storage Tank Litigation and Remediation. California CUPA Forum. Marriott Hotel. Anaheim California. February 6-7, 2003.

Paul Rosenfeld, Ph.D. Underground Storage Tank Litigation and Remediation. EPA Underground Storage Tank Roundtable. Sacramento California. October 23, 2002.

Rosenfeld, P.E. and Suffet, M. 2002. Understanding Odor from Compost, Wastewater and Industrial Processes. Sixth Annual Symposium On Off Flavors in the Aquatic Environment. International Water Association. Barcelona Spain. October 7- 10.

Rosenfeld, P.E. and Suffet, M. 2002. Using High Carbon Wood Ash to Control Compost Odor. Sixth Annual Symposium On Off Flavors in the Aquatic Environment. International Water Association. Barcelona Spain. October 7- 10.

Rosenfeld, P.E. and Grey, M. A. 2002. Biocycle Composting For Coastal Sage Restoration. Northwest Biosolids Management Association. Vancouver Washington. September 22-24.

Rosenfeld, P.E. and Grey, M. A. 2002. Soil Science Society Annual Conference. Indianapolis, Maryland. November 11-14.

Rosenfeld, P.E. 2000. Two stage biofilter for biosolids composting odor control. Water Environment Federation. Anaheim California. September 16, 2000.

Rosenfeld, P. E. 2000. Wood ash and biofilter control of compost odor. Biofest. October 16, 2000. Ocean Shores, California.

Rosenfeld, P. E. 2000. Bioremediation Using Organic Soil Amendments. California Resource Recovery Association. Sacramento California.

Rosenfeld, P.E., C.L. Henry, R. Harrison. 1998. Oat and Grass Seed Germination and Nitrogen and Sulfur Emissions Following Biosolids Incorporation With High-Carbon Wood-Ash. Water Environment Federation 12th Annual Residuals and Biosolids Management Conference Proceedings. Bellevue Washington.

Rosenfeld, P.E., and C.L. Henry. 1999. An evaluation of ash incorporation with biosolids for odor reduction. Soil Science Society of America. Salt Lake City Utah.

Rosenfeld, P.E., C.L. Henry, R. Harrison. 1998. Comparison of Microbial Activity and Odor Emissions from Three Different Biosolids Applied to Forest Soil. Brown and Caldwell, Seattle Washington.

Rosenfeld, P.E., C.L. Henry. 1998. Characterization, Quantification, and Control of Odor Emissions from Biosolids Application To Forest Soil. Biofest Lake Chelan, Washington.

Rosenfeld, P.E., C.L. Henry, R. B. Harrison, and R. Dills. 1997. Comparison of Odor Emissions From Three Different Biosolids Applied to Forest Soil. Soil Science Society of America, Anaheim California.

Professional History

Soil Water Air Protection Enterprise (SWAPE); 2003 to present; Founding And Managing Partner
 UCLA School of Public Health; 2007 to 2010; Lecturer (Asst Res)
 UCLA School of Public Health; 2003 to 2006; Adjunct Professor
 UCLA Environmental Science and Engineering Program; 2002-2004; Doctoral Intern Coordinator
 UCLA Institute of the Environment, 2001-2002; Research Associate
 Komex H₂O Science, 2001 to 2003; Senior Remediation Scientist
 National Groundwater Association, 2002-2004; Lecturer
 San Diego State University, 1999-2001; Adjunct Professor
 Anteon Corp., San Diego, 2000-2001; Remediation Project Manager
 Ogden (now Amec), San Diego, 2000-2000; Remediation Project Manager
 Bechtel, San Diego, California, 1999 – 2000; Risk Assessor
 King County, Seattle, 1996 – 1999; Scientist
 James River Corp., Washington, 1995-96; Scientist
 Big Creek Lumber, Davenport, California, 1995; Scientist
 Plumas Corp., California and USFS, Tahoe 1993-1995; Scientist
 Peace Corps and World Wildlife Fund, St. Kitts, West Indies, 1991-1993; Scientist
 Bureau of Land Management, Kremmling Colorado 1990; Scientist

Teaching Experience

UCLA Department of Environmental Health (Summer 2003 through 2010) Taught Environmental Health Science 100 to students, including undergrad, medical doctors, public health professionals and nurses. Course focuses on the health effects of environmental contaminants.

National Ground Water Association, Successful Remediation Technologies. Custom Course In Sante Fe, New Mexico. May 21, 2002. Focused on fate and transport of fuel contaminants associated with underground storage tanks.

National Ground Water Association; Successful Remediation Technologies Course in Chicago Illinois. April 1, 2002. Focused on fate and transport of contaminants associated with Superfund and RCRA sites.

California Integrated Waste Management Board, April and May, 2001. Alternative Landfill Caps Seminar in San Diego, Ventura, and San Francisco. Focused on both prescriptive and innovative landfill cover design.

UCLA Department of Environmental Engineering, February 5 2002 Seminar on Successful Remediation Technologies focusing on Groundwater Remediation.

University Of Washington, Soil Science Program, Teaching Assistant for several courses including: Soil Chemistry, Organic Soil Amendments, and Soil Stability.

U.C. Berkeley, Environmental Science Program Teaching Assistant for Environmental Science 10.

Academic Grants Awarded

California Integrated Waste Management Board. \$41,000 grant awarded to UCLA Institute of the Environment. Goal: To investigate effect of high carbon wood ash on volatile organic emissions from compost. 2001.

Synagro Technologies, Corona California: \$10,000 grant awarded to San Diego State University. Goal: investigate effect of biosolids for restoration and remediation of degraded coastal sage soils. 2000.

King County, Department of Research and Technology, Washington State. \$100,000 grant awarded to University of Washington: Goal: To investigate odor emissions from biosolids application and the effect of polymers and ash on VOC emissions. 1998.

Northwest Biosolids Management Association, Washington State. \$20,000 grant awarded to investigate effect of polymers and ash on VOC emissions from biosolids. 1997.

James River Corporation, Oregon: \$10,000 grant was awarded to investigate the success of genetically engineered Poplar trees with resistance to round-up. 1996.

United State Forest Service, Tahoe National Forest: \$15,000 grant was awarded to investigating fire ecology of the Tahoe National Forest. 1995.

Kellogg Foundation, Washington D.C. \$500 grant was awarded to construct a large anaerobic digester on St. Kitts in West Indies. 1993.

Cases that Dr. Rosenfeld Provided Deposition or Trial Testimony

In the Court of Common Pleas of Tuscarawas County Ohio

John Michael Abicht, et al., *Plaintiffs*, vs. Republic Services, Inc., et al., *Defendants*

Case Number: 2008 CT 10 0741 (Cons. w/ 2009 CV 10 0987)

In the Court of Common Pleas for the Second Judicial Circuit, State of South Carolina, County of Aiken

David Anderson, et al., *Plaintiffs*, vs. Norfolk Southern Corporation, et al., *Defendants*.

Case Number: 2007-CP-02-1584

In the Circuit Court of Jefferson County Alabama

Jaeanette Moss Anthony, et al., *Plaintiffs*, vs. Drummond Company Inc., et al., *Defendants*

Civil action No. CV 2008-2076

In the Ninth Judicial District Court, Parish of Rapides, State of Louisiana

Roger Price, et al., *Plaintiffs*, vs. Roy O. Martin, L.P., et al., *Defendants*.

Civil Suit Number 224,041 Division G

In the United States District Court, Western District Lafayette Division

Ackle et al., *Plaintiffs*, vs. Citgo Petroleum Corporation, et al., *Defendants*.

Case Number 2:07CV1052

In the United States District Court for the Southern District of Ohio

Carolyn Baker, et al., *Plaintiffs*, vs. Chevron Oil Company, et al., *Defendants*.

Case Number 1:05 CV 227

In the Fourth Judicial District Court, Parish of Calcasieu, State of Louisiana

Craig Steven Arabie, et al., *Plaintiffs*, vs. Citgo Petroleum Corporation, et al., *Defendants*.

Case Number 07-2738 G

In the Fourteenth Judicial District Court, Parish of Calcasieu, State of Louisiana

Leon B. Brydels, *Plaintiffs*, vs. Conoco, Inc., et al., *Defendants*.

Case Number 2004-6941 Division A

In the District Court of Tarrant County, Texas, 153rd Judicial District

Linda Faust, *Plaintiff*, vs. Burlington Northern Santa Fe Rail Way Company, Witco Chemical Corporation A/K/A Witco Corporation, Solvents and Chemicals, Inc. and Koppers Industries, Inc., *Defendants*.

Case Number 153-212928-05

In the Superior Court of the State of California in and for the County of San Bernardino

Leroy Allen, et al., *Plaintiffs*, vs. Nutro Products, Inc., a California Corporation and DOES 1 to 100, inclusive, *Defendants*.

John Loney, Plaintiff, vs. James H. Didion, Sr.; Nutro Products, Inc.; DOES 1 through 20, inclusive, *Defendants*.

Case Number VCVVS044671

In the United States District Court for the Middle District of Alabama, Northern Division

James K. Benefield, et al., *Plaintiffs*, vs. International Paper Company, *Defendant*.

Civil Action Number 2:09-cv-232-WHA-TFM

In the Superior Court of the State of California in and for the County of Los Angeles

Leslie Hensley and Rick Hensley, *Plaintiffs*, vs. Peter T. Hoss, as trustee on behalf of the Cone Fee Trust; Plains Exploration & Production Company, a Delaware corporation; Rayne Water Conditioning, Inc., a California corporation; and DOES 1 through 100, *Defendants*.

Case Number SC094173

In the Superior Court of the State of California in and for the County of Santa Barbara, Santa Maria Branch
Clifford and Shirley Adelhelm, et al., all individually, *Plaintiffs*, vs. Unocal Corporation, a Delaware
Corporation; Union Oil Company of California, a California corporation; Chevron Corporation, a
California corporation; ConocoPhillips, a Texas corporation; Kerr-McGee Corporation, an Oklahoma
corporation; and DOES 1 through 100, *Defendants*.

Case Number 1229251 (Consolidated with case number 1231299)

In the United States District Court for Eastern District of Arkansas, Eastern District of Arkansas
Harry Stephens Farms, Inc, and Harry Stephens, individual and as managing partner of Stephens
Partnership, *Plaintiffs*, vs. Helena Chemical Company, and Exxon Mobil Corp., successor to Mobil
Chemical Co., *Defendants*.

Case Number 2:06-CV-00166 JMM (Consolidated with case number 4:07CV00278 JMM)

In the United States District Court for the Western District of Arkansas, Texarkana Division
Rhonda Brasel, et al., *Plaintiffs*, vs. Weyerhaeuser Company and DOES 1 through 100, *Defendants*.
Civil Action Number 07-4037

In The Superior Court of the State of California County of Santa Cruz
Constance Acevedo, et al. *Plaintiffs* Vs. California Spray Company, et al. *Defendants*
Case No CV 146344

In the District Court of Texas 21st Judicial District of Burleson County
Dennis Davis, *Plaintiff*, vs. Burlington Northern Santa Fe Rail Way Company, *Defendant*.
Case Number 25,151

In the United States District Court of Southern District of Texas Galveston Division
Kyle Cannon, Eugene Donovan, Genaro Ramirez, Carol Sassler, and Harvey Walton, each Individually and
on behalf of those similarly situated, *Plaintiffs*, vs. BP Products North America, Inc., *Defendant*.
Case 3:10-cv-00622

ATTACHMENT B



SMITH ENGINEERING & MANAGEMENT

May 20, 2021

Ms. Kendra Hartmann
Adams Broadwell Joseph & Cardozo
601 Gateway Boulevard, Suite 1000
South San Francisco, CA 94080-7037

Subject: RedwoodTech@101 Project

P21015

Dear Ms. Hartmann:

Per your request, I reviewed the Documentation for the RedwoodTech@101 Project (the "Project") in the City of Morgan Hill (the "City"). My review is with respect to transportation and circulation considerations despite the fact that the current documentation contains no transportation analysis.

My qualifications to perform this review include registration as a Civil and Traffic Engineer in California, over 50 years professional consulting practice in these fields and both preparation and review of the traffic and transportation components of numerous environmental documents prepared under the California Environmental Quality Act ("CEQA"). My professional resume is attached hereto.

The Project Is Best Described as a Business Park, a Category of Land Use That Generates Significant Numbers of Daily, AM and PM Peak Trips.

The Applicant's documentation describes the Project as follows: "The property will be reconfigured into 4 legal lots with 5 buildings designated for flexible industrial and commercial uses, including advanced manufacturing, warehouse, supporting office, and similar industrial and commercial uses totaling up to 501,314 square feet." The documentation goes on to state that "All 5 buildings are designed to be divisible into 2 or 3 tenant spaces." This description

Ms. Kendra Hartmann
 Adams Broadwell Joseph & Cardozo
 May 20, 2021
 Page 2

corresponds to the description for Land Use Category 770, Business Park in the Institute of Transportation Engineers' *Trip Generation, 10th Edition*. That description states "A business park consists of a group of flex-type or incubator one- or two-story buildings served by a common roadway system. The tenant space is flexible and lends itself to a variety of uses; the rear side of the building is usually served by a garage door. Tenants may be start-up companies or small mature companies that require a variety of space. The space may include offices, retail and wholesale stores, restaurants, recreational areas and warehousing, manufacturing, light industrial, or scientific research functions."

Trip Generation, 10th Edition indicates the following equations for estimating daily trips at a Business Park:

Daily: $T = 10.62(X) = 715.67$
 AM Peak $\ln(T) = .97 \ln(X) + 0.49$
 PM Peak $\ln(T) = .90 \ln(X) + 0.85$ where T equals trips and X equals building floor area in thousands of square feet.

With the Project's building area of 501.314 thousand square feet, these equations give trip totals of 6040 trips daily, 818 in the AM peak hour and 629 in the PM peak hour. The peak hour trip totals far exceed both the City and the Santa Clara County Valley Transportation Authority ("VTA") guidelines for new peak hour trip levels where a Transportation Impact Report becomes required.¹ Yet no transportation impact analysis for the Project has been performed.

The City Knew or Should Have Known that the Project Would Cause Intersections in the Vicinity to Operate at Worse than LOS D

In May 2020 the City circulated a Draft EIR for a larger development project, the Morgan Hill Technology Center Mixed Use Project, which included the current RedwoodTech@101 Project as a part. That DEIR disclosed that the mixed-use project would have caused conditions at three intersections in the immediate vicinity to deteriorate from LOS B or C to LOS F in one or the other of the peak hours:

- The intersection of Cochrane Road with DePaul Drive would deteriorate in the PM peak hour from 18.7 seconds average delay per vehicle and LOS B to 101 seconds per vehicle and LOS F.

¹ The VTA policy requires a transportation impact analysis to be performed whenever a project adds 100 or more peak hour trips to the roadway system. The City policy is slightly more stringent, requiring a transportation impact report when a project adds 50 to 99 peak hour trips that would logically affect a nearby intersection or intersections operating at LOS D or worse or one(s) that are projected to operate at LOS D or worse when traffic from already approved but not yet completed projects is added. At or above 100 peak hour trips, the VTA requirement kicks in without necessarily identifying a nearby intersection at LOS D or worse.

Ms. Kendra Hartmann
 Adams Broadwell Joseph & Cardozo
 May 20, 2021
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- The intersection of Cochrane Road and Mission View Drive would deteriorate in the AM peak hour from 23.0 seconds average delay per vehicle and LOS C to 94.6 seconds per vehicle and LOS F.
- The intersection of Mission View Drive and Half Road would deteriorate from 22.6 seconds average delay per vehicle and LOS C in the PM peak hour to 136.9 seconds and LOS F.

If one takes the trip generation for the RedwoodTech@101 Project as fairly calculated in the section above and assumes its share of responsibility for the delay increments disclosed in the Morgan Hill Technology Center Mixed-Use Project DEIR is proportional to the ratio of its trip generation to that of the whole Mixed-Use Project, then the following results are obtained:

- The RedwoodTech@101 Project would cause the intersection of Cochrane Road with DePaul Drive to deteriorate in the PM peak hour from 18.7 seconds average delay per vehicle and LOS B to approximately 63.55 seconds delay and LOS E in the PM peak.
- The intersection of Cochrane Road and Mission View Drive would deteriorate in the AM peak hour from 23.0 seconds average delay per vehicle and LOS C to approximately 78.99 seconds and LOS E in the AM peak.
- The intersection of Mission View Drive and Half Road would deteriorate from 22.6 seconds average delay per vehicle and LOS C in the PM peak hour to approximately 84.89 seconds and LOS F.

The fact that the revised and renamed Project could have effects on this scale should have been obvious to the City, but apparently nobody gave it any thought.

Some may argue that none of the above matters because CEQA has transitioned to the VMT metric for transportation analysis. This, however, ignores the explicit policy stated in the City's 2035 General Plan that the City continues to use LOS to evaluate impacts to transportation. Failure to conform to General Plan policies remains a matter of significance under CEQA.

There Is No Basis for A Claim That the Project Was Somehow Analyzed In the 2035 General Plan EIR

There is no basis for a claim that this Project was somehow analyzed in the 2035 General Plan EIR. That EIR found that at 2035 development level the intersection of Cochrane Road with DePaul Drive would operate at average delays per vehicle of 18.6 seconds and 19.8 seconds in the AM and PM peaks, respectively. It found that the intersection of Cochrane Road with Mission View Drive would operate at average delays per vehicle of 20.2 seconds and 19.0 seconds in the AM and PM peaks, respectively LOS C and B. These reported 2035 values are characteristic of what the Morgan Hill Technology Center Mixed

Ms. Kendra Hartmann
 Adams Broadwell Joseph & Cardozo
 May 20, 2021
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Use Project DEIR reports as *existing conditions* and nothing like what it reports as conditions with development of that project. Moreover, the 2035 General Plan EIR did not even evaluate the intersection of Mission View Drive and Half Road. It would defy common sense to assert that the impacts of the current RedwoodTech@101 Project were already disclosed in the 2035 General Plan EIR.

Furthermore, preparers of the Morgan Hill Technology Center DEIR performed an analysis of projected VMT for that project and compared the results to a “No Project” alternative using the development intensity anticipated by the 2035 General Plan. The comparison indicated that development of the Technology Park would result in significantly more VMT than that anticipated by the General Plan. In attempting to cast doubt on the significance of this result, the DEIR stated this: “At the time that the General Plan EIR was prepared, it was assumed that the project site would be developed at a low intensity within the 20-year period. The development assumptions for the site included in the City’s TDF model are significantly lower than development allowed on-site based on the existing General Plan and zoning designations (refer to Section 7.6.3, No Project/Existing General Plan/Zoning Development Alternative in this EIR).”² By acknowledging that the development of the site anticipated by the General Plan EIR was significantly less intense than that proposed by that project, the DEIR recognized that the 2035 General Plan EIR clearly does not reflect the current Project.

Placed In Context, Approval of RedwoodTech@101 Appears To Be a Project Segmentation That Is Improper Under CEQA

Considering that the proposed Project consists of one component, proposed by the same applicant under a new name, of the recently withdrawn Morgan Hill Technology Center Mixed Use Project, appears to be a case of project segmentation that is improper under CEQA. The City must explain how this is not a matter of piecemealing. Given the City’s admission in the Staff Report that it is undertaking concurrent review of a 269-unit residential development on another portion of the former Morgan Hill Technology Center Mixed Use Project, the evidence of piecemealing is clear.

Conclusion

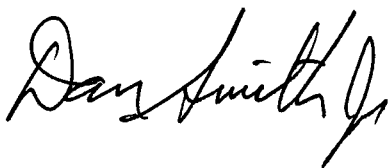
Given the above, the Project cannot be approved without further CEQA review. A full EIR on the whole of the Project should be prepared and circulated in “draft” status.

² See Morgan Hill Technology Center Mixed Use Project Draft EIR, page 160.

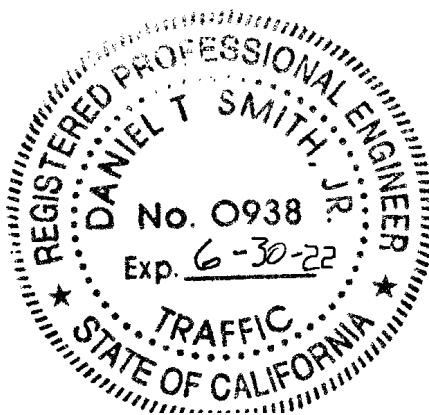
Ms. Kendra Hartmann
Adams Broadwell Joseph & Cardozo
May 20, 2021
Page 5

Sincerely,

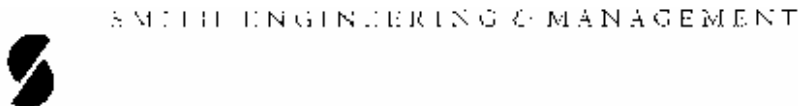
Smith Engineering & Management
A California Corporation



Daniel T. Smith Jr., P.E.
President



Ms. Kendra Hartmann
 Adams Broadwell Joseph & Cardozo
 May 20, 2021
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DANIEL T. SMITH, Jr. President

EDUCATION

Bachelor of Science, Engineering and Applied Science, Yale University, 1967
 Master of Science, Transportation Planning, University of California, Berkeley, 1968

PROFESSIONAL REGISTRATION

California No. 21913 (Civil) Nevada No. 7969 (Civil) Washington No. 29337 (Civil)
 California No. 938 (Traffic) Arizona No. 22131 (Civil)

PROFESSIONAL EXPERIENCE

Smith Engineering & Management, 1993 to present. President.
 DKS Associates, 1979 to 1993. Founder, Vice President, Principal Transportation Engineer.
 De Leuw, Cather & Company, 1968 to 1979. Senior Transportation Planner.
 Personal specialties and project experience include:

Litigation Consulting. Provides consultation, investigations and expert witness testimony in highway design, transit design and traffic engineering matters including condemnations involving transportation access issues; traffic accidents involving highway design or traffic engineering factors; land use and development matters involving access and transportation impacts; parking and other traffic and transportation matters.

Urban Corridor Studies/Alternatives Analysis. Principal-in-charge for State Route (SR) 102 Feasibility Study, a 35-mile freeway alignment study north of Sacramento. Consultant on I-280 Interstate Transfer Concept Program, San Francisco, an AA/EIS for completion of I-280, demolition of Embarcadero freeway, substitute light rail and commuter rail projects. Principal-in-charge, SR 238 corridor freeway/expressway design/environmental study, Hayward (Calif.) Project manager, Sacramento Northeast Area multi-modal transportation corridor study. Transportation planner for I-80N West Terminal Study, and Harbor Drive Traffic Study, Portland, Oregon. Project manager for design of surface segment of Woodward Corridor LRT, Detroit, Michigan. Directed staff on I-80 National Strategic Corridor Study (Sacramento-San Francisco), US 101-Sonoma freeway operations study, SR 92 freeway operations study, I-880 freeway operations study, SR 152 alignment studies, Sacramento RTD light rail systems study, Tasman Corridor LRT AA/EIS, Fremont-Warm Springs BART extension plan/EIR, SRs 70/99 freeway alternatives study, and Richmond Parkway (SR 93) design study.

Area Transportation Plans. Principal-in charge for transportation element of City of Los Angeles General Plan Framework, shaping nations largest city two decades into 21st century. Project manager for the transportation element of 300-acre Mission Bay development in downtown San Francisco. Mission Bay involves 7 million gsf office/commercial space, 8,500 dwelling units, and community facilities. Transportation features include relocation of commuter rail station; extension of MUNI-Metro LRT; a multi-modal terminal for LRT, commuter rail and local bus; removal of a quarter mile elevated freeway; replacement by new ramps and a boulevard; an internal roadway network overcoming constraints imposed by an internal tidal basin; freeway structures and rail facilities; and concept plans for 20,000 structured parking spaces. Principal-in-charge for circulation plan to accommodate 9 million gsf of office/commercial growth in downtown Bellevue (Wash.). Principal-in-charge for 64 acre, 2 million gsf multi-use complex for FMC adjacent to San Jose International Airport. Project manager for transportation element of Sacramento Capitol Area Plan for the state governmental complex, and for Downtown Sacramento Redevelopment Plan. Project manager for Napa (Calif.) General Plan Circulation Element and Downtown Riverfront Redevelopment Plan, on parking program for downtown Walnut Creek, on downtown transportation plan for San Mateo and redevelopment plan for downtown Mountain View (Calif.), for traffic circulation and safety plans for California cities of Davis, Pleasant Hill and Hayward, and for Salem, Oregon.

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 5311 Lowry Road, Union City, CA 94587 tel: 510.489.9477 fax: 510.489.9478

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Ms. Kendra Hartmann
 Adams Broadwell Joseph & Cardozo
 May 20, 2021
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Transportation Centers. Project manager for Daly City Intermodal Study which developed a \$7 million surface bus terminal, traffic access, parking and pedestrian circulation improvements at the Daly City BART station plus development of functional plans for a new BART station at Colma. Project manager for design of multi-modal terminal (commuter rail, light rail, bus) at Mission Bay, San Francisco. In Santa Clarita Long Range Transit Development Program, responsible for plan to relocate system's existing timed-transfer hub and development of three satellite transfer hubs. Performed airport ground transportation system evaluations for San Francisco International, Oakland International, Sea-Tac International, Oakland International, Los Angeles International, and San Diego Lindberg.

Campus Transportation. Campus transportation planning assignments for UC Davis, UC Berkeley, UC Santa Cruz and UC San Francisco Medical Center campuses; San Francisco State University; University of San Francisco; and the University of Alaska and others. Also developed master plans for institutional campuses including medical centers, headquarters complexes and research & development facilities.

Special Event Facilities. Evaluations and design studies for football/baseball stadiums, indoor sports arenas, horse and motor racing facilities, theme parks, fairgrounds and convention centers, ski complexes and destination resorts throughout western United States.

Parking. Parking programs and facilities for large area plans and individual sites including downtowns, special event facilities, university and institutional campuses and other large site developments; numerous parking feasibility and operations studies for parking structures and surface facilities; also, resident preferential parking .

Transportation System Management & Traffic Restraint. Project manager on FHWA program to develop techniques and guidelines for neighborhood street traffic limitation. Project manager for Berkeley, (Calif.), Neighborhood Traffic Study, pioneered application of traffic restraint techniques in the U.S. Developed residential traffic plans for Menlo Park, Santa Monica, Santa Cruz, Mill Valley, Oakland, Palo Alto, Piedmont, San Mateo County, Pasadena, Santa Ana and others. Participated in development of photo/radar speed enforcement device and experimented with speed humps. Co-author of Institute of Transportation Engineers reference publication on neighborhood traffic control.

Bicycle Facilities. Project manager to develop an FHWA manual for bicycle facility design and planning, on bikeway plans for Del Mar, (Calif.), the UC Davis and the City of Davis. Consultant to bikeway plans for Eugene, Oregon, Washington, D.C., Buffalo, New York, and Skokie, Illinois. Consultant to U.S. Bureau of Reclamation for development of hydraulically efficient, bicycle safe drainage inlets. Consultant on FHWA research on effective retrofits of undercrossing and overcrossing structures for bicyclists, pedestrians, and handicapped.

MEMBERSHIPS

Institute of Transportation Engineers Transportation Research Board

PUBLICATIONS AND AWARDS

Residential Street Design and Traffic Control, with W. Homburger *et al.* Prentice Hall, 1989.

Co-recipient, Progressive Architecture Citation, *Mission Bay Master Plan*, with I.M. Pei WRT Associated, 1984.

Residential Traffic Management, State of the Art Report, U.S. Department of Transportation, 1979.

Improving The Residential Street Environment, with Donald Appleyard *et al.*, U.S. Department of Transportation, 1979.

Strategic Concepts in Residential Neighborhood Traffic Control, International Symposium on Traffic Control Systems, Berkeley, California, 1979.

Planning and Design of Bicycle Facilities: Pitfalls and New Directions, Transportation Research Board, Research Record 570, 1976.

Co-recipient, Progressive Architecture Award, *Livable Urban Streets, San Francisco Bay Area and London*, with Donald Appleyard, 1979.

ATTACHMENT C



WILSON IHRIG

ACOUSTICS, NOISE & VIBRATION

CALIFORNIA
WASHINGTON
NEW YORK

WI #21-xxx

May 25, 2021

Kendra Hartmann, Esq.
Christina Caro, Esq.
Adams Broadwell Joseph & Cardozo
601 Gateway Blvd, Suite 1000
South San Francisco, California 94080

SUBJECT: Redwood Tech @1010 Comments on the CEQA document

Dear Ms. Hartmann and Ms. Caro,

Per your request, I have reviewed the background documents for the subject matter project, Redwood Tech @ 101, a new industrial park providing five new buildings on a vacant lot. The staff report indicates that no separate CEQA analysis is required. A previous project was proposed in this area, which also included a residential development on an adjacent lot to the east. The noise and vibration technical report for that project were reviewed for context (Morgan Hill Technology Park, Draft EIR, Appendix G, "Fry's Site Noise and Vibration Assessment – Morgan Hill, California," March 9, 2020, prepared by Illingworth and Rodkin,) referenced as "prior analysis".

Noise Impacts at Noise Sensitive Land Uses not Properly Identified

The construction noise analysis in the prior analysis appears to rely on incorrect distances between the noise sensitive land use and the project construction. Construction noise analyses can be done using the shortest distance between the noise sensitive land use and the work area for the project, or it can be done using the distance from the noise sensitive land use to the center, or possibly the centroid of the project. Given that the extent of the prior project was so large (89 acres), using either of these distances would potentially over-estimate or under-estimate the actual impacts, respectively.

The prior analysis identified a significance threshold of 60 dBA hourly Leq for construction noise received at residential land use and 70 dBA hourly Leq received at commercial land use and exceed the ambient noise environment by at least 5 dBA for more than one year would constitute a significant temporary noise increase.

In the prior analysis, only a short-term noise measurement was made near the residential neighborhood on Tolusa Place (ST-1) measuring two short 10-minute periods ranging from 58 to 62 dBA Leq; given the location's distance from the main arterial and highway noise sources, it is

expected that the ambient at the future residential project, which is being permitted concurrently, would be more similar to the noise measurement data collected at ST-2 near the medical facilities which yielded 64 dBA Leq. According to the prior analysis, construction noise which exceeds 60 dBA Leq and 63 dBA Leq over the course of a year would be significant at the Tolusa Place residents, and construction noise which exceeds 60 dBA Leq and 68 dBA Leq over the course of the year would be significant at the future residential project.

For context, the Oakland Noise Ordinance limits long-term construction projects that last more than 10 days to 65 dBA at residential land use and 70 at commercial land use, regardless of the existing ambient conditions¹. From this perspective the one year requirement to determine significance seems particularly lenient.

The prior analysis relies upon construction equipment noise provided by the FHWA in their Roadway Construction Noise Model. This is common practice as there are many similarities in equipment and noise levels. The prior analysis does not disclose the specific noise level assumptions for each construction phase. Table 1 below extrapolates those values, and these extrapolated source levels provide the same values reported in Tables 7 and 8 of the prior analysis.

Table 1 Extrapolated Construction Source Levels and Activity Duration from Prior Analysis

Construction Phase	Housing Project		Office/Light Industrial	
	Construction Noise Source Levels ¹ (dBA)	Duration (Days)	Construction Noise Source Levels ¹ (dBA)	Duration (Days)
Site Preparation	84	20	84	5
Grading	87	45	85	8
Trenching	79	20	79	10
Build Exterior	80	440	83	230
Build Interior	72	35	75	18
Paving	82	35	83	18
Note 1: noise levels at 50 ft distance				

Focusing attention only on the residential area on Tolusa Place and the future residential project, Tables 2 and 3 provide updated analyses of the construction noise impacts. Since the current project and the residential project are being permitted concurrently, the cumulative effect could be to cause the residents in this area to experience a full year or more of construction noise. The noise levels at the east residential neighborhood would exceed 60 dBA Leq and the existing environment of 58 dBA would be increased by 5 dBA or more for a period of a year or more.

Table 2 Construction Noise Impacts at East Residential Neighborhood

Construction Phase	Residential Construction Source to Tolusa Pl	Commercial Project Source to Tolusa Pl
--------------------	--	--

¹ Oakland Planning Code 17.120.050, Table 17.120.05, accessed via the web on 5/24/21.

https://library.municode.com/ca/oakland/codes/planning_code?nodeId=TIT17PL_CH17.120PEST_17.120.050NO

	Distance to Center: 440 ft	Distance to nearest PL 50 ft	Distance to Center: 1340 ft	Distance to nearest PL 880 ft
Site Preparation	65	84	55	59
Grading	68	87	56	60
Trenching	60	79	50	54
Build Exterior	61	80	54	58
Build Interior	53	72	46	50
Paving	63	82	54	58

The future residential project would be slightly closer to existing noise sources such as Hwy 101, but still within 50 ft of the project construction. If completed prior to the commercial project, some number of homes within the future residential project would be exposed to a significant noise impact as shown in Table 3. The noise levels would exceed 60 dBA Leq and the existing environment of 64 dBA would be increased by 5 dBA or more for a period of a year or more.

Table 3 Construction Noise Impacts from Commercial Buildings at Future Residential Project

Construction Phase	Commercial Project Source to Future Residential Project	
	Distance to Center: 515 ft	Distance to nearest PL 50 ft
Site Preparation	64	84
Grading	65	85
Trenching	59	79
Build Exterior	63	83
Build Interior	55	75
Paving	63	83

CEQA impact analysis should be provided to determine mitigation measures to address these temporary, substantial noise impacts such as buffer distances and sound barriers. Adequate materials for such sound barriers would include temporary barriers using STC 20-25 blankets on a tubular steel frame or scaffolding or 3 PSF wood frame barriers (e.g., using $\frac{3}{4}$ " thick plywood)². In any case the material should overlap or otherwise be constructed to avoid gaps of any size, and should be high enough to block line of sight between the construction noise sources and the affected windows. The sound barrier has to interrupt the line of sight between the source(s) and the receiver(s) and the best placement to maximize the sound barrier benefit is close the source or close to the receiver.

² FHWA *Highway Noise Barrier Design Handbook*, February 2020, pp. 25-27, indicates that materials with a transmission loss of 20 dB or better are well suited for noise barriers, and that the corresponding STC rating is usually 5 to 10 points less than its transmission loss. Practically speaking, many common materials are available with STC 25 or TL 20 to the necessary performance for a construction sound wall. Accessed via the web March 18, 2021. https://rosap.nhtl.bts.gov/view/dot/38373/dot_38373_DS1.pdf

WILSON IHRIG
RedwoodTech @101 CEQA

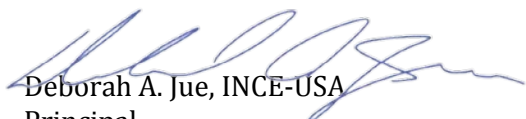
Conclusions

The construction noise analysis for the prior project appears to contain some errors which could lead one to conclude that construction activities for the proposed project and the future residential project could be less than significant. Mitigation measures would be required to reduce the construction noise impact.

Please feel free to contact me with any questions on this information.

Very truly yours,

WILSON IHRIG


Deborah A. Jue, INCE-USA
Principal

redwoodtech @ 101_noise review_wilson ihrig.docx

Attachment: Appeal by Adams Broadwell Joseph & Cardozo (3130 : Trammell Crow Redwood Tech at 101 Appeal)



DEBORAH JUE

Principal

Since joining Wilson Ihrig in 1990, Ms. Jue has been involved in with many projects from environmental assessments and entitlements, through design development, construction documents and construction administration support. As an acoustical consultant, she has provided noise measurement, analysis and recommendations to control noise and vibration both at the interior of the project and at the neighboring properties. She has authored many reports concerning compliance with the requirements of California Noise Insulation Standards, Title 24, local Noise Elements, environmental assessments and Federal noise criteria, and is well aware of the additional design and construction technique requirements to achieve industry standards. Ms. Jue has authored or provided input for many environmental documents and technical studies in accordance with NEPA and California's CEQA regulations, most of them related to surface transportation, and she gives presentations to public officials when necessary to explain construction noise problems, noise mitigation goals, and noise control methods. She can develop construction noise and vibration criteria to address vibration damage potential to nearby buildings and sensitive structures, and vibration annoyance or disruption potential for occupants of nearby buildings.

Education

- M.S. in Mechanical Engineering, University of California, Berkeley, 1998
- B.S. in General Engineering: Acoustics, Stanford University, 1988

Professional Associations (Member)

- American Society of Mechanical Engineers
- Acoustical Society of America
- National Council of Acoustical Consultants
- Institute of Noise Control Engineering
- WTS
- Transportation Research Board, AEP80 Standing Committee Member (2021-2024)

Research and Published Papers

- ACRP Report 175, ACRP 07-14, *Improving Intelligibility of Airport Terminal Public Address Systems*
- NCHRP 25-25, *Current Practices to Address Construction Vibration and Potential Effects to Historic Buildings Adjacent to Transportation Projects*
- *Transportation Research Record*, V. 2502, "Considerations to Establish Ground-Borne Noise Criteria to Define Mitigation for Noise-Sensitive Spaces"

Relevant Experience

- California High Speed Rail Caltrain Corridor EIR/EIS, San Francisco to San Jose
- UC Berkeley Northgate Hall A/V Renovations, Berkeley
- MacArthur Station, *long-term construction noise and vibration monitoring*, Oakland
- Safeway @ Claremont & College, *HVAC noise and construction noise monitoring*, Oakland
- ACTC I-80/Ashby, *interchange traffic noise analysis*, Berkeley and Emeryville
- ACTC I-680 Express Lanes, *traffic noise analysis*, Contra Costa County, CA
- Chase Arena, *construction noise and vibration monitoring*, San Francisco

[VIA Hand Delivery]

June 4, 2021

Michelle Bigelow, City Clerk
Morgan Hill City Clerk's Office
17575 Peak Avenue
Morgan Hill, CA 95037

Re: Notice of Appeal Planning Commission Approval of Resolutions 21-04 and 21-05

Dear Ms. Bigelow:

Pursuant to Chapter 18.112 of the Morgan Hill Municipal Code, I hereby submit, representing the Morgan Hill Responsible Growth Coalition (MHRGC), this Notice of Appeal with associated references, a Completed Uniform Application and a check in the amount of \$627.60 for the posted application fee.

The **specific action being appealed** is the City of Morgan Hill Planning Commission approval of Resolutions NO. 21-04 and 21-05. Resolution 21-04, "approving a design permit to allow for the construction of the Redwood Tech at 101 project" and Resolution 21-05, "approving a vesting tentative parcel map for a 4-lot parcel map on a 28-acre site located on the northern intersection of Condit Road and Half Road (APNS 728-30-006 AND 728-30-009) were approved as part of the agenda item #1, Public Hearing ([SD2020-0011/SR2020-0029 THROUGH SR2020-0033 DE PAUL - TC MORGAN HILL VENTURE: REQUEST FOR A TENTATIVE PARCEL MAP AND DESIGN PERMITS FOR THE REDWOOD TECH AT 101, A FIVE BUILDING INDUSTRIAL PARK, ON A 29± ACRE SITE \(APNS 728-30-006 AND 728-30-009\)](#) on May 25th, 2021.

The specific grounds for this appeal are:

- 1) Neither resolution is consistent with the General Plan. General Plan Policies CNF-18.3 and CNF-18.4 were both objected to not being considered by a Planning Commissioner and by the public and there is nothing in the record which supports the staff's claim that the City Attorney's office has made a 'determination' which allowed those General Plan requirements to be waived for the case at hand.
- 2) The Planning Commission could not make the necessary findings to approve a design permit or tentative map for the project based on information in the record. The MHRGC agrees with and by reference includes all the grounds and all of the analysis included in public comments Supplement #1 (http://morganhillca.igm2.com/Citizens/Detail_Meeting.aspx?ID=2033) by Michael Lozeau and Supplement #3 (http://morganhillca.igm2.com/Citizens/Detail_Meeting.aspx?ID=2033) by Kendra Hartmann. In summary, as taken directly (all text in italics) from Ms. Hartmann's public comment:

Approval of the Project's Design Permit and Tentative Map requires factual findings, supported by substantial evidence, pursuant to the Morgan Hill Municipal Code and the State Subdivision Map Act that a proposed subdivision is consistent with the City's general plan and specific plans, and does not have any detrimental environmental or public health effects.

"The Staff Report claims that the Project is in compliance with the General Plan, Zoning Code and other City Codes as required by Section 17.50.030 of the Municipal Code, but nowhere does it make findings, or offer substantial evidence, that the Project will not have any detrimental environmental or public health effects."

Ms. Hartman's submittal and other information provide substantial evidence that *demonstrates that the Project is likely to have potentially significant impacts on air quality, public health, climate change, noise, and traffic. Silicon Valley Residents' experts have provided ample evidence demonstrating the Project's significant impacts, including:*

- *Emissions of VOCs and TACs from Project construction and operation will be significant.*
- *DPM emissions from construction and operation*
- *The cancer risk from the Project to nearby receptors would be 42 in one million over 30 years, exceeding the BAAQMD threshold of 10 in one million.*
- *Traffic and transportation in the Project vicinity could be significantly impacted by Project construction and operation.*
- *Nearby residents could experience significant impacts from noise for a year or more.*

These effects have not been disclosed or analyzed by the City, which continues to claim that the General Plan EIR is sufficient to address any potential impacts, despite that document's repeated claim that it did not analyze any project specific impacts. As a result, the Project fails to comply with mandatory Map Act requirements. The City, therefore, cannot make the requisite findings pursuant to Government Code Sections 66473.5 and 66474 and must deny the Project's Design Permit and Tentative Map.

In addition, the MHRGC notes that the City received the results of the Citygate Standards of Coverage Assessment for Fire and EMS services in 2019 and is fully aware that there are issues with Emergency Service response times, with the area in which the project is located (the North-East quadrant) being one of the most effected locations in the entire City. The 2035 General Plan EIR certainly did not adequately analyze the Redwood Tech @ 101 project's impact on Emergency Services response times and public safety as required.

The City has improperly tried to rely on the 2035 General Plan EIR as a program EIR with analysis sufficient to satisfy CEQA. That EIR, however, was never meant to serve as a review document for specific projects. Many of the impacts likely to result from the Project will be significantly more severe than what was evaluated in the General Plan EIR, while others were never analyzed at all.

The Design Review Permit and Vesting Tentative Map required for the Project cannot be issued. As supported by substantial evidence, the Project will result in significant and unmitigated impacts that are not disclosed or analyzed by the General Plan EIR. Without further mitigation measures to reduce the Project's significant impacts, the City cannot find that it is not detrimental to public health, safety, or welfare, and thus cannot approve the permits necessary for the Project to move forward.

Because the Citizens of Morgan Hill are, unfortunately, keenly aware of the Shoe Palace project which was approved without requiring a Conditional Use Permit, we wish to also highlight the following portions of Mr. Lozeau's public comment (text in italics is directly quoted):

The CEQA analysis presented in the staff report is fundamentally flawed because it improperly recommends for the City to approve the Project prior to complying with CEQA for the whole project, i.e., its foreseeable uses. Staff suggests that the City may make a CEQA determination and approve the proposed Design Permit and the Vesting Tentative Parcel Map separate from any future conditional use permits for the Project. Staff claims that “[n]o other approvals are required at this time.” Packet Pg. 7. Staff further asserts that “[s]hould a future use on the site require a conditional use permit, that user will be responsible for conducting environmental review for the proposed use as required under CEQA.” Id., p. 19. This two-tiered approach to the Project’s CEQA review violates CEQA’s prohibition on approving any aspect of a proposed project prior to completing the environmental review for the whole project required by CEQA. Moreover, it is inconsistent with the City’s requirements for processing a proposed vested tentative map.

The proposed action items include both the Project’s design permit and a vesting tentative parcel map. The City’s Code sets forth the process and information required to process a vesting tentative parcel map application. The City’s approval of a vesting tentative map provides the applicant with a vested right to proceed with the proposed development: “When the city approves or conditionally approves a vesting tentative map, that approval shall confer a vested right to proceed with development in substantial compliance with the ordinances, policies and standards in effect on the date the city has determined that the application for approval of the vesting tentative map is complete pursuant to Section 65943 of the Government Code.” Muni. Code §17.50.040(A). As a result, the City’s Code requires additional information and considerations that the City must consider in making its discretionary decision whether or not to approve a proposed vesting tentative parcel map. In particular, the City is not authorized to defer or not address the proposed uses of the development proposed by the tentative map. Moreover, given the vesting implications of the City’s decision, the decisionmakers must have access to an environmental review of the whole Project, including its uses and not just its building design or proposed number of parcels.

Particularly relevant here is the express requirement that, “[i]f a conditional use permit is required, such permit shall be **processed prior or concurrently with the vesting tentative map**. Muni. Code § 17.50.060(B)(2) (emphasis added). As described in the staff report, the Project includes 232,000 square feet of warehousing use. Packet Pg. 13. The Project site’s zoning of Light Industrial requires a conditional use permit for “Warehousing and Distribution, Large. (the MH Zoning Code defines the threshold for ‘Large’ as 75,000 square feet)..... the proposed 232,000 square feet of warehousing is large. As a result, the conditional use permit necessary for the proposed warehousing use must be proposed and processed prior to or concurrently with the vesting tentative map. Muni. Code § 17.50.060(B)(2). By choosing to ignore the Project’s uses, the staff report’s CEQA recommendations are deficient as a matter of law, having failed to consider the potential environmental effects of the Project’s warehousing and other uses, including impacts from additional truck trips on air quality and wildlife, additional vehicle miles traveled and transportation impacts as a result of the Project, operational and construction-related noise and health impacts on residents located adjacent to the south corner of the Project site, the impacts of Project design features, such as the large glass facades, on bird-life and other potential impacts. As a result, any CEQA determination by the City must consider the Project’s contemplated uses now.

In addition, underscoring the need for staff to address the impacts of the anticipated uses, “[d]evelopment’ means the uses to which the land which is the subject of the map shall be put, the buildings to be constructed on it and all alterations of the land and construction incident thereto.” Muni. Code §17.08.055 (emphasis added). Thus, rather than defer any consideration of the Project’s uses, the vesting tentative parcel map procedure requires the applicant to submit “[t]he height, size, location, preliminary or conceptual architectural plans and use of all buildings to be constructed within the subdivision....” Muni. Code §17.50.060(B)(4) (emphasis added). Relatedly, to qualify for approval of a vested tentative

parcel map, the applicant must provide "[s]pecific information on the uses to which the proposed buildings will be put...." Muni. Code §17.50.060(B)(10). Thus, should the Planning Commission accept staff's invitation to put off addressing the Project's uses, any decision will be contrary to the City's ordinances.

In addition, CEQA forbids putting off environmental review of the whole project subsequent to approving any of its components. This is especially true for a decision to approve a vesting right in a development. The necessary CEQA document must be prepared and approved prior to any approval of a project subject to CEQA. "Before granting any approval of a project subject to CEQA, every lead agency or responsible agency shall consider a final EIR or negative declaration or another document authorized by these guidelines to be used in the place of an EIR or negative declaration." (14 CCR § 15004(a) [emphasis added].) "EIRs and negative declarations should be prepared as early as feasible in the planning process to enable environmental considerations to influence project program and design" (14 CCR § 15004(b).) Consistent with that goal: The environmental document preparation and review should be coordinated in a timely fashion with the existing planning, review, and project approval processes being used by each public agency. These procedures, to the maximum extent feasible, are to run concurrently, not consecutively. (14 CCR § 15004(c); see also PRC § 21003(a).) By attempting to defer addressing impacts from the Project's anticipated uses until the future, staff's proposals violate these fundamental tenets of CEQA.

Note: As mentioned above, this notice of appeal incorporates, by reference, the entirety of Supplement #1 and Supplement #3 of Agenda Item #1 of the May 25th, 2021 Planning Commission Meeting

(http://morganhillca.igm2.com/Citizens/Detail_Meeting.aspx?ID=2033). For reference, the text of those public comment submittals are attached to this appeal but due to the large size the attachments included with Supplement #3 are not.

The **specific relief and actions** which the applicant requests from the City Council are:

- 1) Protect the health, safety and public welfare of Morgan Hill Citizens and follow your commitment to abide by the General Plan, the Morgan Hill Municipal Code, California State law and CEQA Guidelines by overturning the Planning Commission's approval of Resolutions 21-04 and 21-05.
- 2) Require that the General Plan be interpreted as written even if it is inconvenient to a particular project and may be in the process of revision. Treat every applicant according to the currently approved version. Instruct staff to follow General Plan policies CNF-18.3 and CNF-18.4, or to revise the General Plan and have an amended version adopted before the approval of a Design Permit and Vesting Tentative Parcel Map for Redwood Tech @101 project is reconsidered.
- 3) Recognize the public's legitimate and acute concern for the potential environmental and safety impacts which a 510,000 square foot industrial project that allows for the installation of up to 76 dock-high doors and is located near senior living, a high school, the DePaul Health center and multiple existing and proposed residential neighborhoods and is in a location which has been identified as subject to Emergency Response time issues may have. While substantial evidence exists and should be the basis for your decision, also use your common sense to recognize that when the following language appears **seven times** in the 2035 General Plan EIR:

No specific development projects are proposed as part of the proposed Project. Therefore, this EIR is a program-level EIR that analyzes the potential significant environmental effects

of the adoption of the proposed Project. As a program EIR, it is not project-specific, and does not evaluate the impacts of individual projects that may be proposed under the General Plan. Such subsequent projects will require a separate environmental review, when applicable as required by CEQA, which could be in the form of a Negative Declaration, Mitigated Negative Declaration, or a Subsequent EIR, to secure the necessary development permits. Therefore, while subsequent environmental review may be tiered from this EIR, this EIR is not intended to address project-specific impacts of individual projects.

there is no way the 2035 General Plan EIR can be used to justify that this project is consistent for the project site **without completely losing public trust.**

Instruct staff to prepare an Initial Study and either an MND or EIR to identify, analyze and mitigate the Project's adverse environmental impact including analyzing the project's impact on Emergency Response Times.

Should you have any questions or comments, please do not hesitate to contact me and thank you in advance for your assistance.

Joe Baranowski
joe.b@mh-rgc.org
408-674-2846



Community Development Agency
Planning Division
17575 Peak Avenue
Morgan Hill, CA 95037-4128
Phone: (408) 778-6480
Fax: (408) 779-7236
www.morganhill.ca.gov

UNIFORM APPLICATION

The City of Morgan Hill Planning Division has designed this application in order to obtain important information about your proposed project that will help to expedite the application review process. Please complete all sections, providing as much detail as possible regarding the scope of your proposal.

PROJECT SITE INFORMATION

Project Location: Northern Intersection of Condit Road and Half Road

Street Address: n/a

Assessor's Parcel Number(s): 728-30-006 and 728-30-009

Site Acreage: 29

Zoning: Light Industrial (IL)

General Plan: Commercial/Industrial

Specific Plan and/or PD Overlay(s): Planned Development Combining District (PD)

Project Request: Select all that apply

- | | |
|---|--|
| ☐ Admin. Development Plan Review | ☐ General Plan Amendment |
| ☐ Annexation | ☐ Minor Exception |
| ☒ Appeal | ☐ Parcel Map |
| ☐ Conceptual Plan Review | ☐ Preliminary Plan Review |
| ☐ Conditional Use Permit | ☐ Planned Development |
| ☐ Cultural Resource Alteration/Designation | ☐ Sign Permit, Uniform Sign Program |
| ☐ Design Review | ☐ Subdivision |
| ☐ Development Agreement | ☐ Temporary Use Permit |
| ☐ Development Approval Amendment | ☐ Urban Service Area Amendment |
| ☐ Environmental Assessment | ☐ Variance |
| ☐ Extension of Time | ☐ Zoning Amendment |

☐ Other:

OWNER INFORMATION

Contact Name: Don Little

Company Name: TC Morgan Hill Venture

Mailing Address: unknown by applicant

City:

State:

Zip:

Phone: unknown by applicant

Email Address: unknown by applicant

CONTINUED ON NEXT PAGE

STAFF USE ONLY

Date Received:	Received By:	Complete: ☐ yes ☐ no	Fees Collected:
File Number(s):			
Related File(s):			
Notes:			

APPLICANT INFORMATION

Contact Name: Joe Baranowski

Company Name: Morgan Hill Responsible Growth Coalition

Mailing Address: 17500 Monterey Highway, 178

City: Morgan Hill

State: CA

Zip: 95038

Phone: 408-674-2846

Email Address: joe.b@mh-rgc.org

ENGINEER/ARCHITECT INFORMATION

Contact Name: N/A

Company Name:

Mailing Address:

City:

State:

Zip:

Phone:

Email Address:

NOTE: The individual(s) listed above will receive correspondence from the City regarding this application.

Attachment: Appeal by Morgan Hill Responsible Growth Coalition (3130 : Trammell Crow Redwood Tech at 101 Appeal)

CONTINUED ON NEXT PAGE

CITY OF MORGAN HILL
Letter of Agency

If the applicant is not the owner of record of the subject site, a Letter of Agency from the owner or the owner's authorized representative must be submitted which grants the applicant permission to submit an application for the requested entitlement(s).

PROPERTY OWNER INFORMATION

Property Owner Name: n/a Phone: () -
Address: _____ City: _____ Zip: _____
Email: _____

Date: _____

To: City of Morgan Hill
Development Services Department
Planning Division
17575 Peak Avenue
Morgan Hill, CA 95037

Development Services Department:

I, the undersigned legal owner of record, hereby grant permission to: _____

Applicant: _____ Phone Number: () -
Address: _____ City: _____ Zip: _____

To apply for the following entitlement(s): _____

For the subject property located at: _____

Address of Owner of Record: _____ Phone: () -

Assessor's Parcel Number: _____

Signature of Owner of Record: _____

(must be original signature)

Attachment: Appeal by Morgan Hill Responsible Growth Coalition (3130 : Trammell Crow Redwood Tech at 101 Appeal)

INDEMNIFICATION AGREEMENT

As part of, and in connection, with this application to the City of Morgan Hill, Applicant agrees to defend, indemnify, and hold harmless the City of Morgan Hill, its officers, agents, employees, officials and representatives (Indemnitees) from and against any and all claims, actions, or proceedings arising from any suit for damages or for equitable or injunctive relief which is filed against City to attack, set aside, void or annul its approval of this application or any related decision, or the adoption of any environmental documents which relates to said approval. The City shall promptly notify the Applicant of any such claim, action or proceeding and the City shall cooperate fully in the defense thereof. In the event that Applicant is required to defend Indemnitees in connection with the proceeding, Indemnitees shall retain the right to approve (a) the counsel to so defend Indemnitees; (b) all significant decisions concerning the manner in which the defense is conducted; and (c) any and all settlements, which approval shall not be unreasonably withheld. This indemnification shall include, but is not limited to, (a) all pre-tender litigation costs incurred on behalf of the City, including City's attorney's fees and all other litigation costs and expenses, including expert witnesses, required to defend against any lawsuit brought as a result of City's approval or approvals; (b) reasonable internal City administrative costs, including but not limited to staff time and expense spent on the litigation, after tender is accepted; and (c) all damages, costs, expenses, attorney fees or expert witness fees that may be awarded to the prevailing party arising out of or in connection with the approval of the application or related decision. City may, in its sole discretion, participate in the defense of such action; but such participation shall not relieve Applicant of its obligations under this condition. The undersigned hereby represents that they are the Applicant or are fully empowered by the Applicant as their agent to agree to provide the indemnification, defense and hold harmless obligations, and the signature below represents the unconditional agreement by Applicant to be bound by such conditions.

AFTER REVIEW AND CONSIDERATION OF ALL OF THE FOREGOING TERMS AND CONDITIONS, APPLICANT, BY ITS SIGNATURE BELOW, HEREBY AGREES TO BE BOUND BY AND TO FULLY AND TIMELY COMPLY WITH ALL OF THE FOREGOING TERMS AND CONDITIONS.

Applicant (Print): Joe Baranowski

Date: 06/04/2021

Applicant Signature:

Joe Baranowski

Digitally signed by Joe Baranowski

Date: 2021.06.04 10:30:07 -07'00'

Attachment: Appeal by Morgan Hill Responsible Growth Coalition (3130 : Trammell Crow Redwood Tech at 101 Appeal)

PUBLIC NOTICE/PROJECT IDENTIFICATION SIGN

A. PROCEDURE

A public notice project identification sign shall be posted by the applicant a minimum of 10-days prior to the date of the public hearing or project approval by the Development Services Department. If the notice sign is not posted on the project site before end of business on the posting deadline, the project's public hearing or approval date will be rescheduled until the sign is posted for the minimum 10-day period. The posted notice shall be maintained and remain on the project site until after the City renders a decision on the project. The hearing notice shall be removed from the project site within seven days after the City has rendered a final decision on the project, although the portion of the sign which does not mentioned the hearing may remain to identify the project.

B. SIGN REQUIREMENTS:

There are two sizes of public notice signs:

- 2' x 3' with a maximum overall height of 8' for "minor" projects. Minor projects consist of Minor Subdivisions of four or fewer parcels and Conditional Use Permits or Design Reviews which do not involve the establishment of new buildings on vacant sites.
- 4' x 8' with a maximum overall height of 8' for "major" projects. Major projects include Subdivision of five or more parcels, Conditional Use Permits or Design Reviews which involve the establishment of new buildings on vacant sites.

The notice sign content must contain but is not limited to the following information:

- a) Approval requested by applicant
- b) General description of project/scope of work
- c) Project site identification information such as (address and APN)
- d) Detailed site plan or colored elevation of project

The final version of the notice sign shall be approved by the Planning Division prior to posting to ensure accuracy of information and consistency of design.

I hereby agree to post the subject property with a Public Notice/Project Identification Sign at least ten days prior to the public hearing or final action date. The sign shall be posted on the subject property in a visible location at least five feet behind the property line.

Applicant Name (Print)

Applicant's Signature

Date

Jenna Luna

From: Alisha C. Pember <apember@adamsbroadwell.com>
Sent: Tuesday, May 25, 2021 6:39 PM
To: PC Public Comment; Jennifer Carman; Adam Paszkowski
Subject: [EXTERNAL] Agenda Item No. 1: Redwood Tech at 101 Project (SR2020-0029 through SR2020-0033 and SD2020-0011)
Attachments: 5175-002acp - Redwood Tech at 101 comments 05.25.21 with Attachments A-C.pdf
Follow Up Flag: Follow up
Flag Status: Flagged

Good evening,

Please see the attached **Comments on Agenda Item No. 1: Redwood Tech at 101 Project (SR2020-0029 through SR2020-0033 and SD2020-0011)** and **Attachments A-C**.

We are also providing a Dropbox link containing references in support of

Attachments: <https://www.dropbox.com/sh/svh1g5h9gg0bx1r/AABFq1jmYW5mlAV6upl2bU9sa?dl=0>.

If you have any questions, please contact Kendra Hartmann.

Thank you.

Alisha Pember

Alisha C. Pember
 Adams Broadwell Joseph & Cardozo
 601 Gateway Boulevard, Suite 1000
 South San Francisco, CA 94080
 (650) 589-1660 voice, Ext. 24
apember@adamsbroadwell.com

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Attachment: Appeal by Morgan Hill Responsible Growth Coalition (3130 : Trammell Crow Redwood Tech at 101 Appeal)

ADAMS BROADWELL JOSEPH & CARDOZO

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

601 GATEWAY BOULEVARD, SUITE 1000
SOUTH SAN FRANCISCO, CA 94080-7037

TEL: (650) 589-1660

FAX: (650) 589-5062

khartmann@adamsbroadwell.com

SACRAMENTO OFFICE

520 CAPITOL MALL, SUITE 360
SACRAMENTO, CA 95814-4721

TEL: (916) 444-6201

FAX: (916) 444-6209

DANIEL L. CARDOZO
KEVIN T. CARMICHAEL
CHRISTINA M. CARO
JAVIER J. CASTRO
THOMAS A. ENSLOW
KELILAH D. FEDERMAN
ANDREW J. GRAF
TANYA A. GULESSERIAN
KENDRA D. HARTMANN*
KYLE C. JONES
DARIEN K. KEY
RACHAEL E. KOSS
AIDAN P. MARSHALLMARC D. JOSEPH
Of Counsel*Not admitted in California.
Licensed in Colorado.

May 25, 2021

Via Email OnlyMohammad Habib, Chair
Members of the Planning Commission
City of Morgan Hill
c/o Minutes Clerk
17575 Peak Avenue
Morgan Hill, CA 95037
pcpubliccomment@morganhill.ca.govJennifer Carman, Community Development Director
jennifer.carman@morganhill.ca.gov
Adam Paszkowski
Adam.Paszkowski@morganhill.ca.gov**Re: Agenda Item No. 1: Redwood Tech at 101 Project (SR2020-0029 through SR2020-0033 and SD2020-0011)**

Dear Chair Habib, Commissioners, Minutes Clerk, Ms. Carman, Mr. Paszkowski:

We are writing on behalf of Morgan Hill Residents for Responsible Development ("Residents") to provide comments to the Morgan Hill Planning Commission ("Commission") on Agenda Item No. 1, the Redwood Tech at 101 Project, SR2020-0029 through SR2020-0033 and SD2020-0011 ("Project"). Proposed by Trammel Crow Morgan Hill Ventures ("Applicant"), the Project proposes approximately 501,314 square feet of flexible industrial/commercial space spread across 5 separate buildings on four separate lots in the approximately 29-acre lot south of the former Tree Farm site on Hwy 101 south of Cochrane Road in the City of Morgan Hill ("City").

The Applicant seeks a Design Permit and a Vesting Tentative Parcel Map, both discretionary approvals, to divide the property's existing 2 parcels into 4 legal lots. In accordance with Section 18.108.040.D of the City's Municipal Code, the size

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of the Project is considered significant and, as such, the Development Services Director has elevated the Project to the Planning Commission for review and consideration of the two proposed Project entitlements. The Project proposes to construct 5 buildings on the site, all designated for flexible industrial and commercial uses, including advanced manufacturing, warehouse, supporting office, and similar industrial and commercial uses. The property has a Commercial/Industrial General Plan designation and is zoned Light Industrial (IL). Access to the property will be provided via four driveways from the extension of De Paul Drive to the south from Cochrane Road. All street frontages will be improved to City Standards with sidewalk and landscaping.

The Applicant previously submitted to the City a different project titled the Morgan Hill Technology Center ("Technology Center"), which was withdrawn by the Applicant on September 18, 2020.¹ That previous project encompassed the proposed Project site and the parcels to the north. The original Technology Center proposed a mix of industrial, commercial, and residential uses on an 89-acre site. The industrial and commercial portions of the Technology Center project proposed 1.04 million square feet of light industrial uses contained in six buildings, 45,000 square feet of industrial office in one building situated between the industrial buildings on a 2.31-acre parcel, and 50,000 square feet of retail/commercial on a 2.92-acre parcel fronting Cochrane Road.

We reviewed the Staff Report and related Project documents with the assistance of environmental health, air quality, and GHG expert Paul E. Rosenfeld, Ph.D., and hazardous materials expert Matt Hagemann, P.G., C.Hg. of Soil Water Air Protection Enterprise ("SWAPE"), transportation expert Dan Smith, and noise expert Deborah Jue, INCE-USA. Comments and curriculum vitae of SWAPE are attached to this letter as Attachment A.² Mr. Smith's comments and curriculum vitae are included as Attachment B,³ and Ms. Jue's comments and curriculum vitae are attached as Attachment C.⁴ All expert comments are fully incorporated herein and submitted to the City herewith. Therefore, the City must separately respond to the technical comments in Attachments A, B and C.

¹ Staff Report, p. 6; see <http://www.morgan-hill.ca.gov/1966/Morgan-Hill-Technology-Park> (last visited 5/25/21).

² **Attachment A:** Comments on Redwood Tech at 101 Project (May 21, 2021) ("SWAPE Comments").

³ **Attachment B:** Transportation Comments re Redwood Tech@101 Project by Smith Engineering & Management (May 20, 2021) ("Smith Comments").

⁴ **Attachment C:** Redwood Tech @ 101 Comments, Wilson Ihrig (May 25, 2021) ("Jue Comments").
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Based on our review, it is clear that the City has not complied with the California Environmental Quality Act ("CEQA")⁵, the Subdivision Map Act, or with local and State land use laws in its review of the Project and its proposed entitlements.

The City initially prepared a draft environmental impact report ("DEIR") for the Technology Center Project, which found that the Technology Center Project (which included the instant Project plus the additional components) would have significant impacts on air quality, biological resources, cultural resources, greenhouse gas ("GHG") emissions, hazardous materials, noise, and transportation which required mitigation.⁶ Before the DEIR was certified, the Project application was withdrawn. The Applicant has now repropoed the industrial/commercial component of the Technology Center Project as the Redwood 101 Project, which the City now claims does not require CEQA review because it was previously analyzed in the 2035 General Plan EIR. As discussed below, the General Plan EIR was a planning-level CEQA document which did not analyze the Project's environmental impacts with the degree of specificity required for project-level environmental review. Nor were the project-specific impacts that were identified in the Technology Center DEIR addressed in the General Plan EIR. An EIR is required for the Project for these reasons.⁷

The City is also improperly piecemealing its environmental review of the Project from other components of the original Technology Center Project. As the Staff Report explains, the residential component of the Technology Center Project has been reduced from 319 units to 269 units and is being concurrently developed by Dividend Homes under a separate application.⁸ Two of the original project components are being reviewed by the City for a second time, yet the City failed to prepare an EIR that analyzes the impacts of both developments.

Finally, as discussed below, the Redwood 101 Project has potentially significant, unmitigated impacts on air quality, public health, GHG emissions, noise, and transportation that must be disclosed and mitigated in an EIR. These unmitigated impacts also preclude the Planning Commission from making the

⁵ Pub. Res. Code §§ 21000 et seq; 14 Cal. Code Regs. ("CCR" or "CEQA Guidelines") §§ 150000 et seq.

⁶ See Technology Center DEIR, pp. iv-xxx, available at <https://www.morgan-hill.ca.gov/DocumentCenter/View/36693/Draft-EIR-Morgan-Hill-Tech-Center-12-May-2020-webready> (last visited 5/25/21).

⁷ See 14 CCR § 15152.

⁸ Staff Report, p. 6.
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findings required to approve the Project under the Subdivision Map Act and the City land use codes. The Planning Commission should remand the Project to staff to prepare a legally adequate EIR before the Project can be considered for approval.⁹

I. STATEMENT OF INTEREST

Residents is an unincorporated association of individuals and labor organizations that may be adversely affected by the potential public and worker health and safety standards associated with Project development, as well as its potential environmental impacts. Residents includes local unions, their members and families, and other individuals that live and/or work in the City of Morgan Hill and Santa Clara County.

Individual members of Residents and the affiliated labor organizations live, work, recreate and raise their families in the City of Morgan Hill and Santa Clara County. They would be directly affected by the Project's environmental and health and safety impacts. Individual members, including Santa Clara County resident Fermin Layos, may also work on the Project itself. Accordingly, they will be first in line to be exposed to any health and safety hazards that exist onsite. Residents have a strong interest in enforcing the State's environmental laws that encourage sustainable development and ensure a safe working environment for its members. Environmentally detrimental projects can jeopardize future jobs by making it more difficult and more expensive for business and industry to expand in the region, and by making it less desirable for businesses to locate and people to live there.

II. LEGAL STANDARD

In an effort to ensure the long-term protection of the environment of the state, CEQA requires governmental agencies at all levels to develop standards and procedures necessary to protect environmental quality. To this end, CEQA requires preparation of an EIR whenever a public agency proposes to approve or to carry out a project that may have a significant effect on the environment.¹⁰ In this way, CEQA is designed to inform decision makers and the public about the potentially

⁹ We reserve the right to supplement these comments at later hearings and proceedings on this Project. Gov. Code § 65009(b); PRC § 21177(a); *Bakersfield Citizens for Local Control v. Bakersfield ("Bakersfield")* (2004) 124 Cal. App. 4th 1184, 1199-1203; see *Galante Vineyards v. Monterey Water Dist.* (1997) 60 Cal. App. 4th 1109, 1121.

¹⁰ *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 390. 5175-002acp

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significant environmental impacts of a project before it is approved and implemented.¹¹

Described as “an environmental ‘alarm bell’ whose purpose it is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return,”¹² an EIR’s purpose is to “inform the public and its responsible officials of the environmental consequences of their decisions *before* they are made. Thus, the EIR protects not only the environment, but also informed self-government.”¹³ To fulfill this purpose, the discussion of impacts in an EIR must be detailed, complete, and “reflect a good faith effort at full disclosure.”¹⁴ Furthermore, CEQA imposes an affirmative obligation on agencies to avoid or reduce environmental harm by adopting feasible project alternatives or mitigation measures to address all potentially significant impacts identified in the agency’s CEQA analysis.¹⁵ An adequate EIR must contain facts and analysis, not just an agency’s conclusions.¹⁶

CEQA “projects” include activities undertaken by public agencies that cause direct physical changes to the environment.¹⁷ Following preliminary review of a project to determine whether an activity is subject to CEQA, a lead agency is required to prepare an initial study to identify several key objectives, including whether to prepare an EIR or negative declaration, as well as the appropriate process to be used for analysis of the project’s environmental effects and potential mitigation.¹⁸ CEQA requires an agency to analyze the potential environmental impacts of its proposed actions in an EIR except in certain limited circumstances.¹⁹

¹¹ Cal. Code Regs., tit. 14, § 15002, subd. (a)(1) (“CEQA Guidelines”); *Berkeley Keep Jets Over the Bay v. Bd. of Port Comm’rs.* (2001) 91 Cal.App.4th 1344, 1354 (“*Berkeley Jets*”); *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810.

¹² *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810.

¹³ *Citizens of Goleta Valley v. Bd. of Supervisors* (1990) 52 Cal.3d 553, 564 (internal citations omitted).

¹⁴ CEQA Guidelines, § 15151; *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 721-722.

¹⁵ Pub. Resources Code, §§ 21002-21002.1.

¹⁶ See *Citizens of Goleta Valley v. Bd. of Supervisors* (1990) 52 Cal.3d 553, 568.

¹⁷ *County of Ventura v. City of Moorpark* (2018) 24 Cal.App.5th 377, 385.

¹⁸ CEQA Guidelines, §§ 15060, 15063, subd. (c).

¹⁹ See, e.g., Pub. Resources Code, § 21100.
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III. CEQA PROHIBITS PIECEMEALING OF A PROJECT

CEQA prohibits a project proponent from seeking approval of a project by breaking it up, piecemeal fashion, in order to take advantage of environmental exemptions or less rigorous CEQA review for smaller projects.²⁰ The law mandates that “environmental considerations do not become submerged by chopping a large project into many little ones—each with a minimal potential impact on the environment—which cumulatively may have disastrous consequences.”²¹ As courts have explained, “... [t]he CEQA process is intended to be a careful examination, fully open to the public, of the environmental consequences of a given project, *covering the entire project, from start to finish.*”²²

Specifically, the description of a project must describe a larger future project and analyze its effects if (1) the larger project is a reasonably foreseeable consequence of the initial project, and (2) the future project will be significant in that it will likely change the scope or nature of the initial project or its environmental effects.²³ This rule applies even if (1) the Lead Agency has not yet formally approved the larger future project, and (2) it is impossible to predict with precision the environmental effects of less-than-definite future plans, as long as these effects can be discussed at least in general terms.²⁴ Difficulty in describing the effects of less-than-definite future plans does not excuse an agency from CEQA compliance, especially since CEQA provides mechanisms, such as Program EIRs and tiering of EIRs, to facilitate environmental analysis of larger future projects.²⁵

Furthermore, “[t]iering does not excuse the lead agency from adequately analyzing reasonably foreseeable significant environmental impacts of the project and does not justify deferring such analysis to a later tier EIR or negative declaration.”²⁶ If a program-level EIR has been released, it is nonetheless still not appropriate to piecemeal later tiers in order to avoid environmental review.

²⁰ *Arviv Enterprises, Inc. v. South Valley Area Planning Com.* (2002) 101 Cal. App. 4th 1336, 1340.

²¹ *Bozung v. LAFCO* (1975) 13 Cal.3d 263, 283-84; *City of Santee v. County of San Diego*, (1989) 214 Cal.App.3d 1438, 1452; *Citizens Assn. for Sensible Development of Bishop Area v. County of Inyo* (1985) 172 Cal.App.3d 151, 165.

²² *Natural Resources Defense Council v. City of Los Angeles* (2002) 103 Cal.App.4th 268, (emphasis added).

²³ *Laurel Heights Improvement Assn. v. Regents of Univ. of California* (1988) 47 Cal. 3d 376, 396.

²⁴ *Id.* at 398-99.

²⁵ *Id.* at 399, n.8.

²⁶ 14 C.C.R. § 15152 (b); *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal. 4th 412, 431, 150 P.3d 709, 720.

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A. Development of Multiple Components of the Original Morgan Hill Technology Center Project is Reasonably Foreseeable and Cumulative Impacts Must be Analyzed Together in an EIR

Similar to *Laurel Heights*, in which the Court found that future development was reasonably foreseeable and the university had to include environmental analysis of the anticipated future uses of the site, the Project is just one fragment of anticipated development of the site, which was already analyzed in an EIR.²⁷ Though the Applicant abandoned the larger project in September 2020, the proposed Project is merely a selection excerpted from that larger development, pulled out to be considered on a smaller scale.

Considering the sequence of events associated with development at the site, it is difficult to imagine a scenario in which the Applicant and the City are not attempting to piecemeal a large project into several smaller ones that will require less rigorous CEQA review—or none at all, as the City alleges here. The larger project, the impacts of which the DEIR concluded would be numerous, significant and, in some cases, unavoidable, was abruptly abandoned by the Applicant after considerable pushback from the community.²⁸ When the Applicant submitted the much-abbreviated application for the currently proposed Project, the City pointed out that a Vesting Tentative Map of five or more parcels would require additional CEQA review, after which the Applicant immediately revised the Project, reconfiguring the proposed site into four parcels.²⁹

Moreover, the residential portion of the larger project had been evaluated in the Technology Center DEIR together with all project components. It is now being developed concurrently under a separate application—and separate environmental review.³⁰ As the court in *Laurel Heights* found, “this is not the type of situation where it is unclear as to whether a parcel of land will be developed or as to whether activity will commence.”³¹ In fact, though no formal land use entitlement applications had been filed with the City at the time, the Technology Center DEIR acknowledged that “[t]he future development of [the residential component] is

²⁷ *Id.* at 399.

²⁸ See, e.g., public comment letters, <https://www.morgan-hill.ca.gov/1966/Morgan-Hill-Technology-Park>.

²⁹ See City Letter of Application Incompleteness (Jan. 11, 2021), p. 3; Applicant Response Letter (Feb. 1, 2021), p. 8.

³⁰ Morgan Hill Planning Commission Staff Report, p. 6.

³¹ *Laurel Heights*, 47 Cal.3d at 395.

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reasonably foreseeable given the existing land use designation and zoning.”³² Now that that foreseeable development has come to pass, the adjacent development projects are being evaluated separately.

By now omitting from its environmental review the reasonably foreseeable development of all projects at the same sites originally analyzed in the EIR for the Technology Center Project, the City has impermissibly engaged in piecemealing and must prepare an EIR for the entire site which fully describes, analyzes and mitigates potentially significant impacts.

IV. TIERING

In preparing an initial study, a lead agency is required to identify the appropriate level of environmental review and must determine whether a previously prepared EIR could be used with the project.³³ Tiering, in which the analysis of general matters contained in a broader EIR, such as one prepared for a general plan, is used to frame the general discussion of a later, narrower project and its specific issues and impacts, can be appropriate when considering large-scale planning approval or separate but related projects. A later EIR shall be required when the initial study or other analysis finds that the later project may cause significant effects on the environment that were not adequately addressed in the prior EIR.³⁴

Where a program EIR has been prepared that could apply to a later project, CEQA requires the lead agency to conduct a two-step process to examine the later project to determine whether additional environmental review is required.³⁵ First, the agency must consider whether the project will result in environmental effects that were not examined in the program EIR.³⁶ Whether a later activity is within the scope of a program EIR is a factual question that the lead agency determines based on substantial evidence in the record.³⁷ If the agency finds the activity would have environmental effects that were not examined in the program EIR, it must

³² Technology Center DEIR, p. 17.

³³ CEQA Guidelines, §§ 15060, 15063, subd. (c).

³⁴ 14 C.C.R. § 15152(f).

³⁵ See CEQA Guidelines, 15168, subd. (c); S. Kostka & M. Zischke, Practice Under the California Environmental Quality Act 2d, § 10.16 (Mar. 2018).

³⁶ CEQA Guidelines, § 15168, subd. (c)(1).

³⁷ *Id.* at (c)(2).

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then prepare an initial study to determine whether to prepare an EIR or negative declaration to address those effects.³⁸

Second, if the agency determines the project is covered by the program EIR, it must then consider whether any new or more significant environmental effects could occur due to changes in circumstances or project scope, or new information that could not have been considered in the program EIR.³⁹ More specifically, pursuant CEQA Guidelines section 15162, subsequent or supplemental environmental review is required when one or more of the following events occur:

- (1) Substantial changes are proposed in the project which will require major revisions of the previous EIR due to the involvement of new significant effects or a substantial increase in the severity of previously identified effects;
- (2) Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or
- (3) New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the negative declaration was adopted, shows any of the following:
 - (A) The project will have one or more significant effects not discussed in the previous EIR or negative declaration;
 - (B) Significant effects previously examined will be substantially more severe than shown in the previous EIR;
 - (C) Mitigation measures or alternatives previously found not to be feasible would in fact be feasible, and would substantially reduce one or more significant effects of the

³⁸ CEQA Guidelines, § 15168, subd. (c)(1).

³⁹ CEQA Guidelines, § 15168, subd. (c)(2).

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project, but the project proponents decline to adopt the mitigation measure or alternative; or

- (D) Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.⁴⁰

The terms “supplement” and “subsequent” are not interchangeable. “A supplement to an EIR is a document that contains additions or changes needed to make the previous EIR adequate ... In contrast ... a subsequent EIR revises the previous EIR, rather than simply supplements it.”⁴¹ With subsequent review the “revised EIR must receive the same circulation and review as the original EIR.”⁴²

Similarly, Section 15183 provides a streamlined process for environmental review of projects that are “consistent with the development density established by existing zoning, community plan, or general plan policies for which an EIR was certified,” authorizing agencies to avoid duplicative environmental review “except as might be necessary to examine whether there are project-specific significant effects which are peculiar to the project or its site.”⁴³

Courts have held that if “no EIR has been prepared for a nonexempt project, but substantial evidence in the record supports a fair argument that the project may result in significant adverse impacts, the proper remedy is to order preparation of an EIR.”⁴⁴ The fair argument standard creates a “low threshold” favoring environmental review through an EIR, rather than through issuance of a negative declaration.⁴⁵ An agency’s decision not to require an EIR can be upheld only when there is no credible evidence to the contrary.⁴⁶

⁴⁰ CEQA Guidelines, § 15162, subd. (a)(1)-(3); see also Pub. Resources Code, § 21166.

⁴¹ S. Koskte & M. Zischke, Practice Under the Environmental Quality Act 2d., § 19.4, p. 19-8 (Mar. 2018).

⁴² S. Koskte & M. Zischke, Practice Under the Environmental Quality Act 2d., § 19.4, p. 19-8, (Mar. 2018), emphasis added; see also CEQA Guidelines, §§ 15162, 15163.

⁴³ 14 C.C.R. § 15183(a).

⁴⁴ See, e.g., *Communities for a Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal.4th 310, 319-320.

⁴⁵ *Citizens Action to Serve All Students v. Thornley* (1990) 222 Cal.App.3d 748, 754.

⁴⁶ *Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th, 1307, 1318; see also *Friends of B Street v. City of Hayward* (1980) 106 Cal.App.3d 988, 1002 (“If there was substantial evidence that the proposed

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A. The Project Was Not Analyzed by the 2035 General Plan EIR

In 2016, the Morgan Hill City Council certified the Morgan Hill 2035 General Plan EIR analyzing “land use, urban design, circulation, public services, natural resources, and safety goals, policies, and actions to guide investment and development” in the City over a 20-year period. Prepared as a program EIR pursuant to CEQA Guidelines Section 15168, the EIR states that its intended purpose is to serve as a long-term “policy document[] guiding future development activities and City actions.”⁴⁷

The Staff Report asserts that the General Plan EIR “adequately addressed the potential environmental impacts associated with the comprehensive update of the City’s constitution for growth including certain implementation activities and provided for streamlining of the environmental review process for projects proposed subsequent to the certification of the EIR.”⁴⁸ The Report’s entire analysis of the EIR’s evaluation of impacts from activities specific to the Project consists of the following paragraph:

The proposed project entails dividing the subject property and constructing buildings consistent with the General Plan. The division and development of parcels consistent with the General Plan was addressed in the program EIR for the 2035 General Plan and, therefore, pursuant to Section 15162 and Section 15183 of the State CEQA Guidelines, no additional review under the California Environmental Quality Act is required for the proposed project.⁴⁹

It is unclear from this description how the General Plan EIR’s analysis of development and population growth over the next 15 years applies to the Project’s specific impacts, let alone how those impacts are examined in enough detail as to make further environmental review unnecessary. The Staff Report appears to conclude that, in light of the Project’s proposal to divide “the subject property and construct[] buildings,” the General Plan EIR’s analysis of the “division and development of parcels” is sufficiently adequate that no further review is

project might have a significant environmental impact, evidence to the contrary is not sufficient to support a decision to dispense with preparation of an EIR and adopt a negative declaration, because it could be ‘fairly argued’ that the project might have a significant environmental impact”).

⁴⁷ General Plan EIR, p. 2-2.

⁴⁸ Staff Report, p. 19.

⁴⁹ Staff Report, p. 15.

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warranted. A thorough search of the General Plan EIR, however, reveals that it does not analyze impacts from specific subdivisions or construction whatsoever. In fact, specifics of any kind associated with the Project—environmental setting, baseline, potential impacts from development, subdivision or construction, mitigation—are nowhere to be found in the EIR.

In its insistence that the General Plan EIR's analysis of future impacts renders any further environmental review unnecessary, the Staff Report seems to unequivocally reject the EIR's stated objective with respect to its status as a program EIR. Recognizing the utility of program EIRs when a project "consists of a series of actions related to the issuance of rules, regulations, and other planning criteria," the EIR distinguishes itself as a document that serves to guide policy and City actions over time, rather than as a benchmark for specific project impacts:

No specific development projects are proposed as part of the proposed Project. Therefore, this EIR is a program-level EIR that analyzes the potential significant environmental effects of the adoption of the proposed Project. As a program EIR, it is not project-specific, and does not evaluate the impacts of individual projects that may be proposed under the General Plan. Such subsequent projects will require a separate environmental review, when applicable as required by CEQA, which could be in the form of a Negative Declaration, Mitigated Negative Declaration, or a Subsequent EIR, to secure the necessary development permits. Therefore, while subsequent environmental review may be tiered from this EIR, this EIR is not intended to address project-specific impacts of individual projects.⁵⁰

The City had to make a significant effort to disregard this statement in the EIR, whose preparers went so far as to announce no less than 7 times that it was not to be used to evaluate individual projects.⁵¹ The City cannot do an about-face now to claim that its own General Plan EIR analyzed something which the City has previously and unequivocally stated it did not.

Section 15168's two-step inquiry of a program EIR's applicability to later activities holds that "if a later activity would have effects that were not examined in the program EIR, a new initial study would need to be prepared leading to either an

⁵⁰ General Plan EIR, p. 2-2.

⁵¹ See, e.g., pp. 2-2, 3-1fn.2, 3-42, 4.3-34, 4.3-37, 4.3-38, 4.3-53.
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EIR or a negative declaration.”⁵² The City insists that, pursuant to sections 15162 and 15183, the Project is within the scope of the program EIR and no subsequent EIR is required. “Whether a later activity is within the scope of a program EIR is a factual question that the lead agency determines based on substantial evidence in the record.”⁵³ The City does not offer any substantial evidence to support its dubious conclusion. At most, it suggests a vague association between the EIR’s illusory “division and development of parcels” and the Project’s subdivision and development.

In contrast, as demonstrated below and supported by substantial evidence, the Project is likely to result in significant impacts to transportation, air quality, and public health—impacts specific to its development and that were not contemplated by the General Plan EIR. Since the EIR, by its own admission, did not evaluate the impacts of any specific projects, a subsequent EIR to examine “project-specific significant effects which are peculiar to the project or its site” should be prepared.⁵⁴

V. ENVIRONMENTAL REVIEW IS REQUIRED FOR DISCRETIONARY ACTIONS

In addition to claiming that the program-level General Plan EIR adequately analyzed impacts of future development, including the Project, the City advised the Applicant that the Project was further excused from CEQA review because “Environmental Review is not required for Design Review or Tentative Parcel Map applications.”⁵⁵ This conclusion is patently false for the reasons that follow.

A. Design Review

The City’s conclusion that environmental review is not required for Design Review is incorrect. Per the City’s own Municipal Code, a Design Review permit, which is required for significant projects like the Applicant’s,⁵⁶ “is a discretionary action that enables the city to ensure that proposed development exhibits high

⁵² 14 C.C.R. § 15168(c)(1).

⁵³ *Id.*

⁵⁴ 14 C.C.R. § 15183(a).

⁵⁵ City of Morgan Hill Development Services Center Completeness Comment Letter, February 16, 2021, p. 3.

⁵⁶ Municipal Code 18.108.040(D)(2) states that “[a]ny structure with more than seventy-five thousand square feet of floor area is presumed significant.”

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quality design consistent with the general plan and any other applicable specific plan or area plan adopted by the city council.”⁵⁷ CEQA clearly requires environmental review of all “discretionary projects proposed to be carried out or approved by public agencies.”⁵⁸

The Staff Report notes the receipt of a letter on behalf of the Applicant asserting that the Planning Commission “lacks discretion to address potential environmental effects, making the Project ministerial for CEQA purposes.”⁵⁹ Analogizing to a case in which a court found that approval of a design review permit limited the reviewing agency to consideration of design-related issues, the letter attempts to establish that the Planning Commission has no discretion to consider the Project’s potential environmental impacts. This is because, as the letter contends, the discretion granted to the Commission by the Municipal Code refers only to discretionary review of a project’s design elements. The letter’s interpretation of the case law, however, suffers from two fundamental flaws: (1) it attempts to apply the court’s reasoning to an inapposite set of facts, and (2) it overlooks the other discretionary approval sought for this Project, the Vesting Tentative Parcel Map.

The letter attempts to draw parallels where they do not exist, asserting that “[l]ike the fourteen design review criteria applied by St. Helena in *McCorkle*, the City’s design review criteria are limited to design review and not environmental issues.”⁶⁰ In that case, the St. Helena City Council found the local design review ordinances prevented it from disapproving the project for non-design related matters. Those ordinances did not include any required findings related to CEQA review or otherwise allow the agency to “shape the project in any way which could respond to any of the concerns which might be identified in an environmental impact report.”⁶¹ Here, on the other hand, Morgan Hill’s design review ordinance requires a finding that a project has been reviewed in compliance with CEQA, as well as a determination that it will not be “detrimental to the public health, safety, or welfare or materially injurious to the properties or improvements in the vicinity”—distinctly discretionary actions that require consideration of the Project’s effects on the environment and potential mitigation.⁶²

⁵⁷ MHMC 18.108.040(A).

⁵⁸ Pub. Resources Code § 21080(a).

⁵⁹ Staff Report, p. 19.

⁶⁰ Staff Report, p. 72.

⁶¹ *McCorkle Eastside Neighborhood Group v. City of St. Helena* (2018) 31 Cal.App 5th 80, 90.

⁶² Zoning Code, § 18.108.040.

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Furthermore, even if a design permit did limit the Planning Commission to consideration only of design-related elements, the Project also seeks a Vesting Tentative Parcel Map, a discretionary permit subject to the provisions of CEQA.⁶³ As discussed above, it is well established that a project cannot be divided into smaller parts that individually will not have a significant effect on the environment. This rule is applicable even if one of the smaller parts might require only ministerial, rather than discretionary, approval.⁶⁴ Moreover, when a project “involves an approval that contains elements of both a ministerial action and a discretionary action, the project will be deemed to be discretionary.”⁶⁵

B. Vesting Tentative Parcel Map

The Project requires a Vesting Tentative Parcel Map to subdivide the existing two parcels into four separate parcels, approval of which requires that the Tentative Map is consistent with all applicable city ordinances, general and specific plans adopted by the city, and the State Subdivision Map Act (“Map Act”).⁶⁶ The Map Act, as well as the Morgan Hill Municipal Code, requires specific environmental findings before a parcel map can be approved. A map shall not be approved, for example, if its design or proposed improvements are “likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat,” or are “likely to cause serious public health problems.”⁶⁷ Regulating land subdivisions in Morgan Hill, according to the Municipal Code, is “necessary for the preservation of the public health, safety and general welfare, to promote orderly growth and development and to promote open space, conservation, protection and proper use of land and to insure provision for adequate traffic circulation, utilities and services.”⁶⁸

Once again, making these findings confers on the agency a discretionary duty to determine compliance with the statute.⁶⁹ This discretion, furthermore, involves

⁶³ See, e.g., Pub. Resources Code § 21080: “this division shall apply to discretionary projects proposed to be carried out or approved by public agencies, including, but not limited to, the enactment and amendment of zoning ordinances, the issuance of zoning variances, the issuance of conditional use permits, and the approval of tentative subdivision maps ...”

⁶⁴ *Orinda Assoc. v. Board of Supervisors* (1986) 182 Cal.App.3d 1145, 1171–1172.

⁶⁵ 14 C.C.R. § 15268(d).

⁶⁶ MHMC § 17.24.050 A; 17.24.070 A; .

⁶⁷ Gov. Code § 66474(e), (f); MHMC § 17.20.100.

⁶⁸ MHMC, § 17.04.020.

⁶⁹ Pub. Res. Code § 21080(a); *Rominger v. County of Colusa* (2014) 229 Cal.App.4th 690. 5175-002acp

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consideration of activities that have the “potential to cause a direct physical change or a reasonably foreseeable indirect physical change in the environment.”⁷⁰

The City, in an exercise of this discretionary duty, states in the Staff Report that the Project “will not be detrimental to the public health, safety, or welfare, and will not be materially injurious to the properties or improvements in the vicinity.”⁷¹ As it had previously concluded that no environmental review was required,⁷² however, it is unclear how it reached this determination, and no substantial evidence is offered in support of this conclusory statement. In addition, as discussed in Section VI. below, there is substantial evidence demonstrating that the Project is likely to have potentially significant and unmitigated impacts on air quality, public health, climate change, and traffic. As a result of these unmitigated impacts, the Project fails to comply with the Map Act and Municipal Code and the City cannot make the requisite findings to approve the Project’s Tentative Map.

VI. THE CITY MUST PREPARE AN EIR TO ANALYZE THE PROJECT’S POTENTIALLY SIGNIFICANT ENVIRONMENTAL IMPACTS THAT WERE NOT ANALYZED IN THE MORGAN HILL 2035 GENERAL PLAN EIR

Agencies must fully disclose all potentially significant impacts of a project, and must implement all feasible mitigation to reduce those impacts to less than significant levels. The lead agency’s significance determination with regard to each impact must be supported by accurate scientific and factual data.⁷³ An agency cannot conclude that an impact is less than significant unless it produces rigorous analysis and concrete substantial evidence justifying the finding.⁷⁴

Moreover, the failure to provide information required by CEQA is a failure to proceed in the manner required by CEQA.⁷⁵ Challenges to an agency’s failure to proceed in the manner required by CEQA, such as the failure to disclose

⁷⁰ *Id.*

⁷¹ Staff Report, p. 16.

⁷² Asserting that the Project “is consistent with the development projections analyzed in the Morgan Hill 2035 General Plan program EIR for the project site” and that it “is designed to be consistent with the development standards in the General Plan and Zoning Code” the City concluded that no further environmental review would be required. Staff Report, p. 52.

⁷³ 14 CCR § 15064(b).

⁷⁴ *Kings Cty. Farm Bur. v. Hanford* (1990) 221 Cal.App.3d 692, 732.

⁷⁵ *Sierra Club v. State Bd. Of Forestry* (1994) 7 Cal.4th 1215, 1236.

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information about a project's environmental effects or alternatives, are subject to a less deferential standard than challenges to an agency's factual conclusions.⁷⁶ In reviewing challenges to an agency's approval of an EIR based on a lack of substantial evidence, the court will "determine de novo whether the agency has employed the correct procedures, scrupulously enforcing all legislatively mandated CEQA requirements."⁷⁷

As explained above, where a program EIR has been prepared that can apply to a later project, CEQA requires the lead agency to conduct a two-step process to examine the later project to determine whether additional environmental review is required.⁷⁸ First, the agency must consider whether the project will result in environmental effects that were not examined in the program EIR.⁷⁹ If the later activity involves site-specific operations, as it does here, the City must evaluate the site and activity to determine whether the environmental effects were covered in the program EIR and document its findings by a checklist.⁸⁰ If the agency finds the activity would have environmental effects that were not examined in the program EIR, it must then prepare an initial study to determine whether to prepare an EIR or negative declaration to address those effects.⁸¹

Because the 2035 General Plan EIR did not address any project-specific impacts of future projects, significant effects resulting from the Project will be substantially more severe than anything analyzed in the General Plan EIR. Without completing additional environmental analysis, the Project cannot satisfy the requirements for disclosure and analysis under CEQA and must complete a subsequent EIR.

⁷⁶ *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 435.

⁷⁷ *Id.*, *Madera Oversight Coal., Inc. v. County of Madera* (2011) 199 Cal. App. 4th 48, 102.

⁷⁸ See CEQA Guidelines, 15168, subd. (c); S. Kostka & M. Zischke, Practice Under the California Environmental Quality Act 2d, § 10.16 (Mar. 2018).

⁷⁹ CEQA Guidelines, § 15168, subd. (c)(1).

⁸⁰ 14 CCR §15168(c)(4).

⁸¹ CEQA Guidelines, § 15168, subd. (c)(1).

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A. Air Quality

i. Updated Analysis Provides Substantial Evidence of Potentially Significant Air Quality Impacts

Using Project-specific information, as well as site-specific information such as land use type, meteorological data, total acreage, and typical equipment, experts from SWAPE estimated the Project's construction and operational emissions using the most updated version of CalEEMod.⁸² SWAPE found that emissions of VOCs from construction at the Project site would be 268.96 lb/day, nearly twice the BAAQMD threshold of 137 lb/day.⁸³

This is new information about significant impacts that were not analyzed in the General Plan EIR because this specific development project was not before the City at the time the General Plan was approved. The results substantiate the conclusion that impacts to air quality will be significant and must be analyzed and mitigated in a project-specific EIR.

ii. A Health Risk Analysis Must be Prepared

SWAPE found that potentially significant impacts to public health were undisclosed and the Project failed to provide sufficient information regarding the Project's potential health risk impacts.⁸⁴ The Project will produce emissions of diesel particulate matter ("DPM") through the exhaust stacks of construction equipment throughout its construction period, and will generate daily vehicle trips, which will generate additional exhaust emissions and continue to expose nearby sensitive receptors to DPM emissions.⁸⁵ The City, however, failed to make a reasonable effort to connect the Project's construction-related and operational toxic air contaminant ("TAC") emissions to the potential health risks posed to nearby receptors.⁸⁶ These pose a significant risk to public health, and should be disclosed and mitigated in an EIR.

⁸² SWAPE Comments, p. 3.

⁸³ Id.; California Environmental Quality Act Air Quality Guidelines. BAAQMD, May 2017, available at: https://www.baaqmd.gov/~media/files/planning-and-research/ceqa/ceqa_guidelines_may2017-pdf.pdf?la=en, p. 2-2, Table 2-1.

⁸⁴ SWAPE Comments, p. 4.

⁸⁵ Id.

⁸⁶ Id.

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CEQA requires that a lead agency analyze the human health effects of the air emissions generated by a development project.⁸⁷ Additionally, as SWAPE explained, the Office of Environmental Health Hazard Assessment (“OEHHA”), recommends that exposure from projects lasting more than 6 months be evaluated for the duration of the project and recommends that an exposure duration of 30 years be used to estimate individual cancer risk for the maximally exposed individual resident (“MEIR”).⁸⁸

SWAPE calculated the Project’s excess cancer risk to the MEIR using applicable HRA methodologies prescribed by OEHHA:

Consistent with the default CalEEMod construction schedule, the annualized average concentration for construction was used for the entire third trimester of pregnancy (0.25 years) and the first 1.28 years of the infantile stage of life (0 – 2 years). The annualized averaged concentration for operation was used for the remainder of the 30-year exposure period, which makes up the remainder of the infantile stage of life, and the entire child and adult stages of life (2 – 16 years) and (16 – 30 years), respectively.⁸⁹

Consistent with OEHHA, as recommended by SCAQMD, BAAQMD, and SJVAPCD guidance, we used Age Sensitivity Factors (“ASFs”) to account for the heightened susceptibility of young children to the

⁸⁷ CEQA Appendix G, Section III.D; CEQA Guidelines section 15126.2(a) (“health and safety problems caused by the physical changes” that the proposed project will precipitate); *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 516; *Berkeley Keep Jets. v. Bd. of Port Comrs.* (“*Berkeley Jets*”) (2001) 91 Cal.App.4th 1344, 1369; *Bakersfield*, 124 Cal.App.4th at 1219–1220.

⁸⁸ SWAPE Comments, p. 4; Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments. OEHHA, February 2015, *available at*: http://oehha.ca.gov/air/hot_spots/2015/2015GuidanceManual.pdf, p. 8-6, 8-15

⁸⁹ SWAPE Comments, p. 5.
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carcinogenic toxicity of air pollution.^{90, 91, 92, 93} According to this guidance, the quantified cancer risk should be multiplied by a factor of ten during the third trimester of pregnancy and during the first two years of life (infant) as well as multiplied by a factor of three during the child stage of life (2 – 16 years). Furthermore, in accordance with the guidance set forth by OEHHA, we used the 95th percentile breathing rates for infants.⁹⁴ Finally, according to BAAQMD guidance, we used a Fraction of Time At Home (“FAH”) value of 0.85 for the 3rd trimester and infant receptors, 0.72 for child receptors, and 0.73 for the adult receptors.⁹⁵ We used a cancer potency factor of 1.1 (mg/kg-day)⁻¹ and an averaging time of 25,550 days.

The resulting impacts, SWAPE found, were highly significant and demonstrate a high risk to the health and welfare of the public from the Project:

The excess cancer risk to adults, children, infants, and during the 3rd trimester of pregnancy at the MEIR located approximately 300 meters away, over the course of Project construction and operation, utilizing

⁹⁰ “Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments.” OEHHA, February 2015, *available at*:

<https://oehha.ca.gov/media/downloads/crn/2015guidancemanual.pdf>.

⁹¹ “Draft Environmental Impact Report (DEIR) for the Proposed The Exchange (SCH No. 2018071058).” SCAQMD, March 2019, *available at*: <http://www.aqmd.gov/docs/default-source/ceqa/comment-letters/2019/march/RVC190115-03.pdf?sfvrsn=8>, p. 4.

⁹² “California Environmental Quality Act Air Quality Guidelines.” BAAQMD, May 2017, *available at*: http://www.baaqmd.gov/~media/files/planning-and-research/ceqa/ceqa_guidelines_may2017-pdf.pdf?la=en, p. 56; see also “Recommended Methods for Screening and Modeling Local Risks and Hazards.” BAAQMD, May 2011, *available at*:

<http://www.baaqmd.gov/~media/Files/Planning%20and%20Research/CEQA/BAAQMD%20Modeling%20Approach.ashx>, p. 65, 86.

⁹³ “Update to District’s Risk Management Policy to Address OEHHA’s Revised Risk Assessment Guidance Document.” SJVAPCD, May 2015, *available at*: <https://www.valleyair.org/busind/pto/staff-report-5-28-15.pdf>, p. 8, 20, 24.

⁹⁴ “Supplemental Guidelines for Preparing Risk Assessments for the Air Toxics ‘Hot Spots’ Information and Assessment Act,” June 5, 2015, *available at*: <http://www.aqmd.gov/docs/default-source/planning/risk-assessment/ab2588-risk-assessment-guidelines.pdf?sfvrsn=6>, p. 19.

“Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments.” OEHHA, February 2015, *available at*:

<https://oehha.ca.gov/media/downloads/crn/2015guidancemanual.pdf>

⁹⁵ “Air Toxics NSR Program Health Risk Assessment (HRA) Guidelines.” BAAQMD, January 2016, *available at*: http://www.baaqmd.gov/~media/files/planning-and-research/rules-and-regis/workshops/2016/reg-2-5/hra-guidelines_clean_jan_2016-pdf.pdf?la=en

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ASFs, are approximately 2.4, 15, 23, and 1.1 in one million, respectively. We estimate an excess cancer risk of approximately 42 in one million over the course of a residential lifetime (30 years), utilizing ASFs. The infant, child, and lifetime cancer risks exceed the BAAQMD threshold of 10 in one million, thus resulting in a potentially significant impact.

Neither the General Plan EIR nor the Staff Report disclose this potentially significant health risk impact from the Project. This is new information about significant impacts that were not analyzed in the General Plan EIR because this specific development project was not before the City at the time the General Plan was approved. The City must prepare an EIR to fully disclose the health risk posed to nearby, existing receptors from Project construction and operation, and to require binding mitigation measures to reduce the health impacts from the Project's DPM emissions to less than significant levels.

iii. GHG Emissions Will be Significant

Because the City failed to conduct any project-specific impact analysis, the Staff Report and supporting documentation lack sufficient information regarding the Project's potentially significant GHG emissions.

SWAPE conducted an analysis of the Project's GHG emissions utilizing its CalEEMod model, with the 2030 "Substantial Progress" threshold of 660 metric tons of carbon dioxide equivalents per year ("MT CO₂e/year").⁹⁶ The CalEEMod output files, modeled by SWAPE with Project-specific information, showed "the Project's mitigated emissions, which include approximately 1,389 MT CO₂e of total construction emissions (sum of 2021 and 2022 emissions) and approximately 5,250 MT CO₂e/year of annual operational emissions (sum of area, energy, mobile, waste,

⁹⁶ SWAPE Comments, p. 9; See: JEFFERSON UNION HIGH SCHOOL DISTRICT FACULTY & STAFF HOUSING PROJECT AIR QUALITY & GREENHOUSE GAS ASSESSMENT. City of Daly City, June 2019, available at: https://files.ceqanet.opr.ca.gov/257215-2/attachment/k-aC8VdC7LV3xz75yuUmtGiiExH-Y7HEPQ-dU-YIxuhNp95Dx9bK_TbVP3sWar00-Zx87dh7ji80vbRH0, p. 7; "TO 20-01 PAPÉ MACHINERY AIR QUALITY & GREENHOUSE GAS EMISSIONS ASSESSMENT." City of Fremont, February 2020, available at: "SOLAR4AMERICA ICE FACILITY EXPANSION AIR QUALITY AND GREENHOUSE GAS EMISSION ASSESSMENT." City of San Jose, September 2019, available at: https://www.fremont.gov/DocumentCenter/View/44974/4_Appendix-1_Air-Quality-GHG-Assessment, p. 18; and <https://www.sanjoseca.gov/Home/ShowDocument?id=45200>, p. 6.

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and water-related emissions). When compared to the Project's net annual GHG emissions of 853 MT CO₂e/year to the Bay Area Air Quality Management District's ("BAAQMD") 2030 "Substantial Progress" threshold of 660 MT CO₂e/year, SWAPE found a potentially significant GHG impact, exceeding the "Substantial Progress" threshold by eightfold.⁹⁷

The Project's potentially significant GHG impacts are new information that was not analyzed in the General Plan EIR which must be fully disclosed and mitigated in an EIR.

B. Transportation

The City asserts that CEQA review is not required for the Project because the General Plan EIR evaluated impacts specific enough to release the Applicant or agency from any duty to perform subsequent environmental review. As Mr. Smith points out, however, the projected 2035 impacts to the intersections surrounding the Project site that are listed in the General Plan EIR are far less significant than those anticipated as a result of the Morgan Hill Technology Center in that project's DEIR.⁹⁸ Some of the relevant intersections, meanwhile, were not evaluated at all in the General Plan EIR. Impacts resulting from specific development of the Project site were clearly not evaluated in the General Plan EIR, necessitating further environmental review.⁹⁹

⁹⁷ SWAPE Comments, p. 9; See: "JEFFERSON UNION HIGH SCHOOL DISTRICT FACULTY & STAFF HOUSING PROJECT AIR QUALITY & GREENHOUSE GAS ASSESSMENT." City of Daly City, June 2019, *available at*: https://files.ceqanet.opr.ca.gov/257215-2/attachment/k-aC8VdC7LV3xz75yuUmtGiiExH-Y7HEPQ-dU-YIxuhNp95Dx9bK_TbVP3sWar00-Zx87dh7ji80vbRRH0, p. 7; "TO 20-01 PAPÉ MACHINERY AIR QUALITY & GREENHOUSE GAS EMISSIONS ASSESSMENT." City of Fremont, February 2020, *available at*: "SOLAR4AMERICA ICE FACILITY EXPANSION AIR QUALITY AND GREENHOUSE GAS EMISSION ASSESSMENT." City of San Jose, September 2019, *available at*: https://www.fremont.gov/DocumentCenter/View/44974/4_Appendix-1_Air-Quality-GHG-Assessment, p. 18; and <https://www.sanjoseca.gov/Home/ShowDocument?id=45200>, p. 6.

⁹⁸ The General Plan EIR estimated that the intersection of Cochrane Road and DePaul Drive would operate at average delays per vehicle of 18.6 seconds and 19.8 seconds in the morning and evening peak periods, respectively. It found that the intersection of Cochrane Road and Mission View Drive would operate at average delays per vehicle of 20.2 seconds and 19.0 seconds in the morning and evening peaks. These values are characteristic of what the Morgan Hill Technology Center DEIR reports as *existing conditions*. It estimates significantly higher impacts to the intersections as a result of that larger project. General Plan EIR 4.14-43.

⁹⁹ Smith Comments, p. 4.

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Furthermore, Mr. Smith explains, the DEIR prepared for the Morgan Hill Technology Center project acknowledged that the General Plan EIR did not contemplate the development at issue in that project.¹⁰⁰ As one of its project alternatives, it compared potential project impacts with those estimated in the General Plan EIR buildout of the site. A Traffic Analysis concluded that, using the City's Travel Demand Forecasting Model and the General Plan's 20-year estimation for buildout of the site, VMT would increase significantly with development of the Technology Park project.¹⁰¹ That project, the analysis determined, would result in nearly double the number of miles traveled.¹⁰² The DEIR, however, attempted to cast doubt on the veracity of this conclusion by asserting that the development projections included in the General Plan EIR were "significantly lower" in intensity and "not reflective of the maximum allowed uses under the existing General Plan designations and zoning districts."¹⁰³ The DEIR acknowledges, therefore, that the Technology Park project and its specific development could not have been under consideration in the General Plan's environmental review. Likewise, the General Plan could not have contemplated this Project, as the larger Technology Center encompassed this Project's development.¹⁰⁴

Mr. Smith examined the DEIR prepared for the larger project proposed at the site. The traffic analysis performed for that DEIR, he found, showed highly significant deteriorations at the intersections surrounding the project site, from LOS B or C to LOS F in one or the other of the peak hours:

- The intersection of Cochrane Road with DePaul Drive would deteriorate in the PM peak hour from 18.7 seconds average delay per vehicle and LOS B to 101 seconds per vehicle and LOS F.
- The intersection of Cochrane Road and Mission View Drive would deteriorate in the AM peak hour from 23.0 seconds average delay per vehicle and LOS C to 94.6 seconds per vehicle and LOS F.
- The intersection of Mission View Drive and Half Road would deteriorate from 22.6 seconds average delay per vehicle and LOS C in the PM peak hour to 136.9 seconds and LOS F.¹⁰⁵

¹⁰⁰ *Id.*

¹⁰¹ Technology Park DEIR, p. 160; Technology Park DEIR Traffic Impact Analysis, Appendix H, p. 79.

¹⁰² *Id.*

¹⁰³ Technology Park DEIR, p. 201; Smith Comments, p. 4.

¹⁰⁴ MHMC, Sustainable Building Regulations, § 17.32.040.

¹⁰⁵ Smith Comments, p. 3.

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He further explained: If one takes the trip generation for the RedwoodTech@101 Project as fairly calculated in the section above and assumes its share of responsibility for the delay increments disclosed in the Morgan Hill Technology Center Mixed-Use Project DEIR is proportional to the ratio of its trip generation to that of the whole Mixed-Use Project, then the following results are obtained:

- The RedwoodTech@101 Project would cause the intersection of Cochrane Road with DePaul Drive to deteriorate in the PM peak hour from 18.7 seconds average delay per vehicle and LOS B to approximately 63.55 seconds delay and LOS E in the PM peak.
- The intersection of Cochrane Road and Mission View Drive would deteriorate in the AM peak hour from 23.0 seconds average delay per vehicle and LOS C to approximately 78.99 seconds and LOS E in the AM peak.
- The intersection of Mission View Drive and Half Road would deteriorate from 22.6 seconds average delay per vehicle and LOS C in the PM peak hour to approximately 84.89 seconds and LOS F.¹⁰⁶

“The fact that the revised and renamed Project,” Mr. Smith stated, “could have effects on this scale should have been obvious to the City.”¹⁰⁷ This is new information about significant transportation impacts that were not analyzed in the General Plan EIR because this specific development project was not before the City at the time the General Plan was approved. The City must prepare an EIR to disclose and mitigate these impacts.

C. Noise

Noise expert Deborah Jue, in examining the DEIR prepared for the prior Technology Center Project, found that noise impacts were not properly identified, relying on incorrect distances between the noise sensitive land use and the project construction.¹⁰⁸ This error, she explained, may result in an inaccurate analysis of impacts for the Redwood 101 Project.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ Jue Comments, p. 1: “Construction noise analyses can be done using the shortest distance between the noise sensitive land use and the work area for the project, or it can be done using the distance from the noise sensitive land use to the center, or possibly the centroid of the project. Given 5175-002acp

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The prior analysis identified a significance threshold of 60 dBA hourly Leq for construction noise received at residential land use and 70 dBA hourly Leq received at commercial land use. Ambient noise in excess of these thresholds by at least 5 dBA for more than one year would constitute a significant temporary noise increase.¹⁰⁹

Ms. Jue explained the measurements contained in the prior analysis:

[O]nly a short-term noise measurement was made near the residential neighborhood on Tolusa Place (ST-1) measuring two short 10-minute periods ranging from 58 to 62 dBA Leq; given the location's distance from the main arterial and highway noise sources, it is expected that the ambient at the future residential project, which is being permitted concurrently, would be more similar to the noise measurement data collected at ST-2 near the medical facilities which yielded 64 dBA Leq. According to the prior analysis, construction noise which exceeds 60 dBA Leq and 63 dBA Leq over the course of a year would be significant at the Tolusa Place residents, and construction noise which exceeds 60 dBA Leq and 68 dBA Leq over the course of the year would be significant at the future residential project.¹¹⁰

Putting this one-year allowance into context, Ms. Jue pointed out that the Oakland Noise Ordinance limits long-term construction projects that last more than 10 days to 65 dBA at residential land use and 70 at commercial land use, regardless of the existing ambient conditions. From this perspective, Ms. Jue stated, "the one-year requirement to determine significance seems particularly lenient."¹¹¹

Since the Project is being permitted concurrently with the residential component of the Technology Center project, residents could experience a full year or more of cumulative construction noise. The noise levels at the east residential neighborhood would exceed 60 dBA Leq and the existing environment of 58 dBA would be increased by 5 dBA or more for a period of a year or more.¹¹²

that the extent of the prior project was so large (89 acres), using either of these distances would potentially over-estimate or under-estimate the actual impacts, respectively."

¹⁰⁹ Jue Comments, p. 1.

¹¹⁰ Jue Comments, pp. 1-2.

¹¹¹ Jue Comments, p. 2.

¹¹² Jue Comments, p. 2

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The concurrent residential project would be slightly closer to existing noise sources such as Hwy 101, but still within 50 ft of the project construction. If completed prior to the commercial project, Ms. Jue explained, “some number of homes within the future residential project would be exposed to a significant noise impact as shown in Table 3. The noise levels would exceed 60 dBA Leq and the existing environment of 64 dBA would be increased by 5 dBA or more for a period of a year or more.”¹¹³

Table 1 Construction Noise Impacts from Commercial Buildings at Future Residential Project

Construction Phase	Commercial Project Source to Future Residential	
	Distance to Center: 515	Distance to nearest PL 50
Site Preparation	64	84
Grading	65	85
Trenching	59	79
Build Exterior	63	83
Build Interior	55	75
Paving	63	83

CEQA impact analysis, Ms. Jue points out, is necessary to determine the best mitigation measures to address these temporary, substantial noise impacts. Such measures could include buffer distances and sound barriers. Adequate materials for such sound barriers, she explains, would include “temporary barriers using STC 20-25 blankets on a tubular steel frame or scaffolding or 3 PSF wood frame barriers (e.g., using $\frac{3}{4}$ ” thick plywood).”¹¹⁴ The material, she said, should overlap or otherwise be constructed to avoid gaps of any size, and should be high enough to block the line of sight between the construction noise sources and the affected windows.¹¹⁵ “The sound barrier has to interrupt the line of sight between the source(s) and the receiver(s) and the best placement to maximize the sound barrier benefit is close the source or close to the receiver.”¹¹⁶

¹¹³ Jue Comments, 3.

¹¹⁴ Jue Comments, p. 3.

¹¹⁵ *Id.*

¹¹⁶ *Id.*

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Ms. Jue concluded that, because the noise analysis prepared for the prior project appears to contain some errors “which could lead one to conclude that construction activities for the proposed project and the future residential project could be less than significant.”¹¹⁷ This is new information about significant impacts that were not analyzed in the General Plan EIR because this specific development project was not before the City at the time the General Plan was approved. An EIR must be prepared to disclose and mitigate these impacts.

VII. THE CITY CANNOT MAKE THE NECESSARY FINDINGS TO ISSUE A DESIGN PERMIT OR TENTATIVE MAP FOR THE PROJECT

Approval of the Project’s Design Permit and Tentative Map requires factual findings, supported by substantial evidence, pursuant to the Morgan Hill Municipal Code and the State Subdivision Map Act that a proposed subdivision is consistent with the City’s general plan and specific plans, and does not have any detrimental environmental or public health effects.¹¹⁸

The Staff Report claims that the Project is in compliance with the General Plan, Zoning Code and other City Codes as required by Section 17.50.030 of the Municipal Code, but nowhere does it make findings, or offer substantial evidence, that the Project will not have any detrimental environmental or public health effects.

As discussed in Section VI above, substantial evidence demonstrates that the Project is likely to have potentially significant impacts on air quality, public health, climate change, noise, and traffic. Silicon Valley Residents’ experts have provided ample evidence demonstrating the Project’s significant impacts, including:

- Emissions of VOCs and TACs from Project construction and operation will be significant.
- DPM emissions from construction and operation
- The cancer risk from the Project to nearby receptors would be 42 in one million over 30 years, exceeding the BAAQMD threshold of 10 in one million.¹¹⁹

¹¹⁷ Jue Comments, p. 4.

¹¹⁸ Gov Code §§66473.5, 66474; MHMC 18.108.040(A).

¹¹⁹ SWAPE Comments, p. 8.

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- Traffic and transportation in the Project vicinity could be significantly impacted by Project construction and operation.
- Nearby residents could experience significant impacts from noise for a year or more.

These effects have not been disclosed or analyzed by the City, which continues to claim that the General Plan EIR is sufficient to address any potential impacts, despite that document's repeated claim that it did not analyze any project-specific impacts. As a result, the Project fails to comply with mandatory Map Act requirements. The City, therefore, cannot make the requisite findings pursuant to Government Code Sections 66473.5 and 66474 and must deny the Project's Design Permit and Tentative Map.

VIII. CONCLUSION

The City has improperly tried to rely on the 2035 General Plan EIR as a program EIR with analysis sufficient to satisfy CEQA. That EIR, however, was never meant to serve as a review document for specific projects. Many of the impacts likely to result from the Project will be significantly more severe than what was evaluated in the General Plan EIR, while others were never analyzed at all.

Furthermore, the Design Review Permit and Vesting Tentative Map required for the Project cannot be issued. As supported by substantial evidence above and in expert comment letters attached herein, the Project will result in significant and unmitigated impacts that are not disclosed or analyzed by the General Plan EIR. Without further mitigation measures to reduce the Project's significant impacts, the City cannot find that it is not detrimental to public health, safety, or welfare, and thus cannot approve the permits necessary for the Project to move forward.

Sincerely,



Kendra Hartmann

KDH:acp
Attachments

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T 510.836.4200
F 510.836.4205

1939 Harrison Street, Ste. 150
Oakland, CA 94612

www.lozeaudrury.com
paige@lozeaudrury.com

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Via E-mail

Mohammad Habib - Chair
Malisha Kumar - Vice-Chair
Joseph Mueller
Wayne Tanda
Laura Gonzalez-Escoto
Liam Downey
Juan Miguel Munoz-Morris
Jennifer Carman, Community Services Director
Planning Commission
City of Morgan Hill
17575 Peak Avenue
Morgan Hill, CA 95037
pcpubliccomment@morganhill.ca.gov
Planning_Commission@morganhill.ca.gov
jennifer.carman@morganhill.ca.gov

Re: Comments Regarding The Redwood Tech at 101 - SD2020-0011/SR2020-0029 Through SR2020-0033 (APNS 728-30-006 AND 728-30-009)

Dear Chair Habib, Vice-Chair Kumar, Commissioners Mueller, Tanda, Gonzalez-Escoto, Downey, Munoz-Morris, and Ms. Carman:

I am writing on behalf of the Laborers International Union of North America, Local Union 270 and its members living in the City of Morgan Hill ("LIUNA") regarding the proposed The Redwood Tech at 101 Project, SD2020-0011/SR2020-0029 Through SR2020-0033, a proposed industrial park consisting of five concrete tilt-up buildings totaling about 501,000 square feet in to be constructed on four separate lots of about 29 acres at 1065 Half Road, on the north side of the intersection of Condit Road and Half Road (APN728-30-006 and 728-30-009) ("Project").

LIUNA is concerned that the City of Morgan Hill ("City") is proposing to approve the Project without adequate environmental review under the California Environmental Quality Act ("CEQA"), Public Resources Code section 21000, *et seq.* The staff report improperly proposes to exclude the Project's uses from the CEQA analysis for the development, thus undermining the already truncated CEQA analysis. The staff report also suggests inaccurately that the 2035 General Plan programmatic environmental impact report ("General Plan EIR") addressed this site-specific Project sufficiently to rely upon 14 Cal. Admin. Code 15183 or without preparing a tiered environmental review. Staff's cursory analysis, prepared without the benefit of an initial

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study reviewing the whole project's potential impacts, does not comply with CEQA's requirements and is inconsistent with the City's process for reviewing proposed vesting tentative parcel maps.

LIUNA respectfully requests that the Planning Commission not approve the Project until such time as the City has prepared an initial study followed by either a mitigated negative declaration ("MND") or an EIR for the Project prior to any approvals involving the Project.

I. LEGAL STANDARD

Once a program EIR has been prepared, "[s]ubsequent activities in the program must be examined in light of the program EIR to determine whether an additional environmental document must be prepared." 14 CCR ("CEQA Guidelines") § 15168(c). The first consideration is whether the activity proposed is covered by the PEIR. *Id.* If a later project is outside the scope of the program, then it is treated as a separate project and the PEIR may not be relied upon in further review. *Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th 1307. The second consideration is whether the "later activity would have effects that were not examined in the program EIR." CEQA Guidelines § 15168(c)(1). A PEIR may only serve "to the extent that it contemplates and adequately analyzes the potential environmental impacts of the project." *Sierra Nevada Conservation v. County of El Dorado* ("El Dorado") (2012) 202 Cal.App.4th 1156. If the PEIR does not evaluate the environmental impacts of the project, a tiered EIR must be completed before the project is approved. *Id.* For these inquiries, the "fair argument test" applies. *Sierra Club*, 6 Cal.App.4th 1307, 1318; *See also Sierra Club v. County of San Diego* (2014) 231 Cal.App.4th 1152, 1164 ("when a prior EIR has been prepared and certified for a program or plan, the question for a court reviewing an agency's decision not to use a tiered EIR for a later project 'is one of law, i.e., the sufficiency of the evidence to support a fair argument.'").

Under the fair argument test, a new EIR must be prepared "whenever it can be fairly argued on the basis of substantial evidence that the project may have significant environmental impact." *Sierra Club*, 6 Cal. App. 4th at 1316 (quotations omitted). When applying the fair argument test, "deference to the agency's determination is not appropriate and its decision not to require an EIR can be upheld only when there is no credible evidence to the contrary." *Id.* at 1312. "[I]f there is substantial evidence in the record that the later project may arguably have a significant adverse effect on the environment which was not examined in the prior program EIR, doubts must be resolved in favor of environmental review and the agency must prepare a new tiered EIR, notwithstanding the existence of contrary evidence." *Id.* at 1319.

In *Friends of College of San Mateo Gardens* the California Supreme Court explained the differing analyses that apply when a project EIR was originally approved and changes are being made to the project, and when a tiered program EIR was originally prepared and a subsequent project is proposed consistent with the program or plan:

For project EIRs, of course, a subsequent or supplemental impact report is required in the event there are substantial changes to the project or its circumstances, or in the event of material new and previously unavailable information. (*Friends of Mammoth*, citing §

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21166.) In contrast, when a tiered EIR has been prepared, review of a subsequent project proposal is more searching. **If the subsequent project is consistent with the program or plan for which the EIR was certified, then ‘CEQA requires a lead agency to prepare an initial study to determine if the later project may cause significant environmental effects not examined in the first tier EIR.’** (*Ibid.* citing Pub. Resources Code, § 21094, subds. (a), (c).) ‘If the subsequent project is not consistent with the program or plan, it is treated as a new project and must be fully analyzed in a project—or another tiered EIR if it may have a significant effect on the environment.’ (*Friends of Mammoth*, at pp. 528–529, 98 Cal.Rptr.2d 334.)

Friends of Coll. of San Mateo Gardens v. San Mateo County Cmty. Coll. Dist. (“*San Mateo Gardens*”) (2016) 1 Cal.5th 937, 960.

The City’s General Plan EIR was prepared in accordance with CEQA’s PEIR provisions and subsequent projects must undergo the tiered review process just described. *See* General Plan DEIR, p. 2-2. CEQA requires the City to prepare an initial study to determine if the Project *may* cause significant environmental effects not examined in the General Plan EIR. Pub. Res. Code § 21094. As discussed below, there is substantial evidence supporting a fair argument that the Project may result in a number of potential environmental impacts that were not previously analyzed in any of these EIRs. Accordingly, an initial study followed by an MND or EIR must be prepared for the Project.

II. ARGUMENT

A. The City Must Comply With CEQA for the Whole Project Prior to Issuing Any Approvals of the Project.

The CEQA analysis presented in the staff report is fundamentally flawed because it improperly recommends for the City to approve the Project prior to complying with CEQA for the whole project, *i.e.*, its foreseeable uses. Staff suggests that the City may make a CEQA determination and approve the proposed Design Permit and the Vesting Tentative Parcel Map separate from any future conditional use permits for the Project. Staff claims that “[n]o other approvals are required at this time.” Packet Pg. 7. Staff further asserts that “[s]hould a future use on the site require a conditional use permit, that user will be responsible for conducting environmental review for the proposed use as required under CEQA.” *Id.*, p. 19. This two-tiered approach to the Project’s CEQA review violates CEQA’s prohibition on approving any aspect of a proposed project prior to completing the environmental review for the whole project required by CEQA. Moreover, it is inconsistent with the City’s requirements for processing a proposed vested tentative map.

The proposed action items include both the Project’s design permit and a vesting tentative parcel map. The City’s Code sets forth the process and information required to process a vesting tentative parcel map application. The City’s approval of a vesting tentative map provides the applicant with a vested right to proceed with the proposed development: “When the

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city approves or conditionally approves a vesting tentative map, that approval shall confer a vested right to proceed with development in substantial compliance with the ordinances, policies and standards in effect on the date the city has determined that the application for approval of the vesting tentative map is complete pursuant to Section 65943 of the Government Code.” Muni. Code §17.50.040(A). As a result, the City’s Code requires additional information and considerations that the City must consider in making its discretionary decision whether or not to approve a proposed vesting tentative parcel map. In particular, the City is not authorized to defer or not address the proposed uses of the development proposed by the tentative map. Moreover, given the vesting implications of the City’s decision, the decisionmakers must have access to an environmental review of the whole Project, including its uses and not just its building design or proposed number of parcels.

Particularly relevant here is the express requirement that, “[i]f a conditional use permit is required, such permit shall be processed **prior or concurrently with the vesting tentative map**. Muni. Code § 17.50.060(B)(2) (emphasis added). As described in the staff report, the Project includes 232,000 square feet of warehousing use. Packet Pg. 13. The Project site’s zoning of Light Industrial requires a conditional use permit for “Warehousing and Distribution, Large.” The ordinance does not specify a square footage above which warehousing is large. For parcel hubs, which are not authorized, a building over 75,000 square feet is large. Municipal Code, §18.26.020(A), Table 18.26-1. By that measure, or any commonsense measure, the proposed 232,000 square feet of warehousing is large. As a result, the conditional use permit necessary for the proposed warehousing use must be proposed and processed prior to or concurrently with the vesting tentative map. Muni. Code § 17.50.060(B)(2). By choosing to ignore the Project’s uses, the staff report’s CEQA recommendations are deficient as a matter of law, having failed to consider the potential environmental effects of the Project’s warehousing and other uses, including impacts from additional truck trips on air quality and wildlife, additional vehicle miles traveled and transportation impacts as a result of the Project, operational and construction-related noise and health impacts on residents located adjacent to the south corner of the Project site, the impacts of Project design features, such as the large glass facades, on bird-life and other potential impacts. As a result, any CEQA determination by the City must consider the Project’s contemplated uses now.

In addition, underscoring the need for staff to address the impacts of the anticipated uses, “[d]evelopment’ means **the uses to which the land which is the subject of the map shall be put**, the buildings to be constructed on it and all alterations of the land and construction incident thereto.” Muni. Code §17.08.055 (emphasis added). Thus, rather than defer any consideration of the Project’s uses, the vesting tentative parcel map procedure requires the applicant to submit “[t]he height, size, location, preliminary or conceptual architectural plans and **use of all buildings** to be constructed within the subdivision....” Muni. Code §17.50.060(B)(4) (emphasis added). Relatedly, to qualify for approval of a vested tentative parcel map, the applicant must provide “[s]pecific information on the uses to which the proposed buildings will be put....” Muni. Code §17.50.060(B)(10). Thus, should the Planning Commission accept staff’s invitation to put off addressing the Project’s uses, any decision will be contrary to the City’s ordinances.

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In addition, CEQA forbids putting off environmental review of the whole project subsequent to approving any of its components. This is especially true for a decision to approve a vesting right in a development. The necessary CEQA document must be prepared and approved prior to any approval of a project subject to CEQA. ***“Before granting any approval of a project subject to CEQA, every lead agency or responsible agency shall consider a final EIR or negative declaration or another document authorized by these guidelines to be used in the place of an EIR or negative declaration.”*** (14 CCR § 15004(a) [emphasis added].) ***“EIRs and negative declarations should be prepared as early as feasible in the planning process to enable environmental considerations to influence project program and design”*** (14 CCR § 15004(b).) Consistent with that goal:

The environmental document preparation and review should be coordinated in a timely fashion with the existing planning, review, and project approval processes being used by each public agency. These procedures, to the maximum extent feasible, are to run concurrently, not consecutively.

(14 CCR § 15004(c); *see also* PRC § 21003(a).) By attempting to defer addressing impacts from the Project’s anticipated uses until the future, staff’s proposals violate these fundamental tenets of CEQA.

B. CEQA Guidelines Section 15183 is Not Available for the Project.

The staff report proposes that the City rely on CEQA Guidelines § 15183 to claim that no CEQA review of the Project is required. Section 15183 provides that:

CEQA mandates that projects which are consistent with the development density established by existing zoning, community plan, or general plan policies for which an EIR was certified shall not require additional environmental review, ***except as might be necessary to examine whether there are project-specific significant effects which are peculiar to the project or its site.*** This streamlines the review of such projects and reduces the need to prepare repetitive environmental studies.

CEQA Guidelines § 15183(a) (emphasis added). The situations requiring additional review are set forth in the provision:

In approving a project meeting the requirements of this section, a public agency shall limit its examination of environmental effects to those which the agency determines, in an initial study or other analysis:

- (1) Are peculiar to the project or the parcel on which the project would be located,
- (2) Were not analyzed as significant effects in a prior EIR on the zoning action, general plan or community plan with which the project is consistent,

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- (3) Are potentially significant off-site impacts and cumulative impacts which were not discussed in the prior EIR prepared for the general plan, community plan or zoning action, *or*
- (4) Are previously identified significant effects which, as a result of substantial new information which was not known at the time the EIR was certified, are determined to have a more severe adverse impact than discussed in the prior EIR.

CEQA Guidelines § 15193(b).

Here, it does not appear that the City made a determination as to whether there are environmental effects “peculiar to the project” or whether the other factors in § 15193(b) are met, as case law requires. *See Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1407. Nor does it appear that, in the alternative, the City found that the impacts of the Project “ha[ve] been addressed as a significant effect in the prior EIR, or can be substantially mitigated by the imposition of uniformly applied development policies or standards.” CEQA Guidelines § 15183(c). Nor has the City explained why the Project otherwise meets the requirements of § 15183. Indeed, § 15183(j) specifically provides: “This section does not affect any requirement to analyze potentially significant offsite or cumulative impacts if those impacts were not adequately discussed in the prior EIR.” It does not appear that the City has analyzed the impacts specific to this Project in the prior EIR. Rather, the City has discussed generally “research and development (R&D), warehouse, and industrial buildings.” General Plan DEIR, 3-33. There is no mention in the General plan EIR of any proposed warehouse buildings at the proposed location. That the City may have generally discussed the effects of warehouse and distribution facilities does not make the specific Project on this site exempt from CEQA. A full CEQA analysis is required.

Indeed, under staff’s proposed process, the City will fail to implement mitigations mandated by the General Plan 2035 EIR. For example, Mitigation Measure AQ-4a requires that:

Applicants for future non-residential land uses within the City that: 1) have the potential to generate 100 or more diesel truck trips per day or have 40 or more trucks with operating diesel-powered TRUs, and 2) are within 1,000 feet of a sensitive land use (e.g., residential, schools, hospitals, nursing homes), as measured from the property line of the proposed Project to the property line of the nearest sensitive use, ***shall submit a health risk assessment (HRA) to the City of Morgan Hill prior to future discretionary Project approval.***

General Plan EIR, p. 1-9 (emphasis added). Several houses are located across the street from the Project’s south corner that are within 1,000 feet of the Project site. The staff report makes no mention of this required mitigation measure or how granting a vested right to the Project would affect the City’s enforcement of this measure.

The City may not rely on 14 Cal. Admin. Code § 15183 for the Project. Section 15183 does not relieve the City of reviewing environmental effects that “[w]ere not analyzed as

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significant effects in a prior EIR on the zoning action, general plan or community plan with which the project is consistent.” 14 Cal. Admin. Code § 15183(b)(2). Section 15183 also excludes exempting impacts that are “peculiar” to the Project. Peculiar is a term of art specifically defined by the regulation:

An effect of a project on the environment shall not be considered peculiar to the project or the parcel for the purposes of this section if uniformly applied development policies or standards have been previously adopted by the city or county with a finding that the development policies or standards will substantially mitigate that environmental effect when applied to future projects, unless substantial new information shows that the policies or standards will not substantially mitigate the environmental effect.

14 Cal. Admin. Code § 15183(f). The General Plan EIR did not address the potential significant environmental impacts of bird strikes with new buildings to be constructed in Morgan Hill. Nor does the EIR address direct and cumulative off-site impacts on wildlife from collisions with additional truck and vehicle traffic associated with large warehousing projects. Nor can the City identify development standards or the findings identified by Section 15183 addressing these two categories of impacts that could make those impacts not peculiar to the Project. Other impacts peculiar to the proposed Project site include the health and noise impacts to the adjacent, off-site residents and impacts to wildlife likely present at the site, including burrowing owls and other sensitive species. None of these site-specific and off-site impacts were addressed in the General Plan EIR. The City should prepare an initial study and, based on that review, either an EIR or a mitigated negative declaration to address the Project’s potential impacts.

C. CEQA Guidelines § 15162 Does Not Apply Because the Project Is Not Within the Scope of the Program EIR Prepared for the General Plan

The alternative suggestion in the staff report that the Project is within the scope of the program EIR prepared for the General Plan and the City should rely on CEQA Guidelines § 15162 also is incorrect. Packet Pg. 19. Once a program EIR has been prepared, “[s]ubsequent activities in the program must be examined in light of the program EIR to determine whether an additional environmental document must be prepared.” CEQA Guidelines § 15168(c). The first consideration is whether the activity proposed is covered by the PEIR. *Id.* If a later project is outside the scope of the program, then it is treated as a separate project and the PEIR may not be relied upon in further review. *Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th 1307. The second consideration is whether the “later activity would have effects that were not examined in the program EIR.” CEQA Guidelines § 15168(c)(1). A PEIR may only serve “to the extent that it contemplates and adequately analyzes the potential environmental impacts of the project.” *Sierra Nevada Conservation v. County of El Dorado* (“*El Dorado*”) (2012) 202 Cal.App.4th 1156. If the PEIR does not evaluate the environmental impacts of the project, a tiered EIR must be completed before the project is approved. *Id.* For these inquiries, the “fair argument test” applies. *Sierra Club*, 6 Cal.App.4th 1307, 1318; *See also Sierra Club v. County of San Diego* (2014) 231 Cal.App.4th 1152, 1164 (“when a prior EIR has been prepared and certified for a program or

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plan, the question for a court reviewing an agency's decision not to use a tiered EIR for a later project 'is one of law, i.e., the sufficiency of the evidence to support a fair argument.'").

Under the fair argument test, a new EIR must be prepared "whenever it can be fairly argued on the basis of substantial evidence that the project may have significant environmental impact." *Sierra Club*, 6 Cal.App.4th at 1316 (quotations omitted). When applying the fair argument test, "deference to the agency's determination is not appropriate and its decision not to require an EIR can be upheld only when there is no credible evidence to the contrary." *Id.* at 1312. "[I]f there is substantial evidence in the record that the later project may arguably have a significant adverse effect on the environment which was not examined in the prior program EIR, doubts must be resolved in favor of environmental review and the agency must prepare a new tiered EIR, notwithstanding the existence of contrary evidence." *Id.* at 1319.

In *Friends of College of San Mateo Gardens*, the California Supreme Court explained the differing analyses that apply when a project EIR was originally approved and changes are being made to the project, and when a tiered program EIR was originally prepared and a subsequent project is proposed consistent with the program or plan:

For project EIRs, of course, a subsequent or supplemental impact report is required in the event there are substantial changes to the project or its circumstances, or in the event of material new and previously unavailable information. (*Friends of Mammoth*, citing § 21166.) In contrast, when a tiered EIR has been prepared, review of a subsequent project proposal is more searching. **If the subsequent project is consistent with the program or plan for which the EIR was certified, then 'CEQA requires a lead agency to prepare an initial study to determine if the later project may cause significant environmental effects not examined in the first tier EIR.'** (*Ibid.* citing Pub. Resources Code, § 21094, subds. (a), (c).) 'If the subsequent project is not consistent with the program or plan, it is treated as a new project and must be fully analyzed in a project—or another tiered EIR if it may have a significant effect on the environment.' (*Friends of Mammoth*, at pp. 528–529, 98 Cal.Rptr.2d 334.)

Friends of Coll. of San Mateo Gardens v. San Mateo County Cmty. Coll. Dist. (2016) 1 Cal.5th 937, 960.

The City's General Plan EIR were prepared in accordance with CEQA's PEIR provisions and subsequent projects must undergo the tiered review process just described. As the General Plan EIR states:

[T]his EIR is a program-level EIR that analyzes the potential significant environmental effects of the adoption of the proposed Project. As a program EIR, it is not project-specific, and does not evaluate the impacts of individual projects that may be proposed under the General Plan. Such subsequent projects will require a separate environmental review, when applicable as required by CEQA, which could be in the form of a Negative Declaration, Mitigated Negative Declaration, or a Subsequent EIR, to secure the necessary development permits. Therefore, while

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subsequent environmental review may be tiered from this EIR, this EIR is not intended to address project-specific impacts of individual projects.

General Plan DEIR, p. 2-2. CEQA requires the City to prepare an initial study to determine if the Project *may* cause significant environmental effects not examined in the General Plan EIR. Pub. Res. Code § 21094. As discussed above, there are a number of effects that an initial study should address, including impacts to wildlife at the site, impacts of the Project from bird collisions with the expansive glass façade, off-site impacts to wildlife from collisions with the many vehicle trips that will be generated by a project of this size, off-site transportation impacts on GHG emissions from the Project's increases in vehicle miles travelled, and off-site health and noise impacts from construction and operation on nearby residents. Accordingly, an initial study followed by an MND or EIR must be prepared for the Project.

D. Contrary to the Applicant's Assertion, the Project is Discretionary and Subject to CEQA.

Ignoring its client's request for a vesting tentative parcel map, the applicant's attorneys argue that the Project is ministerial and thus not a "project" under CEQA. Counsel claims that the decision in *McCorkle Eastside Neighborhood Group. v. City of St. Helena* (2018) 31 Cal. App. 5th 80 ("*McCorkle*") is instructive. It is not. Unlike the *McCorkle* decision, the Redwood Tech at 101 project involves multiple discretionary decisions by the City. The City's review and any approval of the proposed vesting tentative parcel map is a discretionary decision. *See* Municipal Code §17.20.090 ("The planning commission may modify or delete any of the conditions of approval recommended in the community development department's report, except conditions required by city ordinance or by the city engineer, related to public health and safety or standards approved by the city engineer, or add additional requirements as a condition of its approval"). Even the City's design review is endowed with discretion to deny the Project in order to make the required finding that "[t]he proposed development will not be detrimental to the public health, safety, or welfare or materially injurious to the properties or improvements in the vicinity." Muni. Code §18.108.040(J)(5). *See also* §18.108.040(A) ("A design permit is a discretionary action"). *McCorkle* involved the City of St. Helena's approval of demolition and design review permits for an in-fill housing development. No vesting tentative map was at issue in that case. Nor was there any potential need for any future CUP in that case. And the City's ordinances strictly limited the design permit review to the specified design criteria and did not encompass a finding such as is required in Morgan Hill, that the development "will not be detrimental to the public health, safety, or welfare or materially injurious to the properties or improvements in the vicinity." *See* 31 Cal.App.5th at 92-93.

The CUP required for the proposed warehousing uses also confirms that the Project is discretionary under CEQA. "Where a project involves an approval that contains elements of both a ministerial action and a discretionary action, the project will be deemed to be discretionary and will be subject to the requirements of CEQA." 14 CCR § 15268(d); *POW*, 10 Cal.5th at 497; *Miller v. City of Hermosa Beach* (1993) 13 Cal.App.4th 1118, 1139; *Friends of Westwood, Inc.*

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v. City of Los Angeles (1987) 191 Cal.App.3d 259, 270-71.) Furthermore, “any doubt whether a project is ministerial or discretionary should be resolved in favor of the latter characterization.” *POW*, 10 Cal.5th at 497. Because both CEQA as well as the City’s ordinance confirm that CEQA review must occur prior to any approvals for the project, whether ministerial or discretionary, even assuming the design review permit is ministerial, the City cannot proceed with that or any other approval until it has completed a legitimate CEQA review. Morgan Hill has discretion to address any potential impacts identified in a CEQA review as a result of its design review authority, its vesting tentative map approval authority, and the CUP authority. Accordingly, *McCorkle* has no bearing on the City’s review of the Project pursuant to CEQA.

III. Conclusion

LIUNA respectfully requests that the Planning Commission not approve these components of the Project and instead instruct staff to prepare an initial study and either an MND or EIR to identify, analyze and mitigate the Project’s adverse environmental impacts. Thank you for considering these comments.

Sincerely,



Michael R. Lozeau



Development Services
 17575 Peak Avenue
 Morgan Hill, CA 95037-4128
 TEL: (408) 778-6480
 FAX: (408) 779-7236
www.morganhill.ca.gov

David H. Blackwell, Esq.
 Allen Matkins Leck Gamble Mallory & Natsis LLP
 Three Embarcadero Center, 12th Floor
 San Francisco, CA 94111

RE: Request for PUD Zoning Interpretation

Dear Mr. Blackwell:

This is in response to your letter seeking an interpretation of Morgan Hill Municipal Code (MHMC) section 18.14.020.C relating to Legacy Zoning Districts. You have specifically requested an interpretation regarding the land uses and development standards that apply to Planned Unit Development (PUD) legacy districts that do not have an approved Master Plan. Please accept the following interpretation:

Text of Relevant Code Section:

18.14.020 Zoning Districts

C. Legacy Zones.

1. A legacy zone is base zoning district, overlay zone, or combining district which was applied to a property prior to July 7, 2018, remains the zoning in effect for the property, but which may not be applied to any additional properties as of July 7, 2018. All rules and regulations of the legacy zone, and any subsequent amendments thereto, continue to apply to the subject property.
2. The Zoning Map shows the following three legacy zones:
 - a. Residential planned development (RPD) overlay district.
 - b. Planned unit development (PUD) base zoning district.
 - c. Conditional (C) base zoning district.
3. Where a legacy zone is shown on the zoning map, the requirements of that legacy zone as originally applied to a property remain in full force and effect.
4. Permitted land uses, development standards, and other provisions that apply within a legacy zone may be amended in accordance with [Chapter 18.114](#) (Zoning Code Amendments).

Permitted Uses and Development Standards in the PUD Zoning Districts:

Areas designated on the Zoning Map as PUD districts that do not have an active Master Plan or Development Agreement, have a base zoning district, such as PUD(IL), PUD(CG), etc. In those cases, the uses and standards allowed in those zones are limited to the uses and standards set forth within the base zoning district. Despite the PUD zoning, a new approved Master Plan would be needed to allow any deviation from the standards and regulations under the base zoning.

Areas designated on the Zoning Map as PUD districts with an approved and active Master Plan are limited to the uses and development standards of the applicable Master Plan.

Analysis:

Under Government Code section 65850, a general law city may regulate the use of buildings and structures as well as development standards such as: (1) the location, height, bulk, number of stories and size of buildings and structures; (2) the size and use of lots, yards, courts and other open spaces; (3) the percentage of a lot which may be occupied by a building or structure; and (4) the intensity of land use. The uses and standards for development, consistent with the Morgan Hill 2035 General Plan, are found in the base zoning districts.

Under MHMC section 18.30.050, a Master Plan controls the permitted uses and development standards in districts with PD or PUD zoning and an approved Master Plan. A Master Plan may be approved on parcels with existing PUD zoning but no Master Plan under the procedures outlined in MHMC section 18.30.050(H). As required under 18.30.050(H)(4)(b), a Master Plan application must describe how the project as proposed is superior to the development that occur under the base zoning, and how it will achieve substantial public benefits.

Under MHMC section 18.30.050(H)(8), a substantial public benefit “is a project feature not otherwise required by the zoning code or any other provision of local, state, or federal law that substantially exceeds the city’s minimum development standards and significantly advances goals of the general plan. A project must include one or more substantial public benefits to be rezoned as a planned development. The public benefit provided shall be of sufficient value as determined by city council to justify deviation from the standards of the zoning district that currently apply to the property.”

Absent an approved Master Plan, a project may be developed under the base zoning. Except under limited circumstances, a property owner has a right to develop property in accordance with the existing established standards. See e.g. *Building Industry Legal Defense Foundation v. Superior Court (City of San Juan Capistrano)*, (1999) 72 Cal. App.4th 1410. Further, “[t]he power to establish uses does not include the power to fix procedures for processing development applications. Zoning ordinances merely determine what uses are permitted where. Once a permitted use is identified by the applicable zoning ordinance, the procedure for processing a development application is established by state laws other than zoning.” *Id.* at p. 1416-1417.¹

Conclusion:

Absent an approved Master Plan, properties in an existing PUD combining district may develop only to the base zoning. Properties in the PUD(IL) district would be subject to the uses and standards set forth in the IL zoning district. Similarly, the PUD(CH) and PUD(CO) districts would be subject to the uses and standards set forth in the CH and CO zoning districts respectively.

If you have any questions, please contact me or City Attorney Don Larkin at the contact information included below.

Sincerely,



Jennifer Carman
Development Services Director
jennifer.carman@morganhill.ca.gov

Donald Larkin

Donald Larkin
City Attorney
donald.larkin@morganhill.ca.gov

¹ However, cities may apply additional procedural requirements that do not conflict with state law. See e.g. *Tashner v. City Council*, (1973) 31 Cal.App.3d 48.



CITY COUNCIL STAFF REPORT

MEETING DATE: June 23, 2021

Item # 01
AGENDA DATE: 06/23/2021
SUPPLEMENT # 1

PREPARED BY: Maria Angeles, Senior Civil Engineer
APPROVED BY: City Manager

****SUPPLEMENTAL REPORT** APPROVE CHANGE TO FORM OF SECURITY ASSOCIATED WITH THE IMPROVEMENT AGREEMENT WITH TSC MOTORS INC. (MORGAN HILL CDR+J DEALERSHIP)**

RECOMMENDATION(S)

Authorize the City Attorney to review and approve an alternative form of security to be provided by TSC Motors Inc. as part of the Improvement Agreement for the Morgan Hill CDR+J Dealership Project.

COUNCIL PRIORITIES, GOALS & STRATEGIES

NARRATIVE:

The original report included a recommendation for City Council to approve an Improvement Agreement with TSC Motors Inc., the property owner proposing a Chrysler, Dodge, Ram, and Jeep car dealership located on a 6-acre portion of a 9.24-acre site at the West side of Condit Road, approximately 600 feet south of Diana Avenue (APN: 728-17-035).

On Section 6 (page no. 3) of the Improvement Agreement, bonds are stated as the type of security to be used by TSC Motors Inc. to secure the performance of the required public improvements to be constructed by the project.

The property owner requested approval to provide an alternative form of security in lieu of bonds. Under Municipal Code Title 17, Chapter 17.32 (Improvements and Improvement Agreements) and under Title 12, Chapter 12.02 (Street and Sidewalk Development), other types of security are allowed, and the form of such security shall be approved by the City Attorney.

Staff recommends that the City Council authorize the City Attorney to review and approve, on behalf of the City, an alternative form of security to be provided by TSC Motors Inc. as part of the Improvement Agreement for the Morgan Hill CDR+J Dealership Project.



APPEAL (AEE2021-004 & AAE2021-005) of SD2020-0011 & SR2020-0029 THROUGH SR2020- 0033 DE PAUL – REDWOOD TECH@101



June 23, 2021

Redwood Tech@101 – Location



Redwood Tech@101



Project:

Vesting Tentative Parcel Map (SD2020-0011)

Design Review (SR2020-0029 through SR2020-0033)

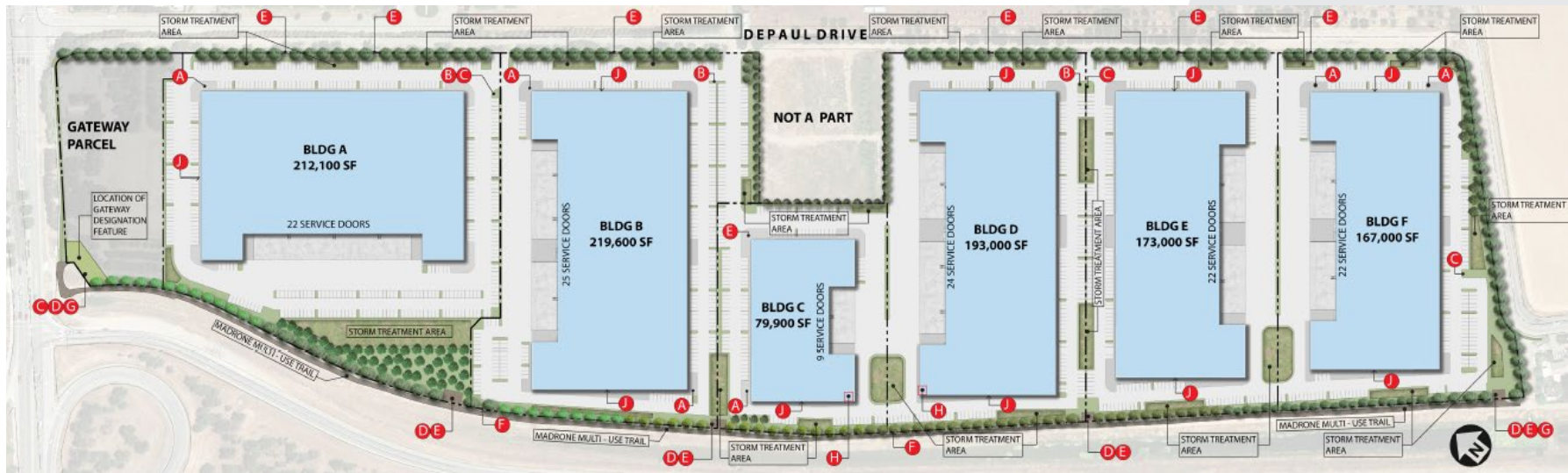
Request:

Building #	Square feet	Parcel #	Acres
A	138,698	A	6.89
B	92,841	B	4.18
C	122,101	C	9.00
D	73,668	D*	9.16
E	74,006		

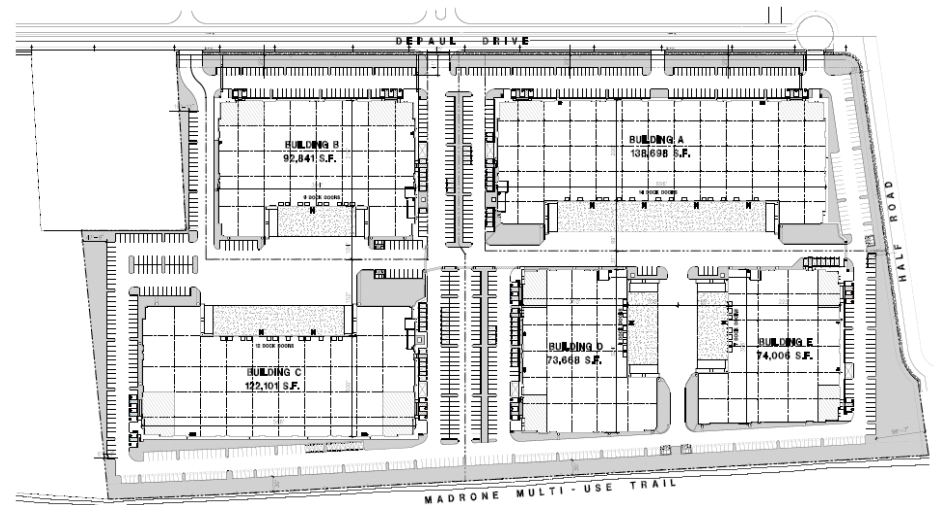
* Buildings D and E are both proposed to be located on Parcel D.

Project Site History

Morgan Hill Technology Park: 1.04 million sq ft



Redwood Tech@101: 501,000 sq ft

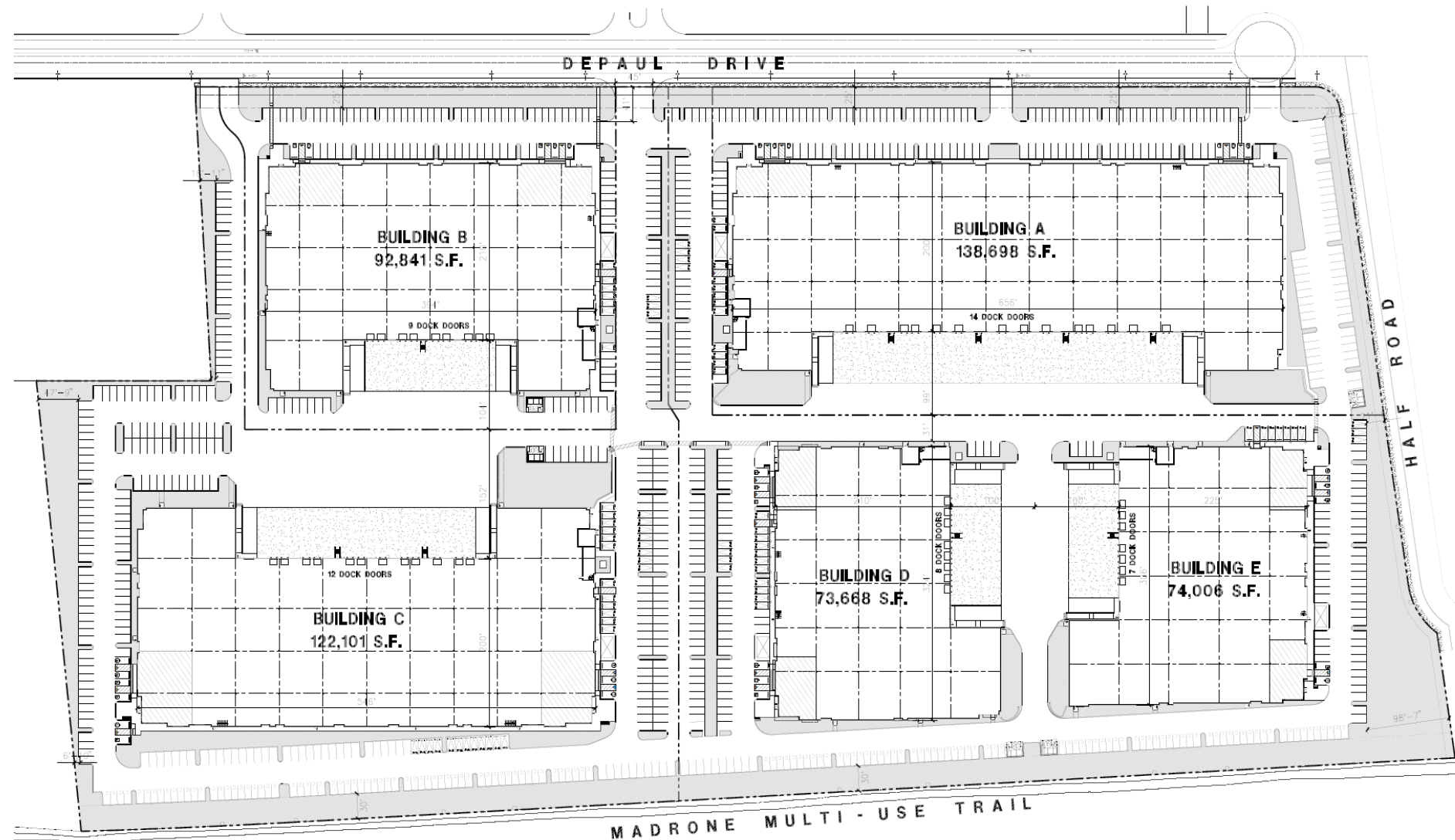


Design Permit Process

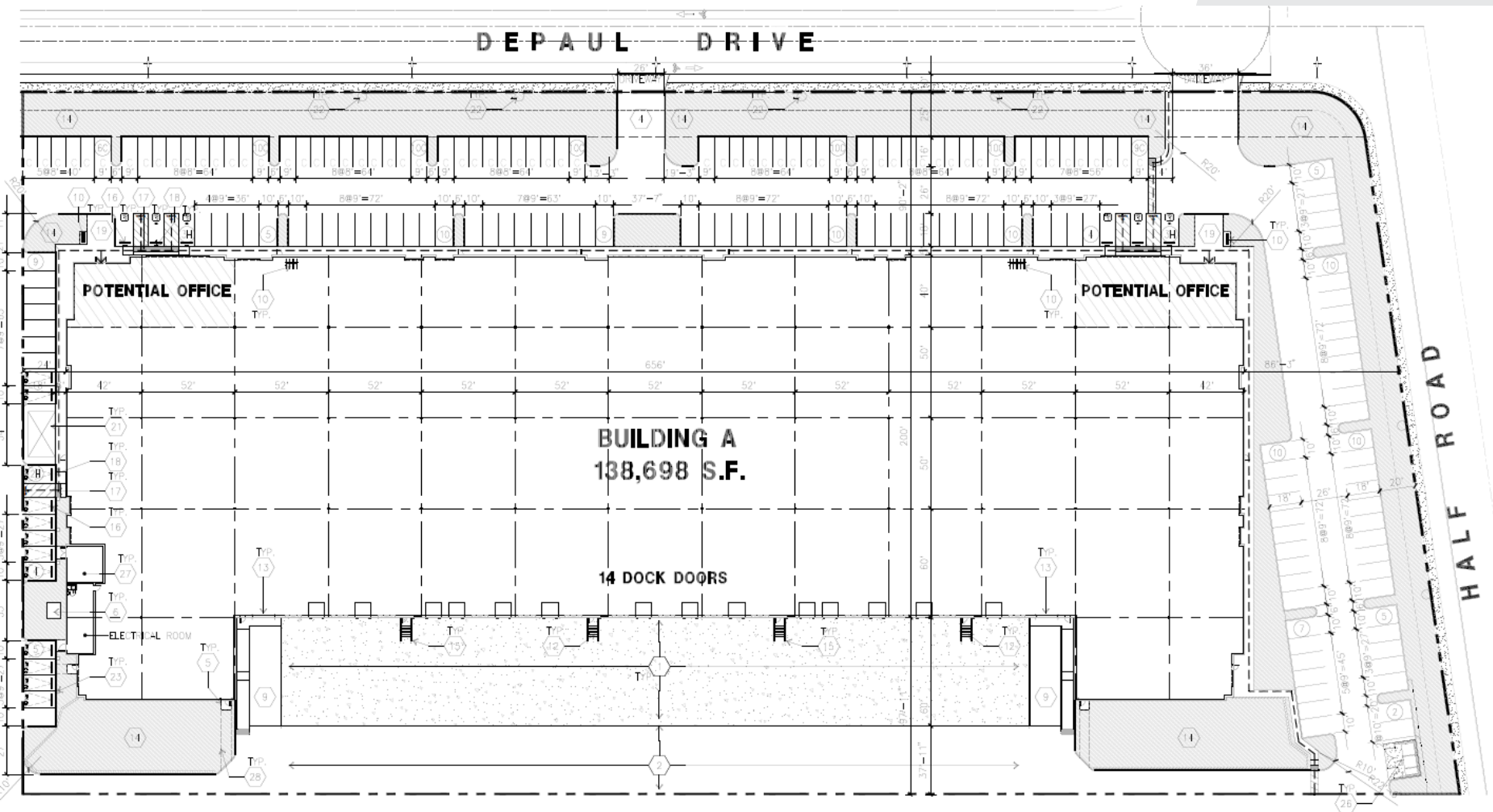


- High quality design consistent with the General Plan and other plans adopted by the City Council
- Development compatible with surroundings and minimize impacts on neighboring properties
- Does not consider or permit the use of a building – it considers the design of the building and the site the building is located on
- If future use is permitted by right – Business Licensing and possibly Zoning Clearance process
- If a future use is conditional – Conditional Use Permit

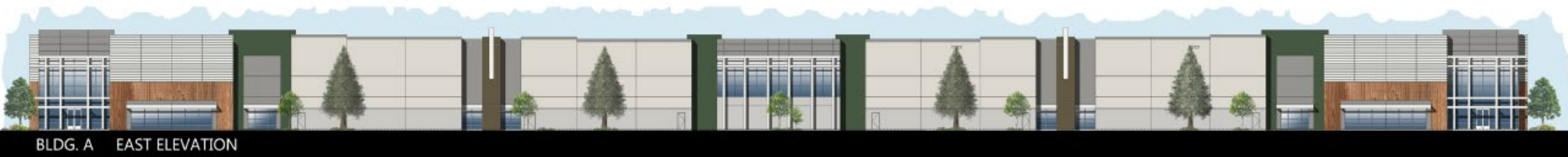
Redwood Tech@101 – Site Plan



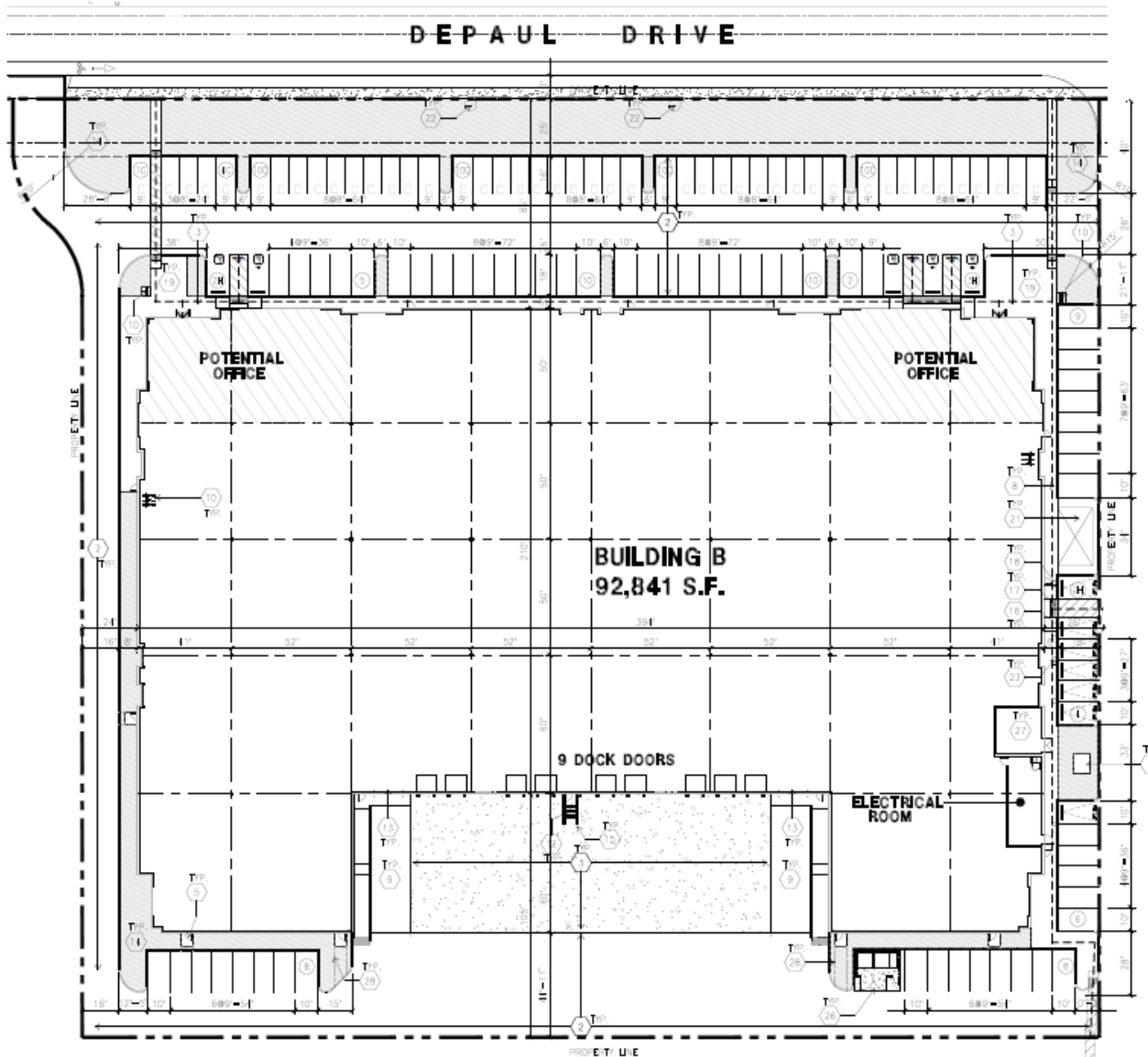
Building A



Building A



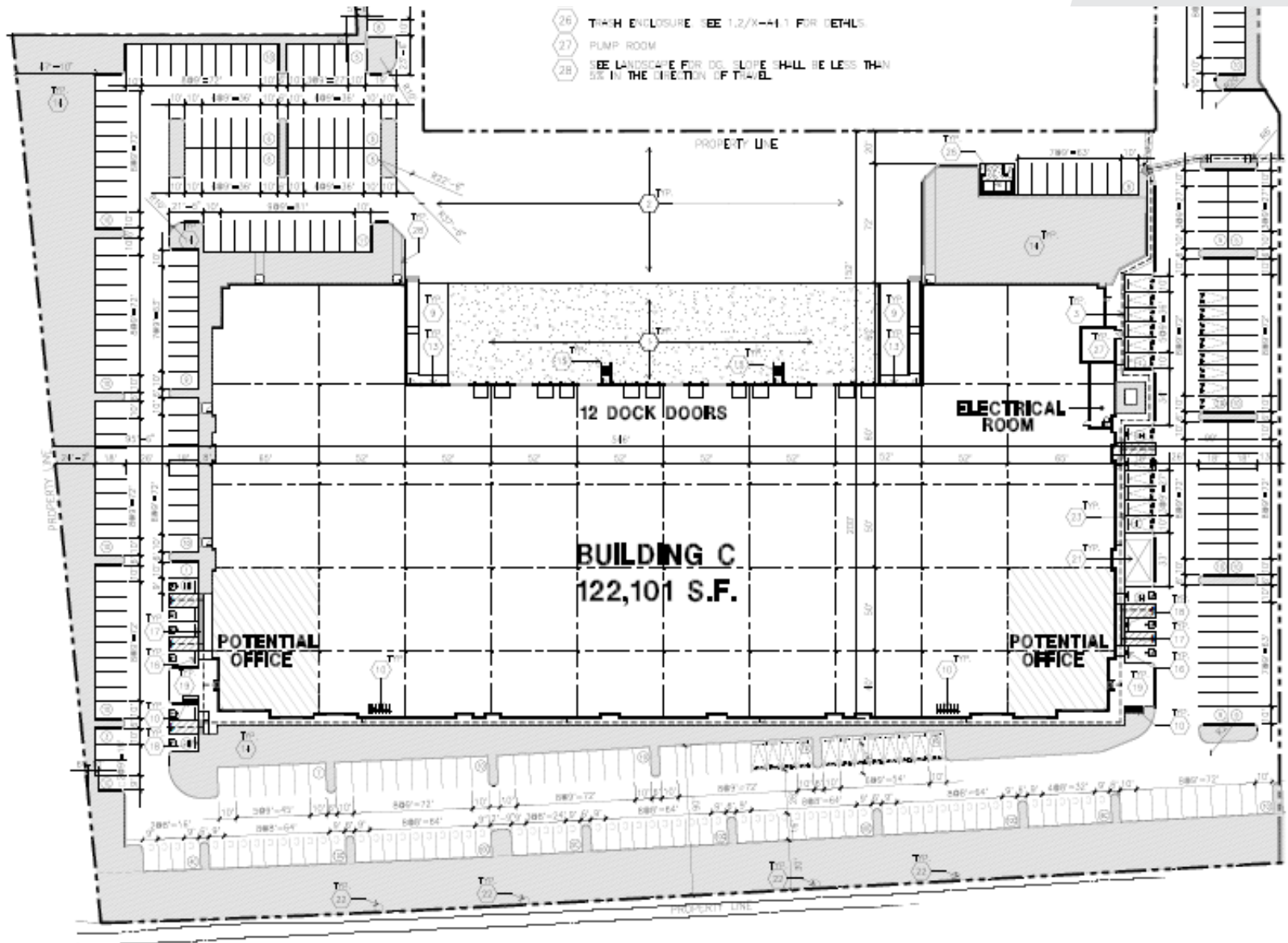
Building B



Building B



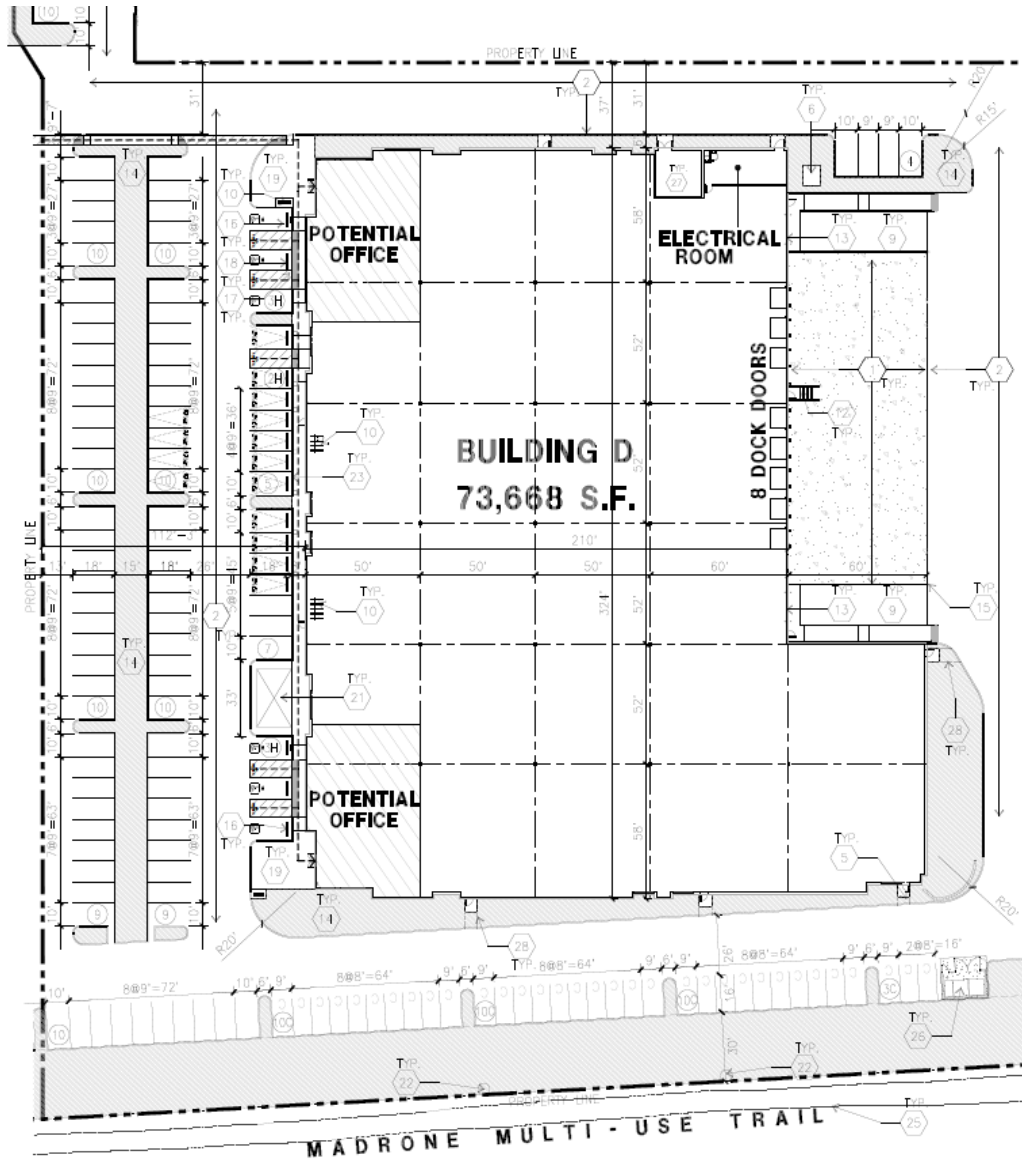
Building C



Building C



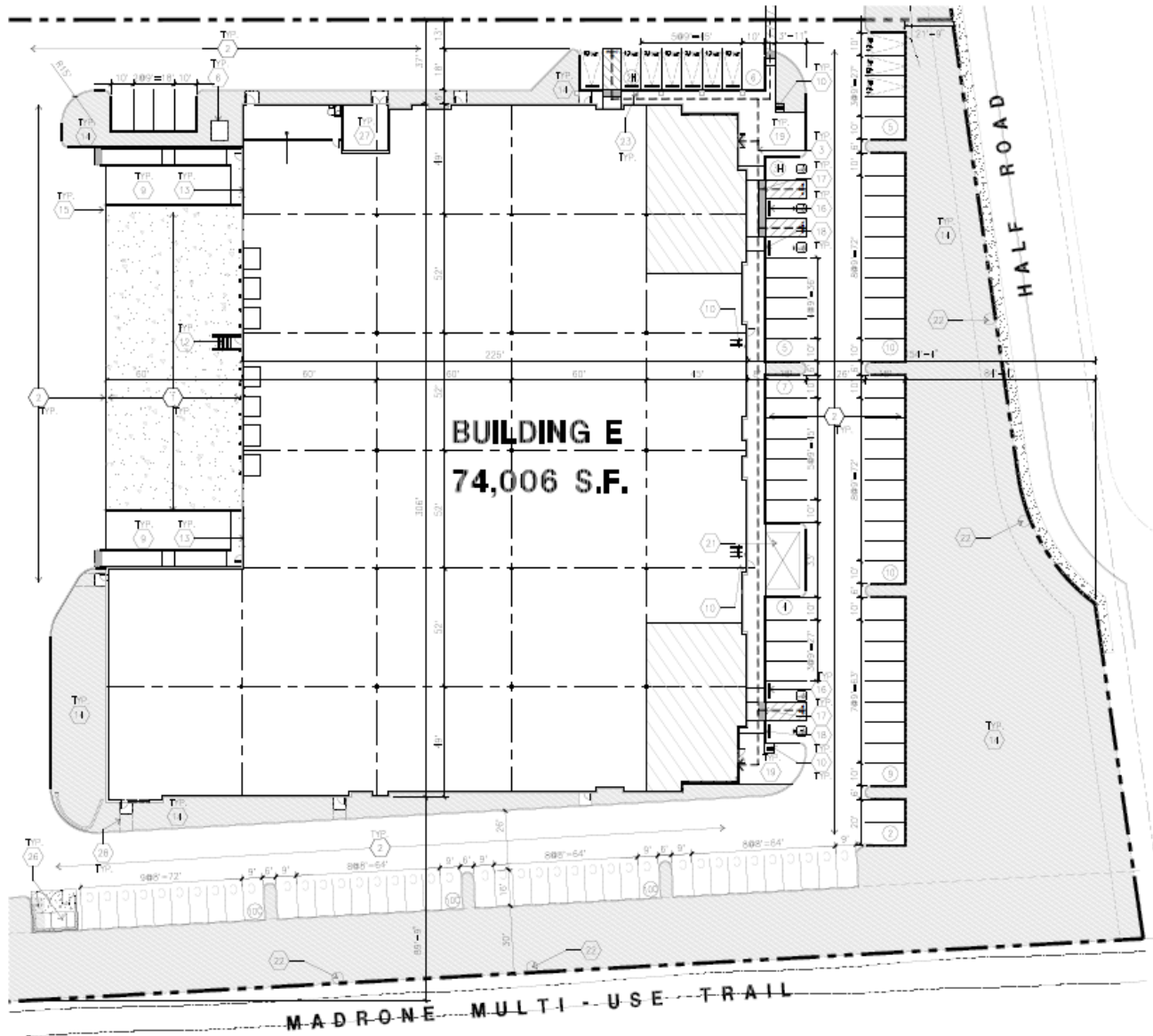
Building D



Building D



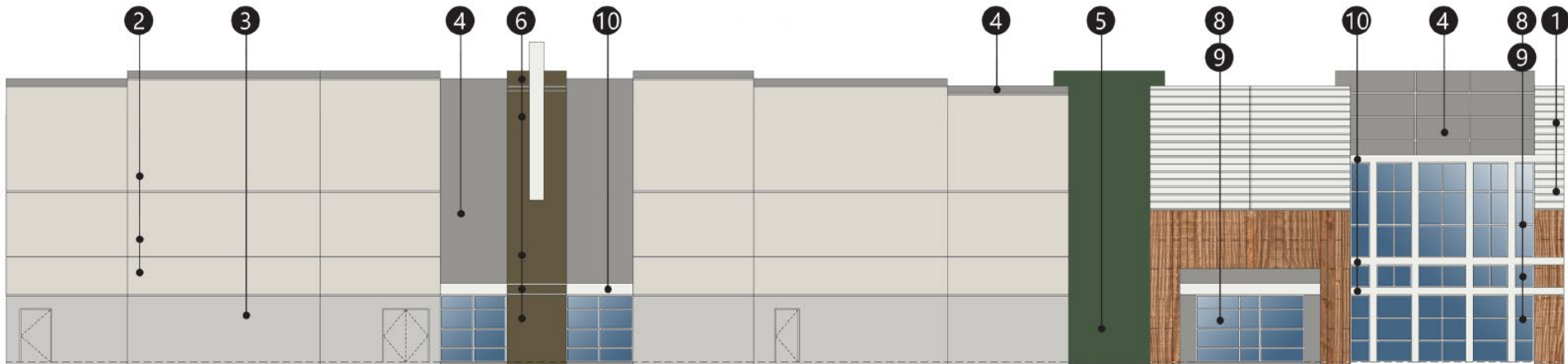
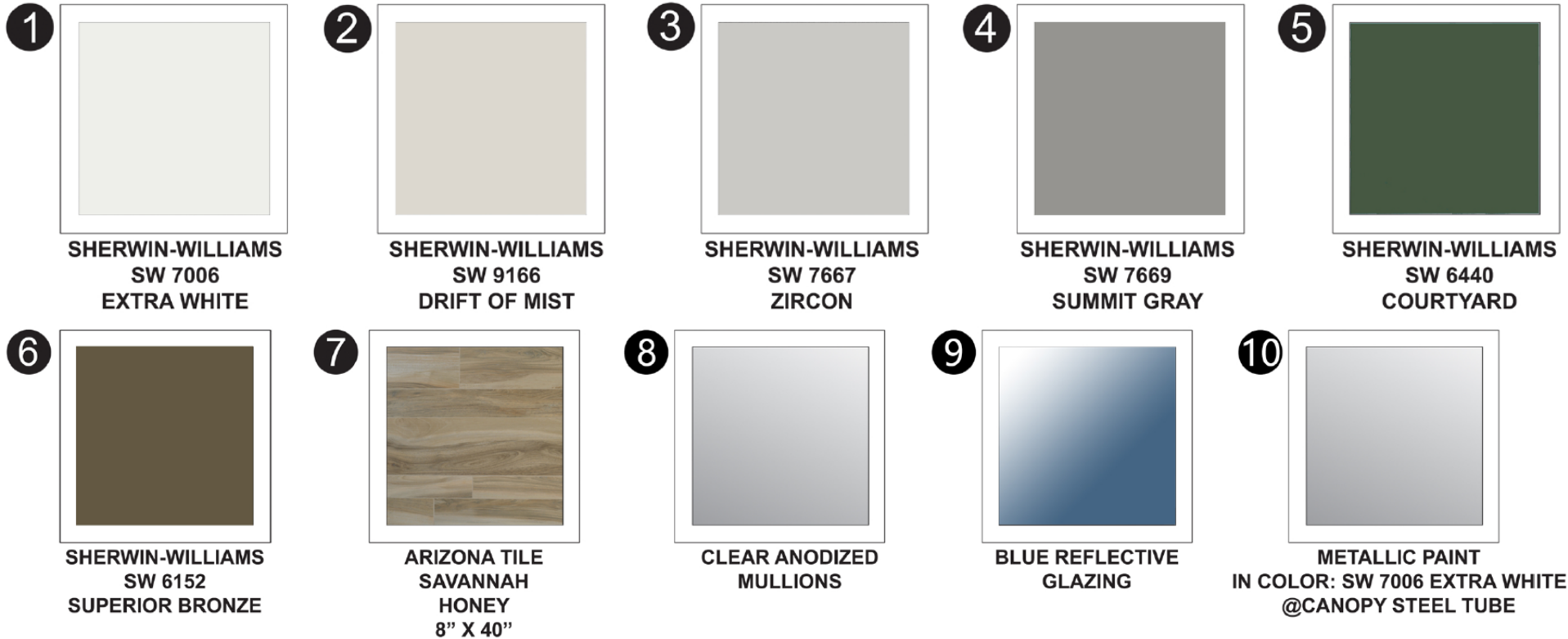
Building E



Building E



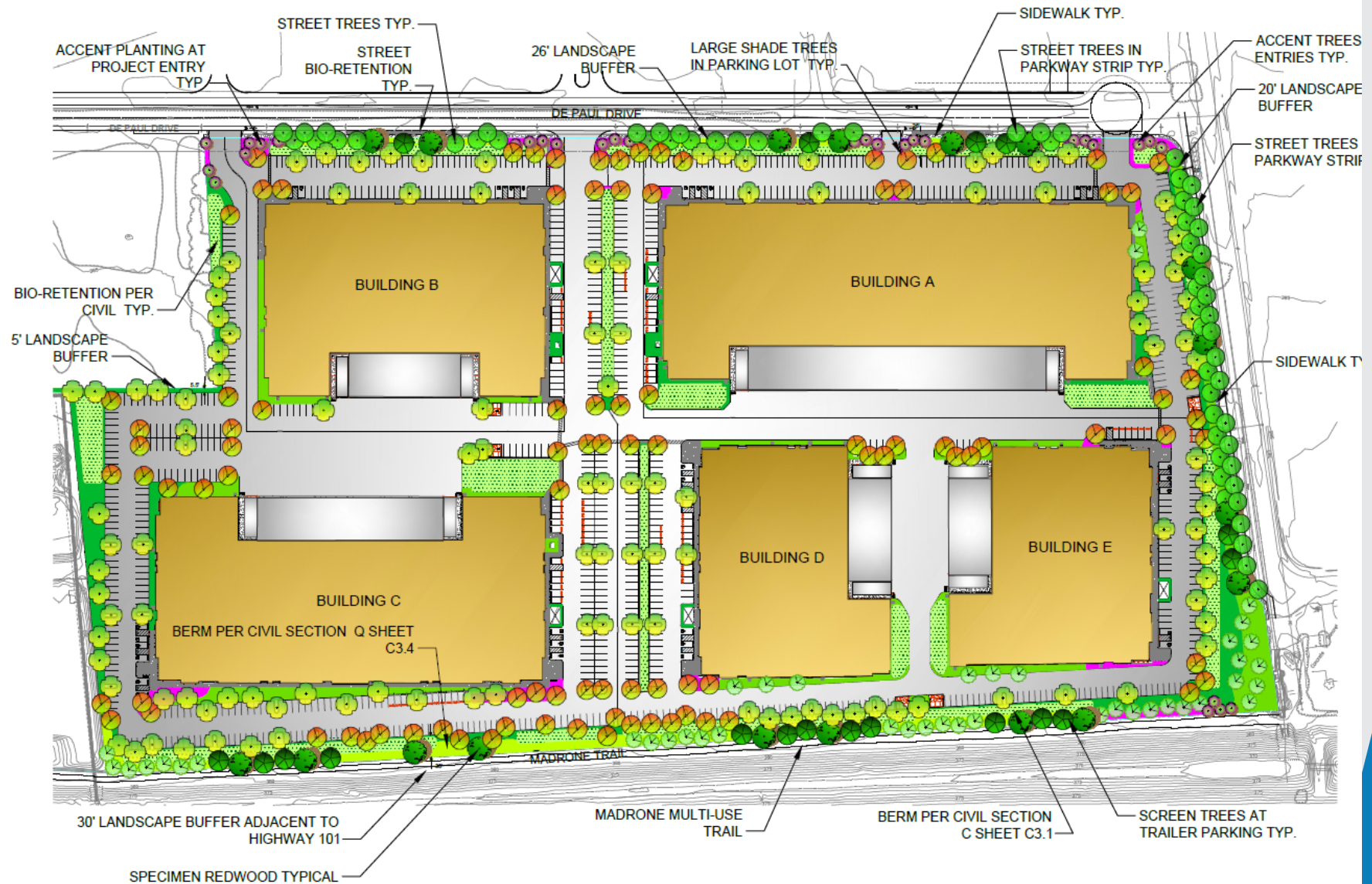
Redwood Tech@101 – Elevations



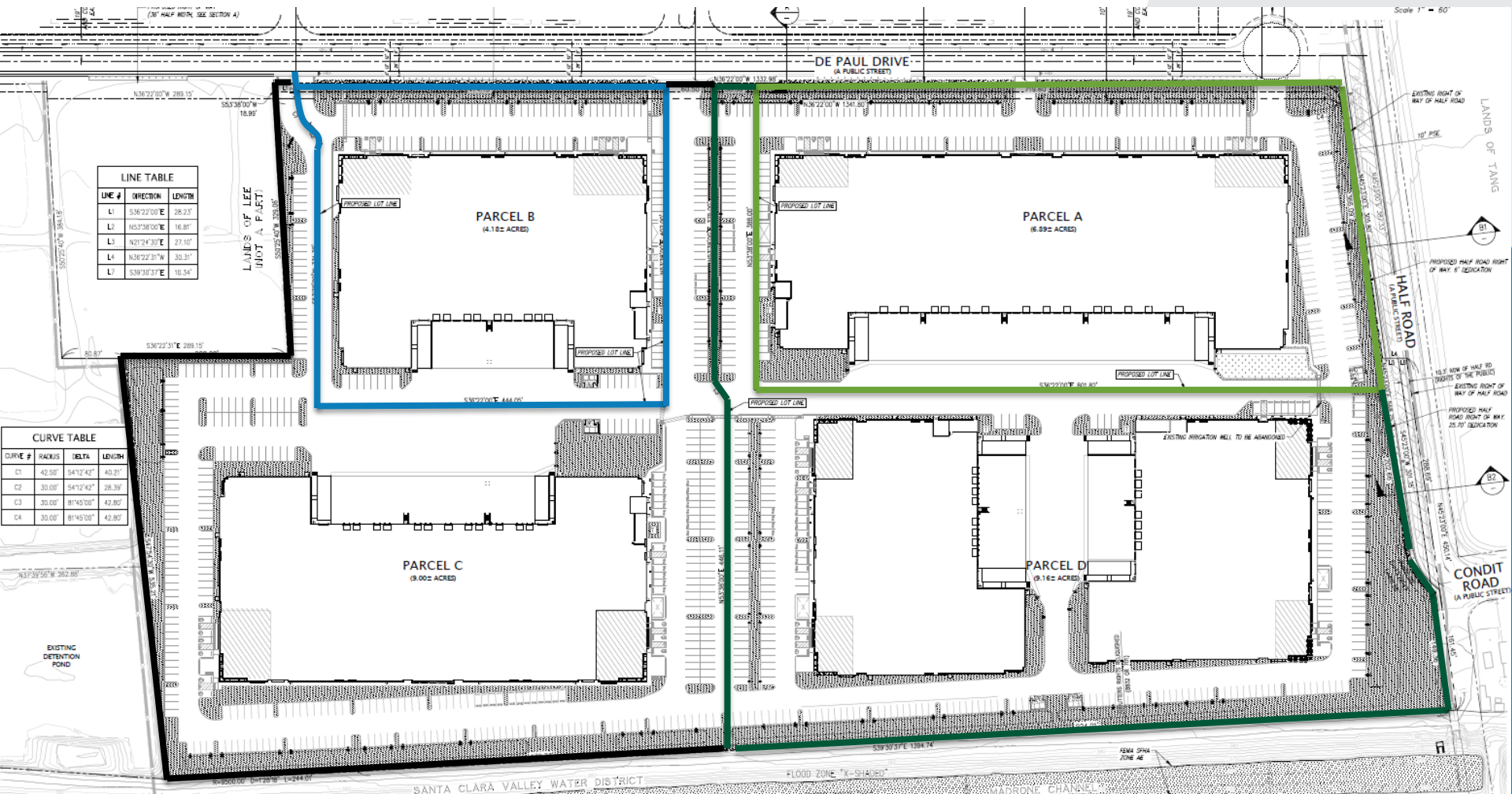
Redwood Tech@101 – Elevations



Landscape Plan



Redwood Tech@101 – Vesting Tentative Parcel Map



Redwood Tech@101 – Community Engagement



- Newspaper
- Mail notification
- Project Website
- Weekly 411
- Notification e-blast

Redwood Tech@101 – Appeal



Planning Commission Action

May 25, 2021

- Approved Design Permits SR2020-0029 through SR2020-0033 (6-1)
- Approved Vesting Tentative Parcel Map SD2020-0011 (6-1)

Appeal and Call for Review Filed

June 4, 2021

- Morgan Hill Residents for Responsible Development
- Morgan Hill Responsible Growth Coalition

Morgan Hill Residents for Responsible Development - Appeal



1. The City's failure to comply with the requirements of CEQA to prepare a legally adequate Environmental Impact Report (EIR) for the project;
2. That the Morgan Hill 2035 General Plan EIR was not intended to be used to evaluate individual future development and did not provide adequate analysis of any impacts specific to the project;

Morgan Hill Residents for Responsible Development - Appeal



3. That the project is a component of a reasonably foreseeable larger project; and
4. The project may result in potentially significant, unmitigated impacts on air quality, public health, greenhouse gas (GHG) emissions, noise, and transportation that must be disclosed and mitigated in an EIR.

Morgan Hill Residents for Responsible Development - Appeal



Appeal Withdrawn on June 19, 2021

Settlement Agreement reduces impacts to:

- Air Quality
- Transportation
- Noise

Morgan Hill Responsible Growth Coalition - Appeal



1. Neither resolution by the Planning Commission is consistent with General Plan Policies CNF-18.3 and CNF-18.4; and
2. The Planning Commission could not make the necessary findings to approve a design permit or tentative map for the project based on information in the record.

Morgan Hill Responsible Growth Coalition - Appeal



Policy CNF-18.3

Compatible Industrial Uses.

Require Planned Development overlay zones (PD) for the industrial and/or commercial development along the side of Highway 101 (south of Cochrane Road and north of Diana Avenue) and the area west of Highway 101 and south of Tennant Avenue to ensure that issues such as circulation, allowable uses, neighborhood compatibility, high visibility, and development standards are properly addressed.

Morgan Hill Responsible Growth Coalition - Appeal



Policy CNF-18.4

Commercial/Industrial Area East of Highway 101.

Require the commercial/industrial area east of Highway 101 to develop in no more than three PDs. The boundary between the PDs, should two or three be proposed, would be Half Road and Main Avenue. The PDs will need to address such issues as traffic circulation, design, allowable uses and impacts on surrounding areas. Mitigation of impacts on nearby residential areas shall be a high priority in planning for and development of the PDs. Allowable uses within these PDs shall include, in addition to industrial uses, retail services, lodging, medical facilities, hospitals, and educational facilities.

Design Permit Findings



- a. The proposed project is consistent with the general plan and any applicable specific plan, area plan, or other design policies and regulations adopted by the city council.
- b. The proposed project complies with all applicable provisions of the zoning code and municipal code.
- c. The proposed project substantially complies with all applicable design standards and guidelines contained in the design review handbook.
- d. The proposed project has been reviewed in compliance with the California Environmental Quality Act (CEQA).
- e. The proposed development will not be detrimental to the public health, safety, or welfare or materially injurious to the properties or improvements in the vicinity.
- f. The proposed project complies with all Design Review criteria in Subsection H of Section 18.108.040 of the municipal code.

Tentative Parcel Map Findings



- a. The Tentative Parcel Map, together with its provisions for its design and improvements, is consistent with the General Plan.

Redwood Tech@101 – Recommendation



Adopt a resolution:

- Denying the appeals
- Reaffirm Planning Commission's decision to approve the project subject to Conditions of Approval

Questions?



From: Kendra Hartmann <khartmann@adamsbroadwell.com>

Sent: Saturday, June 19, 2021 2:56 PM

To: Michelle Bigelow <Michelle.Bigelow@morganhill.ca.gov>; General <general@morganhill.ca.gov>; Adam Paszkowski <adam.paszkowski@morganhill.ca.gov>

Cc: Christina Caro <ccaro@adamsbroadwell.com>; Tanya A. Gulesserian <TGulesserian@adamsbroadwell.com>

Subject: [EXTERNAL] Withdrawal of appeal of Redwood Tech at 101

Dear Mayor Constantine and Councilmembers, Ms. Bigelow, Mr. Paszkowski:

We are writing on behalf of Morgan Hill Residents for Responsible Development to withdraw our June 4, 2021 appeal of the Morgan Hill Planning Commission's May 25, 2021 decision to approve a Design Permit and Vesting Tentative Parcel Map for the Redwood Tech at 101 Project, SR2020-0029 through SR2020-0033 and SD2020-0011.

Residents has entered into a legally enforceable settlement agreement with Applicant TC Morgan Hill Venture, LLC in which the Applicant has committed to implementing additional measures to reduce impacts to air quality, transportation, and noise that address and resolve the merits of the substantive issues regarding the Project raised by Residents in its comments to the City and its Appeal. Please see the attached letter.

Thank you,

Kendra D. Hartmann
Adams Broadwell Joseph & Cardozo
601 Gateway Boulevard, Suite 1000
South San Francisco, CA 94080
Tel: (650) 589-1660 ext. 21
Fax: (650) 589-5062
khartmann@adamsbroadwell.com

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ADAMS BROADWELL JOSEPH & CARDOZO

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

601 GATEWAY BOULEVARD, SUITE 1000
SOUTH SAN FRANCISCO, CA 94080-7037

TEL: (650) 589-1660
FAX: (650) 589-5062

khartmann@adamsbroadwell.com

SACRAMENTO OFFICE

520 CAPITOL MALL, SUITE 350
SACRAMENTO, CA 95814-4721

TEL: (916) 444-6201
FAX: (916) 444-6209

DANIEL L. CARDOZO
KEVIN T. CARMICHAEL
CHRISTINA M. CARO
JAVIER J. CASTRO
THOMAS A. ENSLOW
KELILAH D. FEDERMAN
ANDREW J. GRAF
TANYA A. GULESSERIAN
KENDRA D. HARTMANN*
KYLE C. JONES
DARIEN K. KEY
RACHAEL E. KOSS
AIDAN P. MARSHALL

MARC D. JOSEPH
Of Counsel

*Not admitted in California.
Licensed in Colorado.

June 19, 2021

Via Email and U.S. Mail

Mayor Constantine and City Council Members
Morgan Hill City Council
c/o City Clerk Michelle Bigelow, MMC, CPMC
City Hall
City of Morgan Hill
17575 Peak Avenue
Morgan Hill, CA 95037
Email: Michelle.Bigelow@morganhill.ca.gov;
general@morganhill.ca.gov

Via Email Only

Adam Paszkowski, Principal Planner
Email: Adam.Paszkowski@morganhill.ca.gov

Re: Withdrawal of Appeal of Redwood Tech at 101 Project (SR2020-0029 through SR2020-0033 and SD2020-0011)

Dear Mayor Constantine and Councilmembers, Ms. Bigelow, Mr. Paszkowski:

We are writing on behalf of Morgan Hill Residents for Responsible Development ("Residents") to withdraw our June 4, 2021 appeal ("Appeal") of the Morgan Hill Planning Commission's May 25, 2021 decision to approve a Design Permit and Vesting Tentative Parcel Map for the Redwood Tech at 101 Project, SR2020-0029 through SR2020-0033 and SD2020-0011 ("Project").

Residents is pleased to report that it has entered into a legally enforceable settlement agreement with TC Morgan Hill Venture, LLC ("Applicant") in which the Applicant has committed to implementing additional measures to reduce impacts to air quality, transportation, and noise that address and resolve the merits

of the substantive issues regarding the Project raised by Residents in its comments to the City and its Appeal. The measures are set forth below.

A. Air Quality

- 1.1. Developer shall require off-road construction equipment and all diesel-fueled off-road construction equipment, to be equipped with CARB Tier IV-compliant engines or better, and shall include this requirement in applicable bid documents, purchase orders, and contracts, with successful contractors demonstrating the ability to supply the compliant construction equipment for use prior to any ground-disturbing and construction activities. Notwithstanding, equipment with only Tier III emissions standards will be allowed when the operator shows a good faith effort to procure Tier III equipment, and documents that no Tier IV equipment is available for a particular equipment type within the County of Santa Clara within the scheduled construction period. Each case shall be documented with signed written or e-mailed correspondence by the appropriate construction contractor.
- 1.2. Developer shall adhere to, or require its construction contractor to adhere to, the following measures to limit emissions from construction activity:
 - The project shall develop a plan demonstrating that off-road equipment (more than 25 horsepower) to be used in the construction project (i.e., owned, leased, and subcontractor vehicles) and hauling truck traffic would achieve a 20-percent NO_x reduction and overall 60-percent PM (particulate matter) exhaust reduction.
 - Prohibit off-road diesel-powered equipment from being in the “on” position for more than 10 hours per day.
 - Provide electrical hook ups to the power grid, where feasible, rather than use of diesel-fueled generators, for electric construction tools, such as saws, drills and compressors, and using electric tools whenever feasible.
 - Limit the amount of daily grading disturbance area to the extent feasible.

- Limit idling of on-site diesel-powered heavy construction equipment to two minutes, where feasible.
 - Conduct regular on-site inspections to verify compliance with construction mitigation and to identify other opportunities to further reduce on-site construction impacts.
 - Use paints, architectural coatings, and industrial maintenance coatings that have volatile organic compound levels of less than 10 g/L.
- 1.3. Developer shall adhere to, or require building tenants to adhere to, the following measures to limit emissions from operational activity:
- Require the electrification of all loading docks to facilitate plug-in capability and encourage or require trucks and on-site equipment, such as forklifts and yard trucks, to utilize grid power in order to load, unload, and deliver goods.
 - Limit on-site truck idling to two minutes, where feasible, and require operators to turn off engines when not in use.
 - Post interior- and exterior-facing signs, including signs directed at all dock and delivery areas, identifying idling restrictions and contact information to report violations to CARB, the air district, and the building manager.

B. Transportation

- 1.1. Prior to issuance of a certificate of occupancy, the Developer shall implement TDM Programs to address General Plan Policy NRE-15.10. Examples include, but are not limited to, parking pricing strategies; parking maximums; mandated parking spaces for car-sharing programs; the provision of transit passes in residential, commercial and office developments; charging stations for electric vehicles; bicycle lockers or racks; teleworking policies; bicycling improvements; and more.

June 19, 2021

Page 4

- 1.2. Developer shall establish appropriate truck routes that avoid trucks transiting through residential areas.
- 1.3. Developer shall develop a GHG reduction plan to reduce GHG emissions in the build-out year by at least 3,000 MT CO₂e/year.

C. Noise

- 1.1. Developer shall implement measures to avoid significant construction noise impacts. These may include, but are not limited to, the following:
 - Implement buffer distances and sound barriers between ongoing construction and nearby receptors, including adequate sound barrier materials such as STC 20-25 blankets on tubular steel frames or scaffolding or 3 PSF wood frame barriers;
 - Ensure sound-blocking material overlaps or is constructed to avoid gaps of any size and are high enough to block the line of sight between construction noise and affected receptors.

With the inclusion of these additional measures, the issues raised by Residents regarding the Project have been addressed and resolved. Residents supports the Project and proposed Project approvals.

Thank you for your attention to this matter.

Sincerely,



Kendra Hartmann

:kdh

Item # 09

**AGENDA DATE: 06/23/2021
SUPPLEMENT # 2**

From: Swanee <[REDACTED]>
Sent: Tuesday, June 22, 2021 7:34 PM
To: Michelle Bigelow <Michelle.Bigelow@morganhill.ca.gov>
Subject: [EXTERNAL] Agenda item # 9 June 24th City Council Agenda
Importance: High

Dear Honorable Mayor Constantine and Honorable City Council Members,

Re: Redwood Tech@101 Project

I would like to urge the Morgan Hill City Council to deny the appeals against this Project moving forward. This Project meets all of the zoning requirements for that property. Trammell Crow has shown good faith in listening to the concerns of a certain group of folks and then coming back with a smaller project, that meets the requirements outlined by the opposition group. There have been questions throughout the Silicon Valley Business groups that Morgan Hill may be "business un-friendly" and this concerns me.

We have many challenges ahead of us as a City in maintaining our roads and other City infrastructure. Funding for this very important infrastructure maintenance, as well as funding for parks and other City facilities, do not materialize without growth, smart growth! Many years ago, our Mayor, Dennis Kennedy wisely brought up the dream that we work where we live. Our transportation issues in trying to commute north to anywhere are getting worse each day. Climate change is worsening with every car, sitting for hours trying to go north in the AM or go South in the PM, and while I understand the concern about Truck emissions, the day that we have more electric trucks that diesel, is fast approaching. When a company does manufacturing or even Research and Development, it calls for goods coming in and manufactured goods leaving for distribution. Even our schools require transportation.

We need the development fees for Parks, trails and other recreation, and our Residents demand these services. I agree that a major mistake was made regarding the Shoe Palace, those buildings are awful, but to punish Trammel Crow and rob our City of the smart growth we need to build the best City possible is simply spite. Please deny this frivolous appeal and allow Morgan Hill to continue its smart growth, and help our workers work where they live!

Thank you for your consideration of the ideas in my letter! We LOVE Morgan Hill!

Ever Onward,

Swanee Edwards
Morgan Hill, CA 95037
Resident for 31+
[REDACTED]

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Trammell Crow's Project

A Major Commitment to Community, Design and
Landscape

Creating a Thriving Community We Can All Call Home

Good For Morgan Hill, Residents and Businesses

- **High Quality Development**
- **Small Buildings/Multiple Tenants**
- **Potential Occupancy: 10
Companies Generating More Tax
Revenue**
 - **Property Taxes**
 - **Hotel Occupancy Taxes**
 - **Sales Taxes**

A Thriving Community We Can All Call Home



- 40 Ft Tall Redwood Trees
- Property Set-Back from Freeway
- Smaller Buildings and Attractive Appeal
- Nothing Like the Shoe Palace Building

Elevates Our City's Appeal to Residents, Businesses and Visitors



In Compliance with Zoning and Design Guidelines

A Reputation We Can't Afford

- **Special Interest Obstruction to Projects ==> Bad Business Reputation**
- **Pandemic Difficult for Everyone**
- **Growing Concern for Silicon Valley's Commercial Real Estate Brokerage Industry**



Making Morgan Hill A Better Place

**Trammell
Crow**



Item # 09

AGENDA DATE: 06/23/2021

SUPPLEMENT # 4

From: Armando Be <[REDACTED]>

Sent: Wednesday, June 23, 2021 11:57 AM

To: Rich Constantine <Rich.Constantine@morganhill.ca.gov>; Yvonne Martinez Beltran <yvonne.martinezbeltran@morganhill.ca.gov>; Rene Spring <Rene.Spring@morganhill.ca.gov>; John McKay <john.mckay@morganhill.ca.gov>; Christina Turner <Christina.Turner@morganhill.ca.gov>; Gino Borgioli <Gino.Borgioli@morganhill.ca.gov>

Subject: [EXTERNAL] Item 9: CONSIDER APPEAL OF PLANNING COMMISSION'S APPROVAL OF SD2020-0011/SR2020-0029. ect.

Mayor, City Council Members, and City Manager,

Today you are asked to reverse two decisions rendered by the planning commission regarding the proposed TC planned development. You have the right to pass on the issue de novo, which means weighing all of the facts and circumstances and to make your own independent determination on the matter.

The proposed development project is large (1/2 million square feet). We all know it is going to have an impact on the environment (increased traffic noise and congestion, increased impact on our water and sewer system, increase of release of pollutants in the air, ect.). I do not believe that you have your hands tied and have to approve this massive project without environmental review. If environmental review is carried out and significant negative findings are made, you have the authority to require mitigation. The ability to shape the project through mitigation is what takes this project out of the ministerial category.

That your task is not ministerial is noted in the agenda report. It reads that you may consider-" Factors that an agency may consider in making that determination include, but are not limited to, consistency of the later activity with the type of allowable land use, overall planned density and building intensity, geographic area analyzed for environmental impacts and covered infrastructure as described in the program EIR." The program EIR provides a blueprint but it does not curtail your discretion to make a determination whether or not an EIR is in order. As long as you can shape the project to mitigate negative impacts to the environment, you can certainly require an EIR.

So it is up for each of you to decide. Do you allow a major project, which you know will definitely have a negative impact on some aspects of the city, and bypass any mitigation to potential and reasonably foreseeable negative environmental impacts OR do you require an EIR?

Here is a snippet of the CEQA. "The California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.) was enacted to (1) inform the government and public about a proposed activity's potential environmental impacts; (2) identify ways to reduce, or avoid, those impacts; (3) require project changes through alternatives or mitigation measures when feasible; and (4) disclose the government's rationale for approving a project. CEQA embodies a central state policy requiring state and local governmental entities to perform their duties so that major consideration is given to preventing environmental damage. Accordingly, CEQA prescribes how governmental decisions will be made whenever an agency undertakes, approves, or funds a project".

So, you have the discretion to make the decision on whether to go blind on environmental impacts and bypass the public's right to mitigations or whether to order an EIR and implement the purpose of the CEQA. Your hands are not tied on this one.

Regards,

Armando Benavides

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Item # 09

**AGENDA DATE: 06/23/2021
SUPPLEMENT # 5**

Claiming that *Environmental Review is not required for Design Review or Tentative Parcel Map applications*^[1] is a *patently false conclusion* ^[2, p.13].

APPEAL OF PLANNING COMMISSION'S APPROVAL OF SD2020-0011/SR2020-0029 THROUGH SR2020-0033 DE PAUL - TRAMMELL CROW MORGAN HILL VENTURE: REQUEST FOR A TENTATIVE PARCEL MAP AND DESIGN PERMITS FOR THE REDWOOD TECH AT 101, A FIVE BUILDING INDUSTRIAL PARK, ON A 29± ACRE SITE (APNS 728-30-006 AND 728-30-009).

[1] City of Morgan Hill Development Services Center Completeness Letter, February 16, 2021, p. 3. [<https://www.morgan-hill.ca.gov/Document-Center/View/38669/CompletenessCommentLetter-2020-02-16>]

[2] Attorney Kendra Harman, Adams Broadwell Joseph & Cardozo email to Planning Commission, May 25, 2021 [<http://morganhillca.iqm2.com/Citizens/FileOpen.aspx?Type=4&ID=8236&MeetingID=2033>]

Note: throughout this document, text shown in *italics* is a direct quote

Joe Baranowski
June 23, 2021



Why are we here?

Morgan Hill Zoning Code - **Design Permit** (Section 18.108.40 of Municipal Code)

- *Purpose: A Design Permit is a **discretionary action**...*
- *Findings for Approval: **To approve** a Design Permit, the review authority **shall make all of the following findings**:*
 1. *The proposed project is consistent with the General Plan....*
 2. *The proposed plan complies with all applicable provisions of the Zoning Code and Municipal Code.*
 4. *The proposed project has been reviewed in compliance with CEQA.*
 5. *The proposed development **will not be detrimental to the public health, safety, or welfare** or materially injurious to the properties or improvements in the vicinity.*

TC and MH staff have taken a position that despite the above language, the MH Design Review process is limited to aesthetics and *during the Project's design review proceeding, the PC lacks discretion to address potential environmental effects, making the Project ministerial for CEQA purposes*^[3]. This misguided and incorrect interpretation^[4], which the PC was instructed to follow, makes many other distortions and **inconsistencies** upon which the staff report and recommendation for approval are based on seem less important. They're not.

[3] David Blackwell, Allen Matkins Gamble Mallory & Matsis LLP, email to Jennifer Carman, April 29, 2021, p.3. [<http://morganhillca.iqm2.com/Citizens/FileOpen.aspx?Type=4&ID=8117&MeetingID=2033>]

[4] see appendix



A Design Permit is a discretionary ministerial action?

That argument had to be made because **none** of the following can withstand review.

- The project was adequately analyzed by the 2035 General Plan EIR ([5] p. 2, [2] p. 11-13 & 16-27)
- Considerations of any future use (Warehousing & Distribution) and associated CUP can be deferred ([5] p. 3-5)
- CEQA Section 15183 (streamlined review) supports a claim that no additional review is required ([5] p. 5-7, [2] p. 11-13)
- CEQA Section 15162 (subsequent EIRs) supports a claim that no additional review is required ([5] p. 7-9, [2] p. 11-13)

All the City can do is wave what they believe is a magic ‘2035 General Plan EIR’ wand:

The (staff) Report’s entire analysis of the EIR’s evaluation of impacts from activities specific to the Project consists of the following paragraph:

“The proposed project entails dividing the subject property and constructing buildings consistent with the General Plan. The division and development of parcels consistent with the General Plan was addressed in the program EIR for the 2035 General Plan and therefore, pursuant to Section 15162 and Section 15183 of the State CEQA Guidelines, no additional review under the California Environmental Quality Act is required for the proposed project.”

It is unclear for this description how the General Plan EIR’s analysis of development and population growth over the next 15 years applies to the project’s specific impacts, let alone how those impacts are examined in enough detail as to make further environmental review unnecessary. ([2] p. 11)

[5] Michael Lozeau, Lozeau & Drury LLP, email to MH Planning Commission, May 25, 2021, [<http://morganhillca.iqm2.com/Citizens/FileOpen.aspx?Type=4&ID=8229&MeetingID=2033>]



But no matter how many times you wave the magic 2035 GP EIR wand

It doesn't yield any answers to questions like the these that Commissioner Mueller asked during the May 25th| Planning Commission meeting:

- How did we verify, what was the check that this was consistent with the General Plan EIR? And in particular in terms of traffic? Or noise? Or any other thing?
- As I understand it, the EIR for the General Plan was a program-EIR. For us to use the General Plan EIR for the CEQA review, than what were the limits on this particular piece of property - which are sited in one of the resolutions with no facts? **Nothing was given to us other that it was consistent with it.**
- We were looking at aggregate numbers for a lot of places without looking at something for this site and as much concern as there is for this project site, it seems to me that we should have been given the data so that everybody would understand it for this particular project site because the sentence says it was analyzed against this project site, not against an aggregate General Plan build-out, against the projections for this site.

There are two specific and important General Plan and Municipal Code **inconsistencies** that all the CEQA exception and streamlining hand-waving in the world cannot even attempt to fix.

- 1) Warehousing is being proposed, requiring that it be processed concurrently with the Vesting Tentative Map request
- 2) A Traffic Impact Analysis is required



The Warehousing Is Not Being Proposed Game

- Both CEQA and MH Municipal Code Chapter 17.50 (Vesting Tentative Maps) require that the Conditional Use Permit that is required for the land use the buildings are primarily designed for (warehousing) be considered now. *The City Must Comply With CEQA for the Whole Project Prior to Issuing Any Approvals of the Project.* ^{[5] p. 3)}
- The Vesting Tentative Map requirement could not be more direct: *If a conditional use permit is required, such permit shall be processed **prior or concurrently with the vesting tentative map**.* https://library.municode.com/ca/morgan_hill/codes/code_of_ordinances?nodeId=TIT-17SU_CH17.50VETEMA_17.50.060FIPR, Section 17.50.060(b)(2) (emphasis added)
- And so the CC staff report gives us this: *The Redwood Tech at 101 project does not propose any conditional uses. However, should a future use on the site require a conditional use permit, that user will be responsible for conducting the environmental review for the proposed use as required under CEQA* ^[6, p.3].
- Warehousing & Distribution greater than 75,000 square feet does require a CUP. So Warehousing is not being proposed? Of course not, it's the last thing in the world TC would even want to bring to MH, despite 76 Dock High Door capacity.
- The PC staff report claims that four small tables will prove that *The proposal will be consistent with **all** provisions in the Zoning Code as demonstrated in the consistency tables provided below.* ^[7, p. 9] (emphasis added even though the dubious nature of the claim is probably self-evident, even if the tables were fine)
- The third 'consistency table' is titled *Parking* ^[7, p.10] and is shown on the next slide.

[6] City Council Staff Report, Meeting Date: June 23, 2021, [<http://morganhillca.iqm2.com/Citizens/FileOpen.aspx?Type=30&ID=27128&MeetingID=2071>]

[7] Planning Commission Staff Report, Meeting Date: May 25, 2021, [<http://morganhillca.iqm2.com/Citizens/FileOpen.aspx?Type=30&ID=26503&MeetingID=2033>]



Warehousing is not being proposed except to minimize the required parking space ?

Parking

	Square footage & Required Ratio	Building A	Building B	Building C	Building D	Building E
Office	Sq Ft	8,000	5,500	30,000	10,000	10,000
	1/300	27	18	100	33	33
Warehouse	Sq Ft	100,000	80,000	0	0	52,000
	1/1000	100	80	0	0	52
Manufacturing	Sq Ft	30,698	7,341	92,101	63,668	12,006
	1/500	61	15	184	127	24
TOTAL	Spaces	188	113	284	161	109
Bike Pkg - Long Term	1/20 spaces	10	6	15	9	6
Bike Pkg - Short Term	10% of spaces	19	12	29	17	11

- Warehouse is not a proposed use? O.K. Then the proposed uses must be Office and Manufacturing.
- 1/300 - 1/500 --> an additional **232 to 540** office and manufacturing workers are going to be looking for parking spots. Where exactly are those non-warehouse workers supposed to park?
- Consistency to General Plan, Zoning Code, Municipal Code, CEQA Guidelines and COMMON SENSE requires consideration of warehousing as it clearly **is** being proposed.



Consistency with General Plan requires a Traffic Impact Analysis

- PC staff report recognizes General Plan Action TR-3.D and we again get the illusory connection to ‘future uses’ where no such connection exists. *A traffic analysis will be required for future uses per General Plan Action TR-3.D prior to occupancy. Should a future use on the site require a conditional use permit, that user will be responsible for conducting environmental review for the proposed use as required under CEQA*^[7, p. 16]
- Action TR-3.D. *Guidelines for Preparing Traffic Studies. Use the adopted Guidelines for Preparation of Transportation Analyses in conjunction with the Tiered LOS Policy Standard as the standards and thresholds used by applicants, consultant, and City staff in preparation of traffic studies and application of the LOS standard.*[Morgan Hill 2035 General Plan, p. TR-28]
- The Guideline for Preparation of Transportation Analyses ^[8, p.] is unambiguous. *A transportation impact study **will be required** when a project does any one of the following:*

1. *Generates 100 or more net new peak hour trips (This threshold is consistent with the Valley Transportation Authority policy)*

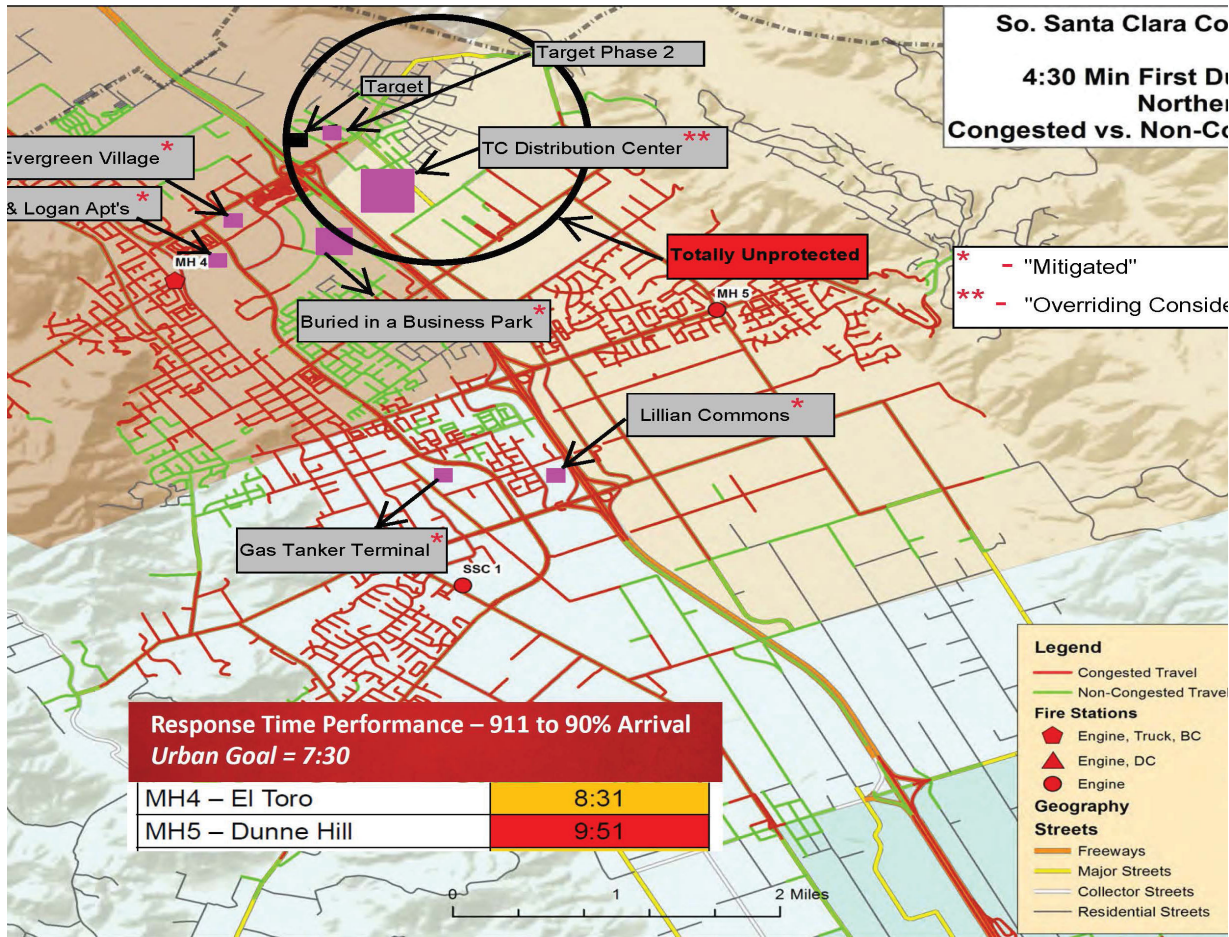
The threshold has **nothing** to do with ‘future uses’ or whether a conditional use permit is required.

- Any practical assumption, even ‘by inspection,’ would likely be considered reasonable to estimate that project will trip generation will exceed 100 net new peak hour trips. Daniel Smith, an expert Traffic Engineer, estimated 6040 daily trips, **818 AM peak hour** trips and **629 PM peak hour** trips assuming a Institute of Transportation Engineers’ Land Use Category of ‘Business Park’ ^[2, p. 203] What is the staff’s estimate?
- Mr. Smith also reviewed the 2035 General Plan EIR and concluded: *There is no basis for a claim that the project was somehow analyzed in the 2035 General Plan EIR* ^[2, p. 204]. By referencing the Morgan Hill Technology Park Draft EIR, he estimates that the Redwood project will cause significant degradation in LOS at intersections in the vicinity of the project. ***The fact that the revised and renamed Project could have effects on this scale should have been obvious to the City, but apparently nobody gave it any thought***. *Some may argue that none of the above matters because CEQA has transitioned to the VMT metric for transportation analysis. This, however, ignores the explicit policy stated in the City’s 2035 General Plan that the City continues to use LOS to evaluate impacts to transportation. Failure to conform to General Plan policies remains a matter of significance under CEQA* ^[2, p. 204].

[8] Guidelines for Preparation of Transportation Impact Reports, May 28, 2008; Amended February 24, 2010 [<https://www.morgan-hill.ca.gov/DocumentCenter/View/39213/Guidelines-FINAL-Morgan-Hill-TIA-Guidelines-CC-2-24-10-Update-1-1?bidId=>]



Not detrimental to public health, safety and welfare ?



- Given what the 2019 Standards of Coverage Assessment shows, how can anyone make a finding that Public Safety will not be impacted without a Traffic Impact Analysis?
- CEQA requires an EIR to analyze the impact of delayed response times on Emergency Service response times on Public Safety. How could the 2019 Standards of Coverage Assessment results not be considered “new and previously unavailable information” that would require a subsequent impact report even if the 2035 General Plan EIR had analyzed **any** project-specific impacts on EMS response times - which it did not. *An agency cannot conclude that an impact is less than significant unless it produces rigorous analysis and concrete substantial evidence justifying the finding*^[2, p 16]. Here, the City knows traffic congestion affects response times in core areas of the City and average unit travel times are 2-3 minutes slower than generally accepted standards and doesn't even disclose that the net new traffic trips generated by a 110,000 sq ft facility with 76 Dock High Door capacity and 232,000 sq ft of designated warehouse space is potentially significant?
- The Staff report appears to conclude that, in light of the Project's proposal to divide “the subject property and construct buildings”, the General Plan EIR's analysis of the “division of parcels” is sufficiently adequate that no further review is warranted. A thorough search of the General Plan EIR, however reveals that it does not analyze impacts from specific subdivisions or construction whatsoever. In fact, specifics of any kind associated with the Project - environmental setting, baseline, potential impacts from development or construction, mitigation - are nowhere to be found in the EIR.^{[2, p.}

11-12]



APPENDIX: Junk Law

Joe Baranowski
June 22, 2021



Junk Science is contemptible because

- » Peddlers use it to promote products knowing some people will believe it, allowing them to profit even though whatever the junk science is promoting is often harmful, e.g. some people duped by dubious diet claims have suffered significant kidney damage
- » In some cases, even 'smart' people are easy to fool when nobody is willing to challenge or fact-check the claims
- » Junk Science → Garbage Policy. (E.g. see <https://www.washingtonexaminer.com/junk-science-garbage-policy>)



Junk Science is so prevalent in nutrition that.....

» The American Food and Nutrition Science Alliance developed the “**Ten Red Flags of Junk Science**” to help people recognize nutrition misinformation. The Red Flag List includes:

- Recommendations made to help sell a product
- Recommendations based on studies published without peer review
- Recommendations that ignore differences among individuals or groups
- Dramatic statements or claims that are refuted by major scientific organizations.
- Lists of ‘good’ and ‘bad’ foods

» The entire list can be found in many articles including one [*] where the author adds three of her own excellent recommendations to help discern whether what you believe is junk:

- Consider the source
- Look for references
- Find out who funded it

[*] https://www.sparkpeople.com/blog/blog.asp?post=10_red_flags_of_junk_science_and_bogus_diets



Junk Law can be used for some of the same reasons as Junk Science

» So here are some suggestions [1] to spot Junk Law

- Based on another court decision that is claimed to be instructive when it is not (see e.g. [2])
- Applies a court's reasoning from other case(s) to an inapposite set of facts (see e.g. [3])
- Attempts to draw parallels to other rulings where they do not exist (see e.g. [3])
- Ignores other facts and circumstances that discredit claims being made (see e.g. [3])
- Promulgated by a party that has vested interest (tens of millions of dollars of profit) in its adoption (see e.g. [4])

[1] To the author's knowledge this list has not been recognized or adopted by any formal organization and is his own proposal

[2] Lozeau & Drury email to MH Planning Commission, May 25, 2021 (pg 9) [<http://morganhillca.iqm2.com/Citizens/FileOpen.aspx?Type=4&ID=8229&MeetingID=2033>]

[3] Adams Broadwell Joseph & Cardozo email to MH Planning Commission, May 25, 2021 (pg 14) [<http://morganhillca.iqm2.com/Citizens/FileOpen.aspx?Type=4&ID=8236&MeetingID=2033>]

[4] Letter from Trammell Crow attorney to Jennifer Carman, April 29, 2021 [<http://morganhillca.iqm2.com/Citizens/FileOpen.aspx?Type=4&ID=8117&MeetingID=2033>]



MORGAN HILL's (not some other city) Zoning Code

SPECIFIC PERMIT REQUIREMENTS

18.108.040

5. The proposed use will not be detrimental to the public health, safety, and welfare.
6. The proposed use would not have a substantial adverse effect in traffic circulation and on the planned capacity of the street system.
7. The proposed use is properly located within the city and adequately served by existing or planned services and infrastructure.

18.108.040 – Design Permit

- A. **Purpose.** A Design Permit is a discretionary action that enables the City to ensure that proposed development exhibits high quality design consistent with the General Plan and any other applicable specific plan or area plan adopted by the City Council. The Design Permit process is also intended to ensure that new development and uses are compatible with their surroundings and minimize negative impacts on neighboring properties.
- B. **Review Authority.**
 1. The Community Development Director shall review and act on all Design Permit



MORGAN HILL's (not some other city) Zoning Code

18.108.050

SPECIFIC PERMIT REQUIREMENTS

- J. **Findings for Approval.** To approve a Design Permit, the review authority shall make all of the following findings:
1. The proposed project is consistent with the General Plan and any applicable specific plan, area plan, or other design policies and regulations adopted by the City Council.
 2. The proposed project complies with all applicable provisions of the Zoning Code and Municipal Code.
 3. The proposed project substantially complies with all applicable design standards and guidelines contained in the Design Review Handbook.
 4. The proposed project has been reviewed in compliance with the California Environmental Quality Act (CEQA).
 5. The proposed development will not be detrimental to the public health, safety, or welfare or materially injurious to the properties or improvements in the vicinity.
 6. The proposed project complies with all applicable Design Review criteria in Subsection H above.
 7. For new residential development, the project complies with commitments made through the Residential Development Control System (RDCS).



By any reasonable set of criteria this [1] is Junk Law

CEQA

- Although a design permit is discretionary, design rarely triggers CEQA. Fairly recent decisions by the courts that affect CEQA review.
- While discretionary action typically triggers CEQA, “this rule applies only when the discretionary component of the project gives the agency the authority to mitigate environmental impacts.”
- Aesthetic issues, while in the province of local design review, are not within the province of CEQA. (McCorkle Eastside Neighborhood Group. v. City of St. Helena (2018) 31 Cal. App. 5th 80)
- Even if a statute grants an agency some discretionary authority over an aspect of a project, the project is ministerial for CEQA purposes if the agency lacks authority to address environmental impacts. (Protecting Our Water & Environmental Resources v. County of Stanislaus (2020) 10 Cal. 5th 479)



21

[1] http://morganhillca.iqm2.com/Citizens/Detail_Communication.aspx?Frame=None&MeetingID=2032&MediaPosition=&ID=8472&CssClass= , slide 21 of “Design Permit Presentation” given to Planning Commission on **May 11th, 2021**, with no public comment and probably less than 5 non-staff or commission participants in ‘attendance’ (wild guess by author with request for verification by City of actual number of attendees at ~9 PM pending) .



A more consistent representation of “fairly recent decisions”

- Is what the staff communicated and instructed the Planning Commission on really a reasonable interpretation of the stated cases **as they apply to Morgan Hill?**
 - » In Protect Our Water, “the Supreme Court helpfully explained the ministerial/discretionary distinction essentially boils down to **how the legislative policy makers have chosen to structure the agency’s project approval process**”[1]:

“If the permitting agency is empowered to disapprove or condition approval of a project based on environmental concerns that might be uncovered by a CEQA review, the project is discretionary.” [2]
- **Morgan Hill’s legislative policy makers (City Council or the People)** *should probably not* ‘regulate’ what “detrimental to public health, safety or welfare” means (like lists of ‘good’ and ‘bad’ foods) but if THEY do it should involve extensive public outreach and public comment and I seriously doubt the People would ever accept that it means being limited to “aesthetics” OR that truck noise impacting a nearby residential community with e.g. the possibility of waking people up every morning at 4 A.M. would EVER be explicitly excluded as something that a permitting agency member could not or should not consider!
- MH Zoning Code, section 18.108.040 . “A Design Permit is a discretionary action”. When it is accepted that such plain language can simply be thrown out, what is really going on?

[1] <https://www.ceqadevelopments.com/2020/08/28/supreme-court-holds-stanislaus-county-well-permit-decisions-under-state-standards-are-neither-categorical-ly-ministerial-nor-categorically-discretionary-in-nature-rather-whether-ceqa-triggering-discr/#>

[2] [https://scholar.google.com/scholar_case?case=6290570938843750628&q=\(Protecting+Our+Water+%26+Environmental+Resources+v.+County+of+Stanislaus&hl=en&as_sdt=2006&as_vis=1](https://scholar.google.com/scholar_case?case=6290570938843750628&q=(Protecting+Our+Water+%26+Environmental+Resources+v.+County+of+Stanislaus&hl=en&as_sdt=2006&as_vis=1)



From: [Donald Larkin](#)
To: [Armando Be](#)
Cc: [Edith Ramirez](#); [Jennifer Carman](#); [Adam Paszkowski](#); [Angie Gonzalez](#); [Michelle Bigelow](#); [Christina Turner](#)
Subject: Re: [EXTERNAL] Item 9: CONSIDER APPEAL OF PLANNING COMMISSION'S APPROVAL OF SD2020-0011/SR2020-0029. ect.
Date: Wednesday, June 23, 2021 7:19:14 PM

Dear Armando,

Thank you for sharing your thoughts. While I agree with some of what you have stated below, some of your assertions are incorrect.

As a general law city, we derive our authority over land use decisions from California law. State law provides that a city may regulate the use of buildings and structures as well as development standards such as: (1) the location, height, bulk, number of stories and size of buildings and structures; (2) the size and use of lots, yards, courts and other open spaces; (3) the percentage of a lot which may be occupied by a building or structure; and (4) the intensity of land use. We do this under our General Plan and zoning ordinance.

Extensive CEQA review was required prior to the adoption of our General Plan. The General Plan EIR analyzed the environmental impact of full build-out of the General Plan, and identified mitigation measures that will be applied to the Redwood Tech project. The property will develop the property as anticipated and as reviewed in the 2035 General Plan update. All of the identified project mitigations are required as a condition of development.

In general, a property owner has a right to develop property in accordance with the existing established standards. See e.g. *Building Industry Legal Defense Foundation v. Superior Court (City of San Juan Capistrano)*, (1999) 72 Cal. App.4th 1410. Further, "[t]he power to establish uses does not include the power to fix procedures for processing development applications. Zoning ordinances merely determine what uses are permitted where. Once a permitted use is identified by the applicable zoning ordinance, the procedure for processing a development application is established by state laws other than zoning." *Id.* at p. 1416-1417. In other words, the Council does not have the authority to create additional procedural requirements, including environmental review, beyond the requirements of the zoning ordinance and state law.

In this case, there is no basis for requiring an EIR. "The "touchstone" for determining whether an agency is required to prepare an EIR is whether the agency could meaningfully address any environmental concerns that might be identified in the EIR" *McCorkle Eastside Neighborhood Group v. City of St. Helena* (2018) 31 Cal.App.5th 80, 89–90, *as modified* (Jan. 25, 2019). While site and design review does involve some discretion, "the discretionary component of the action must give the agency the authority to consider a project's environmental consequences to trigger CEQA. *Id.* Courts have held that site and design review, which involves aesthetic

regulation, do not give an agency authority to consider the project's environmental consequences. "To rule otherwise would mean that an EIR would be required for every urban building project that is not exempt under CEQA if enough people could be marshaled to complain about how it will look." *Id. at p. 93*. I should note that the primary distinction between the St. Helena design review ordinance that was analyzed in the McCorkle case is that the St. Helena ordinance gave the City broader discretion to regulate uses (St. Helena has subsequently amended its design review ordinance).

In addition to California law, property rights are protected by the 5th and 14th Amendments to the United States Constitution. Property owners may not be deprived of a property interest without due process of law. Principles of substantive due process prohibit cities from arbitrarily adding procedural requirements or impediments to the use of property that are not found state or local law. Further, state and federal law can and often do supersede our local ordinances. As a subdivision of the state, we must comply with state law. Denying property rights puts the City at legal risk that could have significant financial consequences to the General Fund.

Best regards,

Don

Donald A. Larkin
City Attorney
City of Morgan Hill
Tel: (408) 778-3490
Email: donald.larkin@morganhill.ca.gov

This e-mail may contain confidential and/or attorney-client privileged material. If you have received this message in error, please immediately notify the sender and delete this e-mail message from your computer.

From: Christina Turner <Christina.Turner@morganhill.ca.gov>
Sent: Wednesday, June 23, 2021 1:23 PM
To: Michelle Bigelow <Michelle.Bigelow@morganhill.ca.gov>; Angie Gonzalez <Angie.Gonzalez@MorganHill.ca.gov>
Cc: Donald Larkin <Donald.Larkin@morganhill.ca.gov>; Edith Ramirez <Edith.Ramirez@morganhill.ca.gov>; Jennifer Carman <Jennifer.Carman@morganhill.ca.gov>; Adam Paszkowski <adam.paszkowski@morganhill.ca.gov>
Subject: FW: [EXTERNAL] Item 9: CONSIDER APPEAL OF PLANNING COMMISSION'S APPROVAL OF SD2020-0011/SR2020-0029. ect.

Please supplement.

From: Armando Be <[REDACTED]>

Sent: Wednesday, June 23, 2021 11:57 AM

To: Rich Constantine <Rich.Constantine@morganhill.ca.gov>; Yvonne Martinez Beltran <yvonne.martinezbeltran@morganhill.ca.gov>; Rene Spring <Rene.Spring@morganhill.ca.gov>; John McKay <john.mckay@morganhill.ca.gov>; Christina Turner <Christina.Turner@morganhill.ca.gov>; Gino Borgioli <Gino.Borgioli@morganhill.ca.gov>

Subject: [EXTERNAL] Item 9: CONSIDER APPEAL OF PLANNING COMMISSION'S APPROVAL OF SD2020-0011/SR2020-0029. ect.

Mayor, City Council Members, and City Manager,

Today you are asked to reverse two decisions rendered by the planning commission regarding the proposed TC planned development. You have the right to pass on the issue de novo, which means weighing all of the facts and circumstances and to make your own independent determination on the matter.

The proposed development project is large (1/2 million square feet). We all know it is going to have an impact on the environment (increased traffic noise and congestion, increased impact on our water and sewer system, increase of release of pollutants in the air, ect.). I do not believe that you have your hands tied and have to approve this massive project without environmental review. If environmental review is carried out and significant negative findings are made, you have the authority to require mitigation. The ability to shape the project through mitigation is what takes this project out of the ministerial category.

That your task is not ministerial is noted in the agenda report. It reads that you may consider-"Factors that an agency may consider in making that determination include, but are not limited to, consistency of the later activity with the type of allowable land use, overall planned density and building intensity, geographic area analyzed for environmental impacts and covered infrastructure as described in the program EIR." The program EIR provides a blueprint but it does not curtail your discretion to make a determination whether or not an EIR is in order. As long as you can shape the project to mitigate negative impacts to the environment, you can certainly require an EIR.

So it is up for each of you to decide. Do you allow a major project, which you know will definitely have a negative impact on some aspects of the city, and bypass any mitigation to potential and reasonably foreseeable negative environmental impacts OR do you require an EIR?

Here is a snippet of the CEQA. "The California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.) was enacted to (1) inform the government and public about a proposed activity's potential environmental impacts; (2) identify ways to reduce, or avoid, those impacts; (3) require project changes through alternatives or mitigation measures when feasible; and (4) disclose the government's rationale for approving a project. CEQA embodies a central state policy requiring state and local governmental entities to perform their duties so that major consideration is given to preventing environmental damage. Accordingly, CEQA prescribes how governmental decisions will be made whenever an agency undertakes, approves, or funds a project".

So, you have the discretion to make the decision on whether to go blind on environmental impacts and bypass the public's right to mitigations or whether to order an EIR and implement the purpose of the CEQA. Your hands are not tied on this one.

Regards,

Armando Benavides

WARNING: This message is from an external user. Confidential information such as social security numbers, credit card numbers, bank routing numbers, gift card numbers, wire transfer information and other personally identifiable information should not be transmitted to this user. For question, please contact the Morgan Hill IT Department by opening a new helpdesk request online or call 408-909-0055.

From: Armando Be <[REDACTED]>
Sent: Thursday, June 24, 2021 6:34 PM
To: Donald Larkin <Donald.Larkin@morganhill.ca.gov>
Cc: Edith Ramirez <Edith.Ramirez@morganhill.ca.gov>; Jennifer Carman <Jennifer.Carman@morganhill.ca.gov>; Adam Paszkowski <adam.paszkowski@morganhill.ca.gov>; Angie Gonzalez <Angie.Gonzalez@MorganHill.ca.gov>; Michelle Bigelow <Michelle.Bigelow@morganhill.ca.gov>; Christina Turner <Christina.Turner@morganhill.ca.gov>
Subject: Re: [EXTERNAL] Item 9: CONSIDER APPEAL OF PLANNING COMMISSION'S APPROVAL OF SD2020-0011/SR2020-0029. ect.

Attorney Larkins,

Thank you for your response. The most important factor to the outcome of the case is the approach and perspective on the part of our city staff. How the leadership staff interprets their obligations and responsibilities regarding the impacts of proposed large scale development determines which direction the outcome will follow.

So, at the outset, our city staff interpreted the relevant city codes, the CEQA requirements, and the requirements of the General Plan and the scope and limitation of the program EIR. After that they reached conclusions that led to the determination that no new EIR is required for the Redwoods at 101 development during the design review process.

Now let's not mix apples and oranges. No one is questioning or challenging TC's right to build a cluster of five buildings which in the aggregate will amount to 1/2 million square feet. Those are the rights the TC has under the 5th and 13th amendments to the constitution. But those rights are not absolute and they may be impacted by the requirements of the State CEQA law and our local ordinances.

Now CEQA does have some overlay, but it consists of an overlay with city ordinances and the types of discretion the ordinances give to local decision makers. CEQA and local ordinances have to be read together. They are not exclusive to each other. Our Municipal Code 18.108.040 related to design permits clearly states "a design permit is discretionary". Our city leaders who drafted that language clearly understood the difference between discretionary and ministerial action. They chose "discretionary" as the standard. You can read the rest of the ordinance. The bottom line is that our own city code authorizes the governmental body to ensure new projects have compatibility with their surroundings and "minimize negative impacts on neighboring properties". And 18.108.40 (C) (1) subjects "new non-residential buildings to design review".

But then there are the CEQA requirements. Section 15168 provides "Whether a later activity is within the scope of a program EIR is a factual question that the lead agency determines based on substantial evidence in the record. Factors that an agency may consider in making that determination include, but are not limited to, consistency of the later activity with the type of allowable land use, overall planned density and building intensity, geographic area analyzed for environmental impacts, and covered infrastructure, as described in the program EIR."

Our City Code ordinance and the Program EIR do not in any way foreclose or restrict an initial determination by our city staff that an EIR will be required on any specific large scale project. So it is the conclusions drawn by our city staff and leadership at the outset that determines whether or not an EIR is necessary. Everything else flows from their initial determinations.

The courts will give great deference to any determinations made by our city staff. However, it is important that our City Council members understand that they are evaluating the decisions of the city staff regarding their factual findings that led to the conclusion that no EIR is required. Our City Council's ability to provide oversight is restricted when they are told that their hands are tied and they have no choice over whether or not an EIR is in order because it is merely a ministerial process. Or that TC has rights that cannot be restricted or that no conditions can be imposed pursuant to design review. I do not believe that is in the spirit of CEQA and our own ordinances that describe the process as "discretionary". The City Council has the power and authority to overturn any decision by the city staff and the development director. And Council Member Spring did just that. He exercised his judgment that TC's proposed development is large scale and that an EIR is in order.

McCorkle is an interesting case but factually it can be distinguished from its facts. In that case, the city ordinances and their General Plan were aligned with state law regarding high density housing development which allowed the development's exclusion from EIR requirements. The city's ordinances explicitly made the project ministerial and obviously led to the initial determination that an EIR was not necessary. Our city ordinances are not restrictive and our General Plan is not aligned with any state law related to large scale business facility development. In fact,

our ordinances on the matter clearly state the opposite and use the word "discretionary". Words matter and their clear meaning are used by courts to evaluate the meaning and intent of an ordinance.

The County of Stanislaus case does offer some guidance as to whether on the matter. It holds "Courts have developed a functional test to further refine this distinction. ([*Friends of Juana Briones House v. City of Palo Alto* \(2010\) 190 Cal.App.4th 286, 302 \[118 Cal.Rptr.3d 324\]](#) (*Friends of Juana Briones House*)).) Like the CEQA Guidelines, the functional test focuses on the scope of an agency's discretion. The "touchstone" is whether the relevant "approval process ... allows the government to shape the project in any way [by requiring modifications] which could respond to any of the concerns which might be identified" by environmental review.' Here pursuant to 18.108.40, the council does have discretion to impose mitigation conditions pursuant to a design permit.

If our city staff had determined that an EIR was in order because of the largeness of the project and the close proximity to residential neighborhoods, there is no doubt that our city ordinances, our General Plan, and CEQA gives authority to the city to shape the project by mitigation at the design review phase.

I understand that the project will have to abide by the mitigation requirements that are required in the program IER. But that is not the most important issue for me. The important issue for me relates to how the CC members carry out their oversight responsibilities.

Regards,
Armando Benavides


On Wed, Jun 23, 2021 at 7:19 PM Donald Larkin <Donald.Larkin@morganhill.ca.gov> wrote:
Dear Armando,

Thank you for sharing your thoughts. While I agree with some of what you have stated below, some of your assertions are incorrect.

As a general law city, we derive our authority over land use decisions from California law. State law provides that a city may regulate the use of buildings and structures as well as development standards such as: (1) the location, height, bulk, number of stories and size of buildings and structures; (2) the size and use of lots, yards, courts and other open spaces; (3) the percentage of a lot which may be occupied by a building or structure; and (4) the intensity of land use. We do this under our General Plan and zoning ordinance.

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develop the property as anticipated and as reviewed in the 2035 General Plan update. All of the identified project mitigations are required as a condition of development.

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Best regards,

Don

Donald A. Larkin
City Attorney
City of Morgan Hill

Tel: (408) 778-3490

Email: donald.larkin@morganhill.ca.gov

This e-mail may contain confidential and/or attorney-client privileged material. If you have received this message in error, please immediately notify the sender and delete this e-mail message from your computer.

From: Armando Be <[REDACTED]>

Sent: Wednesday, June 23, 2021 11:57 AM

To: Rich Constantine <Rich.Constantine@morganhill.ca.gov>; Yvonne Martinez Beltran <yvonne.martinezbeltran@morganhill.ca.gov>; Rene Spring <Rene.Spring@morganhill.ca.gov>; John McKay <john.mckay@morganhill.ca.gov>; Christina Turner <Christina.Turner@morganhill.ca.gov>; Gino Borgioli <Gino.Borgioli@morganhill.ca.gov>

Subject: [EXTERNAL] Item 9: CONSIDER APPEAL OF PLANNING COMMISSION'S APPROVAL OF SD2020-0011/SR2020-0029. ect.

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That your task is not ministerial is noted in the agenda report. It reads that you may consider-"Factors that an agency may consider in making that determination include, but are not limited to, consistency of the later activity with the type of allowable land use, overall planned density and building intensity, geographic area analyzed for environmental impacts and covered infrastructure as described in the program EIR." The program EIR provides a blueprint but it does not curtail your discretion to make a determination whether or not an EIR is in order. As long as you can shape the project to mitigate negative impacts to the environment, you can certainly require an EIR.

So it is up for each of you to decide. Do you allow a major project, which you know will definitely have a negative impact on some aspects of the city, and bypass any mitigation to potential and reasonably foreseeable negative environmental impacts OR do you require an EIR?

Here is a snippet of the CEQA. "The California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.) was enacted to (1) inform the government and public about a proposed activity's potential environmental impacts; (2) identify ways to reduce, or avoid, those impacts; (3) require project changes through alternatives or mitigation measures when feasible; and (4) disclose the government's rationale for approving a project. CEQA embodies a central state policy requiring state and local governmental entities to perform their duties so that major consideration is given to preventing environmental damage. Accordingly, CEQA prescribes how governmental decisions will be made whenever an agency undertakes, approves, or funds a project".

So, you have the discretion to make the decision on whether to go blind on environmental impacts and bypass the public's right to mitigations or whether to order an EIR and implement the purpose of the CEQA. Your hands are not tied on this one.

Regards,

Armando Benavides



Special - Regular Meeting Agenda
City Council

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

Wednesday, June 23, 2021 5:30 p.m.

Virtual Meeting

AMENDED AGENDA

Please note that the recommended actions for item 1 have been amended to add a new recommendation ([changes in red below](#)).

PUBLIC NOTICE

The Public Hearing to consider Vehicle-Miles-Traveled (VMT) screening criteria and thresholds of significance regarding the City's implementation of State Senate Bill 743 (SB 743) transition from Level-of-Service (LOS) to VMT as the metric for transportation analysis under the California Environmental Quality Act (CEQA) for development projects that was noticed for consideration by the City Council at this meeting will be continued to a date uncertain. This will be duly noticed.

VIRTUAL MEETING GUIDELINES AND PUBLIC COMMENT

In accordance with Executive Order N-25-20 and guidance from the California Department of Public Health on gatherings, remote public participation is allowed. Physical meetings will not be in the City Council Chamber until further notice.

City Council meetings will be live streamed on Channel 17, on the City's website and on the City's Facebook page. Those members of the community that would like to participate in the meetings remotely may do so by joining the virtual meeting at: [<https://bit.ly/MHCityCouncilMeeting>](https://bit.ly/MHCityCouncilMeeting) or by calling in to: (669) 900-9128, then enter the webinar id: 873 3200 8380#.

Public comment may be provided in the following ways:

- Join the virtual City Council meeting via the link above, when public comment is opened, raise your virtual hand and be called upon to speak for up to 3 minutes
 - In order to speak, please be sure that your version of Zoom is up to date.
- Join the virtual meeting by calling in to the number above, dial *9 to raise your hand and be called upon to speak for up to 3 minutes

Send public comments in writing to the City Clerk at ccpubliccomment@morganhill.ca.gov
<<mailto:ccpubliccomment@morganhill.ca.gov>>

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

SPECIAL/REGULAR MEETING

A special meeting of the City Council is called at 5:30 p.m. for the purpose of conducting a Housing Sustainability Workshop and a closed session.

5:30 p.m. Housing Sustainability Workshop

6:30 p.m. Closed Session

7:00 p.m. Regular Meeting

SPECIAL MEETING

5:30 p.m. Housing Sustainability Workshop

6:30 p.m. Closed Session

CALL TO ORDER

Mayor Constantine

ROLL CALL ATTENDANCE

City Clerk Michelle Bigelow

DECLARATION OF POSTING AGENDA

Per Government Code Section 54954.2

City Clerk Michelle Bigelow

WORKSHOP

This workshop is the fourth in a series of Housing Workshops that will look at the current and future state of housing in Morgan Hill. This workshop is called "Housing Sustainability." Staff will present and discuss the following:

- o How the City plans for infrastructure needs, including planning for water, sewer, roads, police, and fire.
- o How the City can maintain long-term sustainability in the context of all of the new State-mandated housing production.

CLOSED SESSION

OPPORTUNITY FOR PUBLIC COMMENT

ADJOURN TO CLOSED SESSION

CONFERENCE WITH REAL PROPERTY NEGOTIATORS (Gov. Code section 54956.8.)

June 23, 2021

Property: APN's - 817-06-001
Agency negotiator: Christina Turner and Chris Ghione
Negotiating parties: Chu, John C. and May-Jih C.
Under negotiation: Price and Terms of Payment

CONFERENCE WITH REAL PROPERTY NEGOTIATORS (Gov. Code section 54956.8.)

Property: APN's - 762-61-3052 (Community and Cultural Center)
Agency negotiator: Christina Turner and Chris Ghione
Under negotiation: Price and Terms of Lease

CONFERENCE WITH LEGAL COUNSEL-ANTICIPATED LITIGATION (Gov. Code section 54956.9(d)(2).): (one case).

REGULAR MEETING

7:00 p.m.

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.

PROCLAMATIONS

Proclaiming the month of July as Parks & Recreation Month

RECOGNITIONS

Recognizing Fred Gomez for his years of service to Morgan Hill

CITY COUNCIL REPORTS

Council Member Spring

CITY MANAGER'S REPORT

City Manager Christina Turner

CITY ATTORNEY'S REPORT

City Attorney Donald Larkin

OTHER REPORTS

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. APPROVE AN IMPROVEMENT AGREEMENT AND A DEFERRED IMPROVEMENT AGREEMENT WITH TSC MOTORS INC. (MORGAN HILL CDR+J DEALERSHIP), AND AUTHORIZE THE CITY MANAGER TO EXECUTE AN ASSOCIATED RIGHT-OF-WAY ACQUISITION AGREEMENT WITH THE OWNER OF THE PROPERTY WITH ASSESSOR'S PARCEL NUMBER (APN) 728-17-032

Recommendation:

1. Approve an Improvement Agreement with TSC Motors Inc.;
2. Approve a Deferred Improvement Agreement with TSC Motors Inc.;
3. [Authorize the City Attorney to review and approve an alternative form of security to be provided by TSC Motors Inc. as part of the Improvement Agreement for the Morgan Hill CDR+J Dealership Project;](#)
4. Authorize the City Manager to execute the Improvement Agreement and Deferred Improvement Agreement;
5. Authorize the recordation of the Improvement Agreement and Deferred Improvement Agreement; and
6. Authorize the City Manager to negotiate and execute a Right-of-Way Acquisition Agreement with the Owner of the property with Assessor's Parcel Number (APN) 728-17-032.

2. APPROVE SECOND AMENDMENT TO MAINTENANCE SERVICE AGREEMENT WITH ANIMAL DAMAGE MANAGEMENT, INC.

Recommendation:

1. Determine that competitive bids upon notice would not likely result in a lower price to the City from a responsible bidder or would cause unnecessary expense or delay under the circumstances per Section 3.04.150 (1) of the Morgan Hill Municipal Code; and
2. Authorize the City Manager to execute and administer the Second Amendment to the Maintenance Service Agreement with Animal Damage Management, Inc., extending the agreement for one additional year of service at annual amount of \$35,160 for a new total contract amount of \$140,640 over 4 years.

3. APPROVE THIRD AMENDMENT TO AGREEMENT WITH INNOVATIVE CLAIMS SOLUTIONS, INC.

Recommendation:

Authorize the City Manager to execute and administer a Third Amendment to Agreement with Innovative Claims Solutions, Inc. to provide third party claims administration for workers' compensation extending the agreement for one additional year of service at annual amount of \$34,380, for a new total contract amount of \$206,600 over 6 years.

4. APPROVE THE JUNE 16, 2021 MEETING MINUTES

Recommendation:

Approve Minutes.

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

Recommendation:

1. Award Vehicle Service Agreement to Frank's Auto Service for a total not-to-exceed amount of \$368,308 over three years; and
2. Authorize City Manager to Execute the Agreement.

6. AWARD COMMUNITY AND CULTURAL CENTER BOILER REPLACEMENT PROJECT TO STEPHEN CIARI PLUMBING AND HEATING, INC.

Recommendation:

1. Adopt resolution amending the Fiscal Year 2020-21 Adopted Budget to appropriate an additional \$28,101 from the Building Replacement Fund (741) for the Community and Cultural Center Boiler Replacement Project;
2. Award contract to Stephen Ciari Plumbing and Heating, Inc. in the amount of \$98,274 and authorize the expenditure of (10%) contingency funds not to exceed \$9,827 for a total authorization of \$108,101; and
3. Authorize the City Manager to execute and administer that certain contract with Stephen Ciari Plumbing and Heating, Inc.

7. AWARD OF EAST FIFTH STREET SEWER MAIN PROJECT TO PACIFIC UNDERGROUND CONSTRUCTION, INC.

Recommendation:

1. Approve East 5th Street Sewer Main Project plans and specifications;
2. Award contract to Pacific Underground Construction, Inc. for the East 5th Street Sewer Main Project in the amount of \$1,226,730;
3. Authorize expenditure of construction contingency not to exceed \$122,673; and
4. Authorize the City Manager to execute and administer the construction contract with Pacific Underground Construction, Inc.

PUBLIC HEARING

8. ADOPT RESOLUTION ESTABLISHING CREDIT CARD PAYMENT SERVICE FEE

Recommendation:

1. Open/Close public hearing; and
2. Adopt resolution establishing new credit card service fee for development fees and transient occupancy tax payments by credit card.

Estimated Time: 15 Minutes

9. CONSIDER APPEAL OF PLANNING COMMISSION'S APPROVAL OF SD2020-0011/SR2020-0029 THROUGH SR2020-0033 DE PAUL - TRAMMELL CROW MORGAN HILL VENTURE: REQUEST FOR A TENTATIVE PARCEL MAP AND DESIGN PERMITS FOR THE REDWOOD TECH AT 101, A FIVE BUILDING INDUSTRIAL PARK, ON A 29± ACRE SITE (APNS 728-30-006 AND 728-30-009). (AAE2021-0004 AND AAE2021-0005)

Recommendation:

1. Grant a hearing de novo;
2. Open/close public hearing; and
3. Adopt Resolution denying the appeals and reaffirming the decision of the Planning Commission to approve the project subject to Conditions of Approval.

Estimated Time: 120 Minutes

FUTURE COUNCIL INITIATED AGENDA ITEMS

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

ADJOURNMENT

NOTICE

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

PUBLIC COMMENT

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

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

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

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

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

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

AMERICANS WITH DISABILITIES ACT (ADA)

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

SUSTAINABLE MORGAN HILL



VISION

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

Choose Morgan Hill

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

City Council Ongoing Priorities

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

2020-2021 Strategic Priorities

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



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





CITY COUNCIL STAFF REPORT

MEETING DATE: June 23, 2021

PREPARED BY: Maria Angeles, Senior Civil Engineer
APPROVED BY: City Manager

APPROVE AN IMPROVEMENT AGREEMENT AND A DEFERRED IMPROVEMENT AGREEMENT WITH TSC MOTORS INC. (MORGAN HILL CDR+J DEALERSHIP), AND AUTHORIZE THE CITY MANAGER TO EXECUTE AN ASSOCIATED RIGHT-OF-WAY ACQUISITION AGREEMENT WITH THE OWNER OF THE PROPERTY WITH ASSESSOR'S PARCEL NUMBER (APN) 728-17-032

RECOMMENDATION(S)

1. Approve an Improvement Agreement with TSC Motors Inc.;
2. Approve a Deferred Improvement Agreement with TSC Motors Inc.;
3. Authorize the City Attorney to review and approve an alternative form of security to be provided by TSC Motors Inc. as part of the Improvement Agreement for the Morgan Hill CDR+J Dealership Project;
4. Authorize the City Manager to execute the Improvement Agreement and Deferred Improvement Agreement;
5. Authorize the recordation of the Improvement Agreement and Deferred Improvement Agreement; and
6. Authorize the City Manager to negotiate and execute a Right-of-Way Acquisition Agreement with the Owner of the property with Assessor's Parcel Number (APN) 728-17-032.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Protecting the Environment and Preserving
Open Space and Agricultural Land

2020-2021 Strategic Priorities

Economic Development

GUIDING DOCUMENTS

Morgan Hill 2035 General Plan

REPORT NARRATIVE:

The Morgan Hill CDR+J Dealership project is a proposed 31,397 sq. ft. Chrysler, Dodge, Ram, and Jeep car dealership located on a 6-acre portion of a 9.24-acre site at the West side of Condit Road, approximately 600 feet south of Diana Avenue (APN: 728-17-035) (Attachment 1).

As required by the project's conditions of approval for Design Review (SR2017-0007), the developer is required to enter into an Improvement Agreement (Attachment 2) with the City of Morgan Hill and provide a financial guarantee covering the project's public

improvements. The project has a Design Review Amendment application currently under separate review by the Planning Division to obtain approval on the modifications to the dealership buildings and other site plan changes.

The public improvements to be constructed as part of this project include the following:

1. Condit Road - West Side: Improvements on the west side of Condit Road, along the project frontage, on only the 6-acre portion of the 9.24-acre site. The improvements include, but are not limited to, curb and gutter, attached sidewalk, street trees, street paving, storm drainage facilities, sewer and water, fire protection, and street lighting.
2. Condit Road - East Side: Improvements on the east side of Condit Road, along the frontage of the property directly across from the project site. The improvements include curb and gutter, attached sidewalk, street paving, storm drainage facilities, and street lighting.

Although not directly attributable to the project, the project's Design Review included the condition for the developer to construct the frontage improvements along the east side of Condit Road with the actual improvement cost to be reimbursed by the City. The public improvements on the east side of the road will fully improve this segment of Condit Road to its ultimate width and will be consistent with the Vision Zero and Complete Streets policies.

Improvement Agreement

The Improvement Agreement includes a reimbursement provision (Section 14 of the agreement) that outlines the terms and conditions for reimbursing the developer for the actual construction and design costs associated with the completion of the public improvements along the East side of Condit Road. The reimbursement will be in the form of credits against the Traffic Impact Fees and Storm Impact Fees due from project.

The developer has furnished the City with the necessary documents to complete the processing of the Improvement Agreement by providing surety bonds and insurance for the project's proposed public improvements.

Right-of-Way Acquisition

The construction of the improvements along the East side of Condit Road includes work outside the City's right-of-way on an adjacent parcel located within the unincorporated County area. Staff is currently in communication with the owner of the property with Assessor's Parcel Number (APN) 728-17-032 on the proposed acquisition of the necessary street right-of-way, without compensation, and a 10' Public Service Easement dedication behind the new sidewalk. A Right-of-Way and Public Service Easement (PSE) dedication exhibit is included (Attachment 3) showing the proposed right-of-way and PSE to be obtained.

A Right-of-Way Acquisition Agreement will be executed with the property owner to allow the City to acquire the necessary street right-of-way and to obtain the 10' Public Service Easement dedication

Deferred Improvement Agreement

The developer requested a deferral of the construction of improvements along approximately 180' of frontage of the 3.24-acre northerly portion of the project's 9.24-acre site, in the location of the project's approved temporary automotive sales facility that is currently in operation, as shown in the attached map exhibit (Attachment 4).

Staff is recommending the deferral of the improvements as the developer has not finalized the development plans for the site's northerly area. As part of the deferral, the developer is required to enter into a Deferred Improvement Agreement (Attachment 5) with the City.

Staff recommends that the City Council approve the Improvement Agreement and Deferred Improvement Agreement, authorize the City Manager to negotiate a Right-of-Way Acquisition Agreement, authorize the City Manager to sign the Agreements; and record the Improvement Agreement and Deferred Improvement Agreement on behalf of the City.

COMMUNITY ENGAGEMENT: Inform

On September 1, 2018, the Community Development Director considered a Design Review application for a new car dealership with a 10-day public comment period.

ALTERNATIVE ACTIONS:

There are no feasible alternative actions on the approval of the Improvement Agreement as the developer has furnished the necessary documents to complete the processing of the Improvement Agreement.

The City Council could decide not to approve the Deferred Improvement Agreement. However, the developer may not be able to fully fund the additional frontage improvements along the 3-acre portion of the site and may choose not to continue with the project.

The City Council could also decide not to authorize the execution of a Right-of-Way Acquisition Agreement. This decision will defer the widening of a segment of Condit Road which is a needed improvement consistent with the Vision Zero and Complete Streets policies. Future widening of Condit Road will be performed by the City.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On December 2, 2020, the City Council approved an Incentive Agreement, consistent with the Auto Dealer Economic Development Strategy, with TSC Motors, Inc. for a new car dealership at the Auto Mall Planned Development Site on Condit Road.

On the same date, the City Council also approved and directed the City Manager to execute an Impact Fee Freeze Agreement with TSC Motors, Inc.

FISCAL AND RESOURCE IMPACT:

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

Additional development review costs will be due from the future development of the 3.24-acre portion of the project site.

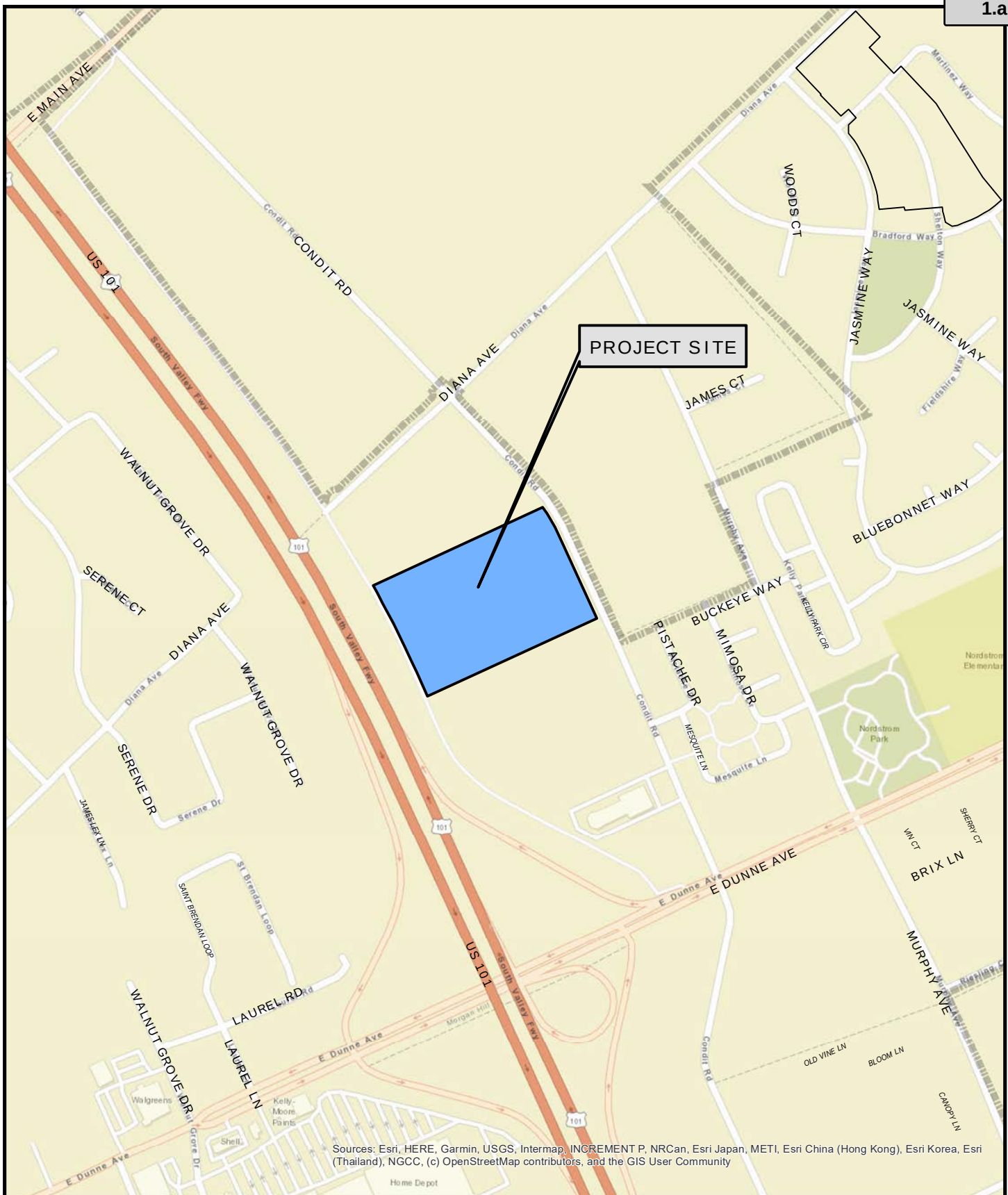
The total estimated construction and design costs for the improvements along the East side of Condit Road is \$391,526 (Reimbursable Amount). As part of the project's Improvement Agreement, the Reimbursable Amount will be applied as a credit against the Traffic Impact Fees and Storm Impact Fees due from the project. A budget amendment is not proposed for Council approval as the project's Traffic Impact Fees and Storm Impact Fees due are enough to cover the Reimbursable Amount.

CEQA (California Environmental Quality Act):

Project – A Mitigated Negative Declaration was adopted.

LINKS/ATTACHMENTS:

1. Site Map
2. Improvement Agreement
3. Right-of-Way and Public Service Easement Dedication Exhibit
4. Location Map of Deferred Improvement Area at Condit Road
5. Deferred Improvement Agreement
6. 01 Supplement 1



Land Development Engineering
Engineering and Utilities Department

G:\R-14\Proj\GIS\John\Maria_CDRJ Dealership.mxd

SITE MAP MORGAN HILL CDR+J DEALERSHIP



0 250 500 1,000 1,500 2,000 Feet

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

CITY OF MORGAN HILL
17575 PEAK AVENUE
MORGAN HILL, CA 95037

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

THE AREA ABOVE IS RESERVED FOR RECORDER'S USE

IMPROVEMENT AGREEMENT

TSC Motors Inc.
17085 Condit Road
APN: 728-17-035
Morgan Hill CDR+J Dealership

THIS AGREEMENT is made on this _____ day of _____, 2021, by the CITY OF MORGAN HILL, a municipal corporation ("CITY"), and TSC Motors Inc., a corporation ("PROPERTY OWNER").

RECITALS

The following Recitals are a substantive part of this Agreement:

1. This Agreement is entered into pursuant to Morgan Hill Municipal Code Chapter 12.02.
2. PROPERTY OWNER has filed a Development Application and supporting documents on the property with the address of **17085 Condit Road**, and the **APN: 728-17-035** having the development name of **Morgan Hill CDR+J Dealership** ("Development").
3. CITY requires as a condition of approval of the Development Permit, as described on said permit, that certain improvements be installed by PROPERTY OWNER as shown on the fully executed Development Improvement Plans entitled **Public Improvement Plans for Morgan Hill CDR+J – Morgan Hill, CA** ("Improvements"), on file with CITY and incorporated herein by this reference.
4. PROPERTY OWNER has been unable to complete, prior to the issuance of the Development Permit, all of the Improvements required by CITY to the satisfaction of the City Engineer.
5. PROPERTY OWNER is required by the terms of the Morgan Hill Municipal Code to improve all streets, highways, or public areas which are part of the Development, including but not limited to necessary paving, curbs, sidewalks, catch basins, water mains, culverts, storm drains, and sanitary sewers, in accordance with the plans and specifications on file with the City Engineer.

6. To assure CITY that PROPERTY OWNER will complete all the work and Improvements required for the Development, the parties have entered into this Agreement.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **Term of Agreement.** The term of this Agreement shall be six (6) months from the date of issuance of the Development Permit ("Term") unless extended by written agreement.
2. **Improvements.** PROPERTY OWNER agrees to construct the Improvements in a good and workmanlike manner in accordance with the plans and documents filed with and approved by CITY in conjunction with the Development, all of which are incorporated herein by reference. These items of the Improvements shall be completed, constructed and installed at PROPERTY OWNER's sole expense unless agreed to otherwise by CITY.
3. **Rights-of-Way.** Except as otherwise provided by this Agreement, CITY can hold without acceptance or recordation all lands, rights-of-way, and easements offered for dedication. All such offers shall, however, remain open, and shall constitute irrevocable offers of dedication in accordance with the Government Code. All such offers may be accepted and recorded by CITY in its sole discretion at any later date without further notice to PROPERTY OWNER as provided by law. By way of explanation only, it is the current intention of CITY to accept all or part of the irrevocable offers to dedicate upon acceptance of the Improvements called for in this Agreement.
4. **Improvements: Time Limits.** PROPERTY OWNER agrees to cause all Improvements to be made and constructed to comply with all requirements of Morgan Hill Municipal Code Chapter 12.02, according to the improvement plans for the Development approved by the City Engineer and including any changes or alteration in the Improvements required by the City Engineer. The Improvements shall be completed utilizing CITY standards and specifications. PROPERTY OWNER agrees to complete the Improvements prior to the expiration of this Agreement, or the issuance of the certificate of occupancy, whichever is earlier; provided however, the City Manager may extend the deadline for completion by not more than six (6) months at his or her reasonable discretion and determination that granting the extension will not be detrimental to the public welfare. No extension of this deadline for completion shall be made except upon the basis of a written application made by PROPERTY OWNER stating fully the ground for the application and the facts relied upon for an extension.

It is further agreed by and between PROPERTY OWNER and CITY that any extension granted shall in no way affect the validity of this Agreement or release the surety(ies) on any bond attached hereto or the financial institution guaranteeing the same. PROPERTY OWNER further agrees to maintain the securities described in Section 6 in full force and effect during the terms of this Agreement, including any extensions of time as may be granted, and until such time as the Improvements have been accepted for maintenance by CITY.

In the event that PROPERTY OWNER shall fail to complete the Improvements within the time provided by this Agreement, CITY may in its sole discretion and in addition to any other remedy provided in this Agreement or by law, enter upon the Development and complete the Improvements and recover the full

cost and expense of construction from PROPERTY OWNER, PROPERTY OWNER's successors and assigns, PROPERTY OWNER's Performance/Labor & Material Bonds associated with this Development, or from the then owner of the Development, and/or place a lien upon the Development property for the cost and expense. Any and all CITY costs shall include but not be limited to administrative and attorney costs.

5. **Acquisition and Dedication of Easements or Rights-of-Way.** If any of the Improvements is to be constructed or installed on land not within the Development or already existing public right-of-way, no construction or installation shall be commenced before the irrevocable offer of dedication or conveyance to CITY of appropriate rights-of-way, easements or other interest in real property, and appropriate authorization from PROPERTY OWNER to allow construction or installation of the Improvements or work has been obtained and paid for by PROPERTY OWNER.

6. **Bond Requirements.** To secure the performance of each Improvement required under this Agreement and to ensure full payment to all persons furnishing or supplying labor or materials for each Improvement required, PROPERTY OWNER shall provide to CITY concurrently with the execution of this Agreement, payment and performance bonds each in the amount of 100% of the total estimated cost of the Improvements as determined by the City Engineer. A performance bond to secure faithful performance of this Agreement as required by Section 12.02.160 of the Morgan Hill Municipal Code for performance shall be provided in substantially the form set forth in Exhibit B. A payment bond to secure full payment to all persons furnishing or supplying labor or materials as required by Section 12.02.160 of the Morgan Hill Municipal Code for labor and materials shall be provided in substantially the form set forth in Exhibit C. PROPERTY OWNER shall provide an additional guarantee and warranty security (in substantially the form set forth in Exhibit D) of fifty (50%) percent of the cost of construction of the Improvements to guarantee and warranty the Improvements for a period of one year following its completion and acceptance against any defective work or labor done, or defective materials furnished, as required by Section 12.02.170 of the Morgan Hill Municipal Code.

Improvements and the City Engineer's Estimated Costs of Improvements as of **June 10, 2021** are attached hereto as Exhibit "A".

Any bonds submitted under this Agreement shall be executed by a surety company authorized to write the same in the State of California, and subject to the review and approval of the City's risk manager. All required securities shall be in a form approved by the City Attorney. The bonds shall be executed on CITY forms by a surety authorized to do business in the State of California and shall be approved by the City Attorney and the City Engineer. Submittal of the Performance/Labor & Material Bonds is a requirement prior to CITY's issuance of an encroachment permit to do work in CITY's right-of-way. Submittal of the Warranty Bond is a requirement prior to the City Engineer's consideration of acceptance of the public improvements.

Note: If Cash Deposit Agreement Guaranteeing Improvements is utilized for security purposes, the Cash Deposit Agreement amount shall be two hundred (200%) percent of the aforementioned City Engineer's Estimated Costs of Improvements. In lieu of the above, CITY will accept a certificate of deposit in CITY's name with escrow instructions acceptable to the City Engineer, subject to the approval of the City Attorney.

The release of any securities shall be governed by the provisions of Section 12.02.170 of the Morgan Hill Municipal Code.

7. **Irrevocability of Security.** The securities provided under this Agreement shall be irrevocable, shall not be limited as to time, and may be released only upon the written approval of the City Engineer and City Council.
8. **Duty to Warn.** PROPERTY OWNER shall give adequate warning to the public of each and every dangerous condition which may exist in the Improvements, and will take all reasonable actions to protect the public from any dangerous condition.
9. **Warranty.** PROPERTY OWNER guarantees and warrants the Improvements required by this Agreement and agrees to remedy any defects in the Improvements arising from faulty or defective materials or construction occurring within twelve (12) months after acceptance by CITY of said Improvements. Following notice, PROPERTY OWNER shall, without delay or cost to CITY, repair, replace, or reconstruct any defective or unsatisfactory portion of Improvements. CITY may, at its sole option, perform the repair or replacement itself if PROPERTY OWNER has failed to commence repair within twenty (20) days after CITY has mailed written notice to PROPERTY OWNER. In such event, PROPERTY OWNER agrees to pay the cost of repair and replacement, plus 15%, by CITY; and CITY may recover such costs as a lien against the Development. CITY may proceed immediately to make repairs should an emergency arise without waiving its rights of recovery against PROPERTY OWNER.
10. **Failure of Performance.** In addition to the other remedies provided by this Agreement, CITY shall have recourse to the security given. In the event that CITY seeks recourse against any security, CITY shall have recourse against PROPERTY OWNER for any and all amounts necessary to complete the obligation. All administrative costs, including attorneys' fees shall be a proper charge against the security and PROPERTY OWNER pursuant to Government Code. The right of CITY to draw upon or utilize the security is additional and not in lieu of any other remedy available to CITY at law or in equity. The parties agree that the estimated costs and security amounts may not reflect the actual cost of construction or installation of Improvements, and therefore, CITY damages for PROPERTY OWNER's default shall be measured by the cost of completing the required Improvements.
11. **Certificate of Occupancy.** PROPERTY OWNER understands that CITY will expect completion, to the satisfaction of CITY, of specific public improvements as well as private utility improvements prior to CITY Approval of a Certificate of Occupancy for any building on the Development property. The specific improvements shall include activation of all public utilities (water, sewer, storm drain); activation of all private utilities (electric, gas, phone) except for cable; street lights turn-on request filed with P G & E; and full street improvements (curb-gutter and paving with/without final lift) from existing public street to building under consideration for Certificate of Occupancy. PROPERTY OWNER, furthermore, agrees to so inform successor in lot interest should lot be transferred to another party prior to CITY acceptance of public improvements.
12. **Final Toxic Report.** Where applicable, PROPERTY OWNER hereby agrees to furnish the City Attorney with a copy of the Final Toxic Report issued by the appropriate licensed consultant on the proposed Development. This report must be received prior to final acceptance of on-site improvements and issuance of certificate of occupancy.
13. **Public Improvements Fee Schedule.** PROPERTY OWNER shall pay the following sums in cash to CITY pursuant to the provisions of Resolution 1383 and any amendments thereto. These sums shall be

paid to CITY at the time of issuance of the Development Permit, and shall be in accordance with the Department of Public Works Fee Schedule attached hereto demonstrating a current Total Fee Obligation of **\$358,298**. All Fees are estimated and may be increased by CITY subject to current resolutions and ordinances. These fees are subject to a minimum annual revision. PROPERTY OWNER consents to increases in these fees. This Agreement shall not be construed to fix or freeze fees as of any point prior to issuance of Development Permits.

All development fees shall be those in effect at the time of the issuance of the Development Permit for this Development. This Agreement does not entitle the developer to any permit including a grading permit. A separate application for a grading permit should be made to the Building Department.

14. **Reimbursements**

a) PROPERTY OWNER acknowledges and agrees that the CITY will reimburse the PROPERTY OWNER for the actual costs associated with the completion of the public improvements along the East side of Condit Road, across the property frontage ("Reimbursable Improvements"). The PROPERTY OWNER shall also be reimbursed the design/engineering consultant costs for constructing the improvements.

b) The CITY shall reimburse the PROPERTY OWNER subject to the following terms and conditions:

(1) The City shall credit/reimburse the PROPERTY OWNER in an amount not to exceed the agreed upon reimbursable amount of **\$391,526**. The reimbursement shall be issued in the form of a credit against the PROPERTY OWNER'S project fee obligation which consists of Traffic and Storm Drain Impact Fees.

(2) The PROPERTY OWNER shall keep records with complete and correct entries of all construction costs related to the improvements, including cancelled checks or other proof of payment. These records shall be made available to the CITY.

15. **Other Agreements Associated with This Improvement Agreement:** The following "checked off" Agreements are understood to be associated with this Agreement and have been fully executed prior to or concurrent with this Agreement:

☐ CITY "Streets" Reimbursement Agreement (CITY Ordinance 982)

PROPERTY OWNER acknowledges and agrees that the property is subject to a Reimbursement Agreement whereby PROPERTY OWNER must reimburse CITY for all costs associated with off-site improvements completed by the CITY and/or others or to be completed by CITY and/or others. PROPERTY OWNER agrees to pay CITY for all sums already incurred under the reimbursement agreement prior to issuance of any building permits. If the improvement has not been completed by CITY and/or others, then PROPERTY OWNER or successor-in-interest agrees to fully reimburse CITY for all costs incurred by CITY and/or others in constructing the improvements.

☐ CITY Public/Private Utility Reimbursement Agreement

☐ Landscape & Lighting Maintenance Assessment District Annexation

☒ Deferred Improvement Agreement

- [X] Incentive Agreement
[X] Impact Fee Freeze Agreement

16. **Insurance Requirements.**

Commencement of Improvements. Before beginning construction of the improvements, PROPERTY OWNER is required to procure and provide proof of the insurance coverage required by this section in the form of certificates and endorsements. The required insurance must cover the activities of PROPERTY OWNER and its subcontractors relating to or arising from the performance of work associated with the Improvements, and must remain in full force and effect at all times during the period covered by the Agreement, including any extensions of time as may be granted, and until such time as the Improvements have been accepted for maintenance by CITY. The coverages may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by excess or "umbrella" policies, provided each such policy complies with the requirements set forth herein. Any deductibles or self-insured retentions must be declared to and approved by City. Coverages may be provided by PROPERTY OWNER's General Contractor if PROPERTY OWNER is not directly insuring such exposures under an "Owners and Contractors Protective Liability Policy (OCP)" on which CITY would be an additional insured. If PROPERTY OWNER will utilize the services of a General Contractor to perform all of the work associated with the Improvements, then PROPERTY OWNER may opt to have all coverages provided by PROPERTY OWNER's General Contractor, provided that a written contract is executed between PROPERTY OWNER and the General Contractor whereby the written contract specifically required General Contractor to fulfill all of the City insurance requirements as outlined in this Agreement, including all endorsements in favor of the City. Verification of the written contract must be provided to City upon request. If PROPERTY OWNER fails to provide any of the required coverage in full compliance with the requirements outlined in this Agreement, CITY may, at its sole discretion, purchase such coverage at PROPERTY OWNER's expense and deduct the cost from payments due to PROPERTY OWNER, assess payment against Development, or terminate the Agreement for default. Any deductibles or self-insured retentions must be declared to and approved by City. PROPERTY OWNER further understands that CITY reserves the right to modify the insurance requirements set forth herein, with thirty (30) days' notice provided to PROPERTY OWNER, at any time as deemed necessary to protect the interests of CITY.

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

- (1) Commercial General Liability Insurance ("CGL"): PROPERTY OWNER shall maintain CGL and shall include coverage for liability arising from PROPERTY OWNER's or its subcontractor's acts or omissions in the performance of work associated with the Improvements against claims and liabilities for personal injury, death, or property damage providing protection in the minimum amount of: (i) five million dollars (\$5,000,000.00) combined single limit each occurrence and either a general aggregate limit of ten million dollars (\$10,000,000.00) or a general aggregate limit of five million dollars (\$5,000,000) as applied on a "per project" or "per location" basis, or (ii) the maximum amount of such insurance available to PROPERTY OWNER under PROPERTY OWNER's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

- a. CGL policy may not exclude explosion, collapse, underground excavation hazard, or removal of lateral support.
- b. CGL policy must include blanket contractual and completed operations.
- c. CGL policy will apply as though separate policies have been issued to each insured ("separation of insureds").

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

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

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

(b) **Required Endorsements.** PROPERTY OWNER shall provide proof of the following endorsements, listed for each policy for which endorsements are required, as outlined below:

(1) **ALL Policies:**

"Waiver of Subrogation" - Each required policy must include an endorsement providing

that the carrier agrees to waive any right of subrogation it may have against CITY and CITY's elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers.

(2) ALL policies except Workers Compensation:

- a. "Additionally Insured" - The City of Morgan Hill, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers are named as additional insureds.
- b. "Primary and Non-Contributing" - Insurance shall be primary non-contributing.

(c) Subcontractors. PROPERTY OWNER must ensure that each subcontractor is required to maintain the same insurance coverage required under this Section 15, with respect to its performance of work associated with the Improvements, including those requirements related to the additional insureds and waiver of subrogation.

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

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

Certificate Holder address:

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

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

18. **Non-Discrimination.** PROPERTY OWNER covenants there shall be no discrimination based upon race, color, creed, religion, gender, marital status, age, disability, national origin, or ancestry, in any activity pursuant to this Agreement.

19. **Independent Contractor.** It is agreed to that PROPERTY OWNER shall act and be an independent

contractor, and not an agent or employee of CITY.

20. **Compliance with Law.** PROPERTY OWNER shall comply with all applicable laws, ordinances, codes, and regulations of the federal, state, and local government.

21. **Right to Inspect and Inspection Fees.** PROPERTY OWNER shall at all times maintain proper facilities and provide safe access for inspection for CITY and its employees to all parts of the Improvements. PROPERTY OWNER shall pay and reimburse CITY for all expenses incurred by CITY for inspecting and checking all work to be performed under the provisions of the Municipal Code or this Agreement. CITY Engineering plan checking and field improvement inspection costs are included in the Department of Public Works Fee Schedule which may be revised from time to time.

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

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

a. Address of PROPERTY OWNER is as follows:

TSC Motors Inc.
3239 Imjin Rd
Marina CA 93933

b. Address of CITY is as follows:

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

With a copy to:

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

24. **PROPERTY OWNER'S Representations.** This Agreement shall include application or items submitted by PROPERTY OWNER to CITY'S Planning Department, Building Department, Planning Commission, and City Council. In the event of any inconsistency between their representations and this Agreement, this Agreement shall govern.

25. **Licenses, Permits and Fees.** PROPERTY OWNER shall obtain a CITY Business License, all permits, and licenses as may be required by this Agreement.

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

from CITY.

27. **Time of Essence**. Time is of the essence in the performance of this Agreement.
28. **Limitations Upon Subcontracting and Assignment**. Neither this Agreement nor any portion shall be assigned by PROPERTY OWNER without prior written consent of CITY.
29. **Authority to Execute**. The persons executing this Agreement on behalf of the parties warrant that they are duly authorized to execute this Agreement.
30. **Counterparts**. This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all such counterparts shall together constitute one and the same instrument.
31. **Indemnification**. PROPERTY OWNER agrees to protect, and hold harmless CITY and its elective or appointive boards, officers, agents, and employees from any and all claims, liabilities, expenses, or damages of any nature, including attorneys' fees, for injury or death of any person, or damage to property, or interference with use of property, arising out of, or in any way connected with performance of the Agreement by PROPERTY OWNER, PROPERTY OWNER'S agents, officers, employees, subcontractors, or independent contractors hired by PROPERTY OWNER. The only exception to PROPERTY OWNER'S responsibility to protect, defend, and hold harmless CITY, is due to the sole negligence of CITY. This hold harmless agreement shall apply to all liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by PROPERTY OWNER.
32. **Modification**. This Agreement constitutes the entire agreement between the parties and supersedes any previous agreements, oral or written. This Agreement may be modified on provisions waived only by subsequent mutual written agreement executed by CITY and PROPERTY OWNER.
33. **California Law**. This Agreement shall be construed in accordance with the laws of the State of California. Any action commenced about this Agreement shall be filed in the central branch of the Santa Clara County Superior Court.
34. **Interpretation**. This Agreement shall be interpreted as though prepared by both parties.
35. **Preservation of Agreement**. Should any provision of this Agreement be found invalid or unenforceable, the decision shall affect only the provision interpreted, and all remaining provisions shall remain enforceable.
36. **Agreement Runs With the Land**. This Agreement shall inure to the benefit of, and be binding upon, the successors and assigns of the parties. It shall be recorded in the Office of the Recorder of Santa Clara County concurrently with the issuance of the Development Permit and shall constitute a covenant running with the land and an equitable servitude upon the Development real property.

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37. **Recording.** It shall be the responsibility of CITY to cause the executed Agreement to be recorded.

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

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

ATTEST:

THE CITY OF MORGAN HILL

Michelle Bigelow, City Clerk

Christina J. Turner, City Manager

Date: _____

Date: _____

APPROVED AS TO FORM:

"PROPERTY OWNER"

Donald A. Larkin, City Attorney

By: *Christian D. Pullara*

Date: _____

Title: *VP/Tres*

Date: *6/11/21*

By:

Title: _____

Date: _____

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

State of **California**

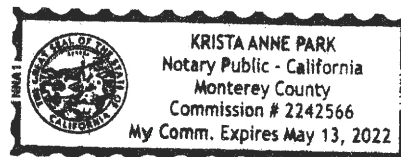
County of ~~Santa Clara~~ Monterey

On June 11 2021, before me, Krista Anne Park a Notary Public in and for said County and State, personally appeared Christian D. Pullara proved to me on the basis of satisfactory evidence to be the person whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.


SIGNATURE OF NOTARY PUBLIC



(ABOVE AREA FOR NOTARY SEAL)

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

State of **California**

County of **Santa Clara**

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

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

WITNESS my hand and official seal.

SIGNATURE OF NOTARY PUBLIC

(ABOVE AREA FOR NOTARY SEAL)

EXHIBIT A
IMPROVEMENTS AND
ESTIMATED COSTS OF IMPROVEMENTS
AS OF JUNE 10, 2021



Project: Condit Active Proj

1.0 Engineering Cost Estimate

a	Sewer System	\$ 10,825.00
b	Basins	\$ -
c	Channel System	\$ -
d	Storm Drain System	\$ 25,600.00
e	Street System / Onsite Improvements	\$ 114,592.75
f	Underground Existing Facilities (Undergrounds)	\$ -
g	Street Trees	\$ 7,200.00
h	Maintenance Districts	\$ -
i	Water System	\$ 73,750.00
j	Recycled Water System	\$ -
k	Traffic Signal System	\$ -
l	Street Light System	\$ 12,050.00
m	Misc Utilities	\$ -
n	Others	\$ -
o	Subtotal (a through n)	\$ 244,017.75
p	Mobilization (5% Subtotal)	\$ 12,200.89
q	Subtotal (o plus p)	\$ 256,218.64
r	Contingency (20%)	\$ 51,243.73
s	Subtotal (r plus s)	\$ 307,462.37

Total Construction

\$ 307,462.37

- DO NOT EXECUTE - USE SEPARATE BOND FORM -

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

Bond No.: _____
 Premium: _____

Whereas, the City Council of the City of Morgan Hill, State of California, and TSC Motors Inc. (hereinafter designated as "principal") have entered into an Improvement Agreement:

TSC Motors Inc.
APN: 728-17-035
17085 Condit Road

whereby principal agrees to install and complete certain designated public improvements, which said agreement, dated _____, 20_____, and identified as project **Morgan Hill CDR+J Dealership**, is hereby referred to and made a part hereof; and

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

Now, therefore, we, the principal and [ENTER SURETY NAME], as surety, are held and firmly bound unto the City of Morgan Hill, hereinafter called ("City"), in the penal sum of Three Hundred Seven Thousand Four Hundred Sixty Two dollars (\$307,462) lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, successors, executors and administrators, jointly and severally, firmly by these presents.

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

License No.: _____
 Address: _____
 Telephone No.: _____

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

Name of non-resident agent: _____
 Non-resident agent's office address: _____
 Telephone No.: _____

The condition of this obligation is such that if the above bounded principal, his or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and provisions in the said agreement and any alteration thereof made as therein provided, on his or their part, to be kept and

Performance Bond
 Page 1 of 3
 Version: December 2017

Attachment: Improvement Agreement [Revision 3] (3128 : APPROVAL OF IMPROV AGREEMENT, DEFERRED IMPROV & R-O-W ACQUISITION

- DO NOT EXECUTE - USE SEPARATE BOND FORM -

performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify and save harmless City, its officers, agents and employees, as therein stipulated, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

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

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

Executed this _____ day of _____ 20 ____ .

Principal

Principal

By: _____
Surety

By: _____
Attorney-in Fact

By: _____
California Resident Agent

By: _____
Non-resident Agent - Attorney-in-Fact

APPROVED:

Scott Creer, City Engineer

Date: _____

APPROVED AS TO FORM:

By: _____
Donald A. Larkin, City Attorney

Date: _____

(Acknowledgment on following page.)

Performance Bond
Page 2 of 3
Version: December 2017

Attachment: Improvement Agreement [Revision 3] (3128 : APPROVAL OF IMPROV AGREEMENT, DEFERRED IMPROV & R-O-W ACQUISITION

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

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

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

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

WITNESS my hand and official seal.

SIGNATURE OF NOTARY PUBLIC

(ABOVE AREA FOR NOTARY SEAL)

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

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

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

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

WITNESS my hand and official seal.

SIGNATURE OF NOTARY PUBLIC

(ABOVE AREA FOR NOTARY SEAL)

Performance Bond
Page 3 of 3
Version: December 2017

- DO NOT EXECUTE - USE SEPARATE BOND FORM -

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

Bond No.: _____
 Premium: _____

Whereas, the City Council of the City of Morgan Hill, State of California, and TSC Motors Inc. (hereinafter designated as "the principal") have entered into an Improvement Agreement:

TSC Motors Inc.
APN: 728-17-035
17085 Condit Road

whereby the principal agrees to install and complete certain designated public improvements, which agreement, dated _____, 20_____, and identified as project **Morgan Hill CDR+J Dealership**, is hereby referred to and made a part hereof; and

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

Now, therefore, the principal and the undersigned as corporate surety, and their successors and assigns are held firmly bound unto City and all contractors, subcontractors, laborers, materialmen, and other persons employed in the performance of the agreement and referred to in Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code in the sum of Three Hundred Seven Thousand Four Hundred Sixty Two dollars (\$307,462), for materials furnished or labor thereon of any kind, or for amounts due under the Unemployment Insurance Act with respect to this work or labor, that the surety will pay the same in an amount not exceeding the amount hereinabove set forth, and also in case suit is brought upon this bond, will pay, in addition to the face amount thereof, costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by City in successfully enforcing this obligation, to be awarded and fixed by the court, and to be taxed as costs and to be included in the judgment therein rendered.

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

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

The Surety's office is located at _____,
 Telephone No. _____; the Surety is licensed to do business in the State of California; and

Labor and Material Bond
 Page 1 of 3
 Version: December 2017

Attachment: Improvement Agreement [Revision 3] (3128 : APPROVAL OF IMPROV AGREEMENT, DEFERRED IMPROV & R-O-W ACQUISITION

- DO NOT EXECUTE - USE SEPARATE BOND FORM -

the California Insurance Agent's License No., address, and telephone number as follows:

License No.: _____
 Address: _____
 Telephone No.: _____

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

Name of non-resident agent: _____
 Non-resident agent's office address: _____
 Telephone No.: _____

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

Executed this _____ day of _____ 20 ____ .

 Principal

 Principal

By: _____
 Surety

By: _____
 Attorney-in Fact

By: _____
 California Resident Agent

By: _____
 Non-resident Agent - Attorney-in-Fact

APPROVED:

 Scott Creer, City Engineer

Date: _____

APPROVED AS TO FORM:

By: _____
 Donald A. Larkin, City Attorney

Date: _____

(Acknowledgment on following page.)

Labor and Material Bond
 Page 2 of 3
 Version: December 2017

Attachment: Improvement Agreement [Revision 3] (3128 : APPROVAL OF IMPROV AGREEMENT, DEFERRED IMPROV & R-O-W ACQUISITION

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

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

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

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

WITNESS my hand and official seal.

SIGNATURE OF NOTARY PUBLIC

(ABOVE AREA FOR NOTARY SEAL)

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

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

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

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

WITNESS my hand and official seal.

SIGNATURE OF NOTARY PUBLIC

(ABOVE AREA FOR NOTARY SEAL)

Labor and Material Bond

Page 3 of 3

Version: December 2017

- DO NOT EXECUTE - USE SEPARATE BOND FORM -

EXHIBIT "D"
FORM OF WARRANTY BOND
(50% of Cost of Construction)

Bond No.: _____

Premium: _____

Whereas, the City Council of the City of Morgan Hill, State of California (hereinafter designated as "City"), and TSC Motors Inc. (hereinafter designated as "Principal") have entered into an Improvement Agreement (hereinafter "Agreement"):

TSC Motors Inc.
APN: 728-17-035
17085 Condit Road

whereby the Principal agrees to install and complete certain designated public improvements (hereinafter "Improvements"), which said Agreement, dated _____, 20____, and identified as project **Morgan Hill CDR+J Dealership**, is hereby referred to and made a part hereof; and

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

Now, therefore, we, the Principal and _____ as Surety, are held and firmly bound unto the City of Morgan Hill in the penal sum of One Hundred Fifty Three Thousand Seven Hundred Thirty One dollars (\$153,731) for the payment of which sum well and truly to be made, we bind ourselves, our heirs, successors, executors and administrators, jointly and severally, firmly by these presents.

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

Surety waives the provisions of Civil Code Sections 2819 and 2845. Surety hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the agreement or the specifications accompanying the same shall in any manner affect its obligations on this bond, and it does hereby waive notice of any such change, extension, alteration, or addition.

Warranty Bond
Page 1 of 3
Version: April 2019

Attachment: Improvement Agreement [Revision 3] (3128 : APPROVAL OF IMPROV AGREEMENT, DEFERRED IMPROV & R-O-W ACQUISITION

- DO NOT EXECUTE - USE SEPARATE BOND FORM -

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

Attn: _____

Address: _____

City/State/Zip: _____

Phone: _____

Fax: _____

Email: _____

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

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

SURETY:

Principal:

Date: _____

Date: _____

s/ _____

s/ _____

Name: _____

Name: _____

Title: _____

Title: _____

(Attach Acknowledgment with Notary
Seal and Power of Attorney)

APPROVED AS TO FORM:

By: _____
Donald A. Larkin, City Attorney

Date: _____

Warranty Bond
Page 2 of 3
Version: April 2019

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

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

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

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WITNESS my hand and official seal.

SIGNATURE OF NOTARY PUBLIC

(ABOVE AREA FOR NOTARY SEAL)

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WITNESS my hand and official seal.

SIGNATURE OF NOTARY PUBLIC

(ABOVE AREA FOR NOTARY SEAL)

Warranty Bond
Page 3 of 3
Version: April 2019



CITY OF MORGAN HILL PUBLIC WORKS DEPARTMENT

17575 Peak Avenue Morgan Hill CA 95037 - Office (408)778-6480 Fax (408)779-7236

6/11/2021 DATE APN: 728-17-035 TRACT / APN 17085 Condit Road ADDRESS / LOT Morgan Hill CDR+J <i>(New automobile sales & service facility accessory carwash)</i> PROJECT DESCRIPTION	FEE SCHEDULE: 07.01.2016 PER RESOLUTION 5902, EFFECTIVE JULY 1, 2006 AND PER RESOLUTION 5592, INCREASED JANUARY 15, 2009 AND PER RESOLUTION 6082, EFFECTIVE FEBRUARY 5, 2007 **SEE BACK PAGE FOR ADDITIONAL FEE RESOLUTIONS 8/9/2021 FEE SCHEDULE EXPIRATION DATE	Cardinale Automotive Group NAME 3239 Imjin Road MAILING ADDRESS Marina, CA 93933 CITY, STATE, ZIP CODE (831) 277-3801 PHONE NUMBER
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NOTES:

1. PRESSURE REGULATORS ARE REQUIRED ON ALL WATER SERVICES.
2. BACKFLOW PREVENTORS ARE REQUIRED ON ALL NON-RESIDENTIAL WATER SERVICES & FIRE SPRINKLER SERVICES. BACKFLOW INSPECTION FEE SHALL BE PAID PRIOR TO INSPECTION.
3. **MULTI-FAMILY** IS DEFINED AS ANY UNIT WITH TWO BEDROOMS OR LESS.
SINGLE FAMILY IS DEFINED AS ANY UNIT WITH 3 BEDROOMS OR MORE.

☐ **THIS FEE SCHEDULE IS ESTIMATE ONLY**

MBA

CALCULATED BY

CHECKED BY

BCOM2021-0016

BUILDING PERMIT #

DATE BLD PERMIT ISSUED

SEWER IMPACT FEES WITHIN RDA BOUNDARY

CHECK APPLICABLE SCENARIO BELOW

☒ **COMMERCIAL OR INDUSTRIAL WITHIN RDA BOUNDARY**

SEWER IMPACT FOR COMMERCIAL & INDUSTRIAL PROJECTS
TEMPORARILY ADJUSTED TO \$0 EFFECTIVE 02/05/07 PER RES# 6082.

☐ **RESIDENTIAL PROJECTS WITHIN RDCS DOWNTOWN AREA**

SEWER IMPACT FOR SINGLE-FAMILY AND MULTI-FAMILY RESIDENTIAL
TEMPORARILY ADJUSTED TO \$0 EFFECTIVE 02/05/07.

☒ **NOT IN RDA AREA BOUNDARY**

** BOTH NORMAL FEES AND ADJUSTED FEES ARE SUBJECT
TO ANNUAL CPI INCREASES.

☐ **COMMERCIAL OR INDUSTRIAL SHELL**

**RDA SEWER ALLOCATION
COMPLETED BY:**

(write Initials below)

version 07.01.16 std

WATER FEES:**1. METER DEPOSIT: 650-37672**

(Authority: Res. #5658 approved 03.19.03, Updated 07.01.16)

1"	\$468	x	1	=	\$468
1 1/2"	\$1,434	x	1	=	\$1,434
2"	\$1,619	x	0	=	\$0
3" or larger-Time & Material + Meter Cost				=	\$0

METER CREDITS

\$0 x 0 = \$0

SUBTOTAL = \$1,902**2. BACKFLOW CONST. INSPECTION: 650-37859**

(Authority: Res. #5658 approved 03.19.03, Updated 07.01.16)

\$62 x 3 Each = \$186

3. WATER FRONTAGE CHARGE: 650-37663

(Authority: Res. #5658 approved 03.19.03, Updated 07.01.16)

1 Side	\$66	x	0	LF	=	\$0
2 Sides	\$37	x	515.71	LF	=	\$19,081

4. WATER IMPACT FEE: 651-37648

(Auth: Res. #5592 approved 08.21.02, Increased 01.15.16)

a) Residential						
\$3,624 /DU	x	0	DU	=	\$0	
(Single Family)						
\$3,269 /DU	x	0	DU	=	\$0	
(Multi Family)						

b) Commercial & Industrial						
(Includes Landscape Service)						
\$10,288 /AC	x	6	AC	=	\$61,728	

WATER CREDITS

\$0 x 0 = \$0

SUBTOTAL = \$61,728**WATER FEE TOTALS = \$82,897****5. ENGINEERING & INSPECTION FEE: 206-38734**

(Minimum \$500.00):

(Authority: Res. #5902 approved 05.04.05, Updated 07.01.09)

ENGINEERING ESTIMATE: \$307,462

DATE ENGINEERING EST. SUBMITTED: 6/10/2021

% APPLIES TO ENGINEER'S ESTIMATE

13.3% \$1 to \$100,000 = \$13,300

11.8% \$100,001 to \$200,000 = \$11,800

10.3% \$200,001 to \$500,000 = \$11,068

8.8% OVER \$500,000 = \$0

ENGINEERING FEE = \$36,168

DEPOSIT PAID (Paid on 3/10/2021) = \$10,000

ENGINEERING FEE TOTAL = \$26,168**5A. LONG RANGE PLANNING FEE: 207-37912**

LONG RANGE PLANNING FEE (15% of E&I) = \$5,425

SEWER FEES:**6. SEWER FRONTAGE CHARGE: 640-37663**

(Authority: Res. #5658 approved 03.19.03, Updated 07.01.16)

1 Side	\$66	/LF	x	0	LF	=	\$0
2 Sides	\$37	/LF	x	515.71	LF	=	\$19,081

7. SEWER IMPACT FEE: 641-37648

(Auth: Res. #6082 approved 02.05.07 &

Res. #5592 approved 08.21.02, Increased 01.15.16).

a) Residential						
\$14,183 /DU	x	0	DU	=	\$0	
(Single Family)						
\$12,004 /DU	x	0	DU	=	\$0	
(Multi Family)						

b) Commercial & Industrial						
\$48.56 /GPD	x	3,513	GPD	=	\$170,591	
\$48.56 /GPD	x	0	GPD	=	\$0	

SEWER CREDITS

\$0 x 0 = \$0

MDA ASSUMED SEWER OBLIGATION

\$14,183 /DU	x	0	DU	=	\$0	
(Single Family)						
\$12,004 /DU	x	0	DU	=	\$0	
(Multi Family)						
\$48.56 /GPD	x	0	GPD	=	\$0	
(Commercial & Industrial)						

SUBTOTAL = \$170,591**SEWER FEE TOTALS = \$189,673****STORM DRAIN FEES:****8. STORM DRAIN FRONTAGE CHARGE: 304-37663**

(Authority: Res. #5658 approved 03.19.03, Updated 07.01.16)

1 Side	\$108	/LF	x	0	LF	=	\$0
2 Sides	\$53	/LF	x	0	LF	=	\$0

9. STORM DRAIN IMPACT FEE: 303-37648

(Auth: Res. #5592 approved 8.21.02, Amdd by Res. 6326 4.28.10, Increased 01.15.16)

\$3,847 /DU	x	0	DU	=	\$0	
(Single Family)						
\$2,001 /DU	x	0	DU	=	\$0	
(Multi Family)						
\$41,897 /ACRE	x	6	AC	=	\$251,382	
(Commercial & Office)						
\$30,505 /ACRE	x	0	AC	=	\$0	
(Industrial)						

STORM CREDITS

\$246,212 x 1 = -\$246,212

(See Notes & Comments on page 4)

SUBTOTAL = \$5,170**STORM DRAIN FEE TOTALS = \$5,170**

10. UNDERGROUNDING UTILITIES: 350-37649

(Authority: Res. #5658 approved 03.19.03, Updated 07.01.16)

1 Side	\$681	x	0	LF	=	\$0
2 Sides	\$343	x	0	LF	=	\$0

11a. PARK IMPACT FEE: 301-37648

(Auth: Res. #5592 appr'd 8.21.02, Amdd by Res. 6326 4.28.10, Increased 01.15.16)

\$5,378 /DU	x	0	DU	=	\$0
(Single Family - Sub)					
\$3,910 /DU	x	0	DU	=	\$0
(Single Family - No Sub)					
\$5,181 /DU	x	0	DU	=	\$0
(Multi Family - Sub)					
\$3,771 /DU	x	0	DU	=	\$0
(Multi Family - No Sub)					

11b. PARK MAINTENANCE DEV. FEE: 302-37649

\$0	x	0	EACH	=	\$0
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PARK CREDITS

\$0	x	0		=	\$0
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PARK FEE TOTAL = \$0**12. TRAFFIC IMPACT FEE: 309-37648**

(Auth: Res. #15-152 approved 06.17.15 & Res. #5592 approved 08.21.02, Increased 01.15.16)

\$1,863 /DU	x	0	DU	=	\$0
(Single Family)					
\$1,155 /DU	x	0	DU	=	\$0
(Multi Family)					
\$1,863 /PHT	x	78	PHT	=	\$145,314
(Commercial)					
\$1,863 /PHT	x	0	PHT	=	\$0
(Industrial)					

TRAFFIC CREDITS

\$145,314	x	1		=	-\$145,314
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(See Notes & Comments on page 4)

TRAFFIC FEE TOTAL = \$0**13. LIBRARY IMPACT FEE: 348-37648**

(Auth: Res. #5837 appr'd 09.01.04, Amdd by Res. 6326 4.28.10, Increased 01.15.16)

\$1,974 /DU	x	0	DU	=	\$0
(Single Family)					
\$1,902 /DU	x	0	DU	=	\$0
(Multi Family)					

LIBRARY CREDITS

\$0	x	0		=	\$0
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LIBRARY FEE TOTAL = \$0**14. BURROWING OWL MITIGATION: 232-38145**

(Authority: Res. #5765 approved 01.21.04, Increased 07.01.16)

\$200 /DU		0	DU	=	\$0
(Residential)					
\$1,395 /AC		6	AC	=	\$8,370
(Commercial/Industrial)					

15a. MAP CHECK FEE: 206-38716

(Authority: Res. #5658 approved 03.19.03, Updated 07.01.16)

PARCEL MAP:	\$3,805	=	\$0
TRACT MAP:	\$5,667	=	\$0

16. POLICE IMPACT FEE: 311-37648

(Auth: Res. #5686 appr'd 06.18.03, Amdd by Res. 6326 4.28.10, Increased 01.15.16)

\$767 /DU	x	0	DU	=	\$0
(Single Family)					
\$741 /DU	x	0	DU	=	\$0
(Multi Family)					
\$1,666 /ACRE	x	6	AC	=	\$9,996
(Commercial)					
\$2,333 /ACRE	x	0	AC	=	\$0
(Industrial)					

POLICE CREDITS

\$0	x	0		=	\$0
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POLICE FEE TOTAL = \$9,996**17. FIRE IMPACT FEE: 313-37648**

(Auth: Res. #6671 approved 07.17.13, Increased 01.15.16)

\$118 /DU	x	0	DU	=	\$0
(Single Family)					
\$112 /DU	x	0	DU	=	\$0
(Multi Family)					
\$1,550 /ACRE	x	6	AC	=	\$9,300
(Commercial)					
\$1,550 /ACRE	x	0	AC	=	\$0
(Industrial)					

FIRE CREDITS

\$0	x	0		=	\$0
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FIRE FEE TOTAL = \$9,300**18. PUBLIC FACILITIES IMPACT FEE: 347-37648**

(Auth: Res. #5592 appr'd 8.21.02, Amdd by Res. 6326 4.28.10, Increased 01.15.16)

\$512 /DU	x	0	DU	=	\$0
(Single Family)					
\$493 /DU	x	0	DU	=	\$0
(Multi Family)					
\$1,128 /ACRE	x	6	AC	=	\$6,768
(Commercial)					
\$1,579 /ACRE	x	0	AC	=	\$0
(Industrial)					

PUBLIC FACILITIES CREDITS

\$0	x	0		=	\$0
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PUBLIC FACILITIES FEE TOTAL = \$6,768**20. COMMNTY/REC CTRS IMPACT FEE: 360-37648**

(Auth: Res. #15-152 appr'd 8.17.15, increased 01.15.16)

\$3,663 /DU	x	0	DU	=	\$0
(Single Family)					
\$3,213 /DU	x	0	DU	=	\$0
(Multi Family)					

PUBLIC FACILITIES CREDITS

\$0	x	0		=	\$0
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PUBLIC FACILITIES FEE TOTAL = \$0

19. RDCS MEASURE C FEES:		
School Pedestrian Safety	(355-37655)	= \$0
Public Facilities	(346-37649)	= \$0
Park Development	(302-37649)	= \$0
Public Fac. - Circulation	(346-37649)	= \$0
TOTAL RDCS MEASURE C FEES		= \$0

OTHER:		
Storm Water Runoff		
Management Plan Review	206-38734	= \$2,846
SWPPP Document Review - 1st	232-37687	= \$1,219
SWPPP Offsite Inspection - 6 month	232-37688	= \$6,097
Post Construction BMP Initial/Base Setup	206-38734	= \$596
Post Construction Each Additional BMP	206-38734	= \$119
Deferred Improvement Agreement	206-38719	= \$3,654
TOTAL FEES DUE		= \$358,298

Notes & Comments:

THE DEVELOPMENT IMPACT FEES FOR THIS PROJECT ARE LOCKED TO THE FISCAL YEAR 2016-2017 FEE SCHEDULE
PER THE IMPACT FEE FREEZE AGREEMENT EXECUTED ON 2/8/2021 BETWEEN THE CITY AND DEVELOPER.

THESE FEES INCLUDE A CREDIT/REIMBURSEMENT AGAINST THE PROJECT'S TRAFFIC & STORM IMPACT FEES
(TOTAL CREDIT OF \$391,526) FOR THE COST OF THE WORK TO BE PERFORMED BY THE DEVELOPER ON THE
EAST SIDE OF CONDUIT ROAD (SEE SECTION 14 OF THE PROJECT'S IMPROVEMENT AGREEMENT).

THESE FEES ONLY APPLY TO THE PROPOSED DEALERSHIP ON THE 6-ACRE SITE. THE FUTURE DEVELOPMENT
APPLICATION AT THE LOCATION OF THE TEMPORARY DEALERSHIP AREA (ADJACENT TO THE SITE'S NORTHERLY
PROPERTY LINE) WILL BE SUBJECT TO ADDITIONAL FEES.

New Car Dealership: Ground Floor = 29,040 sf; Second Floor = 2,897 sf

Total = 31,937 sf (Building areas taken from Building Plans - Sheet A004)

New Accessory Carwash: 3,203 sf

Site APN: 728-17-035 Total Site Area = 9.24 ac Portion to be developed = 6 ac

Frontage along Conduit Rd = 515.71 ft (Water & Sewer only)

Sewer:

New Car Sales Sewer Coefficient = 0.110 gpd/sf

New Car Dealership = (31,937 sf) (0.110 gpd/sf) = **3,513 gpd**

Traffic:

New Car Sales Traffic Coefficient = 2.43 PHT/1,000sf

(From ITE 10th Edition - Average Vehicle Trip Ends vs 1,000 sf GFA PM peak hour of adjacent street traffic)

New Car Dealership = (31,937 sf) (2.43 PHT/1,000 sf) = **78 PHT**

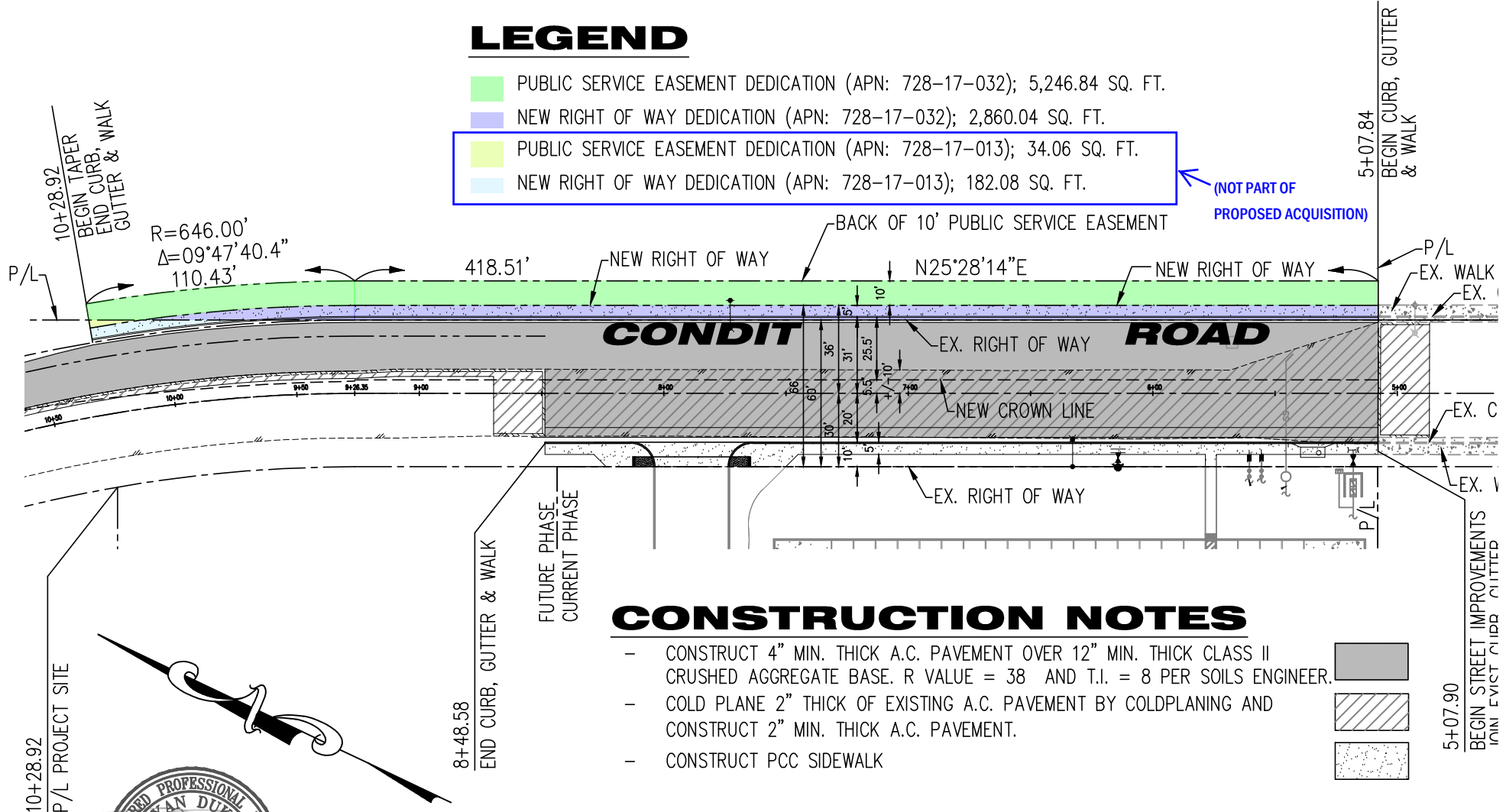
****OTHER FEE RESOLUTIONS:**

RESOLUTION 5006, EFFECTIVE 07.03.1996
RESOLUTION 5128, EFFECTIVE 01.05.1998
RESOLUTION 5658, EFFECTIVE 03.19.2003
RESOLUTION 5686, EFFECTIVE 08.18.2003
RESOLUTION 5765, EFFECTIVE 01.21.2004
RESOLUTION 5837, EFFECTIVE 10.18.2004
RESOLUTION 6080, EFFECTIVE 01.17.2007
RESOLUTION 6133, EFFECTIVE 12.05.2007
RESOLUTION 6326, EFFECTIVE 04.28.2010
RESOLUTION 6671, EFFECTIVE 09.16.2013

RIGHT OF WAY AND PUBLIC SERVICE EASEMENT DEDICATION EXHIBIT

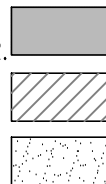
LEGEND

- PUBLIC SERVICE EASEMENT DEDICATION (APN: 728-17-032); 5,246.84 SQ. FT.
- NEW RIGHT OF WAY DEDICATION (APN: 728-17-032); 2,860.04 SQ. FT.
- PUBLIC SERVICE EASEMENT DEDICATION (APN: 728-17-013); 34.06 SQ. FT.
- NEW RIGHT OF WAY DEDICATION (APN: 728-17-013); 182.08 SQ. FT.



CONSTRUCTION NOTES

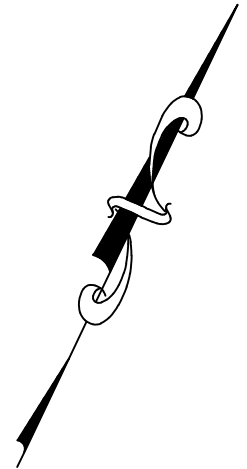
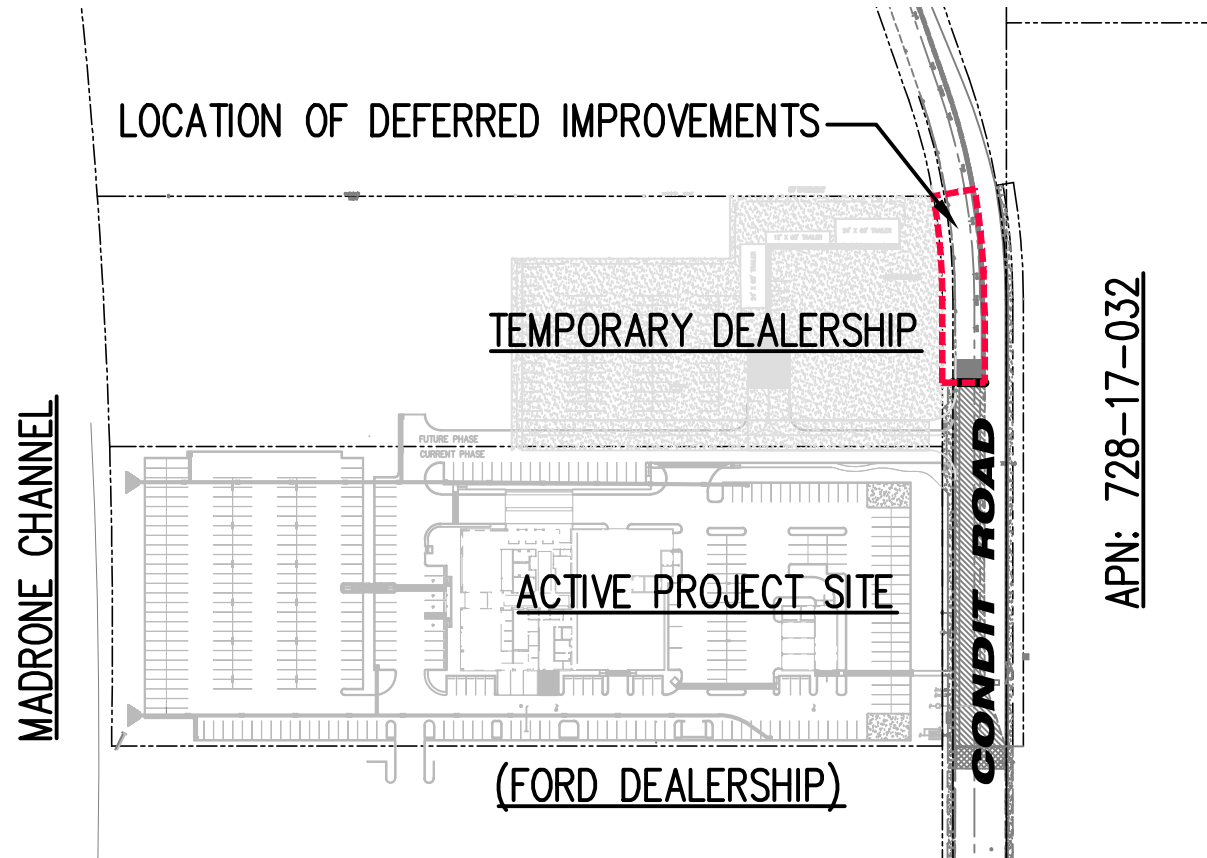
- CONSTRUCT 4" MIN. THICK A.C. PAVEMENT OVER 12" MIN. THICK CLASS II CRUSHED AGGREGATE BASE. R VALUE = 38 AND T.I. = 8 PER SOILS ENGINEER.
- COLD PLANE 2" THICK OF EXISTING A.C. PAVEMENT BY COLDPLANING AND CONSTRUCT 2" MIN. THICK A.C. PAVEMENT.
- CONSTRUCT PCC SIDEWALK



SCALE: 1" = 60'

NOTE: PARCEL MAP BASIS OF BEARINGS AND SURVEY BASIS OF BEARINGS DIFFER BY 00°00'34". SURVEY BASIS OF BEARINGS USED HERE.

LOCATION OF DEFERRED IMPROVEMENTS AT CONDIT ROAD



SCALE: 1" = 20'



RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

CITY OF MORGAN HILL
17575 PEAK AVENUE
MORGAN HILL, CA 95037

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

THE AREA ABOVE IS RESERVED FOR RECORDER'S USE

DEFERRED IMPROVEMENT AGREEMENT

TSC Motors Inc.
17085 Condit Road
APN: 728-17-035
Morgan Hill CDR+J Dealership

THIS AGREEMENT is made on this _____ day of _____, 2021, by the CITY OF MORGAN HILL, a municipal corporation ("CITY"), and TSC Motors Inc., a corporation ("PROPERTY OWNER"). CITY and PROPERTY OWNER may be collectively referred to as "Parties."

RECITALS

The following Recitals are a substantive part of this Agreement:

1. This Agreement is entered into pursuant to Morgan Hill Municipal Code Chapter 12.02.
2. PROPERTY OWNER has filed a Development Application and supporting documents on the property with the address of **17085 Condit Road**, and the **APN: 728-17-035** ("Property") having the development name of **Morgan Hill CDR+J Dealership** ("Development").
3. PROPERTY OWNER anticipates receiving a development permit from the CITY to allow development of the approximately 6-acre portion of the total 9.24 acres of the Property ("Development Permit"). CITY requires as a condition of approval of the Development Permit, as described on the permit, that certain improvements be installed by PROPERTY OWNER along the entire property frontage of the total 9.24-acre site (west side of Condit Road), and along the frontage of a property located in the unincorporated County area, directly across the project site on the east side of Condit Road, as shown on the fully executed Development Improvement Plans entitled **Public Improvement Plans for Morgan Hill CDR+J – Morgan Hill, CA** ("Improvements"), on file with CITY and incorporated herein by this reference.
4. PROPERTY OWNER has been unable to complete, prior to the issuance of the Development Permit, all of the Improvements required by CITY to the satisfaction of the City Engineer. PROPERTY OWNER has or will execute a separate Improvement Agreement with City in conjunction with the required construction of improvements on the 6-acre portion of the Property.

5. PROPERTY OWNER is required by the terms of the Morgan Hill Municipal Code to improve all streets, highways, or public areas which are part of the entire Development, including but not limited to necessary paving, curbs, sidewalks, catch basins, water mains, culverts, storm drains, and sanitary sewers, in accordance with the plans and specifications on file with the City Engineer.
6. PROPERTY OWNER is developing about 6 acres of the 9.24-acre site. PROPERTY OWNER wishes to defer the construction of Improvements required for the remaining 3.24 acres located on the northern portion of the Property ("Future Improvements") by and through this Agreement.
7. CITY is willing to defer the improvements for the remaining 3.24-acre northern portion of the Property in exchange for PROPERTY OWNER entering into this Agreement.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **Term of Agreement.** The term of this Agreement shall be five (5) years from the date of issuance of the Development Permit ("Term"). This Agreement shall automatically be extended for five (5) terms of five (5) years each for a total of thirty (30) years unless it is earlier terminated by construction of the improvements or by mutual written agreement by the Parties. The Future Improvements must be constructed by the end of the thirty-year Term of the Agreement.
2. **Future Improvements.** Attached hereto and incorporated herein by reference as Exhibit A are the list of Future Improvements and a cost estimate for the Future Improvements to be required for the 3.24-acre northern portion of the Property ("Northern Portion"). PROPERTY OWNER agrees to construct the Future Improvements in a good and workmanlike manner in accordance with the plans and documents to be filed with and approved by CITY in conjunction with the future development of the Northern Portion of the Property, all of which are incorporated herein by reference. The Future Improvements shall be completed, constructed and installed at PROPERTY OWNER's sole expense unless agreed to otherwise in writing by CITY.
3. **Rights-of-Way.** Except as otherwise provided by this Agreement, CITY can hold without acceptance or recordation all lands, rights-of-way, and easements offered for dedication. All such offers shall, however, remain open, and shall constitute irrevocable offers of dedication in accordance with the Government Code. All such offers may be accepted and recorded by CITY in its sole discretion at any later date without further notice to PROPERTY OWNER as provided by law. By way of explanation only, it is the current intention of CITY to accept all or part of the irrevocable offers to dedicate upon acceptance of the Future Improvements called for in this Agreement.
4. **Future Improvements: Time Limits.** PROPERTY OWNER agrees to cause all Future Improvements to be made and constructed to comply with all requirements of Morgan Hill Municipal Code Chapter 12.02, according to the improvement plans for the Northern Portion to be approved by the City Engineer and including any changes or alteration in the Future Improvements required by the City Engineer. The Future Improvements shall be completed utilizing CITY standards and specifications. PROPERTY OWNER agrees to complete the Future Improvements prior to the expiration of this Agreement, or prior to the issuance of the certificate of occupancy for the future building(s) in the Northern Portion of the Property, whichever is earlier; provided however, the City Manager may extend the deadline for completion by not

more than six (6) months at his or her reasonable discretion and determination that granting the extension will not be detrimental to the public welfare. No extension of this deadline for completion shall be made except upon the basis of a written application made by PROPERTY OWNER stating fully the grounds for the application and the facts relied upon for an extension.

It is further agreed by and between PROPERTY OWNER and CITY that any extension granted shall in no way affect the validity of this Agreement.

In the event that PROPERTY OWNER shall fail to complete the Future Improvements after developing the Northern Portion, within the time for construction provided by this Agreement, CITY may in its sole discretion and in addition to any other remedy provided in this Agreement or by law, enter upon the Northern Portion and complete the Future Improvements and recover the full cost and expense of construction from PROPERTY OWNER, PROPERTY OWNER's successors and assigns, and PROPERTY OWNER's Performance/Labor & Material Bonds associated with this Development, or from the then owner of the Development, and/or record a lien upon the Property for the cost and expense. Any CITY costs shall include but not be limited to administrative costs and attorneys' fees.

5. **Acquisition and Dedication of Easements or Rights-of-Way.** If any of the Future Improvements are to be constructed or installed on land not within the Northern Portion or already existing public right-of-way, no construction or installation shall be commenced before the irrevocable offer of dedication or conveyance to CITY of appropriate rights-of-way, easements or other interest in real property, and appropriate authorization from PROPERTY OWNER to allow construction or installation of the Future Improvements or work has been obtained and paid for by PROPERTY OWNER.

6. **Bond Requirements.** To secure the performance of each Future Improvement required under this Agreement and to ensure full payment to all persons furnishing or supplying labor or materials for each Future Improvement required, PROPERTY OWNER shall provide to CITY prior to commencing construction of the Future Improvements, payment and performance bonds each in the amount of 100% of the total estimated cost of the Future Improvements as determined by the City Engineer at the time of construction of the Future Improvements. A performance bond to secure faithful performance of this Agreement as required by Section 12.02.160 of the Morgan Hill Municipal Code for performance shall be provided in substantially the form set forth in Exhibit B, or as subsequently amended by the City Attorney. A payment bond to secure full payment to all persons furnishing or supplying labor or materials as required by Section 12.02.160 of the Morgan Hill Municipal Code for labor and materials shall be provided in substantially the form set forth in Exhibit C, or as subsequently amended by the City Attorney. PROPERTY OWNER shall provide an additional guarantee and warranty security (in substantially the form set forth in Exhibit D, or as subsequently amended by the City Attorney) of fifty (50%) percent of the cost of construction of the Future Improvements to guarantee and warranty the Future Improvements for a period of one year following its completion and acceptance against any defective work or labor done, or defective materials furnished, as required by Section 12.02.170 of the Morgan Hill Municipal Code.

Future Improvements and the City Engineer's Estimated Costs of Future Improvements as of **June 10, 2021** are attached hereto as Exhibit "A".

Any bonds submitted under this Agreement shall be executed by a surety company authorized to write the same in the State of California, and subject to the review and approval of the City's risk manager. All required securities shall be in a form approved by the City Attorney. The bonds shall be executed on CITY

forms by a surety authorized to do business in the State of California and shall be approved by the City Attorney and the City Engineer. Submittal of the Performance/Labor & Material Bonds is a requirement prior to CITY's issuance of an encroachment permit to do work in CITY's right-of-way. Submittal of the Warranty Bond is a requirement prior to the City Engineer's consideration of acceptance of the public improvements.

Note: If Cash Deposit Agreement Guaranteeing Improvements is utilized for security purposes, the Cash Deposit Agreement amount shall be two hundred (200%) percent of the aforementioned City Engineer's Estimated Costs of Future Improvements. In lieu of the above, CITY will accept a certificate of deposit in CITY's name with escrow instructions acceptable to the City Engineer, subject to the approval of the City Attorney. The release of any securities shall be governed by the provisions of Section 12.02.170 of the Morgan Hill Municipal Code.

7. **Irrevocability of Security.** The securities to be provided under this Agreement shall be irrevocable, shall not be limited as to time, and may be released only upon the written approval of the City Engineer and City Council.

8. **Duty to Warn.** PROPERTY OWNER shall give adequate warning to the public of each and every dangerous condition which may exist in the Future Improvements, and will take all reasonable actions to protect the public from any dangerous condition.

9. **Warranty.** Following construction of Future Improvements, PROPERTY OWNER guarantees and warrants the Future Improvements required by this Agreement and agrees to remedy any defects in the Future Improvements arising from faulty or defective materials or construction occurring within twelve (12) months after acceptance by CITY of the Future Improvements. Following notice, PROPERTY OWNER shall, without delay or cost to CITY, repair, replace, or reconstruct any defective or unsatisfactory portion of Future Improvements. CITY may, at its sole option, perform the repair or replacement itself if PROPERTY OWNER has failed to commence repair within twenty (20) days after CITY has mailed written notice to PROPERTY OWNER. In such event, PROPERTY OWNER agrees to pay the cost of repair and replacement, plus 15%, by CITY; and CITY may recover such costs as a lien against the Development. CITY may proceed immediately to make repairs should an emergency arise without waiving its rights of recovery against PROPERTY OWNER.

10. **Failure of Performance.** In addition to the other remedies provided by this Agreement, CITY shall have recourse to the security given. In the event that CITY seeks recourse against any security, CITY shall have recourse against PROPERTY OWNER for any and all amounts necessary to complete the obligation. All administrative costs, including attorneys' fees shall be a proper charge against the security and PROPERTY OWNER pursuant to the Government Code. The right of CITY to draw upon or utilize the security is additional and not in lieu of any other remedy available to CITY at law or in equity. The parties agree that the estimated costs and security amounts may not reflect the actual cost of construction or installation of Future Improvements, and therefore, CITY damages for PROPERTY OWNER's default shall be measured by the cost of completing the required Improvements.

11. **Certificate of Occupancy.** PROPERTY OWNER understands that CITY will expect completion, to the satisfaction of CITY, of specific public improvements as well as private utility improvements prior to CITY Approval of a Certificate of Occupancy for any building on the Northern Portion of the Property. The specific improvements shall include activation of all public utilities (water, sewer, storm drain);

activation of all private utilities (electric, gas, phone) except for cable; street lights turn-on request filed with P G & E; and full street improvements (curb-gutter and paving with/without final lift) from existing public street to building under consideration for Certificate of Occupancy. PROPERTY OWNER, furthermore, agrees to inform any successor in interest to the Property should the Property be transferred to another party prior to CITY acceptance of public improvements.

12. **Final Toxic Report.** Where applicable, PROPERTY OWNER hereby agrees to furnish the City Attorney with a copy of the Final Toxic Report issued by the appropriate licensed consultant on the proposed Development. This report must be received prior to final acceptance of on-site improvements and issuance of certificate of occupancy.

13. **Public Improvements Fee Schedule.** PROPERTY OWNER shall pay the fees due at the time of construction of the Future Improvements pursuant to the provisions of Resolution 1383 and any amendments thereto. These sums shall be paid to CITY at the time of issuance of the future Development Permit, and shall be in accordance with the Department of Public Works Fee Schedule in effect at the time of construction of the Future Improvements. These fees are subject to a minimum annual revision. PROPERTY OWNER consents to increases in these fees. This Agreement shall not be construed to fix or freeze fees as of any point prior to issuance of Development Permits for the Northern Portion. All development fees shall be those in effect at the time of the issuance of the Development Permit for the Future Development. This Agreement does not entitle the developer to any permit including a grading permit. A separate application for a grading permit should be made to the Building Department.

14. **Repair and Replacement of Damaged Public Facilities.** PROPERTY OWNER shall, at its own expense, repair or replace all public improvements, public utility facilities, surveying monuments and other public facilities that are destroyed or damaged as a result of any work under this agreement. Property Owner shall promptly notify the City Engineer of such damage and shall obtain the City Engineer's approval of all repair and replacement of damaged facilities.

15. **Property Owner's Responsibility until CITY's Acceptance.** Until City accepts the Future Improvements, Property Owner shall be responsible for the care and maintenance of Future Improvements and shall bear all risks of loss or damage to the Future. CITY shall not have any liability for any accident, loss or damage to Future Improvements prior to their completion and acceptance by CITY.

16. **No Vesting of Rights.** Performance by PROPERTY OWNER under this Agreement shall not be construed to vest PROPERTY OWNER's rights with respect to any change in any zoning or building law or ordinance.

17. **Insurance Requirements.**

Commencement of Improvements. Before beginning construction of the Future Improvements, PROPERTY OWNER is required to procure and provide proof of the insurance coverage required by this section in the form of certificates and endorsements. The required insurance must cover the activities of PROPERTY OWNER and its subcontractors relating to or arising from the performance of work associated with the Future Improvements, and must remain in full force and effect at all times during the period covered by the Agreement, including any extensions of time as may be granted, and until such time as the Future Improvements have been accepted for maintenance by CITY. The coverages may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance

provided by excess or “umbrella” policies, provided each such policy complies with the requirements set forth herein. Any deductibles or self-insured retentions must be declared to and approved by City. Coverages may be provided by PROPERTY OWNER's General Contractor if PROPERTY OWNER is not directly insuring such exposures under an “Owners and Contractors Protective Liability Policy (OCP)” on which CITY would be an additional insured. If PROPERTY OWNER will utilize the services of a General Contractor to perform all of the work associated with the Improvements, then PROPERTY OWNER may opt to have all coverages provided by PROPERTY OWNER's General Contractor, provided that a written contract is executed between PROPERTY OWNER and the General Contractor whereby the written contract specifically required General Contractor to fulfill all of the City insurance requirements as outlined in this Agreement, including all endorsements in favor of the City. Verification of the written contract must be provided to City upon request. If PROPERTY OWNER fails to provide any of the required coverage in full compliance with the requirements outlined in this Agreement, CITY may, at its sole discretion, purchase such coverage at PROPERTY OWNER's expense and deduct the cost from payments due to PROPERTY OWNER, assess payment against Development, or terminate the Agreement for default. Any deductibles or self-insured retentions must be declared to and approved by City. PROPERTY OWNER further understands that CITY reserves the right to modify the insurance requirements set forth herein, with thirty (30) days' notice provided to PROPERTY OWNER, at any time as deemed necessary to protect the interests of CITY.

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

(1) Commercial General Liability Insurance (“CGL”): PROPERTY OWNER shall maintain CGL and shall include coverage for liability arising from PROPERTY OWNER's or its subcontractor's acts or omissions in the performance of work associated with the Future Improvements against claims and liabilities for personal injury, death, or property damage providing protection in the minimum amount of: (i) five million dollars (\$5,000,000.00) combined single limit each occurrence and either a general aggregate limit of ten million dollars (\$10,000,000.00) or a general aggregate limit of five million dollars (\$5,000,000) as applied on a “per project” or “per location” basis, or (ii) the maximum amount of such insurance available to PROPERTY OWNER under PROPERTY OWNER's combined insurance policies (including any excess or “umbrella” policies), whichever is greater.

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

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

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

(2) Workers' Compensation Insurance and Employer's Liability: PROPERTY OWNER shall maintain Workers Compensation coverage, as required by law. The policy must comply with the requirements of the California Workers' Compensation Insurance and Safety Act and provide protection in the minimum amount of: (i) one million dollars (\$1,000,000.00) for any one accident or occurrence, or (ii) the maximum amount of such

insurance available to PROPERTY OWNER under PROPERTY OWNER's combined insurance policies (including any excess or "umbrella" policies), whichever is greater. If PROPERTY OWNER is self-insured, PROPERTY OWNER must provide its Certificate of Permission to Self-Insure, duly authorized by the Department of Industrial Relations.

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

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

(b) **Required Endorsements.** PROPERTY OWNER shall provide proof of the following endorsements, listed for each policy for which endorsements are required, as outlined below:

(1) **ALL Policies:**

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

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

a. "Additionally Insured" - The City of Morgan Hill, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers are named as additional insureds.

b. "Primary and Non-Contributing" - Insurance shall be primary non-contributing.

(c) **Subcontractors.** PROPERTY OWNER must ensure that each subcontractor is required to maintain the same insurance coverage required under this Section 18, with respect to its performance of work associated with the Future Improvements, including those requirements related to the additional

insureds and waiver of subrogation.

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

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

Certificate Holder address:

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

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

19. **Non-Discrimination.** PROPERTY OWNER covenants there shall be no discrimination based upon race, color, creed, religion, gender, marital status, age, disability, national origin, or ancestry, in any activity pursuant to this Agreement.

20. **Independent Contractor.** It is agreed to that PROPERTY OWNER shall act and be an independent contractor, and not an agent or employee of CITY.

21. **Compliance with Law.** PROPERTY OWNER shall comply with all applicable laws, ordinances, codes, and regulations of the federal, state, and local government.

22. **Right to Inspect and Inspection Fees.** PROPERTY OWNER shall at all times maintain proper facilities and provide safe access for inspection for CITY and its employees to all parts of the Future Improvements. PROPERTY OWNER shall pay and reimburse CITY for all expenses incurred by CITY for inspecting and checking all work to be performed under the provisions of the Municipal Code or this Agreement. CITY Engineering plan checking and field improvement inspection costs are included in the Department of Public Works Fee Schedule which may be revised from time to time.

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

24. **Notices.** All notices shall be personally delivered or mailed, via first class mail to the below listed

addresses. These addresses shall be used for delivery of service of process. Notices shall be effective five (5) days after date of mailing, or upon date of personal delivery.

- a. Address of PROPERTY OWNER is as follows:

TSC Motors Inc.
3239 Imjin Rd
Marina CA 93933

- b. Address of CITY is as follows:

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

With a copy to:

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

25. **PROPERTY OWNER'S Representations.** This Agreement shall include application or items submitted by PROPERTY OWNER to CITY'S Planning Department, Building Department, Planning Commission, and City Council. In the event of any inconsistency between their representations and this Agreement, this Agreement shall govern.

26. **Licenses, Permits and Fees.** PROPERTY OWNER shall obtain a CITY Business License, all permits, and licenses as may be required by this Agreement.

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

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

29. **Limitations Upon Subcontracting and Assignment.** Neither this Agreement nor any portion shall be assigned by PROPERTY OWNER without prior written consent of CITY.

30. **Authority to Execute.** The persons executing this Agreement on behalf of the parties warrant that they are duly authorized to execute this Agreement.

31. **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all such counterparts shall together constitute one and the same instrument.

32. **Indemnification.** PROPERTY OWNER agrees to protect, and hold harmless CITY and its elective or appointive boards, officers, agents, and employees from any and all claims, liabilities, expenses, or damages of any nature, including attorneys' fees, for injury or death of any person, or damage to property, or interference with use of property, arising out of, or in any way connected with performance of the

Agreement by PROPERTY OWNER, PROPERTY OWNER'S agents, officers, employees, subcontractors, or independent contractors hired by PROPERTY OWNER. The only exception to PROPERTY OWNER'S responsibility to protect, defend, and hold harmless CITY, is due to the sole negligence of CITY. This hold harmless agreement shall apply to all liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by PROPERTY OWNER.

33. **Modification.** This Agreement constitutes the entire agreement between the parties and supersedes any previous agreements, oral or written. This Agreement may be modified on provisions waived only by subsequent mutual written agreement executed by CITY and PROPERTY OWNER.

34. **California Law.** This Agreement shall be construed in accordance with the laws of the State of California. Any action commenced about this Agreement shall be filed in the central branch of the Santa Clara County Superior Court.

35. **Interpretation.** This Agreement shall be interpreted as though prepared by both parties.

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

37. **Covenant Running with the Land.** This Agreement shall inure to the benefit of, and be binding upon the heirs, administrators, successors, assigns and transferees of the Parties, and shall be recorded in the Office of the County Recorder of Santa Clara County concurrently with the execution of this Agreement and constitute a covenant running with the land and equitable servitude upon the Property. Upon any sale or division of the Property, the terms, covenants, conditions and restrictions of this agreement shall apply to each parcel, and the owner or owners of each parcel shall succeed to the obligations imposed upon Property Owner by this Agreement.

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38. **Recording.** It shall be the responsibility of CITY to cause the executed Agreement to be recorded.

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

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

ATTEST:

THE CITY OF MORGAN HILL

Michelle Bigelow, City Clerk

Date: _____

Christina J. Turner, City Manager

Date: _____

APPROVED AS TO FORM:

"PROPERTY OWNER"

Donald A. Larkin, City Attorney

Date: _____

By: *Christian D. Pullara*
Title: *Corp. Dir. VP/Tres*
Date: *6/14/21*

By:

Title: _____

Date: _____

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

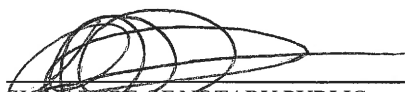
State of **California**

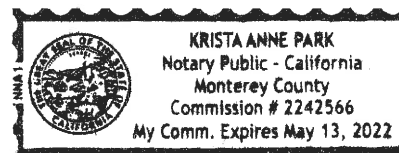
County of ~~Santa Clara~~ Monterey

On June 14 2021, before me, Krista Anne Park a Notary Public in and for said County and State, personally appeared Christian D. Pullara proved to me on the basis of satisfactory evidence to be the person whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.


SIGNATURE OF NOTARY PUBLIC



(ABOVE AREA FOR NOTARY SEAL)

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

State of **California**

County of **Santa Clara**

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

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

WITNESS my hand and official seal.

SIGNATURE OF NOTARY PUBLIC

(ABOVE AREA FOR NOTARY SEAL)

EXHIBIT "A"
LIST OF FUTURE IMPROVEMENTS AND
ESTIMATED COSTS OF IMPROVEMENTS
AS OF JUNE 10, 2021



Project: Condit Deferred Proj

1.0 Engineering Cost Estimate

a	Sewer System	\$ 10,825.00
b	Basins	\$ -
c	Channel System	\$ -
d	Storm Drain System	\$ 56,200.00
e	Street System / Onsite Improvements	\$ 76,674.70
f	Underground Existing Facilities (Undergrounds)	\$ -
g	Street Trees	\$ 4,800.00
h	Maintenance Districts	\$ -
i	Water System	\$ 64,490.00
j	Recycled Water System	\$ -
k	Traffic Signal System	\$ -
l	Street Light System	\$ 12,050.00
m	Misc Utilities	\$ -
n	Others	\$ -
o	Subtotal (a through n)	\$ 225,039.70
p	Mobilizatoion (5% Subtotal	\$ 11,251.99
q	Subtotal (o plus p)	\$ 236,291.69
r	Contingency (20%)	\$ 47,258.34
s	Subtotal (r plus s)	\$ 283,550.02

Total Construction

\$ 283,550.02

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

Bond No.: _____
 Premium: _____

Whereas, the City Council of the City of Morgan Hill, State of California, and TSC Motors Inc. (hereinafter designated as "principal") have entered into an Improvement Agreement:

TSC Motors Inc.
APN: 728-17-035
17085 Condit Road

whereby principal agrees to install and complete certain designated public improvements, which said agreement, dated _____, 20_____, and identified as project **Morgan Hill CDR+J Dealership**, is hereby referred to and made a part hereof; and

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

Now, therefore, we, the principal and [ENTER SURETY NAME], as surety, are held and firmly bound unto the City of Morgan Hill, hereinafter called ("City"), in the penal sum of Two Hundred Eighty Three Thousand Five Hundred Fifty dollars (\$283,550) lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, successors, executors and administrators, jointly and severally, firmly by these presents.

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

License No.: _____
 Address: _____
 Telephone No.: _____

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

Name of non-resident agent: _____
 Non-resident agent's office address: _____
 Telephone No.: _____

The condition of this obligation is such that if the above bounded principal, his or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and provisions in the said agreement and any alteration thereof made as therein provided, on his or their part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their

true intent and meaning, and shall indemnify and save harmless City, its officers, agents and employees, as therein stipulated, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

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

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

Executed this _____ day of _____ 20 ____ .

Principal

Principal

By: _____
Surety

By: _____
Attorney-in Fact

By: _____
California Resident Agent

By: _____
Non-resident Agent - Attorney-in-Fact

APPROVED:

Scott Creer, City Engineer

Date: _____

APPROVED AS TO FORM:

By: _____
Donald A. Larkin, City Attorney

Date: _____

(Acknowledgment on following page.)

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

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

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

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

WITNESS my hand and official seal.

SIGNATURE OF NOTARY PUBLIC

(ABOVE AREA FOR NOTARY SEAL)

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

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

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

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

WITNESS my hand and official seal.

SIGNATURE OF NOTARY PUBLIC

(ABOVE AREA FOR NOTARY SEAL)

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

Bond No.: _____
 Premium: _____

Whereas, the City Council of the City of Morgan Hill, State of California, and TSC Motors Inc. (hereinafter designated as "the principal") have entered into an Improvement Agreement:

TSC Motors Inc.
APN: 728-17-035
17085 Condit Road

whereby the principal agrees to install and complete certain designated public improvements, which agreement, dated _____, 20_____, and identified as project **Morgan Hill CDR+J Dealership**, is hereby referred to and made a part hereof; and

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

Now, therefore, the principal and the undersigned as corporate surety, and their successors and assigns are held firmly bound unto City and all contractors, subcontractors, laborers, materialmen, and other persons employed in the performance of the agreement and referred to in Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code in the sum of Two Hundred Eighty Three Thousand Five Hundred Fifty dollars (\$283,550), for materials furnished or labor thereon of any kind, or for amounts due under the Unemployment Insurance Act with respect to this work or labor, that the surety will pay the same in an amount not exceeding the amount hereinabove set forth, and also in case suit is brought upon this bond, will pay, in addition to the face amount thereof, costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by City in successfully enforcing this obligation, to be awarded and fixed by the court, and to be taxed as costs and to be included in the judgment therein rendered.

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

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

The Surety's office is located at _____,
 Telephone No. _____; the Surety is licensed to do business in the State of California; and

Labor and Material Bond
 Page 1 of 3
 Version: December 2017

Attachment: Deferred Improvement Agreement [Revision 2] (3128 : APPROVAL OF IMPROV AGREEMENT, DEFERRED IMPROV & R-O-W

the California Insurance Agent's License No., address, and telephone number as follows:

License No.: _____
 Address: _____
 Telephone No.: _____

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

Name of non-resident agent: _____
 Non-resident agent's office address: _____

Telephone No.: _____

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

Executed this _____ day of _____ 20 ____ .

 Principal

 Principal

By: _____
 Surety

By: _____
 Attorney-in Fact

By: _____
 California Resident Agent

By: _____
 Non-resident Agent - Attorney-in-Fact

APPROVED:

 Scott Creer, City Engineer

Date: _____

APPROVED AS TO FORM:

By: _____
 Donald A. Larkin, City Attorney

Date: _____

(Acknowledgment on following page.)

Labor and Material Bond
 Page 1 of 3
 Version: December 2017

Attachment: Deferred Improvement Agreement [Revision 2] (3128 : APPROVAL OF IMPROV AGREEMENT, DEFERRED IMPROV & R-O-W

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

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

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

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

WITNESS my hand and official seal.

SIGNATURE OF NOTARY PUBLIC

(ABOVE AREA FOR NOTARY SEAL)

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

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

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

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

WITNESS my hand and official seal.

SIGNATURE OF NOTARY PUBLIC

(ABOVE AREA FOR NOTARY SEAL)

Labor and Material Bond

Page 1 of 3

Version: December 2017

EXHIBIT "D"
FORM OF WARRANTY BOND
(50% of Cost of Construction)

Bond No.: _____

Premium: _____

Whereas, the City Council of the City of Morgan Hill, State of California (hereinafter designated as "City"), and TSC Motors Inc. (hereinafter designated as "Principal") have entered into an Improvement Agreement (hereinafter "Agreement"):

TSC Motors Inc.
APN: 728-17-035
17085 Condit Road

whereby the Principal agrees to install and complete certain designated public improvements (hereinafter "Improvements"), which said Agreement, dated _____, 20____, and identified as project **Morgan Hill CDR+J Dealership**, is hereby referred to and made a part hereof; and

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

Now, therefore, we, the Principal and _____ as Surety, are held and firmly bound unto the City of Morgan Hill in the penal sum of One Hundred Forty One Thousand Seven Hundred Seventy Five dollars (\$141,775) for the payment of which sum well and truly to be made, we bind ourselves, our heirs, successors, executors and administrators, jointly and severally, firmly by these presents.

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

Surety waives the provisions of Civil Code Sections 2819 and 2845. Surety hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the agreement or the specifications accompanying the same shall in any manner affect its obligations on this bond, and it does hereby waive notice of any such change, extension, alteration, or addition.

Warranty Bond
Page 3 of 3
Version: April 2019

Attachment: Deferred Improvement Agreement [Revision 2] (3128 : APPROVAL OF IMPROV AGREEMENT, DEFERRED IMPROV & R-O-W

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

Attn: _____

Address: _____

City/State/Zip: _____

Phone: _____

Fax: _____

Email: _____

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

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

SURETY:

Principal:

Date: _____

Date: _____

s/ _____

s/ _____

Name: _____

Name: _____

Title: _____

Title: _____

(Attach Acknowledgment with Notary
Seal and Power of Attorney)

APPROVED AS TO FORM:

By: _____
Donald A. Larkin, City Attorney

Date: _____

Warranty Bond
Page 3 of 3
Version: April 2019

Attachment: Deferred Improvement Agreement [Revision 2] (3128 : APPROVAL OF IMPROV AGREEMENT, DEFERRED IMPROV & R-O-W

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

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

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

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

WITNESS my hand and official seal.

SIGNATURE OF NOTARY PUBLIC

(ABOVE AREA FOR NOTARY SEAL)

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

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

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

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

WITNESS my hand and official seal.

SIGNATURE OF NOTARY PUBLIC

(ABOVE AREA FOR NOTARY SEAL)

Warranty Bond
Page 3 of 3
Version: April 2019



CITY COUNCIL STAFF REPORT

MEETING DATE: June 23, 2021

Item # 01

AGENDA DATE: 06/23/2021
SUPPLEMENT # 1

PREPARED BY: Maria Angeles, Senior Civil Engineer
APPROVED BY: City Manager

****SUPPLEMENTAL REPORT** APPROVE CHANGE TO FORM OF SECURITY ASSOCIATED WITH THE IMPROVEMENT AGREEMENT WITH TSC MOTORS INC. (MORGAN HILL CDR+J DEALERSHIP)**

RECOMMENDATION(S)

Authorize the City Attorney to review and approve an alternative form of security to be provided by TSC Motors Inc. as part of the Improvement Agreement for the Morgan Hill CDR+J Dealership Project.

COUNCIL PRIORITIES, GOALS & STRATEGIES

NARRATIVE:

The original report included a recommendation for City Council to approve an Improvement Agreement with TSC Motors Inc., the property owner proposing a Chrysler, Dodge, Ram, and Jeep car dealership located on a 6-acre portion of a 9.24-acre site at the West side of Condit Road, approximately 600 feet south of Diana Avenue (APN: 728-17-035).

On Section 6 (page no. 3) of the Improvement Agreement, bonds are stated as the type of security to be used by TSC Motors Inc. to secure the performance of the required public improvements to be constructed by the project.

The property owner requested approval to provide an alternative form of security in lieu of bonds. Under Municipal Code Title 17, Chapter 17.32 (Improvements and Improvement Agreements) and under Title 12, Chapter 12.02 (Street and Sidewalk Development), other types of security are allowed, and the form of such security shall be approved by the City Attorney.

Staff recommends that the City Council authorize the City Attorney to review and approve, on behalf of the City, an alternative form of security to be provided by TSC Motors Inc. as part of the Improvement Agreement for the Morgan Hill CDR+J Dealership Project.

Attachment: 01 Supplement 1 (3128 : APPROVAL OF IMPROV AGREEMENT, DEFERRED IMPROV & R-O-W ACQUISITION AGREEMENTS FOR



CITY COUNCIL STAFF REPORT

MEETING DATE: June 23, 2021

PREPARED BY: Cynthia Iwanaga, Management Analyst
APPROVED BY: City Manager

APPROVE SECOND AMENDMENT TO MAINTENANCE SERVICE AGREEMENT WITH ANIMAL DAMAGE MANAGEMENT, INC.

RECOMMENDATION(S)

1. Determine that competitive bids upon notice would not likely result in a lower price to the City from a responsible bidder or would cause unnecessary expense or delay under the circumstances per Section 3.04.150 (1) of the Morgan Hill Municipal Code; and
2. Authorize the City Manager to execute and administer the Second Amendment to the Maintenance Service Agreement with Animal Damage Management, Inc., extending the agreement for one additional year of service at annual amount of \$35,160 for a new total contract amount of \$140,640 over 4 years.

COUNCIL PRIORITIES, GOALS & STRATEGIES

2020-2021 Strategic Priorities

Fiscal Sustainability

REPORT NARRATIVE:

The purpose of this report is to provide the City Council with an opportunity to consider a second amendment to the City's contract with Animal Damage Management, Inc. for pest control services at various City recreational facilities, parks, booster stations, and the Morgan Hill Police Department facility. The City's current agreement with Animal Damage Management, Inc. expires on June 30, 2021.

Animal Damage Management, Inc. was selected through a competitive RFP process in 2018. The initial two-year agreement for \$70,320 began July 1, 2018. In June 2020, a First Amendment to the agreement extended the term one additional year to June 30, 2021 and increased the amount to \$105,480 per City Manager authority. This proposed Second Amendment would extend the terms an additional year at a rate of \$35,160, increasing the maximum compensation to \$140,640. Per the Second Amendment, Animal Damage Management, Inc. has agreed not to increase their rates. The annual amount is based on monthly maintenance costs of \$1,680 for 12 months of scheduled preventative maintenance service totaling \$20,160 plus \$15,000 for estimated additional pest control services as needed.

Section 3.04.150 (1) of the Morgan Hill Municipal Code authorizes the City Council to extend an agreement if the Council determines that competitive bids upon notice would not be likely to result in a lower price to the City from a responsible bidder or would

cause unnecessary expense or delay under the circumstances. Staff is satisfied with the services provided by Animal Damage Management, Inc. In addition, since this vendor has agreed not to increase their rates, extending the terms with the current pricing is advantageous to the City. Staff therefore recommends this Second Amendment as soliciting competitive bids would not likely result in a lower price to the City from a responsible bidder or would cause unnecessary expense or delay under the circumstances.

It should be noted that pest control services provided by Animal Damage Management, Inc. are performed in alignment with City Policies, including the City's policy not allowing the use of rodenticides.

COMMUNITY ENGAGEMENT: Not Applicable

As pest control services are regular and expected City services, no community engagement occurred for this proposed contract amendment.

ALTERNATIVE ACTIONS:

The City Council could decline to approve the amendment and instead direct staff to proceed with a new request for proposals (RFP) for pest control services. Should the Council wish to rebid this service, staff estimates that a new agreement could be in place by September 2021. Pest control services would be paid on a monthly time and material basis to Animal Damage Management, Inc. until a new agreement could be executed.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The City Council previously awarded the existing agreement to Animal Damage Management, Inc. on July 18, 2018.

FISCAL AND RESOURCE IMPACT:

If approved, the total funding authorization for this agreement would be \$140,640. Funding for pest control services is included in the FY 2020-2022 Adopted Budget within the contractual services line items in the Parks Maintenance Fund (302), Water Operations Fund (650), and Building Maintenance Fund (740).

CEQA (California Environmental Quality Act): Categorical Exemption

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

LINKS/ATTACHMENTS:

1. Second Amendment to Animal Damage Management Agmt_signed

SECOND AMENDMENT TO AGREEMENT ANIMAL DAMAGE MANAGEMENT, INC.

This SECOND AMENDMENT TO AGREEMENT is entered into and becomes effective on _____ (Effective Date), by THE CITY OF MORGAN HILL, a municipal corporation, ("CITY") and ANIMAL DAMAGE MANAGEMENT, INC., a California Corporation ("SERVICE PROVIDER").

RECITALS

The following recitals are a substantive part of this Agreement:

1. This Second Amendment to Agreement is entered into pursuant to the action of the Morgan Hill City Council taken on _____, ____, 20__.
2. The CITY and SERVICE PROVIDER entered into that "Maintenance Service Agreement" made as of July 18, 2018, for services for a maximum compensation of Seventy Thousand Three Hundred Twenty and no/100 dollars (\$70,320.00) ("MAINTENANCE SERVICE AGREEMENT").
3. The CITY and SERVICE PROVIDER entered into a "First Amendment to Agreement" made as of June 10, 2020, under which the maximum compensation under the MAINTENANCE SERVICE AGREEMENT, as amended, was increased to One Hundred Five Thousand Four Hundred Eighty and no/100 dollars (\$105,480.00). The MAINTENANCE SERVICE AGREEMENT and the First Amendment thereto are attached as Exhibit "1" to this Agreement.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

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

A. Paragraph 2 shall be amended and replaced in its entirety by the following:

"2. **Term of Agreement.** This Agreement shall be effective and cover services rendered from July 18, 2018, until June 30, 2022."

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

"4.1. **Amount.** Compensation under this Agreement shall not exceed ONE HUNDRED FORTY THOUSAND SIX HUNDRED FORTY AND NO/100 DOLLARS (\$140,640.00) and shall be billed based on the rate and basis set forth in **Exhibit B.**"

C. Paragraph 5.1 shall be amended by adding the following:

"5.1 **Non-appropriations.** Notwithstanding anything contained in this Agreement to the contrary, if insufficient funds are appropriated, or funds are otherwise unavailable in the budget for CITY for any reason whatsoever in any fiscal year, for payments due under this Agreement, CITY will immediately notify SERVICE PROVIDER of such occurrence,

and this Agreement shall terminate after the last day during the fiscal year for which appropriations shall have been budgeted for CITY or are otherwise available for payments."

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

TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS:

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

ATTEST:

CITY OF MORGAN HILL

Michelle Bigelow, City Clerk

Date: _____

Christina J. Turner, City Manager

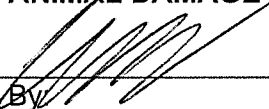
Date: _____

APPROVED AS TO FORM:

ANIMAL DAMAGE MANAGEMENT, INC.

Donald A. Larkin, City Attorney

Date: _____

By: 

Title: _____

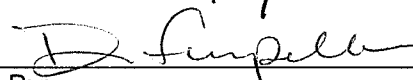
C. J. W.
Vice President

Print Name and Title of Signer.

If Corporate: Chairman, President or Vice President

Date: _____

6/2/21

By: 

Title: _____

Diane Farfella - Secretary

Print Name and Title of Signer.

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

Date: _____

6/2/21

EXHIBIT 1

**FIRST AMENDMENT TO AGREEMENT
ANIMAL DAMAGE MANAGEMENT, INC.**

This FIRST AMENDMENT TO AGREEMENT is entered into and becomes effective on 6/10/2020 (Effective Date), by THE CITY OF MORGAN HILL, a municipal corporation, ("CITY") and ANIMAL DAMAGE MANAGEMENT, INC., a California Corporation ("SERVICE PROVIDER"), hereinafter referred to collectively as "Parties."

RECITALS

The following recitals are a substantive part of this Agreement:

1. This FIRST Amendment to Agreement is entered into pursuant to the action of the Morgan Hill City Council taken on July 18, 2018.
2. The CITY and SERVICE PROVIDER entered into that "Maintenance Service Agreement" made as of July 26, 2018, for services for a maximum compensation of Seventy Thousand Three Hundred Twenty and no/100 dollars (\$70,320.00) ("MAINTENANCE SERVICE AGREEMENT"). The MAINTENANCE SERVICE AGREEMENT is attached as Exhibit "1" to this Agreement.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

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

A. Paragraph 2 shall be amended and replaced in its entirety by the following:

"2. **Term of Agreement.** This Agreement shall be effective and cover services rendered from July 26, 2018, until July 31, 2021."

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

"4.1. **Amount.** Compensation under this Agreement shall not exceed ONE HUNDRED FIVE THOUSAND FOUR HUNDRED EIGHTY AND NO/100 DOLLARS (\$105,480.00) and shall be billed based on the rate and basis set forth in **Exhibit B.**"

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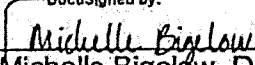
Signatures on Next Page

2. **Conflicts.** In the event of a conflict between the terms and provisions of this First Amendment to Agreement and the terms and provisions of the MAINTENANCE SERVICE AGREEMENT, the terms of this First Amendment to Agreement shall govern and control.

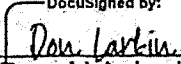
TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS:

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

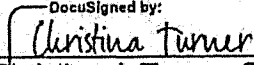
ATTEST:

DocuSigned by:

 Michelle Bigelow, Deputy City Clerk
 Date: 6/10/2020

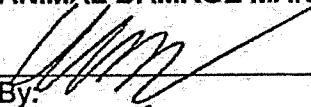
APPROVED AS TO FORM:

DocuSigned by:

 Donald A. Larkin, City Attorney
 Date: 6/9/2020

CITY OF MORGAN HILL

DocuSigned by:

 Christina L. Turner, City Manager
 Date: 6/10/2020

ANIMAL DAMAGE MANAGEMENT, INC.


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

Date: 5/28/20


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

Date: 5/28/20

128-04-08-024

EXHIBIT 1

MAINTENANCE SERVICE AGREEMENT
Animal Damage Management, Inc.

THIS AGREEMENT is entered into and becomes effective on 7/26/18 (Effective Date), by and between the CITY OF MORGAN HILL, a municipal corporation, ("CITY"), and Animal Damage Management, Inc. a California corporation ("SERVICE PROVIDER") hereinafter referred to collectively as "Parties." In consideration of the promises and the mutual covenants contained in this Agreement, the Parties agree as follows:

1. **City Authority.** This Agreement is entered into pursuant to action of the Morgan Hill City Council taken on July 18, 2018.
2. **Term of Agreement.** This Agreement shall cover services rendered from the Effective Date of this Agreement until July 31, 2020 at which time SERVICE PROVIDER'S services shall be completed. The City Manager is authorized to extend the term of this Agreement for a maximum period of one year. Any such extension shall be in writing and signed by both Parties to this Agreement.
3. **Scope of Service.** The services to be performed by SERVICE PROVIDER shall be pest control services as further described in Exhibit A.
4. **Compensation.** SERVICE PROVIDER shall be compensated as follows:
 - 4.1. **Amount.** \$70,320.00. Total compensation to CONSULTANT under this Agreement during its initial term set forth in Section 2 above shall not exceed Seventy thousand three hundred twenty dollars and shall be billed based on the rate and basis set forth in Exhibit B. If the City Manager extends the term of this Agreement for up to one year pursuant to the provisions of Section 2 above, the City Manager shall have the authority to increase the maximum compensation allowed to be paid to CONSULTANT during that extended term period, so long as City Council has appropriated sufficient funds therefor, the Parties mutually agree to such amount in a writing signed by both Parties to this Agreement and provided further that in no event shall such maximum compensation allowed for the extended term exceed 105% of the maximum compensation allowed to be paid to CONSULTANT for one year of service during the initial term of this Agreement.
 - 4.2. **Billing.** SERVICE PROVIDER shall provide CITY with an invoice containing the dated, detailed, and itemized descriptions of all services performed and expenses incurred (if such expenses are reimbursable pursuant to Exhibit B) by SERVICE PROVIDER on a monthly basis unless otherwise specified in Exhibit B. All invoices shall be sent to the CITY addressed to the department head or project manager identified below in Section 14 Notices. Payment will be made to SERVICE PROVIDER within thirty (30) days of receipt of invoice by CITY. Any rate charged shall be prorated where services are interrupted or not provided for any rate period (for example, any monthly rate charge should be prorated when services were interrupted or provided for only part of the month). For services billed on an hourly rate, the minimum unit of billed time shall not exceed one tenth of one hour. CITY shall pay for services and expenses (if so provided in Exhibit B) up to the limit of compensation set forth above, that in the CITY's judgment were necessary and reasonable. Services for work performed and expenses incurred in excess of the total compensation set forth in paragraph 4.1 above shall be at no cost to CITY.
5. **Termination.** CITY or SERVICE PROVIDER shall have the right to terminate this Agreement, without cause, by giving thirty (30) days' written notice or less under urgent circumstances. Upon such termination,

SERVICE PROVIDER shall submit to CITY an itemized statement of services performed for which compensation has not been paid. CITY may require SERVICE PROVIDER to complete certain work product or documents and SERVICE PROVIDER shall deliver to CITY all documents in its possession without additional compensation to SERVICE PROVIDER. The City Manager is authorized to terminate this AGREEMENT on behalf of CITY.

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

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

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

8.1. **Insurance Types and Amounts.**

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

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

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

8.1.5.3. If the performance of SERVICE PROVIDER's work or service under this Agreement involves contact with minors, SERVICE PROVIDER shall procure and maintain Sexual Abuse and Molestation insurance in the minimum amount of: (i) one million dollars (\$1,000,000.00) each claim, or (ii) the maximum amount of such insurance available to SERVICE PROVIDER under SERVICE PROVIDER's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

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

8.2.1. **General Liability.**

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

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

8.2.1.3. Insurance shall be primary non-contributing.

8.2.2. **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.

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

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

Certificate Holder address:

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

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

10. **Compliance with Law.**

- 10.1. SERVICE PROVIDER and its officers, employees, agents, and subcontractors shall comply with all applicable laws, ordinances, administrative regulations, and permitting requirements in carrying out their obligations under this Agreement. SERVICE PROVIDER and its officers, employees, agents, and subcontractors covenant there shall be no discrimination based upon race, color, creed, religion, gender, marital status, age, sexual orientation, national origin, mental disability, physical disability, medical condition, or ancestry, in any activity pursuant to this Agreement.
- 10.2. Without limiting the provisions of Section 10.1 above, each worker performing work under this Agreement shall be paid at a rate not less than the prevailing wage as defined in Sections 1771 and 1774 of the Labor Code. The prevailing wage rates are available online at <http://www.dir.ca.gov/dlsr>. SERVICE PROVIDER shall post a copy of the applicable prevailing rates at the Worksite. Pursuant to Labor Code Section 1775, SERVICE PROVIDER and any Subcontractor shall forfeit to CITY as a penalty up to two hundred dollars (\$200.00) for each calendar day, or portion thereof, for each worker paid less than the applicable prevailing wage rate. SERVICE PROVIDER shall also pay each worker the difference between the applicable prevailing wage rate and the amount actually paid to that worker.
- 10.3. DIR Registration. CITY will not accept a Bid Proposal from or enter into a contract with a SERVICE PROVIDER, without first receiving proof to the satisfaction of CITY that SERVICE PROVIDER and its subcontractors are registered with the California Department of Industrial Relations to perform public work under Labor Code Section 1725.5, subject to limited legal exceptions. Under Labor Code section 1771.4, this Agreement is subject to compliance monitoring and enforcement by the California Department of Industrial Relations.
- 10.4. Compliance with Wage and Hour Laws: SERVICE PROVIDER, and any subcontractor it employs to complete work under this Agreement, shall comply with all applicable federal, state and local wage and hour laws. Applicable laws may include, but are not limited to, the Federal Fair Labor Standards Act and the California Labor Code.

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

Prior Judgments against SERVICE PROVIDER and/or Its Subcontractors: BY SIGNING THIS AGREEMENT, SERVICE PROVIDER AFFIRMS THAT IT HAS DISCLOSED ANY FINAL JUDGMENTS, DECISIONS OR ORDERS FROM A COURT OR INVESTIGATORY GOVERNMENT AGENCY FINDING – IN THE FIVE (5) YEARS PRIOR TO EXECUTING THIS

AGREEMENT – THAT SERVICE PROVIDER OR ITS SUBCONTRACTOR(S) HAS VIOLATED ANY APPLICABLE WAGE AND HOUR LAWS. SERVICE PROVIDER FURTHER AFFIRMS THAT IT OR ITS SUBCONTRACTOR(S) HAS SATISFIED AND COMPLIED WITH – OR HAS REACHED AGREEMENT WITH THE CITY REGARDING THE MANNER IN WHICH IT WILL SATISFY – ANY SUCH JUDGMENTS, DECISIONS OR ORDERS.

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

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

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

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

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

Address of SERVICE PROVIDER is as follows:

Animal Damage Management, Inc.
16170 Vineyard Blvd., Ste. 150
Morgan Hill, CA 95037

Address of CITY is as follows:

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

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

16. **Maintenance of Records.**

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

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

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

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

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 SERVICE PROVIDER, without prior written consent of CITY. Any attempted assignment not first approved by CITY shall be void and, at CITY's option, shall terminate this Agreement effective as of the date of such attempted assignment.
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.** SERVICE PROVIDER shall, to the fullest extent permitted by law, indemnify, defend and hold harmless CITY, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers ("INDEMNITEES") from and against any and all claims, liabilities, expenses, liens, or damages of any nature, including liability for bodily injury, property damage or personal injury, and including reasonable attorneys' fees and expenses, that arise out of, pertain to, or relate to the performance of this Agreement or the failure to comply with any obligations contained in this Agreement by SERVICE PROVIDER, and/or its agents, officers, employees, subcontractors, or independent contractors ("CLAIM").
- 21.2. **Exceptions.** SERVICE PROVIDER is not required to indemnify INDEMNITEES against liability for bodily injury, property damage or personal injury, or any other loss, damage or expense arising from the sole negligence or willful misconduct of CITY.
- 21.3. **Not limited by insurance.** The indemnity, defense and hold harmless provisions of this Agreement apply to all CLAIMs alleged against an INDEMNITEE, regardless of whether any insurance policies are applicable. Policy limits do not act as a limitation upon the amount of indemnification or defense to be provided by SERVICE PROVIDER.
- 21.4. **Right to Offset.** CITY shall have the right to offset against any compensation due SERVICE PROVIDER under this Agreement any amount due CITY from SERVICE PROVIDER as a result of SERVICE PROVIDER's failure to pay CITY promptly any indemnification arising under this Section (21) and any amount due CITY from SERVICE PROVIDER arising from SERVICE PROVIDER's failure either to (i) pay taxes on amounts received pursuant to this Agreement or (ii) comply with applicable workers' compensation laws.
- 21.5. **Interpretation.** This Section shall constitute an agreement or contract of indemnity, incorporating the interpretations under California Civil Code Section 2778. It is expressly understood and agreed that the obligation of SERVICE PROVIDER to indemnify the INDEMNITEE shall be as broad and inclusive as permitted by the laws of the State of California and shall survive termination of this Agreement.
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 SERVICE PROVIDER. If the provisions contained in the main body of this Agreement conflict with any provision contained in an exhibit to this Agreement, the provisions of the main body of this Agreement shall govern and control over any provision contained in an exhibit to this Agreement.
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 SERVICE PROVIDER in the same manner as if those successors in interest, legal representatives or other permitted assignees or transferees had entered into this Agreement originally.

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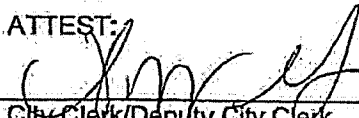
27. **Authority to Execute.** Those individuals who are signing this Agreement on behalf of entities represent and warrant that they are, respectively, duly authorized to sign on behalf of the entities and to bind the entities fully to each and all of the obligations set forth in this Agreement.

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 Clerk/Deputy City Clerk

fw Michelle Wilson
Print Name

Date: 8/11/18

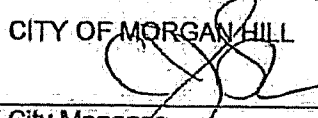
APPROVED AS TO FORM:


City Attorney

Donald A. Larkin
Print Name

Date: 7/20/2018

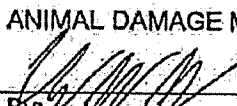
CITY OF MORGAN HILL


City Manager

Christina J. Turner
Print Name

Date: 7/26/18

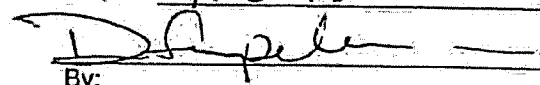
ANIMAL DAMAGE MANAGEMENT, INC.

By: 

Cody UW - Vice President
Print Name and Title of Signer.

If Corporate: Chairman, President or Vice President

Date: 7-6-18

By: 

Dane Furpalla - Secretary
Print Name and Title of Signer.

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

Date: 7-6-18.

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

1000010890
Contractor's DIR Registration Number(s) (if applicable)

Expiration Date(s)

Expiration Date(s) 6-2019

Seal:

U:\Legal Forms\Consultant Agreements\City Maintenance Service Agreement.Docx

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Updated: May 2018

EXHIBIT A SCOPE OF SERVICES

Contractor to provide ongoing scope of services for city facilities described below:

- 1. Butterfield Detention Basin located at Railroad, Fisher and Seymour Avenues: Inspect and treat as needed using traps and or carbon monoxide gas. Monitor and report. To be serviced four (4) times per month.**
- 2. Aquatics Center located at 16200 Condit Road. Inspect, set traps as needed in turf and landscaped areas to control gophers. Monitor and report. To be serviced four (4) times per month.**
- 3. Morgan Hill Police Department located at 16200 Vineyard Boulevard: Inspect bait stations, service each as needed. Monitor and report. Services include cleaning out debris, replenishing bait, marking record card and replacing any damaged bait stations. To be serviced twice per month.**
- 4. Boys Ranch 1, 2 & 3 Wells located at 1000 to 1004 Burnett Avenue. Inspect bait stations, service each as needed. Monitor and report. Services include cleaning out debris, replenishing bait, marking record card, and replacing any damaged bait stations. To be serviced twice per month.**
- 5. Jackson Oaks Booster located at 3842 White Oak Court/E Dunne Avenue after Hilltop Court. Inspect bait stations, service each as needed. Monitor and report. Service includes cleaning out debris, replenishing bait, marking record card and replacing any damaged bait stations. To be serviced twice per month**
- 6. Encino Booster located at 18835 Glen Ayre Drive. Inspect bait stations, service each as needed. Monitor and report. Service includes cleaning out debris, replenishing bait, marking record card and replacing any damaged bait stations. To be serviced twice per month**
- 7. Woodland Acres Booster located at 17910 Woodland Avenue. Inspect bait stations, service each as needed. Monitor and report. Service includes cleaning out debris, replenishing bait, marking record card and replacing any damaged bait stations. To be serviced twice per month**
- 8. Dunne Well located at East Dunne and Condit Road: Inspect bait stations, service each as needed. Monitor and report. Service includes cleaning out debris, replenishing bait, marking record card and replacing any damaged bait stations. To be serviced twice per month**
- 9. Community Park located at 171 W. Edmundson Ave.: Inspect turf and landscape areas for gophers and ground squirrels. Treat as needed using traps and or carbon monoxide gas. Monitor and report. Trappings twice per month. Carbon monoxide gas twice per month.**
- 10. Paradise Park located at La Crosse Drive and Calle Enrique. Inspect turf and landscape areas for gophers and ground squirrels. Set traps as needed. Monitor and report. Serviced twice per month.**
- 11. Extra Services for gophers and ground squirrels, raccoons, birds, wasps, mice, insects, skunks and opossums as requested by City Maintenance Staff.**

**EXHIBIT B
SCHEDULE OF COMPENSATION RATES**

1. Butterfield Detention Basin: \$275.00 per month
2. Aquatics Center \$375.00 per month
3. Morgan Hill Police Department \$100.00 per month
4. Boys Ranch 1, 2 & 3: \$50.00 per month
5. Jackson Oaks Booster: \$50.00 per month
6. Encino Booster: \$50.00 per month
7. Woodland Acres Booster: \$50.00 per month
8. Dunne Well: \$50.00 per month
9. Community Park: \$505.00 per month
10. Paradise Park: \$175.00 per month
11. Extra Services:

Gophers and Ground Squirrels	\$195.00
Raccoons:	\$175.00
Birds:	\$225.00
Wasps:	\$175.00
Mice:	\$185.00
Insects:	\$165.00
Skunks:	\$195.00
Opossums:	\$175.00

**EXHIBIT C
SCHEDULE OF PERFORMANCE**

1. Butterfield Detention Basin: To be serviced four (4) times per month.
2. Aquatics Center To be serviced four (4) times per month.
3. Morgan Hill Police Department To be serviced twice per month.
4. Boys Ranch 1, 2 & 3: To be serviced twice per month.
5. Jackson Oaks Booster: To be serviced twice per month
6. Encino Booster: To be serviced twice per month
7. Woodland Acres Booster: To be serviced twice per month
8. Dunne Well: To be serviced twice per month
9. Community Park: Trappings twice per month. Carbon monoxide gas twice per month.
10. Paradise Park: Serviced twice per month
11. Extra Services: As requested by City Maintenance Staff



CITY COUNCIL STAFF REPORT

MEETING DATE: June 23, 2021

PREPARED BY: Michael Horta, Human Resources Director

APPROVED BY: City Manager

APPROVE THIRD AMENDMENT TO AGREEMENT WITH INNOVATIVE CLAIMS SOLUTIONS, INC.

RECOMMENDATION(S)

Authorize the City Manager to execute and administer a Third Amendment to Agreement with Innovative Claims Solutions, Inc. to provide third party claims administration for workers' compensation extending the agreement for one additional year of service at annual amount of \$34,380, for a new total contract amount of \$206,600 over 6 years.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Maintaining Infrastructure

Preserving and Cultivating Public Trust

2020-2021 Strategic Priorities

Fiscal Sustainability

REPORT NARRATIVE:

The current agreement with Innovative Claim Solutions (ICS) has been in effect since June 2016. During this time, ICS has administered several lengthy and complex workers' compensation case settlements that resulted in City Council review and approval. ICS has expended significant resources and continues to educate and inform Human Resources, departmental workers' compensation liaisons, and the City Attorney on the particular workers' compensation cases, as well as the general aspects of workers' compensation and case law. In early 2016, staff conducted a joint Request For Proposal (RFP) with the City of Gilroy for such services, through which ICS was selected as the most qualified firm to provide the services. ICS was also the lowest overall cost as a result of the RFP. ICS has offered to provide its services for an additional year without an increase to their current fees. The City will be conducting another RFP within the fiscal year. Therefore, staff recommends that Council approve the Third Amendment to Agreement, increasing the contract amount by \$34,380 to a revised not to exceed amount of \$206,600.

COMMUNITY ENGAGEMENT: Inform

This report serves to inform the community of the recommended third amendment to the agreement.

ALTERNATIVE ACTIONS:

The Council could choose not to approve the third amendment to the agreement with ICS and direct staff to conduct an RFP or consider a different third-party administrator for workers' compensation in the interim.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The Council approved the City's current agreement with ICS on May 18, 2016, which was subsequently amended for an additional one-year and two-year term, pursuant to the City Manager's authority.

FISCAL AND RESOURCE IMPACT:

The third amendment to the agreement would increase the compensation by \$34,380 over one year. Costs for these services are budgeted and paid from the Workers' Compensation Fund (770). (GL#:770.8220.42231).

CEQA (California Environmental Quality Act): Not a Project.

This is an administrative action that will not result in physical changes in the environment.

LINKS/ATTACHMENTS:

1. Innovative Claims Solutions - Third Amendment

THIRD AMENDMENT TO AGREEMENT INNOVATIVE CLAIMS SOLUTIONS, INC.

This THIRD AMENDMENT TO AGREEMENT is entered into and becomes effective on _____ (Effective Date), by THE CITY OF MORGAN HILL, a municipal corporation, ("CITY") and INNOVATIVE CLAIMS SOLUTIONS, INC., a California Corporation ("CONSULTANT").

RECITALS

The following recitals are a substantive part of this Agreement:

1. This Third Amendment to Agreement is entered into pursuant to the action of the Morgan Hill City Council taken on _____, _____, 20____.
2. The CITY and CONSULTANT entered into that "Consultant Agreement" made as of June 14, 2016, for consultant services for a maximum compensation of Sixty-Nine Thousand Eighty and no/100 dollars (\$69,080.00) ("CONSULTANT AGREEMENT").
3. The CITY and CONSULTANT entered into a "First Amendment to Agreement" made as of June 7, 2018, under which the maximum compensation under the CONSULTANT AGREEMENT, as amended, was increased to One Hundred Three Thousand Four Hundred Sixty and no/100 dollars (\$103,460.00).
4. The CITY and CONSULTANT entered into a "Second Amendment to Agreement" made as of November 14, 2019, under which the maximum compensation under the CONSULTANT AGREEMENT, as amended, was increased to One Hundred Seventy-Two Thousand Two Hundred Twenty and no/100 dollars (\$172,220.00). The CONSULTANT AGREEMENT, and the First, Second and Third Amendments thereto are attached as Exhibit "1" to this Agreement.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **Amendments:** All terms and conditions of the CONSULTANT AGREEMENT, as amended, as attached as Exhibit "1," shall remain in full force and effect; except that the following amendments shall be made as set forth below:
 - A. Paragraph 2 shall be amended and replaced in its entirety by the following:

"2. **Term of Agreement.** This Agreement shall be effective and cover services rendered from June 14, 2016, until June 30, 2022."
 - B. Rates as described in Exhibit B dated May 22, 2019, are continued in place through June 30, 2022.
 - C. Paragraph 5 shall be amended by adding the following:

"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.”

D. Paragraph 9 shall be amended and replaced in its entirety by the following to correct reference from SERVICE PROVIDER to CONSULTANT:

"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."

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Signatures on the Next Page

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

TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS:

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

ATTEST:

CITY OF MORGAN HILL

Michelle Bigelow, City Clerk

Date: _____

APPROVED AS TO FORM:

Donald A. Larkin, City Attorney

By: _____

Date: _____

Christina J. Turner, City Manager

Date: _____

INNOVATIVE CLAIMS SOLUTIONS, INC.

Cheryl Westeren

By: Cheryl Westeren

Title: President & COO

Print Name and Title of Signer.

If Corporate: Chairman, President or Vice President

Date: _____

6/2/2021

Gary Archibald

By: Gary Archibald

Title: President & COO

Print Name and Title of Signer.

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

Date: _____

6/3/2021

12604-16-053

EXHIBIT 1

**SECOND AMENDMENT TO AGREEMENT
INNOVATIVE CLAIMS SOLUTIONS, INC.**

This SECOND AMENDMENT TO AGREEMENT is entered into and becomes effective on 11/4/19 (Effective Date), by THE CITY OF MORGAN HILL, a municipal corporation, ("CITY") and INNOVATIVE CLAIMS SOLUTIONS, INC., a California Corporation ("CONSULTANT").

RECITALS

The following recitals are a substantive part of this Agreement:

1. This Second Amendment to Agreement is entered into pursuant to the action of the Morgan Hill City Council taken on JUNE 20, 2019
2. The CITY and CONSULTANT entered into that "Consultant Agreement" made as of June 14, 2016, for consultant services for a maximum compensation of SIXTY-NINE THOUSAND EIGHTY AND NO/100 DOLLARS (\$69,080.00) ("CONSULTANT AGREEMENT").
3. The CITY and CONSULTANT entered into a "First Amendment to Agreement" made as of June 7, 2018, under which the maximum compensation under the CONSULTANT AGREEMENT, as amended, was increased to ONE HUNDRED THREE THOUSAND FOUR HUNDRED SIXTY AND NO/100 DOLLARS (\$103,460.00). The CONSULTANT AGREEMENT and the First Amendment thereto are attached as Exhibit "1" to this Agreement.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **Amendments:** All terms and conditions of the CONSULTANT AGREEMENT, as amended, as attached as Exhibit "1," shall remain in full force and effect; except that the following amendments shall be made as set forth below:
 - A. Paragraph 2 shall be amended and replaced in its entirety by the following:

"2. **Term of Agreement.** This Agreement shall be effective and cover services rendered from June 14, 2016, until June 30, 2021."
 - B. Effective July 1, 2019, CONSULTANT'S billing rates are set forth in the revised Exhibit "B" dated May 22, 2019, approved by CITY and attached hereto and incorporated herein by this reference. Paragraph 4.1 shall be amended and replaced in its entirety by the following:

"4.1. **Amount.** Compensation under this Agreement shall not exceed ONE HUNDRED SEVENTY-TWO THOUSAND TWO HUNDRED TWENTY AND NO/100 DOLLARS (\$172,220.00) and shall be billed based on the rate and basis set forth in Exhibit B.

C. Paragraph 5 shall be amended and replaced in its entirety by the following:

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.

D. Paragraph 7.2.2 shall be amended and replaced in its entirety by the following:

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.

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

TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS:

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

ATTEST:

mw
 Michelle Bigelow, Deputy City Clerk
 Date: 11/8/19

APPROVED AS TO FORM:

ya
 Donald A. Larkin, City Attorney
 Date: 10-28-19

CITY OF MORGAN HILL

[Signature]
 Christina J. Turner, City Manager
 Date: 11/4/19

INNOVATIVE CLAIMS SOLUTIONS, INC.

[Signature]
 By: Cheryl Westover
 Title: President & COO
 Print Name and Title of Signer.
 If Corporate: Chairman, President or Vice President

Date: 6/12/19
[Signature]
 By: Gary Archibald
 Title: President & CIO
 Print Name and Title of Signer.
 If Corporate: Secretary, Assistant Secretary, Chief Financial Officer or Assistant Treasurer

Date: 6-12-19

REVISED EXHIBIT B

INNOVATIVE CLAIMS SOLUTIONS, INC. – SECOND AMENDMENT TO AGREEMENT
MAY 22, 2019

City shall pay CONSULTANT:

1. An annualized fee of \$34,380 for the period of July 1, 2019 – June 30, 2020; and
2. an annualized fee of \$34,380 for the period of July 1, 2020 – June 30, 2021.

The payments will be made in equal monthly installments of \$2,865.00.

126-04-16-053

EXHIBIT "1"

FIRST AMENDMENT TO AGREEMENT
INNOVATIVE CLAIMS SOLUTIONS, INC.

This FIRST AMENDMENT TO AGREEMENT is entered into and becomes effective on June 7, 2018 (Effective Date), by THE CITY OF MORGAN HILL, a municipal corporation, ("CITY") and, INNOVATIVE CLAIMS SOLUTIONS, INC., a California corporation ("CONSULTANT").

RECITALS

The following recitals are a substantive part of this Agreement:

1. This First Amendment to Agreement is entered into pursuant to the action of the Morgan Hill City Council taken on May 18, 2016.
2. The CITY and CONSULTANT entered into that "Consultant Agreement" made as of June 14, 2016, for consultant services for a maximum compensation of SIXTY-NINE THOUSAND EIGHTY AND NO/100 DOLLARS (\$69,080.00) ("CONSULTANT AGREEMENT"). The CONSULTANT AGREEMENT is attached as Exhibit "1" to this Agreement.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

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

A. Paragraph 2 shall be amended and replaced in its entirety by the following:

"2. Term of Agreement. This Agreement shall be effective and cover services rendered from June 14, 2016, until June 30, 2019."

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

"4.1. Amount. Compensation under this Agreement shall not exceed ONE HUNDRED THREE THOUSAND FOUR HUNDRED SIXTY AND NO/100 DOLLARS (\$103,460.00) and shall be billed based on the rate and basis set forth in the revised Exhibit B dated May 17, 2018, attached hereto and incorporated herein by this reference."

C. Paragraph 9 shall be amended and replaced in its entirety by the following:

"9. Compliance with Law.

9.1 SERVICE PROVIDER and its officers, employees, agents, and subcontractors shall comply with all applicable laws, ordinances, administrative regulations, and permitting requirements in carrying out their obligations under this Agreement. SERVICE PROVIDER and its officers, employees, agents, and

subcontractors covenant there shall be no discrimination based upon race, color, creed, religion, gender, marital status, age, sexual orientation, national origin, mental disability, physical disability, medical condition, or ancestry, in any activity pursuant to this Agreement.

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

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

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

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

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

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

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

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

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

[Signatures on Next Page]

2. **Conflicts.** In the event of a conflict between the terms and provisions of this First Amendment to Agreement and the terms and provisions of the CONSULTANT, the terms of this First Amendment to Agreement shall govern and control.

TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS:

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

ATTEST:

Procity
 City Clerk
 Date: 06/13/18

APPROVED AS TO FORM:

for
 City Attorney
 Date: 5-21-18

CITY OF MORGAN HILL

City Manager

Date:

6-7-18

INNOVATIVE CLAIMS SOLUTIONS, INC.

By:

Title: Cheryl Western President

Print Name and Title of Signer.

If Corporate: Chairman, President or Vice President

Date:

5-21-2018

By:

Title: Gary Archbold President + CIO

Print Name and Title of Signer.

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

Date:

5-21-2018

REVISED EXHIBIT B
INNOVATIVE CLAIMS SOLUTIONS, INC. - FIRST AMENDMENT TO AGREEMENT
MAY 17, 2018

City shall pay CONSULTANT an annualized fee of \$34,380 for the period of July 1, 2018 – June 30, 2019, and payments will be made in equal monthly installments of \$2,865.00.

126-04-16-053

EXHIBIT "1"**CONSULTANT AGREEMENT
Innovative Claims Solutions, Inc.**

THIS AGREEMENT is entered into and becomes effective on 6/14/16 (Effective Date), by and between the CITY OF MORGAN HILL, a municipal corporation, ("CITY"), and Innovative Claims Solutions, 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 action of the Morgan Hill City Council taken on MAY 18, 2016.
2. **Term of Agreement.** This Agreement shall cover services rendered from the Effective Date of this Agreement until June 30, 2018 at which time CONSULTANT'S services shall be completed. The City Manager is authorized to extend the term of this Agreement for a maximum period of one year. Any such extension shall be in writing and signed by both Parties to this Agreement.
3. **Scope of Service.** The services to be performed by CONSULTANT shall be workers compensation claims administration as further described in Exhibit A.
4. **Compensation.** CONSULTANT shall be compensated as follows:
 - 4.1. **Amount.** \$69,080.00. Total compensation to CONSULTANT under this Agreement during its initial term set forth in Section 2 above shall not exceed sixty nine thousand eighty dollars and shall be billed based on the rate and basis set forth in Exhibit B. If the City Manager extends the term of this Agreement for up to one year pursuant to the provisions of Section 2 above, the City Manager shall have the authority to increase the maximum compensation allowed to be paid to CONSULTANT 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 during the extended term period exceed an additional five percent (5%) above the compensation allowed to be paid to CONSULTANT during the initial term of this Agreement.
 - 4.2. **Billing.** CONSULTANT shall provide CITY with a monthly 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. 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 on behalf of CITY.

6. Performance of Work. CONSULTANT represents that it is qualified by virtue of experience, training, education, and expertise to accomplish these services. Services shall be performed by CONSULTANT in accordance with professional practices in a manner consistent with a level of care, competence and skill exercised by qualified members of the CONSULTANT'S profession. By delivery of completed work, CONSULTANT certifies that the work conforms to the requirements of this Agreement and all applicable federal, state and local laws. If CONSULTANT desires to leave or store any of CONSULTANT's equipment at a CITY site while CONSULTANT is performing work or service pursuant to this Agreement, CONSULTANT will first obtain the consent of CITY's City Manager, or his 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, 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) for bodily injury or death to any one person for any one accident or occurrence and at least one million dollars (\$1,000,000.00) for property damage, 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) for bodily injury or death to any one person for any one accident or occurrence and at least one million dollars (\$1,000,000.00) for property damage, 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 contractor's liability for bodily injury, property damage and environmental damage resulting from pollution and related cleanup costs arising out of the work or services to be performed under this Agreement. Coverage shall be provided for both work performed on site, as well as during the transport of hazardous materials. Such coverage shall be in the minimum amount of: (i) one million dollars (\$1,000,000.00) for any one accident or occurrence, or (ii) the maximum amount of such insurance available to 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, 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.

7.1.5.3. 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) 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.

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

7.2.1. General Liability.

7.2.1.1. 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.

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.

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

7.4. Certificates. CONSULTANT shall furnish CITY of Morgan Hill with copies of all policies or 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. 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.

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:

Innovative Claims Solutions, Inc.
P.O. Box 5128
San Ramon, CA 94583

Address of CITY is as follows:

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

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

15. Maintenance of Records.

15.1. 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.

15.2. 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.

15.3. 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.

16. 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.

17. Time of Essence. Time is of the essence in the performance of this Agreement.

18. 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.

19. 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.

20. Defense and Indemnification.

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

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

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

20.4. Right to Offset. CITY shall have the right to offset against any compensation due CONSULTANT under this Agreement any amount due CITY from CONSULTANT as a result of CONSULTANT's failure to pay CITY promptly any indemnification arising under this Section (20) 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.

20.5. Interpretation. This Section shall constitute an agreement or contract of indemnity, incorporating the interpretations under California Civil Code Section 2778. It is expressly understood and agreed that the obligation of the CONSULTANT to indemnify the INDEMNITEE shall

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

21. 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.

22. 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.

23. 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.

24. 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.

25. Binding Agreement. Notwithstanding the provisions of Section 18 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.

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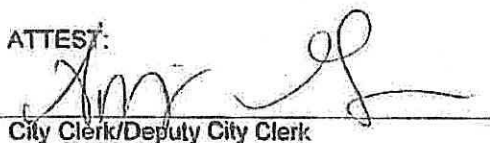
26. Authority to Execute. Those individuals who are signing this Agreement on behalf of entities represent and warrant that they are, respectively, duly authorized to sign on behalf of the entities and to bind the entities fully to each and all of the obligations set forth in this Agreement.

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.

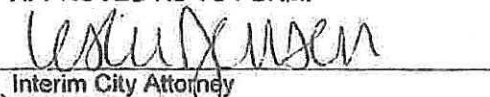
ATTEST:


 City Clerk/Deputy City Clerk

Michelle Wilson
 Print Name

Date: 6/14/16

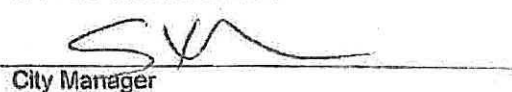
APPROVED AS TO FORM:


 Interim City Attorney

Gary Baum
 Print Name

Date: 06/14/16

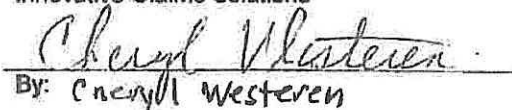
CITY OF MORGAN HILL


 City Manager

Steve Rymer
 Print Name

Date: 6/14/16

Innovative Claims Solutions


 By: Cheryl Western

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

Date: 5/9/16


 By: Gary Archibald

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

Date: 5/9/16

EXHIBIT A SCOPE OF SERVICES

Claims Administration. ICS shall adhere to the following claims administration standards and procedures:

1. ICS shall review and process reported claims for workers' compensation benefits that have not been closed as of the Effective Date of this Agreement and closed claims that reopen on or after the Effective Date. ICS shall have no responsibility other than custody of files and statistical reporting for claims closed prior to the Effective Date.
2. Determine liability for claimed injuries and illnesses in accordance with California Workers' Compensation Laws.
3. Review and process all claims in accordance with rules and regulations established by the Division of Industrial Relations, Department of Self-Insurance Plans.
4. Establish files containing medical and factual information on each reported claim together with complete accounting records and maintain same in accordance with statutory time requirements.
5. ICS shall make all workers compensation disability payments and send all notices in a timely and accurate manner and in conformance in all material respects with all applicable provisions of the California Labor Code and the California workers' compensation laws, rules and regulations.
6. Determine nature and extent of permanent disability and arrange for informal disability rating whenever possible to avoid Workers' Compensation Appeals Board litigation.
7. Explain to and assist employee in completing necessary forms for permanent disability ratings.
8. Review compute and pay all informal rating, findings and awards, life pensions or compromise and release settlements.
9. Maintain and establish reserve estimates for each reported claim.
10. Arrange for and supervise all necessary investigations to determine eligibility for compensation benefits and/or liability of negligent, third parties.
11. Identify, recommend and obtain special fraud investigations after obtaining advance authority from the CLIENT.
12. As a service to the CLIENT, ICS will report all excess claims to excess reinsurance carrier, although the final responsibility for reporting such claims is that of the CLIENT's.
13. Arrange and supervise rehabilitation services where indicated.
14. Arrange for and set up system for payment of benefits and allocated expenses in accordance with CLIENT's needs.
15. ICS shall prepared with the assistance of the CLIENT all reports, which are now, or will be required by the State of California or other government agencies with respect to self-funded programs.

16. ICS shall subscribe to and pay for enrollment in the Index Bureau System and will report to the Index Bureau on each and every indemnity claim. The per claim cost of this service shall be posted as an allocated expense to the CLIENT.

17. On behalf of the Client, ICS will perform all workers compensation claim reporting services required by the Medicare, Medicaid and SCHIP Extension Act (MMSEA) Section 111 Mandatory Reporting to the Centers for Medicare & Medicaid Services (CMS) for the periods identified in this contract.

18. ICS will comply with the performance standards as required by the City's excess carrier. ICS will advise if there are any exceptions, or when compliance with new standards may impact our annual fee.

B. Medical Administration. ICS shall adhere to the following medical administration standards:

1. Authorize, review and monitor all medical treatment required on injury or illness claims.
2. Audit and pay all medical expenses in a timely manner, and within statutory guidelines.
3. Maintain close contact with treating physicians to ensure employees receive proper medical treatment and are returned to full employment at earliest date.
4. Arrange for medical-legal opinions in disputed cases, conferring with medical examiners, CLIENT, and legal counsel where indicated.
5. Consult as required with CLIENT on those cases where injury residual might involve restriction and/or retirement potential.

C. Legal Administration. ICS shall adhere to the following legal administration standards:

1. Refer litigated cases, when needed, to attorneys recommended by ICS and approved by CLIENT for purposes of defending CLIENT's interests before Workers' Compensation Appeals Board and the court.
2. Work closely with counsel in preparing defense of litigated cases.
3. Obtain CLIENT's authorization on all settlements or stipulations when required.
4. Work closely with applicant's attorney and legal counsel in informal dispositions of litigated cases.
5. Attend, when required, Workers' Compensation Appeals Board hearings.
6. Discharge on behalf of CLIENT, all legal obligations to its injured employees imposed by Workers' Compensation Appeals Board and higher courts.
7. Protect and preserve CLIENT's interests in all potential subrogation cases.

D. Medical Cost Containment Services. ICS shall adhere to the following medical cost containment services standards:

1. ICS shall use and cooperate fully with the designated medical cost containment vendor (bill review and utilization review service provider) to review the medical bills for the CLIENT and other medical charges and provide necessary utilization review services relating to treatment requests on all claims of industrial injury or illness.

2. Unless otherwise directed, ICS will select the service provider to be utilized and CLIENT will pay for such services. The City of Morgan Hill shall be responsible for all Managed Care Services and Loss Adjustment Expenses. Managed Care Services shall include medical bill review, utilization review, and medical case management. Costs for such services are documented in Exhibit B; however, bill review services shall be billed at a rate not to exceed \$30.00 per bill. Loss Adjustment Expenses shall include all reasonable expenses necessary to the adjustment of a claim in accordance with the Service Agreement, including, but not limited to, fees for engaging defense counsel, court reporters, expert witnesses and field investigators, incurred on behalf of the City of Morgan Hill.

E. Information Systems. ICS will provide a computer system with appropriate data base management capabilities to maintain records related to the administration of the Client's workers' compensation program. ICS shall coordinate data entry for employees in the program and for services supplied by ICS. The CLIENT shall have access to the computer system during normal working hours and access to the database through its own computers at its own expense. ICS shall provide computer-generated reports that are reasonably requested on a regular basis as detailed in section F below.

F. Statistical. ICS will adhere to the following statistical report production obligations and provide all required reports to the client at agreed to intervals:

1. Report to CLIENT, monthly status of claim payments and reserves on an individual claim basis and in the aggregate.
2. Report to CLIENT, quarterly loss analysis of claims filed by frequency and severity.
3. Assist in the preparation of all reports required by the State of California or other Governmental agencies relating to Workers' Compensation claims.
4. ICS will prepare the federal information return (Form 1099) by the statutory deadline for all payments subject to 1099 reporting made by ICS on behalf of the CLIENT during the term of this Agreement.
5. Additional ad-hoc reports will be provided to CLIENT at their request at no additional cost. Special report requests that require programming time will be charged to CLIENT at \$150 per hour, which is our direct cost. Our system is capable of generating standardized reports as follows:

- Claim Logs
- Claim Activity
- Claim Cost Detail
- Claim Cost Summary
- Claim Cost Summary by Year
- Examiner Activity
- Examiner Case Log
- Frequency Reports
- Location Summary
- Management Summary
- Multiple Claims Listing
- Occurrence Cost
- OSHA
- Payment Type Totals
- Vendor Payments Summary
- State Annual Report

B. Ad-hoc reports queries, which require no specific programming will be provided at no cost to CLIENT.

G. Banking Services. ICS will adhere to the following services standards, as directed by the clients:

1. The CLIENT agrees to establish, fund and replenish an account at a financial institution agreed upon by the CLIENT and ICS for the purpose of paying benefits to workers or care providers and to pay Allocated Loss Adjustment Expenses.

2. All funds in the CLIENT Account belong to the CLIENT. ICS shall have authority to write checks on the CLIENT Account, however, two signatures may be required at client's requested level.

3. ICS shall have authority to pay Allocated Loss Adjustment Expenses from the CLIENT Account to vendors. ICS shall provide the CLIENT with detailed accountings of the expenditures from the CLIENT Account.

4. ICS agrees to make records pertinent to the CLIENT's account available to CLIENT for audit purposes at all reasonable times with at least 24 hours' notice.

5. ICS agrees to maintain CLIENT's trust fund account, if CLIENT elects such arrangement. Otherwise, CLIENT is responsible for all reconciliation and banking processes involved with CLIENT account.

6. Additional services, including but not limited to, field and investigative services, legal expenses, managed care services, index bureau inquiries, bill review and all services which are provided by outside vendors on behalf of the CLIENT shall be paid out of the CLIENT's account, or trust account.

H. Assignments. ICS shall not assign this Agreement, nor any part thereof.

I. **File Storage.** Pursuant to RR 15400.2 Of the California Code of Regulations all files closed for more than 5 (five) years shall be identified. UPON CLIENT direction ICS shall return the file(s) to CLIENT, destroy file(s) or maintain file(s) at CLIENT expense with an off-site storage facility.

J. **Cooperation.** In the event of early termination or non-renewal, both parties will cooperate in good faith to implement a transition to a new service provider with minimum disruption to the provision of benefits to workers. ICS will make available to client, and to a new service provider, all files, summary data, records and information developed with respect to this Agreement, including all loss records and a record layout describing the format of the data tapes. Such information shall be made available electronically whenever possible. The CLIENT shall assume all responsibility for open claims as of the effective date of termination.

K. **Files** All claims files, records, reports and other documents pertaining to employee claims are the property of the CLIENT and CLIENT may audit or inspect the files at any time during normal business hours. ICS shall turn over possession of all files and other documents to the CLIENT or its designee promptly upon the effective date of termination or non-renewal of this Agreement. The CLIENT shall allow ICS to review all files and other documents with information relating to its performance pursuant to this agreement.

L. **Penalties and Fines.** ICS and client agree to the following standards, protocols and principals relating to the fines and penalties:

1. ICS and CLIENT hereto acknowledge the various penalties and administrative fines that contained in The California Workers' Compensation Reform Act of 1989 (effective January 1, 1990 and January 1, 1991) that may be imposed on both employers and claim administrators.
2. ICS will be responsible for any fines or penalties associated with questionable or converted claims that ICS denies without first consulting and obtaining approval by the CLIENT for denial of the claim(s). ICS will not be responsible for any fines or penalties levied by the Division of Workers' Compensation or any other judicial or quasi-judicial organization for improper denial of a claim(s) if, over the objections of ICS, ICS has denied said claim(s) at the direction of the CLIENT.
3. The CLIENT shall be responsible for all penalties where ICS has not been given sufficient notice such that ICS has had at least seven (7) working days in which to investigate the claim and to pay temporary disability or send the required wage continuation notice before the penalties were assessed. ICS shall be responsible for all penalties in which it has had seven (7) or more working days in which to investigate and pay temporary disability or send a wage continuation notice. For the purposes of this section "working day" means all days except Saturdays, Sundays, and commonly observed holidays.
4. The services as described in this Agreement shall be performed in all material respects in accordance with applicable laws, rules, regulations and standards of governmental authorities including, in particular, applicable Workers' Compensation Laws of the State of California.
5. This Agreement shall be construed in accordance with, and governed by, the internal laws of the State of California and the venue for any disputes is the county of Santa Clara as requested by the CLIENT.

**EXHIBIT B
SCHEDULE OF COMPENSATION RATES**

City shall pay CONSULTANT an annualized fee of \$34,380 for the period of July 1, 2016 - June 30, 2017 and an annualized fee of \$34,700 for the period of July 1, 2017 - June 30, 2018.

For FY 16/17, payments will be made in equal monthly installments \$2,865.00 and for FY 17/18, payments will be made in equal monthly installments of \$2,891.66.

DRAFT



Meeting Minutes City Council

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

Wednesday, June 16, 2021 5:30 pm

Virtual Meeting

SPECIAL/REGULAR MEETING

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

5:30 p.m. Housing Affordability Workshop

7:00 p.m. Regular Meeting

SPECIAL MEETING

5:30 p.m. Housing Affordability Workshop

CALL TO ORDER

Mayor Constantine called the meeting to order at 5:30 p.m.

ROLL CALL ATTENDANCE

City Clerk Michelle Bigelow called the roll.

Attendee Name	Title	Status	Arrived
Rich Constantine	Mayor	Remote	
John McKay	Mayor Pro Tem	Remote	
Gino Borgioli	Council Member	Remote	

Minutes Acceptance: Minutes of Jun 16, 2021 5:30 PM (CONSENT CALENDAR)

Yvonne Martinez Beltran	Council Member	Remote	
Rene Spring	Council Member	Remote	

DECLARATION OF POSTING AGENDA

City Clerk Michelle Bigelow declared the posting of the agenda.

WORKSHOP

This workshop is the third in a series of Housing Workshops that will look at the current and future state of housing in Morgan Hill. This workshop is called "Housing Affordability." Staff will present and discuss the following:

- What is considered affordable housing?
- What are the different ways these units are built and by who?
- Who is the housing for?
- What agencies work on affordable housing?
- City's history of affordable housing production.
- Current City efforts.

Assistant City Manager Edith Ramirez introduced the workshop and the housing team. She then turned the presentation over to Housing Manager Rebecca Garcia who provided a presentation.

Public comment opened at 6:44 p.m.

Rocke Garcia was called to speak.

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

The workshop adjourned at 6:58 p.m.

WORKSHOP PRESENTATION

REGULAR MEETING

7:00 p.m.

The regular meeting was called to order at 7:06 p.m.

PRESENTATIONS

YAC PRESENTATION- ASSET #33- INTERPERSONAL COMPETENCE

PROCLAMATIONS

Proclaiming June 19, 2021 as Juneteenth

RECOGNITIONS

Recognizing the many volunteers who staffed the Morgan Hill Safeway/Albertsons Companies COVID-19 vaccination clinics

CITY COUNCIL REPORTS

Council Member Yvonne Martinez Beltran reported that Sister Cities has been meeting less frequently because of COVID but they hope to start their programs again once everything starts to open up again. She stated that Cal Cities had their Housing, Economic Development, and Transportation Committee

meetings where they reviewed various pieces of legislations before going through committees at the state level. Senate Bill 9 (SB 9) did advance at the State Assembly even though Cal Cities opposed it. Cal Cities sent a letter urging the legislature to take action on the Governor's proposed \$7 billion dollar, over three years, plan as it's in line with Cal Cities current budget which asks for \$3 billion next fiscal year to modernize broadband infrastructure and expand broadband to underserved and communities in need to close the digital divide. Silicon Valley Clean Energy (SVCE) they approved a 15-year renewable energy contract and will start delivering power in 2023 for a total of 239 megawatts of new energy and 40 megawatts of battery storage. They are implementing efforts to inform customers about possible summer flex alerts and energy emergencies. In response to the ASIO and PG&E notifications, SVCE will activate notices and messaging to call customers to conserve or let them know how they can prepare. They have also extended the timeline for customers to sign up for the Community Resiliency funding. Morgan Hill is eligible for a total of \$243,000. She provided an update on VTA, sharing that at their June meeting the Board approved an employment contract for the new General Manager/CEO and approved the 2022/2023 biannual budget. There is a special meeting being held on June 18th, to adopt resolutions of necessity for properties that are needed to complete the Bart Phase 2 and to consider approval of the implementation plan including 9.7 million for improvements along Cochrane Rd, Madrone Channel Trail, and Tennant Ave. and some improvements and feasibility studies along Monterey Rd.

CITY MANAGER'S REPORT

City Manager Christina Turner spoke to the evening's supplements and presentations. Due to the intense heat that we have been experiencing that will be intensifying over the next two days, there are two cooling centers set up in Morgan Hill. The Centennial Recreation Center (CRC) lobby is available as a cooling center Wednesday through Friday, June 18th from 8:00 a.m. to 9:00 p.m. The Morgan Hill Library is also set up as a cooling center today through Thursday, June 17th from 1:00 p.m. to 6:00 p.m.

A Flex Alert has been issued. The California Independent System Operator (ISO) put out an extreme heat forecast for much of California and the Southwest. What the statewide flex alert does is it encourages electricity conservation during a specific timeframe. For now they are asking for conservation between 5:00 p.m. and 10:00 p.m. This reduces stress on the grid and avoids power outages. In the past, when flex alerts happened, consumers have answered the call and cut back on electricity usage. It has helped California avoid power outages. It can, if conditions persist or worsen, become necessary when demand for electricity outstrips capacity.

She spoke regarding the dangers of fireworks. Fireworks are illegal in certain areas of California because of serious injury and millions of dollars of property loss that occur every year from wildfires sparked by fireworks. Large grass crops and dry vegetation increase the threat for devastating wildfires throughout our state. California has zero tolerance for the sale and use of illegal fireworks. Illegal fireworks include skyrockets, bottle rockets, roman candles, arial shells, firecrackers, and other fireworks that explode, go into the air, or move on the ground in an uncontrollable manner. It is illegal to sell, transport, or use fireworks that do not carry the safe and sane seal as well as possess or use fireworks in Morgan Hill. Safe and Sane fireworks can be purchased in Gilroy, but they are not to be used in Morgan Hill. If convicted, a violator can be fined up to \$50,000 as well as be sent to jail for up to one year. Parents are liable for any damage or injuries caused by their children using fireworks. Fireworks started an estimated 19,500 fires in 2018. This was 1,900 structure fires, 500 vehicle fires, and 17,100 other fires. They caused five deaths, 46 civilian injuries, and 105 million in direct property damage.

She concluded by recognizing individuals from the Police Department who participated in the Special Olympics Torch Run today. Individuals walked, ran, or rode their bikes. They started at our Cal Fire Headquarter station and ended at Monterey and Cochrane near the Arco station.

CITY ATTORNEY'S REPORT

No report.

OTHER REPORTS

Council Member Borgioli shared that the route 568 Express Bus will resume services in August of 2021 .

Mayor Pro Tem John McKay recognized School Superintendent Steve Betando for his work with the vaccination clinics and thanked him for his dedication, hard work, and for setting the tone. He thanked former City Council Member Larry Carr for bringing the resources to our community and making sure those resources were used effectively. He also recognized Emergency Services Coordinator Jennifer Ponce for the great work that she did. It was an incredible team effort, 141 volunteers manned 49 clinics and gave out 18,000 vaccines over the period of two and a half months.

PUBLIC COMMENT

Public comment opened at 7:46 p.m. The following people were called to speak:

Roseryn Bhudsabourg spoke on behalf of Valley Water

Joe Baranowski (Susie and Miguel Jimenez ceded their time)

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

PUBLIC COMMENT SUPPLEMENT 1

PUBLIC COMMENT SUPPLEMENT 2

PUBLIC COMMENT SUPPLEMENT 3

ADOPTION OF AGENDA

MOTION:

Adopting the agenda as posted.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Rene Spring, Council Member
SECONDER:	John McKay, Mayor Pro Tem
AYES:	Constantine, McKay, Borgioli, Martinez Beltran, Spring

CONSENT CALENDAR

MOTION:

Approving consent calendar items 2 through 10.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	John McKay, Mayor Pro Tem
SECONDER:	Rene Spring, Council Member
AYES:	Constantine, McKay, Borgioli, Martinez Beltran, Spring

1. **ITEM PULLED FOR DISCUSSION**
2. **ADOPT THE 2021 SANTA CLARA COUNTY MULTI-JURISDICTIONAL PROGRAM FOR PUBLIC INFORMATION (PPI), A PROGRAM UNDER THE COMMUNITY RATING SYSTEM OF THE FEDERAL EMERGENCY MANAGEMENT AGENCY'S NATIONAL FLOOD INSURANCE PROGRAM**

Recommendation:

1. Adopt the 2021 Santa Clara County Multi-Jurisdictional Program for Public Information (PPI), a program under the Community Rating System of the Federal Emergency Management Agency's National Flood Insurance Program; and
2. Approve the implementation of the 5-Year PPI Plan for the Community Rating System Program.

3. ADOPT RESOLUTION AMENDING FY 2021-2022 BUDGET TO SUPPORT A PILOT PRIVATE SEWER LATERAL GRANT PROGRAM

Recommendation:

1. Direct staff to implement a Pilot Private Sewer Lateral Grant Program; and
2. Adopt resolution amending the FY 2021-2022 Adopted Budget by \$100,000 to support the Program.

4. APPROVE THIRD AMENDMENT TO SUBDIVISION IMPROVEMENTS AGREEMENT FOR DUNNE MURPHY - TRACT NO. 10387

Recommendation:

1. Approve Third Amendment to Subdivision Improvements Agreement;
2. Authorize the City Manager to execute the Third Amendment to the Subdivision Improvements Agreement with Nordstrom Cal Homes, LLC; and
3. Authorize the recordation of the Third Amendment to the Subdivision Improvements Agreement.

5. APPROVE PURCHASE OF THREE POLICE VEHICLES AND TWO POLICE MOTORCYCLES

Recommendation:

1. Approve the purchase and build out of three vehicles from Priority 1 Public Safety Equipment and two motorcycles from BMW of Long Beach for a total amount not to exceed \$395,502;
2. Authorize the City Manager to approve the purchases with Priority 1 Public Safety Equipment Installation, Inc. and Long Beach BMW; and
3. Authorize the auction of 2006 Ford Van F350-Transport Van #122 and 2003 Ford F250 Truck ASO truck #147 as necessary following their temporary use assignments.

6. APPROVE SEVENTH AMENDMENT TO CENTENNIAL RECREATION CENTER PARTNERSHIP AGREEMENT WITH THE YMCA OF SILICON VALLEY

Recommendation:

Authorize the City Manager to execute a seventh amendment to the Centennial Recreation Center Operating Agreement with the YMCA of Silicon Valley.

7. APPROVE THE MAY 5, 2021 MEETING MINUTES

Recommendation:

Approve Minutes.

8. APPROVE THE MAY 19, 2021 MEETING MINUTES

Recommendation:

Approve Minutes.

9. APPROVE THE MAY 26, 2021 MEETING MINUTES

Recommendation:

Approve Minutes.

10. APPROVE THE JUNE 2, 2021 MEETING MINUTES

Recommendation:

Approve Minutes.

Item pulled for Discussion

1. RECEIVE REPORT REGARDING USE OF PROPOSITION 68 PARK GRANT FUNDING

Recommendation:

Receive report on potential use of Proposition 68 Per Capita Grant Funding and anticipated use for Community Park improvements.

Public comment opened at 7:55 p.m.

Armando Benavides was called to speak.

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

Public Services Director Chris Ghione provided a report.

MOTION:

Receiving the report and directing staff to bring an item back to appropriate funding for the restrooms at Galvan Park.

The meeting recessed at 8:16 p.m. and reconvened at 8:25 p.m.

PUBLIC HEARING

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

Recommendation:

1. Open and close the Public Hearing; and
2. Adopt resolution confirming Fiscal Year (FY) 2021-22 annual assessments and ordering the levy of assessments for the District.

Maintenance Services Coordinator Keri Russell provided the report.

The public hearing opened at 8:26 p.m.
There being no requests to speak, the public hearing closed.

MOTION:

Approving the recommended action.

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

OTHER BUSINESS

12. RECEIVE MONTHLY BUDGET UPDATE AND APRIL 2021 FINANCIAL AND INVESTMENT REPORTS

Recommendation:

Accept and file report.

Finance Director Dat Nguyen provided a presentation and report.

Public comment opened at 8:31 p.m.
There being no requests to speak, public comment closed.

RESULT:	ACCEPT REPORT
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13. ADOPT RESOLUTION DECLARING LEVEL 2 WATER SUPPLY SHORTAGE

Recommendation:

Adopt resolution declaring a Level 2 Water Supply Shortage and amending adopted budget.

Program Administrator Anthony Eulo provided a presentation and report.

Public comment opened at 9:40 p.m.
Armando Benavides was called to speak.
There being no further requests to speak, public comment closed.

MOTION:

Approving the recommended action.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Rene Spring, Council Member
SECONDER:	Yvonne Martinez Beltran, Council Member
AYES:	Constantine, McKay, Borgioli, Martinez Beltran, Spring

FUTURE COUNCIL INITIATED AGENDA ITEMS

Council Member Spring requested that the Council send letters of opposition to Senate Bills (SB) 8, 9, 10, and SB478. He requested that the City Attorney ask the court for permission to file a brief amicus curiae (friend of the court) to oppose the YIMBY lawsuit and to protect the City from having its RHNA increased.

Council Member Martinez Beltran requested a community workshop on where they would like to see the additional American Rescue Plan Act funds to be spent.

Mayor Pro Tem McKay requested a Council discussion about what can be done to have a greater impact in Sacramento. He also requested periodic updates on water conservation.

ADJOURNMENT

There being no further business, the meeting adjourned at 9:53 p.m.

MINUTES PREPARED BY:

Michelle Bigelow, City Clerk



CITY COUNCIL STAFF REPORT

MEETING DATE: June 23, 2021

PREPARED BY: Ray Ramos, Administrative Sergeant
APPROVED BY: City Manager

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

RECOMMENDATION(S)

1. Award Vehicle Service Agreement to Frank's Auto Service for a total not-to-exceed amount of \$368,308 over three years; and
2. Authorize City Manager to Execute the Agreement.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety
Maintaining Infrastructure

2020-2021 Strategic Priorities

Fiscal Sustainability

GUIDING DOCUMENTS

Public Safety Master Plan

REPORT NARRATIVE:

The Police and Public Services Departments collectively maintain a fleet of vehicles. As such, vehicle maintenance and repair are essential for City operations and the safety of our staff and community.

In February 2021, the City of Morgan Hill issued a Request for Proposal (RFP) for vehicle fleet repair and maintenance for the Police and Public Services Departments. The City of Morgan Hill received two proposals: 1) Frank's Auto Service and 2) AMMCO, both of which met the RFP requirements.

In response to the RFP, the Police and Public Services Departments recommend entering into a new Service Agreement with Frank's Auto Service for a 3-year term. Frank's Auto Service has provided fleet services to the Police Department for over six (6) years. The Police Department remains extremely satisfied with the services and workmanship provided. Staff is confident Frank's Auto Service will continue to provide a superior level of service under the new Agreement.

The Fleet Maintenance Agreement will begin on July 1, 2021, and run through June 30, 2024. To maintain operational efficiencies and consistency, at the end of the Agreement term, the City shall have the option to renew the Agreement for an additional two-year period.

COMMUNITY ENGAGEMENT: Inform

The RFP was posted on the City's website and with the mechanics' trade association for publication. This staff report serves to inform the community of the proposed agreement between the City of Morgan Hill and Frank's Auto Service for the repair and maintenance of vehicles operated by the Police and Public Services Departments.

ALTERNATIVE ACTIONS:

The City Council could choose not to approve this Fleet Maintenance Agreement and direct staff to issue a new RFP.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The City Council approved a maintenance agreement with Frank's Auto on June 13, 2017. The Agreement was extended for an additional year and expires June 30, 2021.

FISCAL AND RESOURCE IMPACT: There are sufficient funds in the Police and Public Services Departments' FY2021-2022 operating budgets for the costs associated with fleet repair and maintenance. Funds for FY2022-2024 (years two and three of the Agreement) will be included in the next two-year budget development process. Below is a matrix outlining the costs for each year of the 3-year Agreement.

The costs reflected in the proposal submitted by Frank's Auto Service are as follows:

Year 1: Labor Cost per Hour - \$140.00 | Material Costs 20% Above Wholesale

Year 2: Labor Cost per Hour - \$145.00 | Material Costs 20% Above Wholesale

Year 3: Labor Cost per Hour - \$150.00 | Material Costs 20% Above Wholesale

The Repair and Maintenance Agreement shall not exceed \$368,308 based on the annual breakdown reflected below (based on July 2021 contract effective date):

3 Year Vehicle Maintenance & Repair Projected Costs

Dept/Division	Cost Center	Year 1	Year 2	Year 3	TOTAL
Police	010.3210	\$68,000	\$70,720	\$73,088	\$211,808
Wastewater Operations	640.5900	\$20,800	\$21,666	\$22,534	\$65,000
Water Operations	650.5710	\$22,800	\$23,876	\$24,824	\$71,500
Streets	010.5800	\$5,000	\$5,000	\$5,000	\$15,000
Parks	010.8030	\$1,664	\$1,667	\$1,669	\$5,000
GRAND TOTAL					\$368,308

CEQA (California Environmental Quality Act): Not a Project

Continuing administrative or maintenance activities, such as purchases for supplies, personnel-related actions, general policy, and procedure making.

LINKS/ATTACHMENTS:

1. Frank's Auto and City Fleet Maintenance Agreement

**SERVICE AGREEMENT
FRANK O. GAMEZ**

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

1. **City Authority.** This Agreement is entered into pursuant to the action of the Morgan Hill City Council taken on _____, _____, 20____.
2. **Term of Agreement.** This Agreement shall cover services rendered from the Effective Date of this Agreement until June 30, 2024 at which time SERVICE PROVIDER'S services shall be completed. The City Manager is authorized to extend the term of this Agreement for a maximum period of 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 SERVICE PROVIDER shall be repair, service and routine maintenance of the Police Department, Engineering, Utilities and Community Services fleet as further described in **Exhibit A**.
4. **Compensation.** SERVICE PROVIDER shall be compensated as follows:
 - 4.1. **Amount.** \$368,308. Total compensation to SERVICE PROVIDER under this Agreement during its initial term set forth in Section 2 above shall not exceed Three Hundred and Sixty Eight Thousand and Three Hundred and Eight dollars and shall be billed based on the rate and basis set forth in **Exhibit C**. If the City Manager extends the term of this Agreement pursuant to the provisions of Section 2 above, the City Manager shall have the authority to increase the maximum compensation allowed to be paid to SERVICE PROVIDER during that extended term period, so long as City Council has appropriated sufficient funds therefor, the Parties mutually agree to such amount in a writing signed by both Parties to this Agreement and provided further that in no event shall such maximum compensation allowed for the extended term exceed 105% of the maximum compensation allowed to be paid to SERVICE PROVIDER for one year of service during the initial term of this Agreement.
 - 4.2. **Billing.** SERVICE PROVIDER shall provide CITY with an invoice containing the dated, detailed, and itemized descriptions of all services performed and expenses incurred (if such expenses are reimbursable pursuant to Exhibit C) by SERVICE PROVIDER on a monthly basis unless otherwise specified in Exhibit C. All invoices shall be sent to the CITY addressed to the department head or project manager identified below in Section 14 Notices. Payment will be made to SERVICE PROVIDER within thirty (30) days of receipt of invoice by CITY. Any rate charged shall be prorated where services are interrupted or not provided for any rate period (for example, any monthly rate charge should be prorated when services were interrupted or provided for only part of the month). For services billed on an hourly rate, the minimum unit of billed time shall not exceed one tenth of one hour. CITY shall pay for services and expenses (if so provided in Exhibit C) up to the limit of compensation set forth above, that in the CITY's judgment were necessary and reasonable. Services for work performed and expenses incurred in excess of the total compensation set forth in paragraph 4.1 above shall be at no cost to CITY.

5. **Termination.** CITY or SERVICE PROVIDER shall have the right to terminate this Agreement, without cause, by giving thirty (30) days' written notice or less under urgent circumstances. Upon such termination, SERVICE PROVIDER shall submit to CITY an itemized statement of services performed for which compensation has not been paid. CITY may require SERVICE PROVIDER to complete certain work product or documents and SERVICE PROVIDER shall deliver to CITY all documents in its possession without additional compensation to SERVICE PROVIDER. The City Manager 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 SERVICE PROVIDER of such occurrence, and this Agreement shall terminate after the last day during the fiscal year for which appropriations shall have been budgeted for CITY or are otherwise available for payments.

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

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

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

8.1. **Insurance Types and Amounts.**

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

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

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

8.1.4. **Pollution (Environmental) Liability.** Intentionally Omitted.

8.1.5. **Garagekeepers:** SERVICE PROVIDER shall maintain Garagekeepers insurance covering all owned and non-owned automobiles, including automobile parts and equipment, in SERVICE PROVIDER's care, custody or control against claims and liabilities for damage, theft, or other loss in the minimum amount of: (i) one hundred and fifty thousand dollars (\$150,000.00) or (ii) the maximum amount of such insurance available to SERVICE PROVIDER under SERVICE PROVIDER's combined insurance policies (including any excess or "umbrella" policies), whichever is greater. Such insurance shall be primary over any other insurance.

8.1.6. **Professional Liability.** Intentionally Omitted.

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

8.2.1. **General Liability.**

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

8.2.1.2. 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,

8.2.1.3. Insurance shall be primary non-contributing.

8.2.2. Workers Compensation.

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

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

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

Certificate Holder address:

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

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

10. Compliance with Law.

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

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

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

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

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

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

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

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

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

Address of SERVICE PROVIDER is as follows:

Frank O. Gamez, Inc dba Frank's Auto Service
16250 Railroad Avenue
Morgan Hill, CA 95037

Address of CITY is as follows:

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

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

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

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

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

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

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

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

22. **Defense and Indemnification.**

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

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

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

22.4. **Right to Offset.** CITY shall have the right to offset against any compensation due SERVICE PROVIDER under this Agreement any amount due CITY from SERVICE PROVIDER as a result of SERVICE PROVIDER's failure to pay CITY promptly any indemnification arising under this Section (22) and any amount due CITY from SERVICE PROVIDER arising from SERVICE PROVIDER's

failure either to (i) pay taxes on amounts received pursuant to this Agreement or (ii) comply with applicable workers' compensation laws.

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

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

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

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

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

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

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[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
 Print Name

 Christina J. Turner
 Print Name

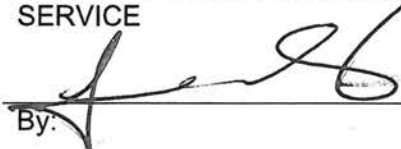
Date: _____

Date: _____

APPROVED AS TO FORM:

FRANK O. GAMEZ, INC, dba FRANK'S AUTO SERVICE

 City Attorney

By: 

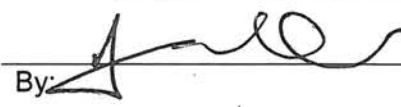
 Donald A. Larkin
 Print Name

FRANK GAMEZ PRESIDENT
 Print Name and Title of Signer.

If Corporate: Chairman, President or Vice President

Date: _____

Date: 6-10-21

By: 

FRANK GAMEZ Vice President
 Print Name and Title of Signer.

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

Date: 6-10-21

EXHIBIT A SCOPE OF SERVICES

GENERAL PROVISIONS

Service Provider will perform general and preventive maintenance and routine repair services on vehicles and equipment including, but not limited to, brakes, tires, suspension, heat/air conditioning systems, electrical systems, engine, etc. as outlined below.

A. Preventive Maintenance

The Police Department has (41) vehicles in its fleet, and they are routinely driven in short distances, frequent start/stop, and long idle periods. The Police Department requests the SERVICE PROVIDER to provide a recommended schedule for fleet vehicle maintenance requirements due to the use conditions. The average annual usage is 13,000 miles for Police patrol vehicles.

Engineering, Utilities, and Community Services have (54) vehicles in its fleet, and they are routinely driven in short distances, frequently start/stop, and for long periods of time. The average annual usage is approximately 7,000 miles for utility vehicles.

B. Repairs and Maintenance

Provide service/repairs to all common mechanical and electrical systems as needed.

C. Transport of Vehicles for Services

- a. Provide pick-up and delivery vehicle to and from Police Department.
 - i. Police Department - 16200 Vineyard Boulevard
- b. Provide pick-up and delivery vehicle to and from the City of Morgan Hill's Corporation Yard
 - i. City of Morgan Hill Corporation Yard – 100 Edes Court
- c. For vehicles not drivable, an additional towing charge may be billed upon approval of authorized city staff.
- d. Contractor shall store vehicles in a secured yard for overnight storage.
- e. 24/7 on-call phone and shop open to all city vehicles.
- f. Locked and gated facility that includes alarm and security cameras.

D. Conditions on Required Services

- a. When a prior appointment has been made for routine maintenance, the turn-around time should be between 4 to 6 hours.
- b. Provide adequate inventory on special parts to ensure minimum turn-around on non-routine repairs.
- c. All Police Department fleet vehicles that have been involved in a pursuit will undergo inspection and repair as required. Vehicles to be inspected after pursuit will be the discretion of officer-involved and authorized Police Department staff.
- d. The inspection will be completed immediately after a pursuit.

E. Repair Order Content and Procedure

- a. The SERVICE PROVIDER shall provide Repair Orders for all services provided containing the following information:
- b. Repair estimates with anticipated work to be performed, estimated completion time, and estimated cost signed by the City staff upon pick-up/drop-off. A confirming copy with the final cost shall be emailed to City upon completion, and a billing copy shall be sent to the City with the invoice.
- c. Actual work/cost above written estimate requires City approval prior to work start.
- d. Authorization of work by a designated City employee or designee is required for all repair orders.
- e. Individual vehicle charges shall be submitted on separate repair orders for each service visit. *The repair order must include:*
 - i. Date work performed
 - ii. Vehicle Number and/or license #, make/model
 - iii. Vehicle mileage at the time of service/repair
 - iv. Date in / date out / time completed
 - v. Detail type of service, hours, material used, and cost associated with each.
 - vi. Subcontracted repair orders containing the same information shall be attached to the repair order.
- f. The SERVICE PROVIDER guarantees and warrants that all material furnished, and all services performed will be free from defects in material and workmanship and will be warranted by SERVICE PROVIDER for a minimum of 12 months, 12,000 miles, or the length of time of any warranty given by the manufacturer or rebuilder/remanufacturer, whichever is greater, after acceptance. The SERVICE

PROVIDER shall remedy all such defects at his/her own expense within one (1) working day after notification by the City.

- g. Warranty repair orders need to be provided by the SERVICE PROVIDER. The SERVICE PROVIDER shall be the prime Contractor.

F. Fleet Maintenance Software

City has purchased a cloud-based fleet management software program called RTA. SERVICE PROVIDER is required to utilize the software to maintain service and repair records and track inventory of parts purchased. SERVICE PROVIDER will be required to install the RTA software on its business/commercial hardware and identify appropriate staff to be trained in its use and utilize the software as required for the Police Department and Engineering, Utilities, and Community Services.

G. Hours of Operation

The Police Department is active on a 24/7 basis and desires the most comprehensive hour coverage possible. Normal business hours for Frank's Auto Service are Monday to Friday from 8:00 am to 5:00 pm. Frank's Auto Service has provided an emergency contact number to the Police Department representative to arrange for delivery of vehicles, if required, outside of regularly scheduled hours of operation

H. Employees

SERVICE PROVIDER'S employees who work on all City vehicles shall undergo a criminal background check. Any arrest recorded will be reviewed by the police department's designee.

EXHIBIT B OPERATING PROCEDURES FOR VEHICLE MAINTENANCE SERVICES

This sets forth the operating policy and procedures for servicing City vehicles and equipment. It discusses maintenance scheduling procedures and invoicing requirements.

Contracted maintenance facilities are expected to provide prompt, courteous and competent service to drivers. Garage staff must be knowledgeable about service procedures and initiate the service transaction within 30 minutes of their arrival and/or service call is placed. It is important that the service desk is staffed adequately to provide efficient customer service in a timely manner.

To assist the SERVICE PROVIDER with the maintenance program, the City will provide:

1. Listing of covered vehicles (Exhibit F) updated, as necessary.
2. Repair orders and billing invoices must refer to the vehicles by their VIN number.
3. City preventive maintenance schedule (Schedule A).
4. Designated City staff contacts.

A. Safety Check

SERVICE PROVIDER shall perform a safety check in conjunction with all maintenance requirements listed within this Agreement. These safety checks shall be performed every time a vehicle is brought in for service:

- ✓ Tires – Visually check condition/Alignments.
- ✓ Lights – Check directional signaling devices and emergency light systems for proper operation.
- ✓ Seat belt – Check operation of seat belts.

Windshield Wipers and Washers – Check condition of wiper arms and blades. Check aim and flow of washer spray. Fill washer reservoir with washer solvent.

- ✓ Fluid Levels – Check and replenish fluid levels in transmission, differential, steering sector or power steering pump, and master cylinder. Inspect all units for leakage and clogging.
- ✓ Battery – Check condition of heatshield, hold-down clamps and cable ends, top off electrolyte level, and clean top and terminals as necessary.
- ✓ Heater-Defroster-Air Conditioner System and Wiper Controls – Check switches,

valves, and ducting doors for proper operation.

- ✓ Exhaust System – Visually inspect complete exhaust system including catalytic converter and heat-shielding. Check for broken, damaged, missing, or poorly positioned parts. Inspect for open seams, holes, or any condition which could allow exhaust fumes to enter the vehicle.
- ✓ Steering and Suspension Components – Conduct a “look and “shake” inspection.
- ✓ Frame/Sub-Frame and Cross Member – Visually check for “drive-over” and/or vehicular damage and fatiguing.
- ✓ Drive Shaft U-Joints / CV Joints – Conduct a “look” and “shake” inspection for seal leakage and joint failure.
- ✓ Critical Components – Check condition of all under-hood heatshields, and the routing of all hoses and wiring to ensure maximum protection from radiated exhaust heat. Inspect all coolant hoses, fuel line hoses, power steering hoses, engine accessory drive belts, and other under-hood plastic or rubber components.
- ✓ Brakes – Inspect all brake line hoses and master cylinder for signs of leaks or damage. Inspect front brake pads, rear brake linings, wheels cylinders, and parking brake cables and linkage. Report estimate of remaining life of pads and shoes.
- ✓ Starter/Charging System – Electronically check starter motor cranking speed and current draw. Check alternator charging rate.
- ✓ Cooling System – Visually inspect entire system for leaks, damage or others signs of needed repair.
- ✓ Tire Repair/Headlamps/Brakes – these shall be repaired and receive priority while officer waits in order to minimize time vehicle is out of service.

B. Scheduling of Maintenance and Service Procedures

1. The Police Department and Engineering, Utilities, and Community Services will designate an authorized Fleet Representative (FR); the FR is the SERVICE PROVIDER'S primary contact with the City.
2. SERVICE PROVIDER shall identify a single individual by name to serve as the responsible contact for daily communication with the Police Department and Engineering, Utilities, and Community Services regarding vehicle scheduling and vehicle status update(s).

3. The FR will contact the designated SERVICE PROVIDER'S representative between 8:00 a.m. and 5:00 p.m., weekdays to determine the status of vehicles and/or equipment being serviced. The SERVICE PROVIDER'S representative shall provide accurate and timely information to the FR on vehicle status including but not limited to:
 - What vehicle(s)/equipment are ready by vehicle VIN number.
 - What vehicle(s)/equipment are being serviced/require repair.
 - Estimated completion of vehicle(s)/equipment under repair.
 - Description of repairs and costs.
4. After the service is completed, the SERVICE PROVIDER shall:
 - a. Complete Vehicle Service Order ready for FR or designee to sign.
 - b. Place service reminder label on the driver's side windshield stating the next maintenance Mileage and Date for routine preventive maintenance.
 - c. Contact FR or designee to provide time that vehicle is ready for transporting back to the original location. If the FR is not available, leave a voicemail message.
 - d. After the FR or designee has checked the work performed, signed off on the Repair Order, the Service Provider's representative shall provide the vehicle keys to the FR or designee.
5. When repairs cannot be accomplished at the SERVICE PROVIDER'S facility, the Service Provider must contact the FR for instructions. No repairs shall be made by non-authorized facilities without notification of the FR.
6. SERVICE PROVIDER shall report to the FR any vehicle brought in for service or repair and the Service Provider has determined that the service or repair was due to driver misuse.
7. SERVICE PROVIDER will be responsible for loss and damage to all City vehicles under its custody and/or control.
8. All repair parts are to be original equipment manufacturer (OEM) or equivalent. Exceptions will be individually considered by the FR on a case-by-case basis.

C. Preventive Maintenance

Based on the Maintenance Schedule attached as Schedule A, the Police Department and Engineering, Utilities, and Community Services will provide a listing of vehicles due for preventive maintenance service at the beginning of each month. Vehicles will be listed by VIN number, the type of preventive maintenance the vehicle is to receive, and the week the vehicle is due for service. The FR or designee will notify the SERVICE PROVIDER for specific dates vehicle will be ready for service.

The preventive maintenance services will be in accordance with the preventive maintenance schedule. Additionally:

1. If projected brake pad/shoe life is less than 1500 miles, replace brake pads/shoes.
2. Tires will be checked, and depth of tread will be indicated on Repair Order.
3. Turn-around time of 6 to 8 hours for routine preventive maintenance is expected.
4. When a prior appointment has been made for routing maintenance, the turnaround time should be four (3 to 5) hours.

CI. Non-Preventive Maintenance Service and Emergencies

1. Non-routine maintenance, other than emergencies, will be handled by appointment through the FR or designee. If a City employee delivers a vehicle to the SERVICE PROVIDER'S facility Monday through Friday between 8:00 a.m. and 5:00 p.m. requesting service without prior notification to you from the City, call the FR or designee for instructions.
2. After hour's delivery, if a City vehicle has a breakdown or is involved in an accident and must be towed, then it will be towed to the SERVICE PROVIDER'S locked facility. In such a situation, the Service Provider shall contact the FR for instructions and be present to accept vehicle.
3. There may be times when the FR calls early in the day with a specific set of instructions, and later in the day changes them; or, another staff member will call to change them if the FR is not available. The last set of instructions will prevail.
4. Turn-around time of 6 to 8 hours for non-preventive maintenance service is required, unless otherwise approved by the FR.

**EXHIBIT C
PAYMENT PROVISIONS**

Payment for services shall be as described in Exhibit D and E

SCHEDULE A VEHICLE MAINTENANCE SCHEDULE

		Service A				Service B				Service C				Service D			
		At 15,000 Miles	At 30,000 Miles	At 45,000 Miles	At 60,000 Miles	At 15,000 Miles	At 30,000 Miles	At 45,000 Miles	At 60,000 Miles	At 15,000 Miles	At 30,000 Miles	At 45,000 Miles	At 60,000 Miles	At 15,000 Miles	At 30,000 Miles	At 45,000 Miles	At 60,000 Miles
1	Change Engine Oil	X				X				X				X			
2	Change Engine Oil Filter	X				X				X				X			
3	Check Air Filter Condition	X				X				X				X			
4	Check and Adjust Drive Belts	X				X				X				X			
5	Check Battery Electrolyte Level, Add Water As Needed; Clean And Tighten Terminals	X				X				X				X			
6	Check Brake Fluid Level	X				X				X				X			
7	Check Brake Pads, Shoes, Hoses	X				X				X				X			
8	Check Breather Condition	X				X				X				X			
9	Check Drive Tran Fluid Levels (Transmission, Transfer case, Differential)	X				X				X				X			
10	Check Engine Compartment Fluid Levels, Add As Needed	X				X				X				X			
11	Check Engine Cooling System, Hoses And Clamps	X				X				X				X			
12	Check Exhaust System	X				X				X				X			
13	Check Front And Rear Shocks For Wear and/or Leakage	X				X				X				X			
14	Check Exterior & Interior Lights And Other Electrical Items For Correct Operation	X				X				X				X			
15	Check Power Steering Fluid Level	X				X				X				X			
16	Check Tire Pressure And Condition	X				X				X				X			
17	Check Windshield Wiper operation, Blades condition, Washer Solvent level, Fill as needed.	X				X				X				X			
18	Lubricate Chassis/CV boots	X				X				X				X			
19	Lubricate Steering Linkage	X				X				X				X			
20	Check Front Brake Pads, Rotors And Calipers	X				X				X				X			
21	Check Rear Brake Shoes, Drums And Wheel Cylinders	X				X				X				X			
22	Rotate Tires (4 Way - Front To Rear)	X				X				X				X			
23	Air Filter - Replace	As Needed				As Needed				As Needed				As Needed			
24	Check Headlight Alignment	X				X				X				X			
25	Check Parking Brake Operation	X				X				X				X			
26	Lubricate Door Latches, Locks And Hinges	X				X				X				X			
27	Fuel Filter - Replace	As Needed				As Needed				As Needed				As Needed			
28	Transmission - Change Fluid, Filter, Gasket	X				X				X				X			
29	Check Air Condition System, Freon Level And Compressor Operation Where Applicable	X				X				X				X			
30		X				X				X				X			

EXHIBIT D

RECOMMENDED VEHICLE MAINTENANCE SCHEDULE		Service A		Service B		Service C		Service D	
		At	5000 Miles	At	5000 Miles	At	5000 Miles	At	5000 Miles
1	Change Engine Oil								
2	Change Engine Oil Filter								
3	Check Air Filter Condition								
4	Check and Adjust Drive Belts								
5	Check Battery Electrolyte Level, Add Water As Needed; Clean And Tighten Terminals								
6	Check Brake Fluid Level								
7	Check Brake Pads, Shoes, Hoses								
8	Check Breather Condition								
9	Check Drive Tran Fluid Levels (Transmission, Transfer case, Differential)								
10	Check Engine Compartment Fluid Levels, Add As Needed								
11	Check Engine Cooling System, Hoses And Clamps								
12	Check Exhaust System								
13	Check Front And Rear Shocks For Wear and/or Leakage								
14	Check Exterior & Interior Lights And Other Electrical Items For Correct Operation								
15	Check Power Steering Fluid Level								
16	Check Tire Pressure And Condition								
17	Check Windshield Wiper operation, Blades condition, Washer Solvent level, Fill as needed.								
18	Lubricate Chassis/CV boots								
19	Lubricate Steering Linkage								
20	Check Front Brake Pads, Rotors And Calipers								
21	Check Rear Brake Shoes, Drums And Wheel Cylinders								
22	Rotate Tires (4 Way - Front To Rear)								
23	Air Filter - Replace								
24	Check Headlight Alignment								
25	Check Parking Brake Operation								
26	Lubricate Door Latches, Locks And Hinges								
27	Fuel Filter - Replace								
28	Transmission - Change Fluid, Filter, Gasket								
29	Check Air Condition System, Freon Level And Compressor Operation Where Applicable								
30									

EXHIBIT E
COST AND CONDITIONS

Services/Costs	Police, Engineering and Utilities, and Community Services 4x4 Trucks, Utility Vehicles & Sedans							
	Labor Per Hour	Year 1	Year 2	Year 3	Material Cost	Year 1	Year 2	Year 3
Service A: Vehicle Maintenance Services provided at mileage level as reflected in Exhibit D		\$140	\$145	\$150		20%	20%	20%
Service B: Vehicle Maintenance Services provided at mileage level as reflected in Exhibit D		\$140	\$145	\$150		20%	20%	20%
Service C: Vehicle Maintenance Services provided at mileage level as reflected in Exhibit D		\$140	\$145	\$150		20%	20%	20%
Service D: Vehicle Maintenance Services provided at mileage level as reflected in Exhibit D		\$140	\$145	\$150		20%	20%	20%
Cost of Hourly Labor Rate (not included in Service A,B,C,D)		\$140	\$145	\$150		20%	20%	20%
Replacement Dealer Parts (not included in Service A,B,C,D)		\$140	\$145	\$150		20%	20%	20%
Replacement Non-Dealer Parts (not included in Service)		\$140	\$145	\$150		20%	20%	20%

5.a

Conditions:

1. Prices for the services listed above must include all labor and material needed to complete the services specified.
2. Prices proposed in this section are fixed prices for the initial period of the contract (three years). Should City elect to renew the contract for an additional 2 years, the unit price of the Contract will be subject to negotiation and be mutually agreed upon by both parties for the 24-month term.
3. All repair parts are to be OEM or equivalent. Exceptions will be individually considered on a case- by-case basis. Price for each service shall include parts, labor and all necessary fluids and free fluid top off between service intervals.
4. Provide break down of labor hours for each periodic repair item and indicate any exceptions, if applicable. Labor hours shall be repair time, not factory time.
5. Unless otherwise specified and/or agreed to, all services performed will be free from defects in material and workmanship and will be warranted for a minimum of 120 days or 4000 miles, or the length of time of any warranty given by the manufacturer or rebuilder/remanufacturer, whichever is greater, after acceptance.

EXHIBIT F
Morgan Hill Police Department and Engineering, Utilities, and Community Services
Fleet List

DESCRIPTION	REPLACEMENT DATE
2005 Ford Expedition (115)	N/A
2006 Ford E350 Prisoner Transport Van (122)	2021
2010 Ford Police Interceptor (139)	N/A
2012 Chevy Tahoe (141)	2020
2015 Ford Police Interceptor SUV (144)	2021
2003 Ford F250 Utility-Animal Control (147)	2021
2017 Ford Police Interceptor SUV (152)	2023
2017 Ford Police Interceptor SUV (153)	2023
2007 Chevy Silverado- Graffiti (154)	N/A
2017 Ford Police Interceptor SUV (155)	2023
2017 Ford Police Interceptor SUV (156)	2023
2017 Ford Police Interceptor SUV (157)	2023
2017 Ford Police Interceptor SUV (158)	2023
2019 Ford Police Interceptor SUV (159)	2025
2019 Ford Police Interceptor SUV (160)	2025
2019 Ford Police Interceptor SUV (161)	2025
2018 Ford F150- MSO (162)	2025
2019 Chevy Tahoe (163)	2025
2016 Honda Motorcycle (148)	2022
2016 Honda Motorcycle (149)	2022
2020 BMW Motorcycle (150)	2026
2006 Ford F150 Extended Cab- Tan (300)	N/A
2011 Chevy Malibu- Blue (304)	N/A
2011 Ford Taurus- Silver (305)	N/A
2012 Ford Taurus- White (306)	N/A
2013 Ford Taurus – Silver (308)	2021
2014 Ford Fusion – Silver (309)	2022
2001 Ford F450- SWAT (307)	NA
2014 Honda Accord (310)	2022

2015 Honda Accord (311)	2023
2015 Honda Accord (312)	2023
2016 Chevy Tahoe (313)	2024
2000 Chevy Express G1500- EOC (314)	N/A
2020 Ford Explore (315)	2028
2020 Ford Explore (316)	2028
2020 Ford Explore (317)	2028
1955 Oldsmobile	NA
Radar Trailer	2015
DUI Trailer	NA
2004 Pace Am Trl MEDC03A	NA
2005 Zieman Dual Motorcycle Trailer	NA
2004 Pace Am Trl HOMSEC	NA

Engineering, Utilities, and Community Services

Vehicle Description	Replacement Year
2007 Ford F250 4x4 (S07158)	2020
2008 Ford F450 Dump Truck (S08123)	2023
2011 Ford F350 Flat Bed 4x4 (S11159)	2023
2015 Ford F350 flatbed 4X4 (S15116)	2023
2018 CCTV Truck (S18160)	2033
2019 Ford F-150 (S19103)	2026
2019 Ford F450 Supercab w/ Scelzi Utility Body (S19152)	2026
2019 Ford F-150 (S19169)	2026
2007 Ford 4WD Expedition SUV (U07114)	2020
2007 Ford Escape (U07137)	2021
2010 Ford F150 Super Cab (U10167)	2020
2006 Ford F150 4x4 (W06165)	2020
2007 Ford F150 Super Cab (W07115)	2021
2007 Ford F150 Super Cab (W07129)	2020
2008 Ford F350 (W08155)	2021

2009 Ford Ranger Super Cab (W09154)	2021
2011 Ford F450 Utility Truck w/Crane (W11124)	2022
2014 Ford F150 Super Cab (W14161)	2024
2015 Ford F450 Supercab (W15117)	2022
2015 Ford F450 Supercab w/ Scelzi Utility Body (W15144)	2022
2018 Ford Transit Cargo Van (W18163)	2025
2019 Ford F350 Supercab w/ Scelzi Utility Body (W19104)	2027
2019 Ford F450 Supercab w/ Scelzi Utility Body (W19168)	2026
2019 Ford F450 Supercab w/ Scelzi Utility Body (W19170)	2026
2019 Ford F450 Supercab w/ Scelzi Utility Body (W19171)	2026
2020 Ford F150 (U20167)	2027
2020 Ford F150 (U20165)	2027
2020 Ford F150 (U2019)	2027
2020 Ford F250 4x4 (S20158)	2027
2008 Ford Ranger Extended Cab (E08153)	2020
2008 Ford Ranger Extended Cab (E08156)	2020
2007 Ford Escape SLS 4WD (E07141)	2020
2020 Ford F150 (R20120)	2027
2007 Ford F250 4x2 supercab utility (R07150)	N/A
2020 Ford F250 4x2 supercab (R20102)	2027
1999 Dodge 1500 Club Cab (R99117)	N/A
2008 Ford F250 4x2 supercab (R08118)	N/A
2001 Jeep Cherokee (D01116)	N/A
2014 Chevy PU 2WD (D14182)	N/A
2008 Ford F450 4x2 reg cab utility w/crane	N/A
2020 Ford F250 4x4 supercab	2027
2011 Ford F250 4X4 - abatement spray truck (D11151)	N/A
2008 Ford F450 4x2 crew cab (D08127)	N/A
2014 Ford Focus Electric (D14116)	N/A
2014 Ford 150 (B14152)	N/A

2014 Ford 150 (B14153)	N/A
2018 Ford Escape SE 4WD (B18151)	N/A
2018 Chevy Colorado (B18150)	N/A
2019 Ford F150 crew cab	N/A
2020 Ford Ranger	N/A
2002 Chevy pick up 2WD (D02182)	N/A
2010 Ford Ranger pick up (A10120)	N/A
2014 Ford Flex (A14121)	N/A
2014 Ford F150 (A14122)	N/A



CITY COUNCIL STAFF REPORT

MEETING DATE: June 23, 2021

PREPARED BY: Cynthia Iwanaga, Management Analyst
APPROVED BY: City Manager

AWARD COMMUNITY AND CULTURAL CENTER BOILER REPLACEMENT PROJECT TO STEPHEN CIARI PLUMBING AND HEATING, INC.

RECOMMENDATION(S)

1. Adopt resolution amending the Fiscal Year 2020-21 Adopted Budget to appropriate an additional \$28,101 from the Building Replacement Fund (741) for the Community and Cultural Center Boiler Replacement Project;
2. Award contract to Stephen Ciari Plumbing and Heating, Inc. in the amount of \$98,274 and authorize the expenditure of (10%) contingency funds not to exceed \$9,827 for a total authorization of \$108,101; and
3. Authorize the City Manager to execute and administer that certain contract with Stephen Ciari Plumbing and Heating, Inc.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety
Maintaining Infrastructure

REPORT NARRATIVE:

The purpose of this item is to provide the City Council with an opportunity to consider the award of a contract to Stephen Ciari Plumbing and Heating, Inc. ("Ciari") in the amount of \$98,274 with a 10% contingency amount of \$9,827 for a total authorization of \$108,101. The scope of work for this Community and Cultural Center (CCC) Boiler Replacement Project ("Project") includes all labor and material necessary to remove and replace the water boiler at the CCC. The water boiler supplies the HVAC heating water to the building. It is original equipment from the CCC opening in 2002 and is near end of life and requires replacement.

The Invitation to Bid was released on May 17, 2021 and four bids were received on June 3, 2021. In soliciting bids for this project, the City advertised in the Morgan Hill Times on May 14, 2021. The bids were also posted on the City website and on two online bid services, Public Purchase and the Online Plan Service, whose subscribers include multiple Northern California Builders' Exchanges. Bid documents were also sent directly to the County of Santa Clara Builders' Exchange and the Central Coast Builders' Association.

On June 3, 2021, four (4) bids were received from the following contractors:

Bidder's Name	Bid Amount
A&B Mechanical, Inc.	\$153,980
ACCO Engineered Systems	<u>\$189,975</u>
Bay City Boiler and Engineering Co.	\$116,000
Stephen Ciari Plumbing and Heating, Inc.	\$ 98,274

Staff recommends that the City Council award the contract to Stephen Ciari Plumbing and Heating, Inc. and authorize the City Manager to execute and administer the agreement (Attachment B).

COMMUNITY ENGAGEMENT: Inform

Before and during the boiler replacement project, signs will be posted at the Community and Cultural Center informing customers of the upcoming project and days or times that the facility will be closed. Scheduling will occur to minimize any impacts on CCC users. Welcome Desk staff will be kept informed of the schedule to respond to any customer inquiries. The project status will also be included in the City's The Scoop weekly newsletter.

ALTERNATIVE ACTIONS:

The City Council could decide not to approve this project and direct staff to pursue an alternative approach to replacing the hot water boiler at the CCC. Postponing this work is not recommended due to the age and condition of the original boiler.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The Council has not previously taken action on this item.

FISCAL AND RESOURCE IMPACT:

If approved, the total funding authorization for this agreement will be \$108,101, which includes the contract amount of \$98,274 and a 10% contingency (\$9,827). The contingency will support completing the project within the anticipated schedule ensuring the best customer service. The FY 2020-21 Adopted Budget includes \$80,000 in the Building Replacement Fund (741) for this project. Because the cost is higher than anticipated, staff recommends adopting the attached resolution and budget scorecard (Attachment A) which appropriates an additional \$28,101 in the Building Replacement Fund (741) to this project.

CEQA (California Environmental Quality Act): Categorical Exemption.

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

LINKS/ATTACHMENTS:

1. Attachment A- Resolution_CCC Boiler_Amend_Budget_FY_2021_v2
2. Attachment B- Ciari Plumbing Contract_CCC Boiler Replacement

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO THE CITY'S FISCAL YEAR 2020/2021 BUDGET IN THE BUILDING REPLACEMENT FUND (FUND NO. 741) TO APPROPRIATE \$28,101 THEREFOR

WHEREAS, the City of Morgan Hill, a municipal corporation and general law city duly organized and existing under and pursuant to the Constitution and laws of the State of California ("City"), is authorized to enter into contracts and agreements for the benefit of the City and, has adopted a two-year budget for Fiscal Years 2020/2021 and 2021/2022; and

WHEREAS, recommended amendments are needed and proposed to the City's previously adopted Two Year Budget for Fiscal Years 20/21 and 21/22, as set forth on Exhibit A to this Resolution, to appropriate the requisite funds to implement the actions authorized by this Resolution; and

WHEREAS, the activities allowed under this Resolution do not constitute a project under the provisions of California Environmental Quality Act of 1970; and

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

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

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

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

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

- a. That the City's previously adopted Two Year Budget for Fiscal Years 20/21 and 21/22, as the same has been amended to date, is hereby further amended in accordance with and as reflected on Exhibit A attached hereto and incorporated herein by this reference; and

- b. That the City Clerk is hereby authorized and directed to forward a copy of this Resolution to the City's Finance Director, who is hereby authorized and directed to take all actions necessary to implement the terms of this **Resolution pertaining to the Two-Year Budget for Fiscal Years 20/21 and 21/22; and**

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

PASSED, APPROVED AND ADOPTED by the City Council of Morgan Hill at a regular meeting held on the 23rd day of June 2021.

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

APPROVED:

ATTEST:

RICH CONSTANTINE, Mayor

MICHELLE BIGELOW, City Clerk

∞ CERTIFICATION ∞

I, Michelle Bigelow, City Clerk of the City of Morgan Hill, California, do hereby certify that the foregoing is a true and correct copy of Resolution No. 21-XXX, adopted by the City Council at the meeting held on June 23, 2021.

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

DATE: _____

Michelle Bigelow, CITY CLERK

AGENDA BUDGET SCORECARD

FISCAL YEAR 2020-2021

ADJUSTMENT #

017

FUND:

741

Building Replacement Fund

DEPARTMENT:

8500

Building Replacement-Equipment Replacement

OBJECT:

43820

OTHER IMPROVEMENTS

AGENDA DATE:

06/23/21

AGENDA ITEM TITLE:

CCC Boiler Replacement Project

	07/01/20 PROJECTED BEGINNING FUND BALANCE	ESTIMATED REVENUES	AMENDED APPROPRI- ATIONS	06/30/21 PROJECTED ENDING FUND BALANCE
ORIGINAL BUDGET	2,515,067	726,251	457,000	2,784,318
CUMULATIVE REVISIONS PRIOR TO RECOMMENDED ACTION	-	-	-	-
RECOMMENDED ACTION		-	28,101	(28,101)
RESULT OF RECOMMENDED ACTION	<u>2,515,067</u>	<u>726,251</u>	<u>485,101</u>	<u>2,756,217</u>

CONTRACT

This public works contract ("Contract") is entered into by and between the City of Morgan Hill ("City") and Stephen Ciari Plumbing and Heating, Inc. ("Contractor") for work on the CCC Boiler Replacement Project ("Project").

The parties agree as follows:

1. **Award of Contract.** In response to the Notice Inviting Informal Bids, Contractor has submitted a Bid Proposal to perform work on the Project, and on [REDACTED], 20 [REDACTED], (Contract Date) City authorized award of this Contract to Contractor for the amount of Contractor's bid.
2. **Contract Documents.** The Contract Documents incorporated into this Contract include and are comprised of all of the following:

- 2.1 Notice Inviting Informal Bids;
- 2.2 Instructions to Bidders;
- 2.3 Addenda, if any;
- 2.4 Bid Proposal and attachments thereto;
- 2.5 Contract;
- 2.6 Payment and Performance Bonds;
- 2.7 General Conditions;
- 2.8 Special Conditions;
- 2.9 Project Drawings and Specifications;
- 2.10 Change Orders, if any;
- 2.11 Notice of Award;
- 2.12 Notice to Proceed;
- 2.13 And the following:

"No other documents"

3. **Contractor's Obligations.** Contractor agrees to perform all of the Work required for the Project, as specified in the Contract Documents. Contractor must provide, furnish, and supply all things necessary and incidental for the timely performance and completion of the Work, including all necessary labor, materials, equipment, transportation, and utilities, unless otherwise specified in the Contract Documents. Contractor must use its best efforts to complete the Work in a professional and expeditious manner and to meet or exceed the performance standards required by the Contract Documents.

4. **Payment.** As full and complete compensation for Contractor's timely performance and completion of the Work in strict accordance with the terms and conditions of the Contract Documents, City will pay Contractor Ninety-Eight Thousand Two Hundred Seventy-Four Dollars (\$98,274.00) (the "Contract Price"), in accordance with the payment provisions in the General Conditions. The Contract Price includes all applicable federal, state, and local taxes.
5. **Time for Completion.** Contractor will fully complete the Work for the Project within **30 calendar days** from the commencement date given in the Notice to Proceed ("Contract Time"). By signing below, Contractor expressly waives any claim for delayed early completion.
6. **Liquidated Damages.** If Contractor fails to complete the Work within the Contract Time, City will assess liquidated damages in the amount of Five Hundred Dollars (\$500.00) for each day of unexcused delay in completion, and the Contract Price will be reduced accordingly.
7. **Labor Code Compliance.**
 - 7.1 **General.** This Contract is subject to all applicable requirements of Chapter 1 of Part 7 of Division 2 of the Labor Code, including requirements pertaining to wages, working hours and workers' compensation insurance.
 - 7.2 **Prevailing Wages.** This Project is subject to the prevailing wage requirements applicable to the locality in which the Work is to be performed for each craft, classification or type of worker needed to perform the Work, including employer payments for health and welfare, pension, vacation, apprenticeship and similar purposes. Copies of these prevailing rates are available online at <http://www.dir.ca.gov/DLSR>.
 - 7.3 **DIR Registration.** City will not accept a Bid Proposal from or enter into the Contract with a bidder, without proof that the bidder and its Subcontractors are registered with the California Department of Industrial Relations ("DIR") to perform public work under Labor Code Section 1725.5, subject to limited legal exceptions.
8. **Workers' Compensation Certification.** Under Labor Code Section 1861, by signing this Contract, Contractor certifies as follows: "I am aware of the provisions of Labor Code Section 3700 which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the Work on this Contract."

9. **Notice.** Any notice required by the Contract Documents must be made in writing, and sent to the other party by personal delivery, U.S. Mail, a reliable overnight delivery service, facsimile, or by email as a PDF (or comparable) file. Notice is deemed effective upon delivery unless otherwise specified. Notice for each party must be given as follows:

City:

City of Morgan Hill
17575 Peak Avenue
Morgan Hill, CA 95037
Phone: (409) 779-7259
Attn: City Clerk
Email: michelle.bigelow@morganhill.ca.gov
Copy to: cynthia.iwanaga@morganhill.ca.gov

Contractor:

Name: Stephen Ciari Plumbing and Heating, Inc.
Address: 1054 Elm Street
City/State/Zip: San Jose, CA 95126
Phone: (408) 296-6010
Attn: Stephen Ciari, President
Email: steve@ciariplumbing.com
Copy to: marc@ciariplumbing.com

10. General Provisions.

- 10.1 Assignment and Successors.** Contractor may not assign its rights or obligations under this Contract, in part or in whole, without City's written consent. This Contract is binding on Contractor's successors and permitted assigns.
- 10.2 Third Party Beneficiaries.** There are no intended third party beneficiaries to this Contract except as expressly provided in the General Conditions or Special Conditions.
- 10.3 Governing Law and Venue.** This Contract will be governed by California law and venue will be in the Superior Court of Santa Clara County, and no other place.
- 10.4 Amendment.** No amendment or modification of this Contract will be binding unless it is in a writing duly authorized and signed by the parties to this Contract.

- 10.5 Integration; Severability.** This Contract and the Contract Documents incorporated herein, including authorized amendments or Change Orders thereto, constitute the final, complete, and exclusive terms of the agreement between City and Contractor. If any provision of the Contract Documents, or portion of a provision, is determined to be illegal, invalid, or unenforceable, the remaining provisions of the Contract Documents will remain in full force and effect.
- 10.6 Authorization.** Each individual signing below warrants that he or she is authorized to do so by the party that he or she represents, and that this Contract is legally binding on that party. If Contractor is a corporation, signatures from two (2) officers of the corporation are required pursuant to California Corporation Code Section 313.

[Signatures are on the following page.]

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

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

The parties agree to this Contract as witnessed by the signatures below:

CITY OF MORGAN HILL:

 Christina J. Turner
 City Manager

Date: _____

Attest:

 Michelle Bigelow
 City Clerk

Date: _____

Approved as to Form:

 Donald A. Larkin
 City Attorney

Date: _____

CONTRACTOR:

STEPHEN CIARI PLUMBING AND
 HEATING, INC.

 Signature

STEPHEN CIARI / PRESIDENT
 Name/Title [print]

Date: 6-7-2021

*Corporate entities must provide a
 second signature:*

 Signature

Theresa Ciari/officer
 Name/Title [print]

Date: 6/7/2021

828351

Contractor's License Number(s)

12/31/2021

Expiration Date(s)

Seal:

1000003021

Contractor's DIR Registration Number(s)

06/30/2022

Expiration Date

END OF CONTRACT



CITY COUNCIL STAFF REPORT

MEETING DATE: June 23, 2021

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

AWARD OF EAST FIFTH STREET SEWER MAIN PROJECT TO PACIFIC UNDERGROUND CONSTRUCTION, INC.

RECOMMENDATION(S)

1. Approve East 5th Street Sewer Main Project plans and specifications;
2. Award contract to Pacific Underground Construction, Inc. for the East 5th Street Sewer Main Project in the amount of \$1,226,730;
3. Authorize expenditure of construction contingency not to exceed \$122,673; and
4. Authorize the City Manager to execute and administer the construction contract with Pacific Underground Construction, Inc.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Maintaining Infrastructure

2020-2021 Strategic Priorities

Economic Development

GUIDING DOCUMENTS

Wastewater System Master Plan

REPORT NARRATIVE:

The City's 2017 Sewer System Master Plan calls for the construction of a new 12" sewer main in East Dunne Avenue between Monterey Road and the east side of the UPRR right-of-way. The construction of the new sewer main is intended to reduce the potential for sewer spills on Monterey Road south of Dunne Avenue by diverting the sewer flow coming through the Downtown to the 15" sewer trunk line on the east side of the UPRR right-of-way. To reduce project costs and minimize construction impacts to the community, the decision was made to relocate the new 12" inch sewer main from East Dunne Avenue to East 5th Street. The new 12" sewer main will replace the old sewer main in East 5th which will have the benefit of improving the sewer system for the residents in this neighborhood as well.

The scope of work for the East 5th Street Sewer Main Project includes replacing the existing sewer main in East 5th Street between Monterey Road and Depot Street and extending a new 12" sewer main east of Depot Street through the Hale Lumber site and under the UPRR right-of-way (via bore and jack method). Additional work as part of the project will include sewer lateral connections, trench restoration, new sewer manholes, a 2" asphalt concrete overlay on East Fifth Street (between Monterey Road and Depot Street), and all other incidental work to complete the project. The plans and specifications were completed in April 2021.

The bid opening for this project was held on June 7, 2021 and five bids were received:

Pacific Underground Construction, Inc.	\$1,226,730
Ranger Pipelines, Inc.	\$1,285,775
Monterey Peninsula Engineering, Inc.	\$1,366,290
A. Teichert & Son, Inc. DBA Teichert Construction	\$1,443,403
KJ Woods Construction	\$1,448,000

Pacific Underground Construction, Inc.'s bid of \$1,226,730 is approximately 28% less than the engineer's estimate of \$1,700,000. Pacific Underground Construction, Inc. is an experienced contractor for this type of work and has performed work for the City on previous undergrounding utility projects. Staff recommends award of the contract to Pacific Underground Construction, Inc. in the amount of \$1,226,730 with a 10% contingency to this project. The project is scheduled to start in July 2021 and be completed by December 2021.

The plans and specifications are available for review on the City's web page under the Government tab and Community Projects site: <https://www.morgan-hill.ca.gov/1436/Project-Plans-Specifications-and-Bid-Res>

COMMUNITY ENGAGEMENT: Inform

The East 5th Street Sewer Main Project is located within residential neighborhoods and a few businesses in the area. While there may be inconveniences to residents and business owners, staff will work with the contractor to minimize these inconveniences and provide email and door notifications prior to any construction activities. Staff will also provide regular updated construction information weekly through Nextdoor and on the City's website.

ALTERNATIVE ACTIONS:

City Council may elect to reject the bids for this construction contract and request the project be re-bid. Staff does not recommend this alternative as competitive bids were received. Rebidding the project is not likely to result in significant savings and it will delay the project approximately three to four months.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

October 18, 2017 - City Council adopted the 2017 Sewer System Master Plan.

November 1, 2017 – City Council approved design agreement with Mott Macdonald for the Tennant Avenue and Dunne Avenue Sewer Project.

June 17, 2020 - City Council adopted the FY 2020-21 through FY 2025-26 Capital Improvement Budget which identifies funding for the proposed sewer projects through bond proceeds.

November 20, 2020 - City Council adopted a resolution authorizing the execution of an installment purchase agreement to provide financing of the City's anticipated projects through the sale of \$20 million in sewer revenue bonds.

FISCAL AND RESOURCE IMPACT:

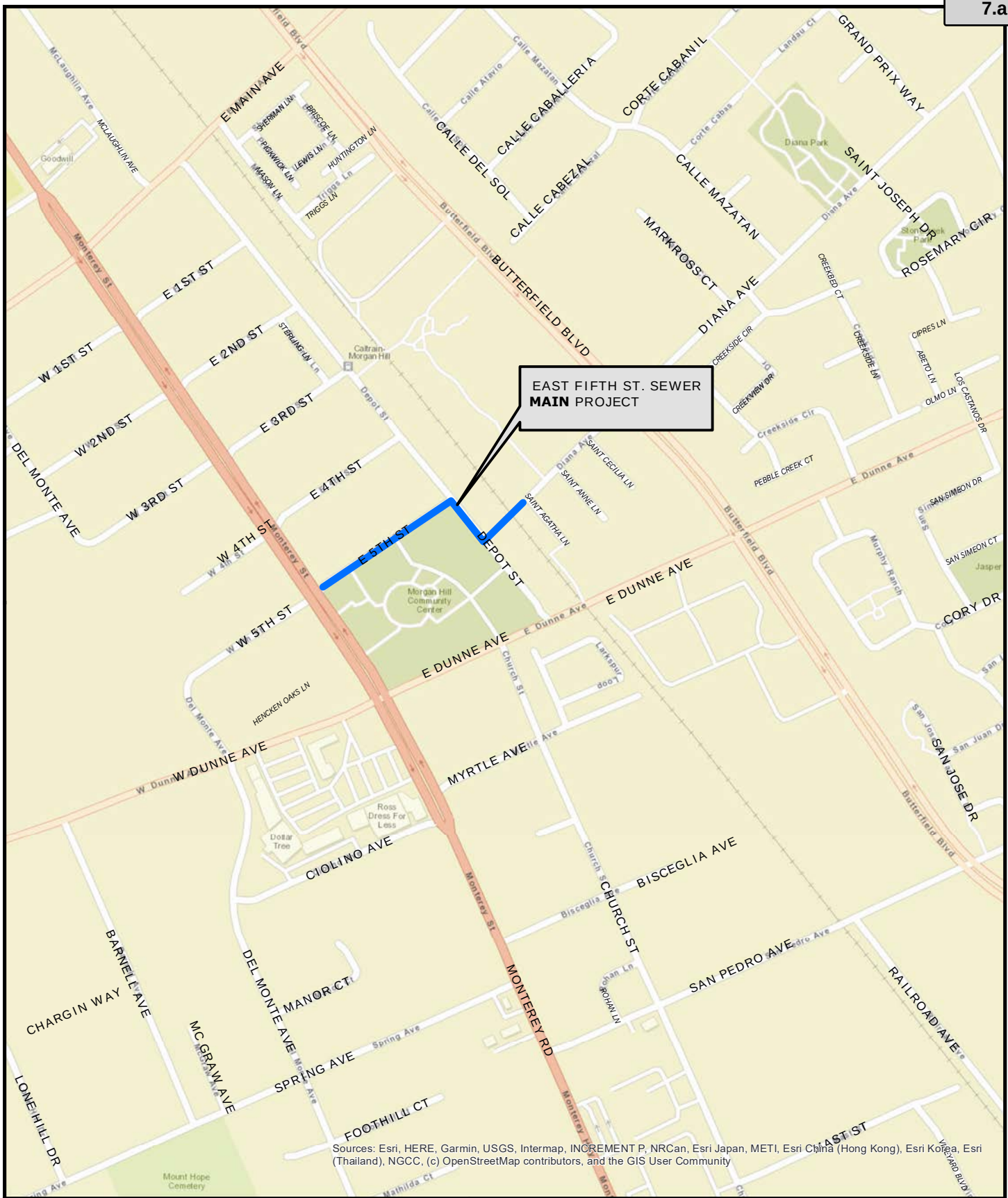
If approved, the total authorization of this project shall be \$1,349,403, which includes a 10% contingency of \$122,673. There are sufficient funds within the FY 2020-21 Budget for this project (302T17). Funding for the 2" asphalt concrete overlay on East Fifth Street between Monterey Road and Depot Street will come from Fund 308.

CEQA (California Environmental Quality Act): Categorical Exemption

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

LINKS/ATTACHMENTS:

1. East Fifth Street Sewer Main Project Vicinity Map 6-23-21
2. Plans and Specifications (weblink)



Engineering and Utilities Department
CIP Engineering Division

G:\R-14\Proj\GIS\John\Yat_5th St Sewer Proj.mxd

EAST FIFTH STREET SEWER MAIN PROJECT



0 250 500 1,000 1,500 2,000 Feet



CITY COUNCIL STAFF REPORT

MEETING DATE: June 23, 2021

PREPARED BY: Dat Nguyen, Finance Director
APPROVED BY: City Manager

ADOPT RESOLUTION ESTABLISHING CREDIT CARD PAYMENT SERVICE FEE

RECOMMENDATION(S)

1. Open/Close public hearing; and
2. Adopt resolution establishing new credit card service fee for development fees and transient occupancy tax payments by credit card.

COUNCIL PRIORITIES, GOALS & STRATEGIES

2020-2021 Strategic Priorities

Fiscal Sustainability

REPORT NARRATIVE:

The City accepts credit cards for a wide array of fees and through various mediums. Historically, the City has viewed credit card acceptance as a method of encouraging prompt and a more guaranteed form of payment. However, in recent years, credit and debit cards have become so widely used that customers expect the ability to pay with a card.

Excluding utilities, payments made by debit and prepaid cards, the City processed credit card transactions totaling over \$5.2 million from May 2019 to May 2021 and paid \$111,423, or 2.13% in bank fees to process the transactions.

Visa and MasterCard bank fees are quite complex. The amount charged for a given transaction depends on various factors; whether the payment card is a credit or debit, what the industry code is for the merchant account (e.g., retail, utilities), and the card type (e.g., business card, rewards card). Debit cards are the least expensive cards to process, costing an average of \$0.25-\$0.35 per transaction. Conversely, certain business cards and rewards cards are the most expensive to process, costing approximately 2.75% of the transaction amount.

The City does not currently pass along any bank fees to customers as transaction fees or convenience fees. However, it has been the City's practice to cap the maximum payment that customers or residents can make with a credit card at \$25,000 per customer/resident/project. This cap would continue to encourage residents and customers to utilize City's auto and online payment method and prompt payment while limiting City's expenses.

However, it has been brought to staff's attention that putting a maximum limit on a card transaction is against Visa and Mastercard rules. In speaking with our merchant bank, staff discussed several options to determine what might be allowable. The below table provides the options discussed:

Processing Option	Permitted
Place a dollar limit on credit card transactions	No
Charge a fee on transactions over a certain dollar amount	No
Charge fees for all over the counter transactions	Yes
Not accept credit cards for certain fees	Yes
Add service fee for certain fees	Yes

To continue encouraging residents and customers to sign up for autopay, online, and prompt payment for utilities, business licenses, recreation services, and other certain small fees while limiting City's expenses, staff recommends a new fee for development fees and TOT payments made by credit card. Development fees could run as high as hundreds of thousands of dollars, while monthly TOT due for a hotel could range from tens of thousands of dollars. The fee of 2.0% of the transactions allows the City to offset some of the bank fees when residents and customers are paying by credit card for development fees and TOT.

COMMUNITY ENGAGEMENT: Inform

This public hearing has been properly noticed in the Morgan Hill Times on June 11, 2021.

ALTERNATIVE ACTIONS:

The Council has the discretion not to adopt the proposed fee or lower it.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

None.

FISCAL AND RESOURCE IMPACT:

Adopting the proposed fee would marginally increase the net revenue for the general fund and development services fund.

CEQA (California Environmental Quality Act):

Not a Project

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

LINKS/ATTACHMENTS:

1. Resolution Adopting Credit Card Fee
2. Proposed credit card service fee

RESOLUTION NO.

**A RESOLUTION OF THE CITY COUNCIL OF THE
CITY OF MORGAN HILL ESTABLISHING CREDIT
CARD SERVICE FEE FOR DEVELOPMENT FEES
AND TRANSIENT OCCUPANCY TAX PAYMENTS BY
CREDIT CARD**

WHEREAS, the City Council, pursuant to Section 3.50.010 of the Morgan Hill Municipal Code ("Code"), requires the recovery of costs reasonably born from fees and charges levied in providing the regulation, products or services enumerated in Code Chapter 3.50 – Fee and Service Charge Revenue/Cost Comparison System; and

WHEREAS, the City of Morgan Hill has conducted a fee study to calculate the costs reasonably borne to provide the specified payment by credit card, which study has been available to the public for at least ten (10) days prior to the adoption of this Resolution; and

WHEREAS, the proposed establishment of the fees that are the subject of this Resolution was agendized for consideration by the City Council of the City of Morgan Hill at a duly noticed public hearing of the Council held on June 23, 2021, at which hearing all interested persons were afforded an opportunity to be heard on said proposed fees; and

WHEREAS, the Council heard all relevant testimony and reviewed all written materials submitted in connection with its hearing on this Resolution.

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

1. The City Council has conducted an extensive analysis of its credit card service fee, including the cost to the City for payments made by credit card; and
2. Based upon the analysis and the provided information, the City (i) identifies the purpose of the proposed fees, (ii) identifies the use to which the fees will be put, (iii) demonstrates a reasonable relationship between the fees' use and the types of services on which the fees are imposed, and (iv) demonstrates a reasonable relationship between the amount of the fees and the cost of the City's services attributable to the applications on which the fees are imposed; and
3. The City Council finds and determines the fees calculations utilized to establish credit card service fee for development fees and transient occupancy tax payments by credit card will not cause fee revenues to exceed the estimated cost reasonably borne of providing the services which the fees are levied; and
4. The City Council hereby adopts and approves the establishment of a new fee to be titled Credit Card Service Fee to be set at 2 percent of the development fees and transient occupancy tax payments by credit card as set forth in attached **Exhibit A** and incorporated by this reference; and

5. The City Manager or his/her designee is hereby authorized and directed to amend the City Fee Schedule to reflect the fees as set forth in **Exhibit A**.

PASSED, APPROVED, AND ADOPTED by the City Council of the City of Morgan Hill at a regular meeting held on the 23rd day of June 2021.

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

APPROVED:

ATTEST:

 RICH CONSTANTINE, Mayor

 MICHELLE BIGELOW, 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. _____, adopted by the City Council at a regular meeting held on June 23, 2021.

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

DATE: _____

 Michelle Bigelow, City Clerk

EXHIBIT A

Credit Card Service Fee for Development Fees and Transient
Occupancy Tax Payments by Credit Card

<u>Fee Description</u>	<u>Amount</u>
Credit Card Service Fee	2%

**PROPOSED SERVICE FEE FOR DEVELOPMENT FEES AND TRANSIENT OCCUPANCY
TAX (TOT) PAYMENTS BY CREDIT CARD**

Total amount processed less utilities, debit, and prepaid cards from May 2019 to May 2021	\$ 5,229,650.28
Total credit card fees less utilities, debit, and prepaid cards fees paid by City from May 2019 to May 2021	\$ 111,422.60
Percentage	2.13%
PROPOSED FEE	2.00%

Attachment: Proposed credit card service fee [Revision 1] (3135 : CREDIT CARD PAYMENT SERVICE FEE)



CITY COUNCIL STAFF REPORT

MEETING DATE: June 23, 2021

PREPARED BY: Adam Paszkowski, Principal Planner
APPROVED BY: City Manager

CONSIDER APPEAL OF PLANNING COMMISSION'S APPROVAL OF SD2020-0011/SR2020-0029 THROUGH SR2020-0033 DE PAUL - TRAMMELL CROW MORGAN HILL VENTURE: REQUEST FOR A TENTATIVE PARCEL MAP AND DESIGN PERMITS FOR THE REDWOOD TECH AT 101, A FIVE BUILDING INDUSTRIAL PARK, ON A 29± ACRE SITE (APNS 728-30-006 AND 728-30-009). (AAE2021-0004 AND AAE2021-0005)

RECOMMENDATION(S)

1. Grant a hearing de novo;
2. Open/close public hearing; and
3. Adopt Resolution denying the appeals and reaffirming the decision of the Planning Commission to approve the project subject to Conditions of Approval.

COUNCIL PRIORITIES, GOALS & STRATEGIES

GUIDING DOCUMENTS

Economic Blueprint
Morgan Hill 2035 General Plan

REPORT NARRATIVE:

The City has received two appeals and a request from Council Member Spring to elevate the Planning Commission decision to the City Council. The appellants, Adams Broadwell Joseph & Cardozo Attorneys at Law (on behalf of the Morgan Hill Residents for Responsible Development) and Joe Baranowski (on behalf of the Morgan Hill Responsible Growth Coalition (MHRGC)), have each filed an appeal of the decision of the Planning Commission to approve a Vesting Tentative Parcel Map and Design Permits (SR2020-0029 through SR2020-0033 De Paul – TC Morgan Hill Venture) for the Redwood Tech at 101 project to allow five buildings ranging in size from 73,828± square feet to 138,714± square feet and to subdivide the 29± acre project site into four parcels ranging in size from 4.18± acres to 9.16± acres.

In accordance with Chapter 18.112 (Appeals) of the Morgan Hill Municipal Code, all Planning Commission decisions may be appealed to the City Council. Section 18.112.040 of the Municipal Code governs the Call for Review process. Any City Council Member may make the Call for Review, and a Council Member calling for review is not required to provide a statement of reasons for the review.

Planning Commission Actions

The Planning Commission discussed the project and received public testimony at their May 25, 2021 meeting. After hearing public testimony, the Planning Commission approved Resolutions No. 21-04 and 21-05 (Exhibit A to Attachment 1) at the May 25, 2021, meeting, approving the proposed Design Permits and Vesting Tentative Parcel Map. The May 25, 2021, Planning Commission Staff Report has been attached (Attachment 2).

The Appeal and Call for Review

The appeals and call for review were filed on or before June 4, 2021, within 10 (ten) calendar days following the date the decision was rendered by the Planning Commission, consistent with Chapter 18.112. Both appellants' letters (Attachments 3 and 4) provide the basis for their appeals. No supplemental materials are required for a Call for Review.

Morgan Hill Residents for Responsible Development

The appellant, Adams Broadwell Joseph & Cardozo Attorneys at Law, on behalf of the Morgan Hill Residents for Responsible Development, states that the specific grounds of appeal are:

1. The City's failure to comply with the requirements of CEQA to prepare a legally adequate Environmental Impact Report (EIR) for the project;
2. That the Morgan Hill 2035 General Plan EIR was not intended to be used to evaluate individual future development and did not provide adequate analysis of any impacts specific to the project;
3. That the project is a component of a reasonably foreseeable larger project; and
4. The project may result in potentially significant, unmitigated impacts on air quality, public health, greenhouse gas (GHG) emissions, noise, and transportation that must be disclosed and mitigated in an EIR.

The following responds to the three comments from the appellant regarding the need to prepare an EIR for the Redwood Tech at 101 project and not utilize the Morgan Hill 2035 General Plan EIR. Pursuant to Section 15168(c) of the *State CEQA Guidelines*, a later activity or project must be examined in the light of the Program EIR to determine whether an additional environmental document must be prepared. If the City finds that no subsequent EIR would be required, the City can approve the activity as being within the project's scope covered by the program EIR, and no new environmental document would be required. Whether a later activity is within the scope of a program, EIR is a factual question that the lead agency determines based on substantial evidence in the record. Factors that an agency may consider in making that determination include, but are not limited to, consistency of the later activity with the type of allowable land use, overall planned density and building intensity, geographic area analyzed for environmental impacts and covered infrastructure as described in the program EIR. As outlined below, the proposed Redwood Tech at 101 project meets these factors.

The project evaluated in the Morgan Hill 2035 Genal Plan EIR is the adoption and

implementation of the 2035 General Plan, which includes land use, urban design, circulation, public services, natural resources, and safety goals, policies, and actions to guide investment and development in the city. The Morgan Hill 2035 General Plan EIR provides a programmatic analysis of the environmental impacts associated with the projected buildout of the 2035 General Plan.

The Redwood Tech at 101 project proposes land uses allowed by right consistent with the Morgan Hill 2035 General Plan EIR and 2035 General Plan. Specifically, the Morgan Hill 2035 General Plan EIR states the Commercial/Industrial designation allows office, research and development, light industrial uses, and similar uses, and would also allow amenities, such as retail services, restaurants, and lodging, to support the primary job-generating uses within business park settings.

The Redwood Tech at 101 project does not propose any conditional uses. However, should a future use on the site require a conditional use permit, that user will be responsible for conducting the environmental review for the proposed use as required under CEQA.

As listed in the Morgan Hill 2035 General Plan EIR and 2035 General Plan, the Commercial/Industrial designation allows for a maximum floor area ratio of 0.6 and a maximum building height of 50 feet for industrial uses, which the proposed Redwood Tech at 101 project is consistent with. In addition, the Morgan Hill 2035 General Plan EIR was a program EIR that analyzed environmental impacts throughout the City regarding implementation of the 2035 General Plan.

On July 27, 2016, the City Council certified the Morgan Hill 2035 General Plan EIR. As mentioned previously, the EIR for the General Plan was prepared as a program EIR under the provisions of Section 15168 of the *State CEQA Guidelines*. As a program EIR, the document adopted by the City Council adequately addressed the potential environmental impacts associated with the comprehensive update of the City's constitution for growth, including certain implementation activities, and provided for streamlining of the environmental review process for projects proposed subsequent to the certification of the EIR. The proposed Redwood Tech at 101 project entails dividing the subject property and constructing buildings consistent with the General Plan. The division and development of parcels consistent with the General Plan were addressed in the program EIR for the 2035 General Plan. Therefore, pursuant to Section 15162 and Section 15183 of the *State CEQA Guidelines*, no additional review under the California Environmental Quality Act is required for the proposed project.

In addition, the proposed Vesting Tentative Parcel Map is categorically exempt pursuant to Section 15315 of the *State CEQA Guidelines* because it consists of the division of property in urbanized areas zoned for industrial use into four parcels and conforms with the General Plan and zoning, no variances or exceptions are required, all services and access to the proposed parcels to local standards are available, the parcel was not involved in a division of a larger parcel within the previous two years, and the parcel does not have an average slope greater than 20 percent.

It should also be noted as part of the Planning Commission's May 25th meeting packet, the City of Morgan Hill received a letter dated April 29, 2021, from Allen Matkins Attorneys at Law on behalf of Trammell Crow regarding the Planning Commission's scope of design review and its relation to CEQA. The letter points to two cases, *Protecting Our Water & Environmental Resources v. County of Stanislaus* and *McCorkle Eastside Neighborhood Group v. City of St. Helena*. The letter stated the Planning Commission lacks the discretion to address potential environmental effects, making the Project ministerial for CEQA purposes, and therefore, should the Planning Commission exempt the proposed project from CEQA, the Commission should also make the findings that the exemption is not required due to the ministerial nature of the City's design review procedures.

The appellant alleges [or further alleges] that the project is a component of a reasonably foreseeable larger project. They claim that the City is piecemealing the Redwood Tech at 101 project and a residential application filed by Dividend Homes, titled "Crosswinds," for a 269 residential unit development on 28-acres located on the east side of De Paul Drive.

The appellant states that the previous application submitted by Trammell Crow, the "Morgan Hill Technology Center," (which included the Redwood Tech at 101 project site) also included a 319 residential unit component, which required an EIR. The appellant mistakenly states that the City is improperly piecemealing the two projects, the industrial project (Redwood Tech at 101) and the residential project (Crosswinds).

CEQA requires that EIRs be evaluated on a comprehensive and cumulative analysis which includes reasonably foreseeable development. The City of Morgan Hill received a Conceptual Plan Review application from Dividend Homes in 2019. Therefore, the Draft EIR for the Morgan Hill Technology Center stated that although only preliminary plans and no formal land use entitlement applications were currently on file for the 28-acre residential site to the east of De Paul Drive, the Morgan Hill Technology Center EIR was being evaluated at a programmatic level to include a maximum of 319 single-family detached and attached units. The Draft EIR continued to state, the future development of this land is reasonably foreseeable given the existing land use designation and zoning and the proposed roadway and other infrastructure, and therefore the EIR analyzes and discloses the effects of the whole project.

Since then, Dividend Homes have applied for a 269 residential unit development on 28-acres, titled "Crosswinds," which will be evaluated by an EIR which will evaluate cumulative impacts of reasonably foreseeable development since the build out of the area the Crosswinds project occupies was not evaluated in the Morgan Hill 2035 General Plan EIR.

Morgan Hill Responsible Growth Coalition (MHRGC)

The appellant, MHRGC, states that the specific grounds for the appeal are:

1. Neither resolution by the Planning Commission is consistent with General Plan Policies CNF-18.3 and CNF-18.4; and

2. The Planning Commission could not make the necessary findings to approve a design permit or tentative map for the project based on information in the record.

Policies CNF-18.3 and CNF-18.4 of the Morgan Hill 2035 General Plan read as follows:

*Policy CNF-18.3 **Compatible Industrial Uses.** Require Planned Development overlay zones (PD) for the industrial and/or commercial development along the side of Highway 101 (south of Cochrane Road and north of Diana Avenue) and the area west of Highway 101 and south of Tennant Avenue to ensure that issues such as circulation, allowable uses, neighborhood compatibility, high visibility, and development standards are properly addressed.*

*Policy CNF-18.4 **Commercial/Industrial Area East of Highway 101.** Require the commercial/industrial area east of Highway 101 to develop in no more than three PDs. The boundary between the PDs, should two or three be proposed, would be Half Road and Main Avenue. The PDs will need to address such issues as traffic circulation, design, allowable uses, and impacts on surrounding areas. Mitigation of impacts on nearby residential areas shall be a high priority in planning for and development of the PDs. Allowable uses within these PDs shall include, in addition to industrial uses, retail services, lodging, medical facilities, hospitals, and educational facilities.*

In July 2020, the Development Services Department and City Attorney's Office provided an interpretation of Morgan Hill Municipal Code Section 18.14.00.C relating to Legacy Zoning Districts; specifically, an interpretation regarding land uses and development standards that apply to Planned Unit Development (PUD) legacy districts that do not have an approved Master Plan (Attachment 5). The interpretation concluded that absent an approved Master Plan, properties in an existing PUD combining district may develop only to the base zoning. A Master Plan would be needed to allow any deviation from the standards and regulations under the base zoning district. The proposed Redwood Tech at 101 project does not seek any deviation from the standards and regulations under the base zoning district; therefore, the project may develop pursuant to the base Light Industrial (IL) zoning district. Hence, Policies CNF-18.3 and CNF-18.4 of the 2035 General Plan do not apply to the Redwood Tech at 101 project.

In response to the appellant's comment that the Planning Commission could not make the necessary findings to approve the project at the May 25, 2021, Planning Commission meeting, the Planning Commission made the necessary findings to approve the Redwood Tech at 101 project on a 6-1 vote with the following amendment: "Buildings should have a consistent design on all elevations viewable from public streets. The Director shall work with the applicant to ensure colors and materials are included on all elevations that limit the amount of blank wall space."

In approval of the Design Permit, the Planning Commission made the following findings as outlined in the May 25, 2021, Planning Commission Staff Report pursuant to Section 18.108.040.J of the Zoning Ordinance:

1. The proposed project is consistent with the General Plan and any applicable specific plan, area plan, or other design policies and regulations adopted by the City Council.
2. The proposed project will comply with all applicable provisions of the Zoning Code and Municipal Code.
3. The proposed project substantially complies with all applicable design standards and guidelines contained in the Design Review Handbook.
4. The proposed project has been reviewed in compliance with the California Environmental Quality Act (CEQA).
5. The proposed project development will not be detrimental to the public health, safety, or welfare or materially injurious to the properties or improvements in the vicinity.
6. The proposed project complies with all Design Review criteria in subsection H. of Section 18.108.040 of the municipal code.
7. For new residential development, the project complies with commitments made through the Residential Development Control System (RDCS).

In approval of the Vesting Tentative Parcel Map, the Planning Commission made the following finding pursuant to Section 17.24.070 of the Municipal Code:

1. The Tentative Parcel Map, together with its provisions for its design and improvements, is consistent with the General Plan.

Conclusion

As discussed, the proposed project meets the requirements of the General Plan and Zoning Ordinance. The facts do not adequately support the allegations made in the appeals. For the reasons set forth in this report, it is recommended that the City Council adopt a resolution denying the appeals.

COMMUNITY ENGAGEMENT: Involve

The Planning Commission approved the project at its meeting on May 25, 2021. A notice of the appeal hearing was mailed to all property owners on the east side of 101 from Eagle View drive to the north, Cochrane to the east, and Half Road to the south encompassing all the residential neighborhoods in this area.

ALTERNATIVE ACTIONS:

If the City Council is able to make adequate findings, it could decide to grant the appeal to SD2020-0011/SR2020-0029 through SR2020-0033 De Paul – TC Morgan Hill Venture and deny the Vesting Tentative Parcel Map and Design Permits.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The Planning Commission approved the project at the May 25, 2021, meeting (6-1), with Commissioner Mueller casting the dissenting vote. Commissioner Mueller's primary concern was not being able to determine that the project is consistent with the development projections analyzed in the Morgan Hill 2035 General Plan program EIR for the project site.

FISCAL AND RESOURCE IMPACT:

The City Development Review functions are cost-recovery, with fees collected from applicants to cover the cost of services. These fees have been collected from the applicant. Appeal fees for the appellants are not cost recovery fees and were reduced by the City Council to not create an impediment to public participation.

CEQA (California Environmental Quality Act):

Categorical Exemption

On July 27, 2016, the City Council certified an environmental impact report (EIR) for the Morgan Hill 2035 General Plan. The EIR for the General Plan was prepared as a program EIR under the provisions of Section 15168 of the *State CEQA Guidelines*. As a program EIR, the document adopted by the City Council adequately addressed the potential environmental impacts associated with the comprehensive update of the City's constitution for growth, including certain implementation activities, and provided for streamlining of the environmental review process for projects proposed subsequent to the certification of the EIR. The proposed project entails dividing the subject property and constructing buildings consistent with the General Plan. The division and development of parcels consistent with the General Plan were addressed in the program EIR for the 2035 General Plan and, therefore, pursuant to Section 15162 and Section 15183 of the *State CEQA Guidelines*, no additional review under the California Environmental Quality Act is required for the proposed project.

This project is also exempt pursuant to Section 15315 of the *State CEQA Guidelines* because it consists of the division of property in urbanized areas zoned for industrial use into four parcels and conforms with the General Plan and zoning, no variances or exceptions are required, all services and access to the proposed parcels to local standards are available, the parcel was not involved in a division of a larger parcel within the previous two years, and the parcel does not have an average slope greater than 20 percent. Further, the map involves no unusual circumstances that would warrant additional CEQA review.

LINKS/ATTACHMENTS:

1. City Council Resolution
2. May 25, 2021 - PC Staff Report (Weblink)
3. Appeal by Adams Broadwell Joseph & Cardozo
4. Appeal by Morgan Hill Responsible Growth Coalition
5. PUD Zoning Interpretation Letter

RESOLUTION NO. XX-XX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL DENYING THE APPEALS SUBMITTED BY MORGAN HILL RESIDENTS FOR RESPONSIBLE DEVELOPMENT AND MORGAN HILL RESPONSIBLE GROWTH COALITION FOR SD2020-0011 AND SR2020-0029 THROUGH SR2020-0033: DE PAUL-TC MORGAN HILL VENTURE AND REAFFIRMING THE APPROVAL OF THE VESTING TENTATIVE PARCEL MAP AND DESIGN PERMITS FOR THE REDWOOD TECH AT 101 PROJECT ON PROPERTY LOCATED ON THE NORTHERN INTERSECTION OF CONDIT ROAD AND HALF ROAD (APNS 728-30-006 AND 728-30-0009)

WHEREAS, such request was considered by the Planning Commission at its regular meeting of May 25, 2021, at which time the Planning Commission approved Vesting Tentative Parcel SD2020-0011 and Design Permits SR2020-0029 through SR2020-0033: De Paul-TC Morgan Hill Venture (Redwood Tech at 101); and

WHEREAS, testimony received at a duly noticed public hearing, along with exhibits and drawings and other materials have been considered in the review process; and

WHEREAS, Morgan Hill Residents for Responsible Development and Morgan Hill Responsible Growth Coalition, both filed an appeal of the Planning Commission's decision on the Application to the City Council pursuant to the applicable provisions of the Morgan Hill Municipal Code; and

WHEREAS, at the time and place noticed for a hearing on the appeal, the City Council of the City of Morgan Hill conducted a *de novo* appeal hearing on the Application, provided all interested persons an opportunity to be heard, and received, reviewed, and considered all testimony and other evidence provided regarding the subject of this appeal.

NOW, THEREFORE, BASED UPON ALL OF THE INFORMATION SUBMITTED TO THE CITY COUNCIL FOR THE APPEAL AT THE PUBLIC HEARING CONDUCTED FOR THE APPEAL, THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY RESOLVE AS FOLLOWS:

SECTION 1. Following are the relevant facts in connection with Application:

- A. The approved Vesting Tentative Parcel Map and Design Permits are consistent with the Zoning Ordinance and the General Plan.

- B.** At their meeting of May 25, 2021, the Planning Commission found that the approved Vesting Tentative Parcel Map and Design Permits would be consistent with the criteria for Vesting Tentative Parcel Map and Design Permits approval contained within the Zoning Code. The basis and findings were set forth in the staff report for May 25, 2021.

SECTION 2. Based upon the above facts, the City Council finds as follows:

- A.** The project is consistent with the Zoning Ordinance, and General Plan.
B. The Design Review has been found consistent with the criteria for Design Review permit approval contained in Section 18.108.040 of the Morgan Hill Municipal Code. The proposed project is in compliance with all applicable design standards and guidelines contained in the Design Review Handbook.

SECTION 3. Based upon the above facts and findings the City Council determines as follows:

- A.** The approval of the Vesting Tentative Parcel Map and Design Permits granted by the Planning Commission on May 25, 2021, were made consistent with the Morgan Hill Municipal Code. Therefore, the appeal submitted regarding the Vesting Tentative Parcel Map and Design Permits approval should not be approved.
B. The Planning Commission approval as set forth in Planning Commission Resolution No. 21-04 and Resolution No. 21-05, attached hereto as Exhibit A and incorporated herein by this reference, is hereby reaffirmed, and approved.

SECTION 4. For the reasons set forth above, the appeal is **DENIED**.

PASSED AND ADOPTED THIS 23rd DAY OF JUNE 2021, AT A MEETING OF THE CITY COUNCIL BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

City of Morgan Hill
Resolution No.
Page 3 of 5

ATTEST:

APPROVED:

MICHELE BIGELOW, City Clerk

RICHARD CONSTANTINE, Mayor

Attachment: City Council Resolution [Revision 2] (3130 : Trammell Crow Redwood Tech at 101 Appeal)

CERTIFICATE OF THE CITY CLERK

I, MICHELLE BIGELOW, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Resolution No. _____, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the ____ day of _____, 2021.

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

DATE: _____

MICHELE BIGELOW, City Clerk

EXHIBIT A

Planning Commission Resolution No. 21-04 and Resolution No. 21-05

RESOLUTION NO. 21-04

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MORGAN HILL APPROVING A DESIGN PERMIT TO ALLOW FOR THE CONSTRUCTION OF THE REDWOOD TECH AT 101 PROJECT - A FIVE BUILDING INDUSTRIAL PARK LOCATED ON THE NORTHERN INTERSECTION OF CONDIT ROAD AND HALF ROAD (DE PAUL – TC MORGAN HILL VENTURE (REDWOOD TECH AT 101)) (APNS 728-30-006 AND 728-30-009)

WHEREAS, the developer Trammell Crow applied for a Design Permit to construct an industrial park containing five (5) industrial buildings ranging in size from 73,668 to 138,698 square feet. (SR2020-0029 through -033: De Paul – TC Morgan Hill Venture (Redwood Tech at 101)); and

WHEREAS, such request was considered by the Planning Commission at its meeting of May 25, 2021; and

WHEREAS, this project is consistent with the development projections analyzed in the Morgan Hill 2035 General Plan program EIR for the project site. The project also is designed to be consistent with the development standards in the General Plan and Zoning Code. No further environmental assessment is required; and

WHEREAS, testimony received at a duly-noticed public hearing, along with exhibits and drawings and other materials have been considered in the review process.

NOW, THEREFORE, THE MORGAN HILL PLANNING COMMISSION DOES RESOLVE AS FOLLOWS:

SECTION 1. The project is consistent with the Zoning Ordinance, and General Plan.

SECTION 2. The Design Review has been found consistent with the criteria for Design Review permit approval contained in Section 18.108.040 of the Morgan Hill Municipal Code. The proposed project is in compliance with all applicable design standards and guidelines contained in the Design Review Handbook.

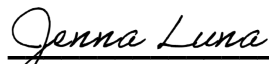
SECTION 3. The Planning Commission approves SR2020-0029 through -0033: De Paul – TC Morgan Hill Venture (Redwood Tech at 101). The design shall be expressly conditioned in conformance with conditions incorporated herein and as attached as Exhibit “A”. Minor deviations to the site review permit may be approved by the Community Development Director when consistent with the overall intent of the project.

SECTION 4. Notice is hereby given that, pursuant to the Mitigation Fee Act, the City of Morgan Hill charges certain fees (as such term is defined in Government Code Section 66000) in connection with approval of your use for the purpose of defraying all or a portion of the cost of public facilities related to your development project (Mitigation Fee Act Fees). These fees do not include fees for processing applications for governmental regulatory actions or approvals, or fees collected (a) under development agreements, (b) pursuant to agreements with the Morgan Hill Redevelopment Agency or (c) as a part of your application for development allocations under the City's Residential Development Control System. The Mitigation Fee Act Fees applying to your project are listed in the schedule of fees provide. Notice is also hereby given that you have the opportunity to protest the imposition of the Mitigation Fee Act Fees within 90 days of the approval of the approval or conditional approval of your development project and that the 90-day approval period in which you may protest has begun. This right to protest does not apply to voluntary Residential Development Control System fees.

PASSED AND ADOPTED THIS 25th DAY OF MAY 2021, AT A REGULAR MEETING OF THE PLANNING COMMISSION BY THE FOLLOWING VOTE:

AYES:	COMMISSIONERS:	HABIB, KUMAR, TANDA, GONZALEZ-ESCOTO, DOWNEY, MUNOZ- MORRIS
NOES:	COMMISSIONERS:	MUELLER
ABSTAIN:	COMMISSIONERS:	NONE
ABSENT:	COMMISSIONERS:	NONE

ATTEST:


JENNA LUNA, Deputy City Clerk

APPROVED:


MOHAMMAD HABIB, Chair

EXHIBIT "A" STANDARD CONDITIONS

APPLICATION NO: SR2020-0029 through -0033

THE FOLLOWING APPROVAL REQUIREMENTS AND ANY SPECIAL CONDITIONS SHALL BE APPLIED THROUGH THE DEVELOPMENT APPROVAL PROCESS.

Legend

MHMC= Morgan Hill Municipal Code
 MHARH= Morgan Hill Architectural Review Handbook
 CMH= City of Morgan Hill
 CFC= California Fire Code

I. PROJECT DESCRIPTION

This project proposes approximately 501,000 square feet of flexible industrial space spread across 5 separate concrete tilt-up buildings on four separate lots. As with all other development, this project requires a Design Permit. The Community Development Director has elevated this project to the Planning Commission for consideration. All five buildings are designed to be divisible into two or three tenant spaces with a maximum exterior height of 43 feet.

The project shall comply with all requirements of related project approvals granted by the City, including all of the following:

II. PROJECT CONDITIONS OF APPROVAL

This Design Permit approval is limited to the plan set dated December 11, 2020 on file (File Number SR2020-0029 through -0033: De Paul – TC Morgan Hill Venture (Redwood Tech at 101)) with the Development Services Department. The approved building plans and landscape plans must be in substantial conformance with the Design Review plans as determined by the Development Services Director. These documents show the location and dimensions of all buildings and elevations with colors and materials, amenities and square footage for all common areas, and vehicle and pedestrian circulation ways (ingress/egress), common areas, and other easement areas.

It shall be the responsibility of the Owner to ensure that any changes or modifications to the Project or any Unit are in compliance with the original City Conditions of Approval of the Project, which are incorporated herein.

PLANNING COMMISSION

Buildings shall have a consistent design on all elevations viewable from public streets. The Development Services Director shall work with the applicant to ensure colors and materials are included on all elevations that limit the amount of blank wall space.

PLANNING DIVISION

DEFENSE AND INDEMNITY

- A. As part of, and in connection, with this application to the City of Morgan Hill, Applicant agrees to defend, indemnify, and hold harmless the City of Morgan Hill, its officers, agents, employees, officials and representatives (Indemnitees) from and against any and all claims, actions, or proceedings arising from any suit for damages or for equitable or injunctive relief which is filed against City to attack, set aside, void or annul its approval of this application or any related decision, or the adoption of any environmental documents which relates to said approval. The City shall promptly notify the Applicant of any such claim, action or proceeding and the City shall cooperate fully in the defense thereof. In the event that Applicant is required to defend Indemnitees in connection with the proceeding, Indemnitees shall retain the right to approve (a) the counsel to so defend Indemnitees; (b) all significant decisions concerning the manner in which the defense is conducted; and (c) any and all settlements, which approval shall not be unreasonably withheld. This indemnification shall include, but is not limited to, (a) all pre-tender litigation costs incurred on behalf of the City, including City's attorney's fees and all other litigation costs and expenses, including expert witnesses, required to defend against any lawsuit brought as a result of City's approval or approvals; (b) reasonable internal City administrative costs, including but not limited to staff time and expense spent on the litigation, after tender is accepted; and (c) all damages, costs, expenses, attorney fees or expert witness fees that may be awarded to the prevailing party arising out of or in connection with the approval of the application or related decision. City may, in its sole discretion, participate in the defense of such action; but such participation shall not relieve Applicant of its obligations under this condition. The undersigned hereby represents that they are the Applicant or are fully empowered by the Applicant as their agent to agree to provide the indemnification, defense and hold harmless obligations, and the signature below represents the unconditional agreement by Applicant to be bound by such conditions.

TIME LIMITS

- A. **Term:** The Design Review approval granted pursuant to this Resolution shall remain in effect for two years to May 25, 2023. Failure to obtain building permits within this term shall result in termination of approval unless an extension of time is granted with a showing of just cause prior to expiration date. **(MHMC 18.108.040)**

SITE DEVELOPMENT

- A. **Final Site Development Plans:** Final site development plans shall be reviewed for conformance with Design Permit SR2020-0029 through -0033: De Paul – TC Morgan Hill Venture (Redwood Tech at 101) and in accordance with Morgan Hill Municipal Code Section 18.108.040 (Design Permit) and approved by the Development Services Department prior to issuance of a building permit. All such plans shall include:
1. Detail depicting all concrete curbs as full formed.
 2. Exterior lighting of the building and site shall be designed so that lighting is not directed onto adjacent properties and light source is shielded from direct off-site viewing.
 3. Ramps, special parking spaces, signing and other physical features for the disabled, shall be provided throughout the site for all publicly used facilities.
 4. All mechanical equipment, including electrical and gas meters, post indicator valve, backflow prevention devices, etc., shall be architecturally screened from view or located interior to the building. All ground mounted utility appurtenances such as transformers shall not be visible from any public right-of-way and shall be adequately screened through the use or combination of concrete or masonry walls, berming, and landscaping. **(MHARH p.20, 45, 79)** For additional screening, backflow preventers shall be painted dark green, except the fire connection which shall be painted yellow.
 5. All existing on-site overhead utilities shall be placed underground in an approved conduit from the service connection at the street or at the property line to the service connection at the building as detailed in engineering conditions within this document.
 6. Adequate bicycle trails and amenities (e.g. bike racks, bike fix-it station) and pedestrian connections throughout the site, including connections to De Paul Drive, and a sidewalk along the De Paul Drive frontage.

7. To the extent acceptable to end users, implement good faith Transportation Demand Management Plan measures to promote alternate means of transportation and reduce single occupancy vehicle trips to and from the Project.
- B. **Building Coverage:** In accordance with Morgan Hill Municipal Code Section 18.26.030 (Development Standards) and approved by the Development Services Director prior to issuance of a building permit, Building B shall be reduced in size to have a maximum building coverage of 50%.
 - C. **Trash Enclosures:** All trash enclosures shall include a solid noncombustible roof structure consistent in design, materials and colors as the primary buildings and shall be reviewed and approved by the Development Services Director prior to issuance of a building permit.
 - D. **Pedestrian Access:** The Project shall provide pedestrian walkways in compliance with ADA requirements and with Section 18.72.060.H of the Morgan Hill Municipal Code, which states the following:
 1. Parking lots with more than thirty parking spaces shall include a pedestrian walkway in compliance with ADA requirements.
 2. The design of the pedestrian walkway shall be clearly visible and distinguished from parking and circulation areas through striping, contrasting paving material, or other similar method as approved by the Development Services Director.
 - E. **Bicycle parking.** The project shall provide short-term and long-term bicycle parking spaces in conformance with Section 18.72.080 of the Morgan Hill Municipal Code:
 1. **Short-Term/Class II Bicycle Parking Standards.** Short-term bicycle parking shall be located within one hundred feet of the primary entrance of the structure or use it is intended to serve.
 2. **Long-Term Bicycle Parking Standards.** The following standards apply to long-term bicycle parking:
 - a. Location. Long-term bicycle parking shall be located on or within seven hundred fifty feet of the use that it is intended to serve.
 - b. Security. Long-term bicycle parking spaces shall be secured. Spaces are considered secured if they are:

- i. In a locked room or area enclosed by a fence with a locked gate;
 - ii. Within view or within one hundred feet of an attendant or security guard;
 - iii. In an area that is monitored by a security camera; or iv. Visible from employee work areas.
- 3. **Parking Space Dimensions.**
 - a. Minimum dimensions of two feet by six feet shall be provided for each bicycle parking space.
 - b. An aisle of at least five feet shall be provided behind all bicycle parking to allow room for maneuvering.
 - c. 2 feet of clearance shall be provided between bicycle parking spaces and adjacent walls, polls, landscaping, pedestrian paths, and other similar features.
 - d. Four feet of clearance shall be provided between bicycle parking spaces and adjacent automobile parking spaces and drive aisles.
- 4. **Rack Design.** Bicycle racks must be capable of locking both the wheels and the frame of the bicycle and of supporting bicycles in an upright position.
- 5. **Cover.** Required cover for bicycle parking spaces shall be permanent, designed to protect the bicycle from rainfall, and at least seven feet above the floor or ground.

The location of all bicycle parking spaces shall be identified prior to issuance of a building permit.

- D. **Electric Vehicle Charging Stations:** The Project shall provide electric vehicle charging stations in compliance with Section 18.72.040.C of the Morgan Hill Municipal Code. The project is required to provide two charging stations, plus one for each additional fifty parking spaces. The developer shall provide location of each charging station prior to issuance of building permit.
- E. **Prohibition of Natural Gas Infrastructure in New Buildings.** In accordance with Chapter 15.63 of the Municipal Code, future tenants will be required to demonstrate the need for gas service for manufacturing and other business uses. Natural gas shall not be used for heating and cooling of the building.

BUILDING DESIGN

- A. **Roof Mounted Mechanical Equipment:** All roof mounted mechanical equipment shall be placed within a screened roof top enclosure depicted on the elevation drawings or located below the parapet level and shall not be visible from the ground at any distance from the building. Cross section roof drawings shall be provided at the building permit stage indicating the relative height of the screen wall or parapet. Minimum screen height or parapet depth shall be 5 feet or greater to match the height of any proposed equipment. **(MHARH p.48, 65, 87, 106)**
- B. **Building Mounted Lighting:** Lighting fixtures shall not project above the fascia or roofline of the building. Any ground mounted lighting projecting onto the building or site shall be subject to the review and approval of the Development Services Director. Adjustment to the lighting intensity may be required after the commencement of the use. **(MHARH p. 67, 109)**

PARKING, VEHICULAR ACCESS AND LANDSCAPING

- A. **Parking Lot Landscaping:** All landscaping within parking lots shall comply with the requirements of Chapter 18.72 (Landscaping) in addition to the standards within this section.
 - 1. **Interior Landscaping.** All areas within a parking lot not utilized for parking spaces or access/circulation shall be landscaped. For parking lots with more than fifteen spaces, the minimum amount of interior landscaping is specified in Table 18.72-6. Interior landscaping is defined as any landscaped area surrounded on at least two sides by parking spaces or drive aisles, and excluding areas around the perimeter of the parcel or development site.
 - 2. **Shade Trees.**
 - a. One shade tree shall be provided for every five parking spaces in a parking lot.
 - b. Shade trees shall be a minimum twenty-four-inch box in size and shall provide a minimum thirty-foot canopy at maturity.
 - c. Shade trees shall be of a type that can reach maturity within fifteen years of planting and shall be selected from a city-recommended list of canopy tree species.
 - d. Shade trees shall be arranged in a parking lot to provide maximum shade coverage (based on a thirty-foot canopy) on August 21. The arrangement should approximate nearly fifty percent shade coverage.

3. **Concrete Curbs.**
 - a. All landscape areas shall be separated from parking spaces, drive aisles and driveways by a continuous, raised concrete curb. Raised concrete curbs shall be a minimum of six inches high by four inches deep.
 - b. The city may approve alternatives to raised concrete curbs as needed to comply with any mandatory stormwater drainage standards.
 4. **Parking Space Landscaping.** A maximum of two feet at the front end of a parking space may be landscaped with low shrubs or ground cover in which a vehicle could extend over in lieu of paving surface. This landscaping may not count toward minimum required parking lot landscaped area.
 5. **Timing.** Adjacent parking lot landscaping shall be installed prior to the city's authorization to occupy any buildings served by the parking area, or prior to the final inspection for the parking lot.
 6. **Green Parking Exemptions.** Parking lots that incorporate solar panels, bioswales, and other similar green features not otherwise required by post construction stormwater requirements are eligible for reduced parking lot landscaping requirements with the approval of a conditional use permit.
 7. **Exterior Parking Lot Lighting:** For projects with more than six parking spaces, detailed lighting information is provided in compliance with Section 18.72.060.G of the Morgan Hill Municipal Code. Lights shall use cut-off shields and be downward directed and shall not overlap with landscaping which will block and reduce the effectiveness and purpose of the lighting.
- B. **Planting and Irrigation Working Drawings:** Detailed landscape planting and irrigation working drawings shall be submitted to the Development Services Director for approval prior to issuance of building permits. Landscape plans for streets and landscape easements shall be part of the improvement plan submittal.
- C. **Lighting:** Walkways and pedestrian pathways in landscaped areas or common areas not considered building entrances or a part of parking lot areas shall be illuminated with a minimum of one (1) foot-candle to ensure safe nighttime conditions. (MHARH p.30, 67, 108)

- D. **Trash Enclosures:** Trash enclosures shall be separated from adjacent parking stalls with a minimum three (3) foot wide planter and a 12-inch-wide paved surface behind the curb (consistent with planter island standards). Trash enclosures shall be screened with landscape materials subject to the review and approval of the Development Services Director.
- E. **Maintenance of Landscaping:** The landscaping installed and accepted with this project shall be maintained on the site as stated within the approved plans. Any alteration or modification to the landscaping shall not be permitted unless otherwise approved by the Development Services Director.
- F. **Water Conserving Landscaping Ordinance:** The landscape plans shall be in conformance with the City's Water Conserving Landscape Ordinance that was developed in accordance with California law. This Ordinance restricts landscaping turf to certain areas, specifies plant selection, requires certain types of irrigation equipment, and calls for the development of comprehensive water use calculations as an aspect of the submitted landscape plans. **(MHMC 18.64)**

SIGNS

- A. **Separate Application Required for Sign Approval:** Signs proposed for this development shall be designed in conformance with the Sign Ordinance and shall require separate application and approval by the Planning Division prior to installation of any signs.

HABITAT PLAN

- A. **Fees:** The approved project is covered pursuant to the Santa Clara Valley Habitat Plan (Habitat Plan) and subject to fees and conditions contained in the Habitat Plan.
- B. **Application Package:** Prior to issuance of a grading permit, the project shall complete and submit a Habitat Plan Application Package. All fees shall be paid prior to issuance of a grading permit. **(MHMC 18.132)**
- C. **Conditions:** Any additional conditions or mitigations required by the Habitat Plan shall be clearly stated on all plans that involve any ground disturbing activity (i.e. grading plans, improvement plans, paving plans, demolition plans or other plans for site clearing or temporary stockpile of dirt). **(MHMC 18.132)**

AIR QUALITY

- A. **Dust, Noise, Vibration and Materials Management Plan:** A management plan detailing strategies for control of noise, dust and vibration, and storage of hazardous materials during construction of the project shall be submitted for review prior issuance of a grading permit and requirements shall be included on all site development and grading plans. The intent of this condition is to minimize construction related disturbance of residents of the nearby or adjacent properties. **(MHMC 18.76)**
1. All exposed surfaces shall be watered at a frequency adequate to maintain minimum soil moisture of 12 percent. Moisture content can be verified by lab samples or moisture probe.
 2. All excavation, grading, and/or demolition activities shall be suspended when average wind speeds exceed 20 mph.
 3. Wind breaks (e.g., trees, fences) shall be installed on the windward side(s) of actively disturbed areas of construction. Wind breaks should have at maximum 50 percent air porosity.
 4. Vegetative ground cover (e.g., fast-germinating native grass seed) shall be planted in disturbed areas as soon as possible and watered appropriately until vegetation is established.
 5. The simultaneous occurrence of excavation, grading, and ground disturbing construction activities on the same area at any one time shall be limited. Activities shall be phased to reduce the amount of disturbed surfaces at any one time.
 6. All trucks and equipment, including their tires, shall be washed off prior to leaving the site.
 7. Site accesses to a distance of 100 feet from the paved road shall be treated with a 6 to 12-inch compacted layer of wood chips, mulch, or gravel.
 8. Sandbags or other erosion control measures shall be installed to prevent silt runoff to public roadways from sites with a slope greater than one percent.
 9. Minimizing the idling time of diesel-powered construction equipment to two minutes.

10. The project shall develop a plan demonstrating that the off-road equipment (more than 50 horsepower) to be used in the construction project (i.e., owned, leased, and subcontractor vehicles) would achieve a project wide fleet-average 20 percent NOX reduction and 45 percent PM reduction compared to the most recent ARB fleet average. Acceptable options for reducing emissions include the use of late model engines, low emission diesel products, alternative fuels, engine retrofit technology, after-treatment products, add-on devices such as particulate filters, and/or other options as such become available.
11. Use low VOC (i.e., ROG) coatings beyond the local requirements (i.e., Regulation 8, Rule 3: Architectural Coatings).
12. Requiring that all construction equipment, diesel trucks, and generators be equipped with Best Available Control Technology for emission reductions of NOx and PM.
13. Requiring all contractors use equipment that meets CARB's most recent certification standard for off-road heavy-duty diesel engines.

CULTURAL RESOURCES

Significant Historic or Archaeological Materials: This project has been determined not to be in a site identified as archaeologically sensitive by the City's adopted archaeological sensitivity map, but nonetheless could adversely impact undocumented human remains or unintentionally discover significant historic or archaeological materials. The following policies and procedures for treatment and disposition of inadvertently discovered human remains or archaeological materials shall apply and should be provided as standard conditions on the building permit, grading permit, or improvement plans. If human remains are discovered, it is probable they are the remains of Native Americans.

1. If human remains are encountered they shall be treated with dignity and respect as due to them. Discovery of Native American remains is a very sensitive issue and serious concern. Information about such a discovery shall be held in confidence by all project personnel on a need to know basis. The rights of Native Americans to practice ceremonial observances on sites, in labs and around artifacts shall be upheld. Remains should not be held by human hands. Surgical gloves should be worn if remains need to be handled. Surgical mask should also be worn to prevent exposure to pathogens that may be associated with the remains.

2. In the event that known or suspected Native American remains are encountered or significant historic or archaeological materials are discovered, ground-disturbing activities shall be immediately stopped. Examples of significant historic or archaeological materials include, but are not limited to, concentrations of historic artifacts (e.g., bottles, ceramics) or prehistoric artifacts (chipped chert or obsidian, arrow points, groundstone mortars and pestles), culturally altered ash-stained midden soils associated with pre-contact Native American habitation sites, concentrations of fire-altered rock and/or burned or charred organic materials, and historic structure remains such as stone-lined building foundations, wells or privy pits. Ground-disturbing project activities may continue in other areas that are outside the discovery locale.
3. An “exclusion zone” where unauthorized equipment and personnel are not permitted shall be established (e.g., taped off) around the discovery area plus a reasonable buffer zone by the Contractor Foreman or authorized representative, or party who made the discovery and initiated these protocols, or if on-site at the time of discovery, by the Monitoring Archaeologist (typically 25-50ft for single burial or archaeological find).
4. The discovery locale shall be secured (e.g., 24-hour surveillance) as directed by the City or County if considered prudent to avoid further disturbances.
5. The Contractor Foreman or authorized representative, or party who made the discovery and initiated these protocols shall be responsible for immediately contacting by telephone the parties listed below to report the find and initiate the consultation process for treatment and disposition:
 - The City of Morgan Hill Development Services Director (408) 779-7247
 - The Contractor’s Point(s) of Contact
 - The Coroner of the County of Santa Clara (if human remains found) (408) 793-1900
 - The Native American Heritage Commission (NAHC) in Sacramento (916) 653-4082
 - The Amah Mutsun Tribal Band (916) 481-5785 (H) or (916) 743-5833 (C)
6. The Coroner has two working days to examine the remains after being notified of the discovery. If the remains are Native American the Coroner has 24 hours to notify the NAHC.

7. The NAHC is responsible for identifying and immediately notifying the Most Likely Descendant (MLD) from the Amah Mutsun Tribal Band. (Note: NAHC policy holds that the Native American Monitor will not be designated the MLD.)
8. Within 24 hours of their notification by the NAHC, the MLD will be granted permission to inspect the discovery site if they so choose.
9. Within 24 hours of their notification by the NAHC, the MLD may recommend to the City's Development Services Director the recommended means for treating or disposing, with appropriate dignity, the human remains and any associated grave goods. The recommendation may include the scientific removal and non-destructive or destructive analysis of human remains and items associated with Native American burials. Only those osteological analyses or DNA analyses recommended by the Amah Mutsun Tribal Band may be considered and carried out.
10. If the MLD recommendation is rejected by the City of Morgan Hill the parties will attempt to mediate the disagreement with the NAHC. If mediation fails then the remains and all associated grave offerings shall be reburied with appropriate dignity on the property in a location not subject to further subsurface disturbance.

GENERAL

- A. **Mitigation Fee Act:** Notice is hereby given that, pursuant to the Mitigation Fee Act, the City of Morgan Hill charges certain fees (as such term is defined in Government Code Section 66000) in connection with approval of this development project for the purpose of defraying all or a portion of the cost of public facilities related to this development project (Mitigation Fee Act Fees). These fees do not include fees for processing applications for governmental regulatory actions or approvals, fees collected as part of development agreements, or as a part of the application for the City's Residential Development Control System. The Mitigation Fee Act Fees applying to this project are listed in the schedule of fees to be provided at building permit stage. Notice is also hereby given that the Developer has an opportunity to protest the imposition of the Mitigation Fee Act Fees within 90 days of the approval or conditional approval of this development project and that the 90-day protest period has begun.

- B. **Signed Copies of Resolution with Conditions:** Submit two (2) signed copies of the resolution with conditions to the Planning Division prior to issuance of a building permit.
- C. **Traffic Analysis:** A traffic analysis shall be performed prior to each tenant occupying a building. Recommendations made in the traffic analysis to improve on-site or off-site conditions shall be incorporated as reviewed and approved by the Development Services Director and City Engineer prior to the tenant occupying the building.

ENGINEERING DIVISION

I. PROJECT SPECIFIC

- A. Street and Utility Improvements:
 - 1. Coordination with Adjacent Residential Project: The developer shall coordinate the De Paul Drive improvements and sanitary sewer improvements with the project known as "The Crosswinds Project" located on the east side of De Paul Drive (APNs: 728-30-001, -002, -003, & -004) and owned by Dividend Homes.
 - i. Prior to parcel map approval, the developer shall obtain the necessary right-of-way on De Paul Drive (and construction easement, if required) from Dividend Homes' Crosswinds Project.
 - 2. De Paul Drive: Construct De Paul Drive to comply with the City's half street (2/3 street) standards along the west side of De Paul Drive from Cochrane Road to the proposed cul-de-sac next to Half Road (includes the frontage along the Lands of Lee with APN: 728-30-008) to the satisfaction of the City Engineer.
 - i. Install and dedicate the required street improvements at De Paul Drive to have a straight road alignment with a minimum 46' right-of-way width and a minimum 36' pavement width from face of curb along the unimproved section of De Paul Drive to the new cul-de-sac next to Half Road.
 - ii. The City will quitclaim approximately 19' of right-of-way along the De Paul Drive frontage of APN: 728-30-009.
 - iii. The developer shall dedicate 36' right-of-way width in fee to the City for public street purposes along the De Paul Drive frontage of APN: 728-31-014 and dedicate a 10' wide Public Service Easement (PSE) behind the proposed property line.
 - iv. The project's right-of-way dedication and quitclaim shall be shown on the parcel map.

- v. The street improvements shall include, but are not limited to, curb and gutter, sidewalk, landscaping, full cul-de-sac at the southerly end of De Paul Drive next to Half Road, street paving, utilities, undergrounding, stormwater post-construction facilities, and street lighting.
 - vi. The project shall construct City standard sidewalk along the west side of De Paul Drive from Cochrane Road to the proposed cul-de-sac next to Half Road to provide a continuous pedestrian connection from the project site to Cochrane Road.
 - 1) The project has an option to construct a temporary asphalt sidewalk along the frontages of the future Phase 2 Project and the Lands of Lee (APN: 728-30-008)
 - vii. The project's two northerly driveways at De Paul Drive are proposed to have widths that exceed the City standard maximum industrial driveway width of 36' to allow truck access/maneuvering.
 - 1) At improvement plan/building permit stage, submit an additional truck turning template using the ultimate street width of De Paul Drive for City Engineer review.
 - viii. At improvement plan/building permit stage, revise the De Paul Drive street cross-sections to match the 2/3 street width.
- 3. Half Road: The developer shall construct Half Road to comply with City standards along the north side of the project's Half Road frontage to the satisfaction of the City Engineer.
 - i. Install and dedicate the required street improvements at Half Road. The street improvements shall include, but are not limited to, curb and gutter, sidewalk, landscaping, street paving, utilities, stormwater post-construction facilities, and street lighting.
 - ii. The developer shall dedicate right-of-way in fee to the City for public street purposes at a width of 36' from centerline along the Half Road frontage of APN: 728-30-009 and dedicate a 10' wide PSE behind the proposed property line.
 - iii. Extend the new sidewalk along the project's Half Road frontage westerly up to the Madrone Channel/Trail entrance. The design of the sidewalk and compliance with Valley Water's access requirements to Madrone Channel will be reviewed at improvement plan/building permit stage.
- 4. Cochrane Road: Construct the ultimate width of Cochrane Road along the project's frontage to comply with the City's arterial street standards to the satisfaction of the City Engineer.
 - i. Install and dedicate the required street improvements at Cochrane Road. The street improvements shall include, but are not limited to, curb and gutter, sidewalk, dedicated right-turn pocket along eastbound Cochrane Road, landscaping, street paving, utilities, stormwater post-construction facilities, and street lighting.

- ii. The developer shall dedicate a minimum of 60' of right-of-way from the centerline of Cochrane Road for public street purposes along the Cochrane Road frontage of APN: 728-31-014 and dedicate a 10' wide PSE behind the proposed property line.
 - iii. At improvement plan//building permit stage, revise plans to show the number of streetlights and spacing along Cochrane Road to comply with City standards. Per City standards, streetlight spacing for arterials is 160' to 180' and streetlight location shall be directly opposite the existing streetlight on the north side of Cochrane Road.
 - iv. At improvement plan//building permit stage, submit a traffic signal modification plan for the Cochrane Road/De Paul Drive intersection. The plan shall include the relocation or replacement of the two existing traffic signal poles on the southwest corner of the intersection, signal phasing, and the proposed striping plans.
- 5. Utilities: The City's Water System Master Plan, Storm Drainage System Master Plan, and Sewer System Master Plan identified proposed improvements along De Paul Drive and Half Road.
 - i. Storm Improvements:
 - 1) The project shall construct a 48" to 54" storm main along the project's Half Road frontage per the City's Storm Master Plan.
 - 2) Provide a minimum 20' wide additional PSE centered over the portion of the proposed storm drain main located west of Condit Road. The PSE shall be reviewed at parcel map stage.
 - 3) The developer shall continue to work with the City and Valley Water to review the design conditions of the PL-566 project and shall revise the on-site drainage plans at improvement plan stage, as needed, to the satisfaction of the City Engineer.
 - 4) Per the notes on the project's Vesting Tentative Parcel Map, the site is in Flood Zone "X- Shaded" and Flood Zone "AE" as shown on the FEMA Flood Insurance Rate Maps. Depending on the results of Valley Water's updated hydrology model, the project may be required to submit a Letter of Map Revision (LOMR) to FEMA or other appropriate documentation to update the flood zone for the site and designate the entire site to be entirely within Flood Zone "X- Shaded", an area defined as outside the 100-year floodplain.
 - 5) A segment of the proposed 24" storm main along De Paul Drive shows a manhole spacing that exceeds the City standard maximum spacing of 400' for 15" to 30" storm pipe diameters. At improvement plan/building permit stage, revise storm manhole spacing to comply with City standards.
 - 6) At improvement plan/building permit stage, revise the pipe size of the following to the minimum size of 15-inch diameter per City standard:

- a) Proposed 12" storm main segment at De Paul Drive, between Sta. 16+00 and Sta. 18+00.
 - b) Proposed 12" storm lateral at Half Road, near Sta. 5+40.
 - c) Proposed 12" storm laterals at De Paul Drive.
- ii. Water Improvements: At improvement plan/building permit stage, revise the plans to comply with the following:
 - 1) Extend the existing 12" public water main from the southerly terminus of De Paul Drive to Half Road per the City's Water System Master Plan. The water main extension shall be public.
 - 2) At improvement plan/building permit stage, show each of the five buildings with a dedicated domestic, irrigation and fire services connected to a public water main.
 - 3) The Utility Plans show the domestic water service for two parcels (Parcels C & D) crossing other parcels. Service for Parcel D crosses Parcel A and service for Parcel C crosses Parcel B. At parcel map review stage, add private utility easements for the water services on Parcels A and B.
 - 4) Detailed review of the water service configurations, water lateral, meter and backflow preventer locations will be performed at improvement plan/building permit stage and will be subject to City Engineer approval.
- iii. Sanitary Sewer Improvements: Based on the proposed amendment to the City's Sewer Master Plan, a sewer flow re-route into the Condit Road Sewer Trunk will be a required sewer master plan improvement for the project.
 - 1) Install a 10" sanitary sewer gravity main beginning at De Paul Drive, approximately 540' south of Cochrane Road; then continue in a southbound direction to Half Road; then west along Half Road up to Condit Road; then follow Condit Road and end at a connection to the existing 10" sewer main at Main Avenue.
 - 2) At improvement plan/building permit stage, revise the plans to comply with the following:
 - a) On Sheet 6.5 (Preliminary Street Improvement Sections - Sections G & H), show the new 10" sanitary sewer main at Half Road to be constructed by the project.
 - b) Show a minimum horizontal clearance of 10' from the existing Valley Water groundwater recharge line.
 - 3) Prior to parcel map approval/building permit issuance, the project shall enter into a Private Sanitary Sewer Maintenance Agreement with the City for maintenance of all private sanitary sewer facilities

which includes the private sewer mains, sewer laterals, force main and lift station.

- 4) A sanitary sewer test manhole shall be provided for each of the five buildings and shall be accessible to the Pretreatment Inspector. The sanitary sewer test manholes shall be located within private property but adjacent to the street right-of-way or as approved by the City Engineer in conjunction with Pretreatment Inspector review.

6. Reimbursement Agreement: Prior to parcel map approval, the developer shall enter into a Reimbursement Agreement with the City for the reimbursement of the applicable portions of the cost to construct the following improvements that are beyond the developer's responsibility as determined by the City Engineer:
 - i. De Paul Drive and Half Road street improvements
 - ii. Traffic signal improvements at the intersection of Cochrane Road & De Paul Drive
 - iii. Storm improvements at Half Road per City's Storm Master Plan including the proposed outfall to Madrone Channel. The developer will be reimbursed for the cost to upsize the storm main above 24" per the City's Storm Master Plan.
 - iv. Sanitary sewer improvements per the City's Sewer Master Plan with the cost based on a sewer cost allocation to be agreed upon by the City, project developer and by Dividend Homes for the Crosswinds Project. The developer will be reimbursed for the cost to upsize the sewer main from 8" (developer's responsibility) to 10" per the proposed amendment to City's Sewer Master Plan.
7. Permits/Approvals from Other Agencies:
 - i. At improvement plan/building permit stage, the developer shall submit the improvement plans to Valley Water for review and approval of the following work:
 - 1) Proposed improvements along Half Road due to the proximity of the work to the existing Valley Water groundwater recharge pipeline
 - 2) Proposed storm outfall to Madrone Channel
 - 3) Any required or proposed modifications to an existing storm outfall
 - 4) Proposed Madrone Channel access
 - ii. Prior to start of sanitary sewer construction at Half Road/Condit Road, the developer shall obtain an encroachment permit from County Roads & Airports for the installation of the sanitary sewer main extension along Condit Road.

- B. Stormwater Management: The project's Preliminary Stormwater and Hydrology Report dated January 29, 2021 was submitted for City review. At improvement

plan/building permit stage, submit the Final Stormwater and Hydrology Report that addresses all of the stormwater comments included in Land Development Engineering's supplemental comment letter dated February 26, 2021.

1. The developer/owner(s) of each of the five parcels will be required to enter into a formal written Stormwater BMP Operation and Maintenance Agreement with the City prior to building permit issuance. The draft agreement will be provided at improvement plan/building permit stage.
2. At improvement plan/building permit stage, the project shall revise the plans to meet the following design criteria for all loading/unloading dock areas:
 - i. Cover loading dock areas or design drainage to minimize run-on and runoff of stormwater.
 - ii. Direct connections to storm drains from depressed loading docks (truck wells) are prohibited.

C. Grading:

1. At improvement plan/building permit stage, address the following grading comments:
 - i. The Section Details on Sheets C3.1, 3.2, & 3.3 include high points, such as the location of the proposed landscape screening in Section Detail A. Provide spot grades on the grading and drainage plans at these locations and label as high points.
 - ii. Revise the callouts or the section details to match.
 - iii. Sheet C2.2 calls out a 6' clearance between curb and building E while the clearance shown in Section N on Sheet C3.4 is 8'. Revise to match.

D. Landscaping:

1. At improvement plan/building permit stage, revise the proposed street tree species to comply with the list of Zone 1 street tree species in the City's Master Street Tree Plan.
2. The project shall comply with the City's adopted Santa Clara Valley Water Resource Protection Collaborative's "Guidelines and Standards for Land Use Near Streams. A copy of the guidelines and standards can be found at <https://www.valleywater.org/contractors/doing-businesses-with-the-district/permits-for-working-on-district-land-or-easement/guidelines-and-standards-for-land-use-near-streams>."
 - i. Verify that the proposed landscaping along the project's westerly property line, adjacent to Madrone Channel, complies with the Guidelines and Standards (See Chapters 3 & 4).
3. There is a small, unimproved area behind the new cul-de-sac, next to Half Road, with no improvement proposed. At improvement plan/building permit

stage, add a note stating the temporary or permanent landscaping or hardscape proposed for this area.

ENGINEERING STANDARD CONDITIONS

I. GENERAL

- A. The applicant shall cause the construction of all public and private improvements in accordance with the latest City Standard Drawings and Specifications. **(MHMC 12.02.090 A; 17.32.010 A)**
- B. The applicant shall submit as part of the improvement drawings for the project, profiles of all improvements in the project and typical cross-sections of all streets and details of curbs, gutters, and sidewalks, to be accomplished to the satisfaction of the City Engineer prior to submittal of Parcel Map. **(MHMC Sec 17.32.060 B; 17.32.070; 17.32.080 A)**
- C. Obtain necessary encroachment permits from:
 - ☒ City of Morgan Hill
 - ☒ County of Santa Clara Roads & Airports
 - ☒ Santa Clara Valley Water District (Valley Water)
 and provide guarantee covering off-site improvements. **(MHMC 12.08.040 A; 12.08.090)**
- D. Improvement plans are to show water lines, sanitary sewer, storm drain system, pavement widths, curve radius, and existing utilities.
- E. Enter into a Subdivision Improvement Agreement (SIA) with the City of Morgan Hill to cover required improvements. **(MHMC 12.02.150; 17.32.010 B; 17.32.160)**
- F. Reciprocal access easements and maintenance agreements ensuring access to all parcels and joint maintenance of all common roads, drives or parking areas shall be provided by CC&R's and by deed and shall be recorded concurrent with the map, or prior to issuance of building permit where no map is involved. **(MHMC 17.20.350 H)**
- G. **Impact Fees:** The City of Morgan Hill, pursuant to City Code Chapter 3.56 has established impact fees to finance the cost of improvements required by new development. City Code Chapter 3.56.050 provides for automatic annual (July 1st) adjustment of those fees in existence utilizing the Engineering News Record Index for the preceding twelve months. The City maintains historical records on the Engineering News Record Index. These records are available

for inspection during normal business hours. **(MHMC 3.56.010; 3.56.030; 3.56.050)**

II. STREET IMPROVEMENTS

- A. **Public and Private Streets:** The applicant shall cause the design and construction of all new public and private streets serving the project. The design of all new public and private streets shall be consistent with the General Plan Land Use and Circulation Element as well as the Street Standard Details as contained within the Public Works Standards Details. The construction of the streets shall be undertaken to the lines and grades and in a manner satisfactory to the City Engineer. All street improvements shall be constructed to the satisfaction of the City Engineer. The timing of the improvements will be determined by the City. **(MHMC 12.02.010; 12.02.090; 17.32.060 B; CMH General Plan; CMH Design Standards and Standard Details for Construction)**
- B. **Installation and Dedication of Streets:** The project shall install and dedicate street improvement including, but not limited to, curb and gutter, sidewalk, compaction, street paving, oiling, storm drainage facilities, sewer and water, fire protection, undergrounding of utilities and street lighting in conformance with City of Morgan Hill requirements. **(MHMC 12.02.010; 12.02.50; 12.02.080; 12.02.100; 17.28.010; 17.32.060)**
- C. **Underground existing utilities:** All existing overhead utilities adjacent to any site boundary or along any street frontage of site shall be placed underground in accordance with City standards and affected utility company guidelines. **(MHMC 12.02.090 B; 17.32.020 E.1)**

III. SANITARY SEWER SYSTEM

- A. **Design of Sewer Improvements:** The applicant shall cause to be undertaken the design and construction of sanitary sewer improvements including, but not limited to installation of sewer line extension on the proposed public street(s) or private street(s)/drive aisle(s). The sanitary collection system shall include, but not be limited to manholes with manhole frames and covers, cleanouts, wye-branches and laterals, and separate sewer taps to each parcel. These are to be installed by the developer. **(MHMC 13.20.355; 17.32.020 C; CMH Sewer System Master Plan; CMH Design Standards and Standard Details for Construction)**
- B. All existing and future sewer lines shall be tied into the City's system and existing septic systems shall be abandoned in accordance with City requirements. **(MHMC 13.24.060; 17.32.20 C)**

IV. STORM DRAIN SYSTEM

- A. **Storm Drainage Study:** A complete storm drainage study of the proposed development must be submitted showing amount of run-off, and existing and proposed drainage structure capacities. This study shall be subject to review and approval by the City Engineer. All needed improvements will be made by the applicant. No overloading of the existing system will be permitted. **(MHMC 17.32.020 B; 17.32.090; CMH Design Standards and Standard Details for Construction)**
- B. **Storm Drainage Design:** The applicant shall cause the design and construction to be undertaken for a storm drainage collection system shown on the Tentative Map/Design Review plans. All storm drain improvements shall be constructed to the satisfaction of the City Engineer. **(MHMC 17.32.020 A & B)**
- C. **Storm Drainage Capacity:** Collection system shall be designed to be capable of handling a 10-year storm without local flooding. On-site detention facilities shall be designed to a 25-year storm capacity. Streets shall be designed to carry 100-year storm. Items of construction shall include, but not be limited to installation of storm line extension on proposed public street(s), surface and subsurface storm drain facilities, manholes with manhole frames and covers, catch basins and laterals. Note: the project may be required to **retain** stormwater runoff as part of resolution R3-2013-0032 prior to releasing discharge rates at pre-development flows. **(MHMC 17.32.020 B; 18.74.440; CMH Design Standards and Standard Details for Construction; CMH Storm Drainage System Master Plan)**
- D. **Storm Drainage General Requirements:** Prior to issuance of a grading permit, the applicant shall complete the following to the satisfaction of the City Engineer.
 - 1. Storm drain calculations to determine detention/retention pond sizing and operations.
 - 2. Plan describing how material excavated during construction will be controlled to prevent this material from entering the storm drain system.
 - 3. Water Pollution Control Drawings (WPCD) for Sediment and Erosion Control.**(CMH Design Standards and Standard Details for Construction)**
- E. **Valley Water Dedications:** Where the project adjoins existing Valley Water storm drain facilities, applicant shall obtain dedication(s) of all necessary easement or right-of-way to accommodate established ultimate facilities master plan.
- F. **Tree Protection:** BMP Tree protection shall be part of the SWPPP inspections.

G. NPDES Construction Activity General Permit/SWPPP Requirements: As required by the State Water Resources Control Board (SWRCB) Order No. 2009-0009-DWQ, construction activity resulting in a land disturbance of one (1) acre or more of soil, or whose projects are part of a larger common plan of development that in total disturbs more than one (1) acre, are required to obtain coverage under the National Pollutant Discharge Elimination System (NPDES) General Permit No. CAS000002 for Discharges of Storm Water Associated with Construction Activity (General Permit). To be permitted with the SWRCB under the General Permit, owners must file a complete Notice of Intent (NOI) ONLINE at: <http://smarts.waterboards.ca.gov/smarts/faces/SwSmartsLogin.jsp> and develop a Storm Water Pollution Prevention Plan (SWPPP) Manual in accordance with the General Permit. The SWPPP Manual shall follow the CASQA SWPPP template/format at <https://www.casqa.org/store/products/tabid/154/p-167-construction-handbookportal-initial-subscription.aspx> and shall be approved by Public Works Engineering. A Waste Discharger Identification (WDID) number to be issued to the construction site after the SWRCB receives and verifies the submitted ONLINE NOI information. The WDID number and approved SWPPP Manual shall be provided to Public Works and the Building Department prior to any approval of grading activities (**SWRCB NPDES General Permit CA000002**).

H. NPDES GENERAL PERMIT SITE SWPPP INSPECTIONS AND COMPLIANCE:

1. ALL project onsite and offsite construction activity shall have the site inspected by a **qualified third party SWPPP Inspector (QSD or QSP or RCE)**.
2. SWPPP Inspections shall occur weekly during the rainy season (September 15th thru May 1st).
3. SWPPP Inspections shall occur bi-weekly during the non-rainy season.
4. 48 hours prior to and following a forecasted rain event, SWPPP Inspections shall occur in addition to those of items 2 or 3 above.
5. Per each of the inspection conditions 2, 3, or 4, the NPDES SWPPP Inspector shall certify in writing to the Building and Public Works Department if the site is in compliance or non-compliance with the NPDES General Permit for Stormwater, site SWPPP Manual, and Water Pollution Control Drawings (per the CMH-SWPPP Inspection Check List to be provided by Public Works). QSD/QSP SWPPP Inspectors shall forward onsite and offsite information/certification to the Building (on-site private property issues) and Public Works (public right-of-way issues) inspectors, respectively.
6. Prior to rain events, BMPs not in compliance will need to be corrected immediately.
7. Illicit discharges per the NPDES General Permit, non-compliance of tracking control, and inlet protection within the public right of way shall be address immediately.

8. Other non-compliance issues need to be addressed within a 24-hour period.
9. Non-compliance issues which have been corrected shall be verified by NPDES SWPPP Inspector by a follow up inspection.
10. BMPs maintenance/inspections shall include tree protection if applicable.

V. WATER SYSTEM

- A. **Domestic Water System:** The applicant shall cause the design and construction to be undertaken of a domestic water system to the satisfaction of the City Engineer. The water system improvements shall be constructed within public easements or street rights-of-way to the satisfaction of the City Engineer and dedicated to the City. **(MHMC 17.32.020 A & D; CMH Design Standards and Standard Details for Construction; CMH Water System Master Plan)**
- B. **Water well abandonment:** Abandonment of any existing water well shall be in conformance with Santa Clara Valley Water District (Valley Water) Ordinance 90-1. Location and disposition to be shown on the plan. Well(s) shall be properly registered with Valley Water and either be maintained or abandoned in accordance with Valley Water standards.
- C. **Water line extension:** Install water line extension on the proposed public streets and/or private streets. **(MHMC 17.32.020 A & D; CMH Water System Master Plan)**
- D. **Water Meters:** Provide separate water services and meters for each parcel. These are to be installed by developer. **(MHMC 17.32.020 D)**
- E. Provide separate fire service and double detector check with FDC per City standard detail W-8 for each parcel.

VI. OTHER CONDITIONS

- A. **Easement Dedications:** The owner shall dedicate all necessary utility easements. **(MHMC 12.02.080 D; 17.28.010 A)**
- B. **Undergrounding new utilities:** The applicant shall cause the design and construction required to underground all electric, gas, Cable TV and communication lines within the development. Such design and construction shall be to the satisfaction of the affected utilities and the City Engineer. **(MHMC 17.32.020 E.1)**
- C. **Parcel Map:** For minor subdivision (4 lots or less), the parcel map shall be signed by the City Engineer and the Planning Commission Secretary prior to issuance of a grading permit. **(MHMC 17.20.390; 17.24.210)**

- D. **Landscaping and Irrigation Systems:** Landscaping and irrigation systems serving common areas that are required to be installed in the public right-of-way on the perimeter of this project shall be continuously maintained by the property owner or designated maintenance entity.
- E. **Final Landscape Plans:** Final landscape plans shall be submitted with and included as part of the improvement plans for the project. **(MHMC 17.08.090)**
- F. **Pre-construction Meeting:** Prior to the approval of any building permit for grading activity, the developer shall schedule a pre-construction meeting with the Public Works Inspection Division with the following project team members:
 - 1. Civil Engineer of record
 - 2. Geotechnical Engineer of record
 - 3. Third Party QSD/QSP SWPPP Inspector
 - 4. General Contractor
 - 5. Sub-Contractors

VII. NPDES WATER QUALITY STORMWATER MANAGEMENT DEVELOPMENT STANDARDS

- A. **Stormwater Management Guidance Manual for Low Impact Development State Water Resources Control Board Post Construction Requirements (PCRs):** Project shall comply with the California Regional Water Quality Control Board Central Coast Region Resolution No. R3-2013-0032 as documented by the **Stormwater Management Guidance Manual for Low Impact Development and Post-Construction Requirements** (developed from Resolution No. R-2013-0032 Attachment 1 and 2 at: http://www.waterboards.ca.gov/centralcoast/water_issues/programs/stormwater/docs/lid/lid_hydromod_charette_index.shtml). A copy of the guidance manual can be obtained through the Land Development Engineering webpage. Project shall provide Stormwater Runoff Management Plan, Stormwater Control Plan Checklist and applicable calculations per the Stormwater Management Guidance Manual for Low Impact Development and Post-Construction Requirements. Project shall meet the applicable requirements of the Stormwater Management Guidance Manual for Low Impact Development and Post-Construction Requirements:
 - 1. Performance Requirement 1: Site Design and Runoff Reduction
 - 2. Performance Requirement 2: Water Quality Treatment
 - 3. Performance Requirement 3: Runoff Retention
 - 4. Performance Requirement 4: Peak Management
- B. **Peak Storm Water Runoff Discharge Rates:** Post-development peak storm water runoff discharge rates shall not exceed the estimated pre-development rate for developments where the increased peak storm water discharge rate will

result in increased potential for downstream erosion. Note: the project may be required to **retain** stormwater runoff as part of resolution R3-2013-0032 prior to releasing discharge rates at pre-development flows.

- C. **Provide Storm Drain System Stenciling and Signage:** Storm drain stencils are highly visible source controls that are typically placed directly adjacent to storm drain inlets. The stencil contains a brief statement that prohibits the dumping of improper materials into the storm water conveyance system. Graphical icons, either illustrating anti-dumping symbols or images of receiving water fauna, are effective supplements to the anti-dumping message. All storm drain inlets and catch basins within the project area must be stenciled with prohibitive language (such as: "NO DUMPING – DRAINS TO CREEK") and/or graphical icons to discourage illegal dumping. Signs and prohibitive language and/or graphical icons, which prohibit illegal dumping, must be posted at public access points along channels and creeks within the project area. Legibility of stencils and signs must be maintained.
- D. **Properly Design Trash Enclosure Areas:** All trash enclosure areas must meet the following Structural or Treatment Control BMP requirements:
1. Roof Required: Trash enclosure areas shall have an all-weather noncombustible solid roof to prevent rainwater from mixing with the enclosure's contents.
 2. Walls Required: Trash enclosure shall have structural walls to prevent unauthorized off-site transport of trash.
 3. Doors: Trash enclosure shall have door(s) which can be secured when closed.
 4. Grades: The pad for the enclosure shall be designed to not drain outward, and the grade surrounding the enclosure shall be designed to not drain into the enclosure.
 5. Drain Inlet: Within the enclosure, an area drain with an approved (Zurn) vandal proof drain shall be installed and shall be plumbed to the sanitary sewer system with grease trap. Grease trap shall be located within the trash enclosure footprint.
- E. **Design Standards for Structural or Treatment Control BMPs:** The post-construction treatment control BMPs shall incorporate, at a minimum, either a volumetric or flow- based treatment control design standard, or both, as identified below to mitigate (infiltrate, filter or treat) storm water runoff:
1. Volumetric Treatment Control BMP
 - a. The 85th percentile 24-hour runoff event determined as the maximized capture storm water volume for the area, from the formula recommended in Urban Runoff Quality Management, WEF Manual of Practice No. 23/ASCE Manual of Practice No. 87, (1998); or
 - b. The volume of annual runoff based on unit basin storage water quality volume, to achieve 80 percent or more volume treatment by the method

recommended in California Stormwater Best Management Practices Handbook – Industrial/ Commercial, (2003); or

- c. The volume of runoff produced from a historical-record based reference 24-hour rainfall criterion for “treatment” that achieves approximately the same reduction in pollutant loads achieved by the 85th percentile 24-hour runoff event.
 2. Flow Based Treatment Control BMP
 - a. The flow of runoff produced from a rain event equal to at least two times the 85th percentile hourly rainfall intensity for the area; or
 - b. The flow of runoff produced from a rain event that will result in treatment of the same portion of runoff as treated using volumetric standards above.
- F. Stormwater Runoff Management Plan (SWRMP) required:** The stormwater runoff management plan shall include sufficient information to evaluate the environmental characteristics of affected areas, the potential impacts of the proposed development on water resources, and the effectiveness and acceptability of measures (post construction BMPs) proposed for managing stormwater runoff.
1. The stormwater runoff management plan shall be prepared under the direction of a professional civil engineer registered in the State of California. The responsible professional civil engineer shall stamp and sign the approved stormwater runoff management plan.
 2. The City Engineer or designee may require a developer to provide a signed certification from the civil engineer responsible for preparing the stormwater runoff management plan that all stormwater best management practices have been designed to meet the requirements of this chapter.
 3. Each certifying civil engineer shall establish to the City's satisfaction that such person has been trained on the design of stormwater quality best management practices not more than three years prior to the certification signature date.
 4. Qualifying training shall be conducted by an organization with stormwater quality management expertise, such as a university, the Bay Area Stormwater Management Agencies Association, the American Society of Civil Engineers, the American Public Works Association, or the California Water Environment Association.
- G. Stormwater BMP operation, maintenance, and replacement responsibility**
1. All on-site stormwater management facilities shall be operated and maintained in good condition and promptly repaired/replaced by the property owner(s), an owners' association or other legal entity approved by the city.
 2. Any repairs or restoration/replacement and maintenance shall be in accordance with city-approved plans.
 3. The property owner(s) shall develop a maintenance schedule for the life of any stormwater management facility and shall describe the maintenance to

be completed, the time period for completion, and who shall perform the maintenance. This maintenance schedule shall be included with the approved stormwater runoff management plan.

H. Stormwater BMP operation and Maintenance Agreement (SWBOMA)

required: Prior to the issuance of any building permit requiring stormwater management BMPs, the owner(s) of the site shall enter into a formal written stormwater BMP operation and maintenance agreement with the city. The City shall record this agreement, against the property or properties involved, with the County of Santa Clara and it shall be binding on all subsequent owners of land served by the storm water management treatment BMPs (City standard Stormwater BMP Operation and Maintenance Agreement to be provided by Land Development Engineering at improvement plan/building permit stage).

I. Stormwater BMP inspection responsibility

1. The property owner(s) shall be responsible for having all stormwater management facilities inspected for condition and function by a **Registered Civil Engineer (RCE)**.
2. Unless otherwise required by the City Engineer or designee, stormwater facility inspections shall be done at least twice per year (April 15th and September 15th) by the RCE. Written records shall be kept of all inspections and shall include, at minimum, the following information:
 - a. Site address;
 - b. Date and time of inspection;
 - c. Name of the person conducting the inspection;
 - d. List of stormwater facilities inspected;
 - e. Condition of each stormwater facility inspected;
 - f. Description of any needed maintenance or repairs; and
 - g. As applicable, the need for site re-inspection.
3. Upon completion of each inspection, an inspection report shall be submitted to Land Development Engineering.

J. Records of maintenance and inspection activities: On or before April 15th and September 15th of each year, the party responsible for the operation and maintenance of on-site stormwater management facilities under the BMP operation and maintenance agreement shall provide the City Engineer or designee with records of all inspections, maintenance and repairs.

K. Annual Certification of SWRMP: On or before September 30th of each year, a Registered Civil Engineer (RCE) shall provide written certification that the developments stormwater quality design standards are properly maintained and functioning as required by the SWRMP.

BUILDING DIVISION

- A. Trash enclosures shall be connected to an accessible route.
- B. Trash enclosures shall have a solid noncombustible roof structure to prevent storm water from entering the sanitary sewer system. See Pretreatment requirements regarding the required connection to sanitary sewer.
- C. All building entrances shall be on an accessible route, CBC 11B-206.4. CBC 1028.5 requires the exit discharge shall provide a direct and unobstructed access to a public way.
- D. **California Code of Regulations:** Project shall be designed to comply with the most current California Code of Regulations as amended by Morgan Hill Municipal Code Title 15. Building Permit applications submitted after January 1, 2020 shall be designed to comply with the 2019 California Codes of Regulations.
- E. **Compliance with Morgan Hill Municipal Code:** Project shall comply with the Morgan Hill Municipal Code (MHMC) including but not limited to:
 - 1. MHMC 15.65 Sustainable Building Regulations.
 - 2. MHMC 18.72.040 C. Electric Vehicle Charging.
 - i When Required. Electric vehicle charging stations shall be provided:
 - (a) For new structures or uses required to provide at least twenty-five parking spaces; and
 - (b) Additions or remodels that increase an existing parking lot of fifty or more spaces by ten percent or more.
 - ii Number of Charging Stations. The number of required charging stations shall be as follows:
 - (a) Twenty-five to forty-nine parking spaces: One charging station.
 - (b) Fifty to one hundred parking spaces: Two charging stations, plus one for each additional fifty parking spaces.
 - 3. MHMC 15.40 Building Security
 - 4. MHMC 15.38 Wage Theft Preventions
 - 5. MHMC 18.148 Water Conservation
 - 6. MHMC 15.63 Prohibition of Natural Gas Infrastructure in New Buildings

FIRE DIVISION

- A. **Preliminary Review Only:** The requirements and conditions stated in this review are preliminary and are intended to be used for the purposes of project planning. An official Fire Department review of the project will be conducted upon receipt of a complete plan submittal application that clearly shows all intended grading, demolition, construction or building modifications.

- B. **Proposal limited to:** Review of this Development proposal is limited to acceptability of site access as they pertain to fire department operations, and shall not be construed as a substitute for formal plan review to determine compliance with adopted model codes. Prior to performing any work, the applicant shall make application to, and receive from, the Building Department all applicable construction permits.
- C. Underground fire service, fire sprinklers, and fire alarm shall all be deferred submittals under a separate permit.

SANTA CLARA VALLEY WATER DISTRICT

- A. Proposed outfalls to the Madrone Channel shall require permits from Valley Water, the Central Coast Regional Water Quality Control Board, US Army Corps of Engineers and the California Department of Fish and Wildlife.
- B. The proposed location of the outfall to the Madrone Channel shall be reviewed and approved by Valley Water.
- C. Grading adjacent to Madrone Channel shall be at a maximum 4:1 slope along the property line, for the minimum amount necessary, per the Guidelines and Standards for Land Use Near Streams. All site drainage should be directed to the City storm drain system, not overbank towards Madrone Channel. Bio-swales should be designed to overflow into the site drainage system, not overbank into Madrone Channel.
- D. Any road work, grading, paving and proposed utility (sewer or water, etc.) crossing over Valley Water's Main-Madrone Pipeline in Half Road shall require a Valley Water Permit.
- E. Landscaping shall be setback such that there are no overhanging branches in Valley Water right of way during and at full growth. Species selection should be in accordance with the Guidelines and Standards for Land Use Near Streams.
- F. The proposed storm drain outfall manhole shall be located outside Valley Water right-of-way.
- G. Improvement plans shall be submitted to Valley Water for review and approval of the proposed Madrone Channel access.

RESOLUTION NO. 21-05

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MORGAN HILL APPROVING OF A VESTING TENTATIVE PARCEL MAP FOR A 4-LOT PARCEL MAP ON A 29-ACRE SITE LOCATED ON THE NORTHERN INTERSECTION OF CONDIT ROAD AND HALF ROAD (DE PAUL – TC MORGAN HILL VENTURE (REDWOOD TECH AT 101)) (APNS 728-30-006 AND 728-30-009)

WHEREAS, on December 15, 2020, TC Morgan Hill Venture submitted an application for a vesting tentative parcel map (SD2020-0011: De Paul – TC Morgan Hill Venture) for the Redwood Tech at 101 project; and

WHEREAS, such request was considered by the Planning Commission at its meeting of May 25, 2021; and

WHEREAS, this project is consistent with the development projections analyzed in the Morgan Hill 2035 General Plan program EIR for the project site. The project also is designed to be consistent with the development standards in the General Plan and Zoning Code. No further environmental assessment is required; and

WHEREAS, testimony received at a duly-noticed public hearing, along with exhibits and drawings and other materials have been considered in the review process.

NOW, THEREFORE, THE MORGAN HILL PLANNING COMMISSION DOES RESOLVE AS FOLLOWS:

SECTION 1. The Vesting Tentative Parcel Map, together with its provisions for its design and improvements, is consistent with the General Plan and the zoning code.

SECTION 2. The Vesting Tentative Parcel Map as described herein is hereby approved. The proposed project shall be subject to the conditions as identified in the set of standard conditions attached hereto, as Exhibit A, and by this reference incorporated herein.

PASSED AND ADOPTED THIS 25th DAY OF MAY 2021, AT A SPECIAL MEETING OF THE PLANNING COMMISSION BY THE FOLLOWING VOTE:

AYES:	COMMISSIONERS:	HABIB, KUMAR, TANDA, GONZALEZ- ESCOTO, DOWNEY, MUNOZ-MORRIS
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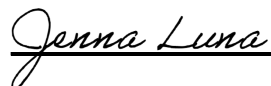
NOES:	COMMISSIONERS:	MUELLER
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City of Morgan Hill
Resolution No. 21-05
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ABSTAIN: **COMMISSIONERS:** **NONE**

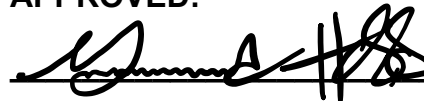
ABSENT: **COMMISSIONERS:** **NONE**

ATTEST:



JENNA LUNA, Deputy City Clerk

APPROVED:



MOHAMMAD HABIB, Chair

Date: 05/28/2021

Attachment: City Council Resolution [Revision 2] (3130 : Trammell Crow Redwood Tech at 101 Appeal)

EXHIBIT "A" STANDARD CONDITIONS

**APPLICATION NO: SD2020-0011: DE PAUL – TC MORGAN HILL VENTURE
(REDWOOD TECH AT 101)**

**THE FOLLOWING APPROVAL REQUIREMENTS AND ANY SPECIAL CONDITIONS
SHALL BE APPLIED THROUGH THE DEVELOPMENT APPROVAL PROCESS.**

Legend

MHMC= Morgan Hill Municipal Code
MHARH= Morgan Hill Architectural Review Handbook
CMH= City of Morgan Hill
CFC= California Fire Code

I. PROJECT DESCRIPTION

The project includes a Vesting Tentative Parcel Map to subdivide the project site into four parcels.

The project shall comply with all requirements of related project approvals granted by the City, including all of the following:

II. PROJECT CONDITIONS OF APPROVAL

This Tentative Parcel Map approval is limited to the plan set dated January 2021 on file (File Number SD2020-0011) with the Development Services Department. These documents, as amended by Design Review approval, show the location and sizes of all lots in this development, the location and dimensions of all vehicle and pedestrian circulation ways (ingress/egress), common areas, and other easement areas.

The Parcel Map shall be in substantial compliance with the approved Tentative Map as determined by the City Engineer and Development Services Director.

PLANNING DIVISION

DEFENSE AND INDEMNITY

- A. As part of, and in connection, with this application to the City of Morgan Hill, Applicant agrees to defend, indemnify, and hold harmless the City of Morgan Hill, its officers, agents, employees, officials and representatives (Indemnitees) from and against any and all claims, actions, or proceedings arising from any suit for damages or for equitable or injunctive relief which is filed against City to attack, set aside, void or annul its approval of this application or any related decision, or the adoption of any environmental documents which relates to said approval. The

City shall promptly notify the Applicant of any such claim, action or proceeding and the City shall cooperate fully in the defense thereof. In the event that Applicant is required to defend Indemnitees in connection with the proceeding, Indemnitees shall retain the right to approve (a) the counsel to so defend Indemnitees; (b) all significant decisions concerning the manner in which the defense is conducted; and (c) any and all settlements, which approval shall not be unreasonably withheld. This indemnification shall include, but is not limited to, (a) all pre-tender litigation costs incurred on behalf of the City, including City's attorney's fees and all other litigation costs and expenses, including expert witnesses, required to defend against any lawsuit brought as a result of City's approval or approvals; (b) reasonable internal City administrative costs, including but not limited to staff time and expense spent on the litigation, after tender is accepted; and (c) all damages, costs, expenses, attorney fees or expert witness fees that may be awarded to the prevailing party arising out of or in connection with the approval of the application or related decision. City may, in its sole discretion, participate in the defense of such action; but such participation shall not relieve Applicant of its obligations under this condition. The undersigned hereby represents that they are the Applicant or are fully empowered by the Applicant as their agent to agree to provide the indemnification, defense and hold harmless obligations, and the signature below represents the unconditional agreement by Applicant to be bound by such conditions.

TIME LIMITS

- A. **Term:** The Tentative Parcel Map approval granted pursuant to this Resolution shall remain in effect for two years to May 25, 2023. Failure to apply for Parcel Map approval with the City Engineer within this term shall result in expiration of approval unless an extension of time is granted by the Development Services Department/Planning Commission prior to the expiration date. **(MHMC 17.20.170; 17.24.110)**

SITE DEVELOPMENT

- A. **Street Names:** Street names, private or otherwise, used to identify building locations shall be submitted to the Planning Division for approval. Proposed street names shall comply with the Street Naming Policy approved by City Council (Resolution No. 4601) and CP 94-13.

HABITAT PLAN

- A. **Fees:** The approved project is covered pursuant to the Santa Clara Valley Habitat Plan (Habitat Plan) and subject to fees and conditions contained in the Habitat Plan.
- B. **Application Package:** Prior to issuance of a grading permit, the project shall complete and submit a Habitat Plan Application Package. All fees shall be paid prior to issuance of a grading permit. **(MHMC 18.132)**

- C. **Conditions:** Any additional conditions or mitigations required by the Habitat Plan shall be clearly stated on all plans that involve any ground disturbing activity (i.e. grading plans, improvement plans, paving plans, demolition plans or other plans for site clearing or temporary stockpile of dirt). **(MHMC 18.132)**

CULTURAL RESOURCES

- A. **Significant historic or archaeological materials:** This project has been determined not to be in a site identified as archaeologically sensitive by the City's adopted archaeological sensitivity map, but nonetheless could adversely impact undocumented human remains or unintentionally discover significant historic or archaeological materials. The following policies and procedures for treatment and disposition of inadvertently discovered human remains or archaeological materials shall apply and should be provided as standard conditions on the building permit, grading permit, or improvement plans. If human remains are discovered, it is probable they are the remains of Native Americans.
1. If human remains are encountered, they shall be treated with dignity and respect as due to them. Discovery of Native American remains is a very sensitive issue and serious concern. Information about such a discovery shall be held in confidence by all project personnel on a need to know basis. The rights of Native Americans to practice ceremonial observances on sites, in labs and around artifacts shall be upheld. Remains should not be held by human hands. Surgical gloves should be worn if remains need to be handled. Surgical mask should also be worn to prevent exposure to pathogens that may be associated with the remains.
 2. In the event that known or suspected Native American remains are encountered, or significant historic or archaeological materials are discovered, ground-disturbing activities shall be immediately stopped. Examples of significant historic or archaeological materials include, but are not limited to, concentrations of historic artifacts (e.g., bottles, ceramics) or prehistoric artifacts (chipped chert or obsidian, arrow points, ground-stone mortars and pestles), culturally altered ash-stained midden soils associated with pre-contact Native American habitation sites, concentrations of fire-altered rock and/or burned or charred organic materials, and historic structure remains such as stone-lined building foundations, wells or privy pits. Ground-disturbing project activities may continue in other areas that are outside the discovery locale.
 3. An "exclusion zone" where unauthorized equipment and personnel are not permitted shall be established (e.g., taped off) around the discovery area plus a reasonable buffer zone by the Contractor Foreman or authorized representative, or party who made the discovery and initiated these

protocols, or if on-site at the time of discovery, by the Monitoring Archaeologist (typically 25-50ft for single burial or archaeological find).

4. The discovery locale shall be secured (e.g., 24-hour surveillance) as directed by the City or County if considered prudent to avoid further disturbances.
5. The Contractor Foreman or authorized representative, or party who made the discovery and initiated these protocols shall be responsible for immediately contacting by telephone the parties listed below to report the find and initiate the consultation process for treatment and disposition:
 - The City of Morgan Hill Development Services Director (408) 779-7247
 - The Contractor's Point(s) of Contact
 - The Coroner of the County of Santa Clara (if human remains found) (408) 793-1900
 - The Native American Heritage Commission (NAHC) in Sacramento (916) 653-4082
 - The Amah Mutsun Tribal Band (916) 481-5785 (H) or (916) 743-5833 (C)
6. The Coroner has two working days to examine the remains after being notified of the discovery. If the remains are Native American, the Coroner has 24 hours to notify the NAHC.
7. The NAHC is responsible for identifying and immediately notifying the Most Likely Descendant (MLD) from the Amah Mutsun Tribal Band. (Note: NAHC policy holds that the Native American Monitor will not be designated the MLD.)
8. Within 24 hours of their notification by the NAHC, the MLD will be granted permission to inspect the discovery site if they so choose.
9. Within 24 hours of their notification by the NAHC, the MLD may recommend to the City's Development Services Director the recommended means for treating or disposing, with appropriate dignity, the human remains and any associated grave goods. The recommendation may include the scientific removal and non-destructive or destructive analysis of human remains and items associated with Native American burials. Only those osteological analyses or DNA analyses recommended by the Amah Mutsun Tribal Band may be considered and carried out.
10. If the MLD recommendation is rejected by the City of Morgan Hill the parties will attempt to mediate the disagreement with the NAHC. If

mediation fails, then the remains and all associated grave offerings shall be reburied with appropriate dignity on the property in a location not subject to further subsurface disturbance.

GENERAL

- A. Recordation of Map: The recordation of the parcel map shall not be completed until approval of the Design Review Permit is completed.
- B. Signed copies of Resolution: Submit two (2) signed copies of this Resolution to the Planning Division prior to issuance of building permits.

ENGINEERING DIVISION

PROJECT SPECIFIC ENGINEERING CONDITIONS

- A. Street and Utility Improvements:
 - 1. Coordination with Adjacent Residential Project: The developer shall coordinate the De Paul Drive improvements and sanitary sewer improvements with the project known as "The Crosswinds Project" located on the east side of De Paul Drive (APNs: 728-30-001, -002, -003, & -004) and owned by Dividend Homes.
 - i. Prior to parcel map approval, the developer shall obtain the necessary right-of-way on De Paul Drive (and construction easement, if required) from Dividend Homes' Crosswinds Project.
 - 2. De Paul Drive: Construct De Paul Drive to comply with the City's half street (2/3 street) standards along the west side of De Paul Drive from Cochrane Road to the proposed cul-de-sac next to Half Road (includes the frontage along the Lands of Lee with APN: 728-30-008) to the satisfaction of the City Engineer.
 - i. Install and dedicate the required street improvements at De Paul Drive to have a straight road alignment with a minimum 46' right-of-way width and a minimum 36' pavement width from face of curb along the unimproved section of De Paul Drive to the new cul-de-sac next to Half Road.
 - ii. The City will quitclaim approximately 19' of right-of-way along the De Paul Drive frontage of APN: 728-30-009.
 - iii. The developer shall dedicate 36' right-of-way width in fee to the City for public street purposes along the De Paul Drive frontage of APN: 728-31-014 and dedicate a 10' wide Public Service Easement (PSE) behind the proposed property line.
 - iv. The project's right-of-way dedication and quitclaim shall be shown on the parcel map.
 - v. The street improvements shall include, but are not limited to, curb and gutter, sidewalk, landscaping, full cul-de-sac at the southerly end of De

- Paul Drive next to Half Road, street paving, utilities, undergrounding, stormwater post-construction facilities, and street lighting.
- vi. The project shall construct City standard sidewalk along the west side of De Paul Drive from Cochrane Road to the proposed cul-de-sac next to Half Road to provide a continuous pedestrian connection from the project site to Cochrane Road.
 - 1) The project has an option to construct a temporary asphalt sidewalk along the frontages of the future Phase 2 Project and the Lands of Lee (APN: 728-30-008)
 - vii. The project's two northerly driveways at De Paul Drive are proposed to have widths that exceed the City standard maximum industrial driveway width of 36' to allow truck access/maneuvering.
 - 1) At improvement plan/building permit stage, submit an additional truck turning template using the ultimate street width of De Paul Drive for City Engineer review.
 - viii. At improvement plan/building permit stage, revise the De Paul Drive street cross-sections to match the 2/3 street width.
3. Half Road: The developer shall construct Half Road to comply with City standards along the north side of the project's Half Road frontage to the satisfaction of the City Engineer.
- i. Install and dedicate the required street improvements at Half Road. The street improvements shall include, but are not limited to, curb and gutter, sidewalk, landscaping, street paving, utilities, stormwater post-construction facilities, and street lighting.
 - ii. The developer shall dedicate right-of-way in fee to the City for public street purposes at a width of 36' from centerline along the Half Road frontage of APN: 728-30-009 and dedicate a 10' wide PSE behind the proposed property line.
 - iii. Extend the new sidewalk along the project's Half Road frontage westerly up to the Madrone Channel/Trail entrance. The design of the sidewalk and compliance with Valley Water's access requirements to Madrone Channel will be reviewed at improvement plan/building permit stage.
4. Cochrane Road: Construct the ultimate width of Cochrane Road along the project's frontage to comply with the City's arterial street standards to the satisfaction of the City Engineer.
- i. Install and dedicate the required street improvements at Cochrane Road. The street improvements shall include, but are not limited to, curb and gutter, sidewalk, dedicated right-turn pocket along eastbound Cochrane Road, landscaping, street paving, utilities, stormwater post-construction facilities, and street lighting.
 - ii. The developer shall dedicate a minimum of 60' of right-of-way from the centerline of Cochrane Road for public street purposes along the

Cochrane Road frontage of APN: 728-31-014 and dedicate a 10' wide PSE behind the proposed property line.

- iii. At improvement plan//building permit stage, revise plans to show the number of streetlights and spacing along Cochrane Road to comply with City standards. Per City standards, streetlight spacing for arterials is 160' to 180' and streetlight location shall be directly opposite the existing streetlight on the north side of Cochrane Road.
 - iv. At improvement plan//building permit stage, submit a traffic signal modification plan for the Cochrane Road/De Paul Drive intersection. The plan shall include the relocation or replacement of the two existing traffic signal poles on the southwest corner of the intersection, signal phasing, and the proposed striping plans.
5. Utilities: The City's Water System Master Plan, Storm Drainage System Master Plan, and Sewer System Master Plan identified proposed improvements along De Paul Drive and Half Road.
- i. Storm Improvements:
 - 1) The project shall construct a 48" to 54" storm main along the project's Half Road frontage per the City's Storm Master Plan.
 - 2) Provide a minimum 20' wide additional PSE centered over the portion of the proposed storm drain main located west of Condit Road. The PSE shall be reviewed at parcel map stage.
 - 3) The developer shall continue to work with the City and Valley Water to review the design conditions of the PL-566 project and shall revise the on-site drainage plans at improvement plan stage, as needed, to the satisfaction of the City Engineer.
 - 4) Per the notes on the project's Vesting Tentative Parcel Map, the site is in Flood Zone "X- Shaded" and Flood Zone "AE" as shown on the FEMA Flood Insurance Rate Maps. Depending on the results of Valley Water's updated hydrology model, the project may be required to submit a Letter of Map Revision (LOMR) to FEMA or other appropriate documentation to update the flood zone for the site and designate the entire site to be entirely within Flood Zone "X-Shaded", an area defined as outside the 100-year floodplain.
 - 5) A segment of the proposed 24" storm main along De Paul Drive shows a manhole spacing that exceeds the City standard maximum spacing of 400' for 15" to 30" storm pipe diameters. At improvement plan/building permit stage, revise storm manhole spacing to comply with City standards.
 - 6) At improvement plan/building permit stage, revise the pipe size of the following to the minimum size of 15-inch diameter per City standard:
 - a) Proposed 12" storm main segment at De Paul Drive, between Sta. 16+00 and Sta. 18+00.
 - b) Proposed 12" storm lateral at Half Road, near Sta. 5+40.
 - c) Proposed 12" storm laterals at De Paul Drive.

- ii. Water Improvements: At improvement plan/building permit stage, revise the plans to comply with the following:
 - 1) Extend the existing 12" public water main from the southerly terminus of De Paul Drive to Half Road per the City's Water System Master Plan. The water main extension shall be public.
 - 2) At improvement plan/building permit stage, show each of the five buildings with a dedicated domestic, irrigation and fire services connected to a public water main.
 - 3) The Utility Plans show the domestic water service for two parcels (Parcels C & D) crossing other parcels. Service for Parcel D crosses Parcel A and service for Parcel C crosses Parcel B. At parcel map review stage, add private utility easements for the water services on Parcels A and B.
 - 4) Detailed review of the water service configurations, water lateral, meter and backflow preventer locations will be performed at improvement plan/building permit stage and will be subject to City Engineer approval.

- iii. Sanitary Sewer Improvements: Based on the proposed amendment to the City's Sewer Master Plan, a sewer flow re-route into the Condit Road Sewer Trunk will be a required sewer master plan improvement for the project.
 - 1) Install a 10" sanitary sewer gravity main beginning at De Paul Drive, approximately 540' south of Cochrane Road; then continue in a southbound direction to Half Road; then west along Half Road up to Condit Road; then follow Condit Road and end at a connection to the existing 10" sewer main at Main Avenue.
 - 2) At improvement plan/building permit stage, revise the plans to comply with the following:
 - a) On Sheet 6.5 (Preliminary Street Improvement Sections - Sections G & H), show the new 10" sanitary sewer main at Half Road to be constructed by the project.
 - b) Show a minimum horizontal clearance of 10' from the existing Valley Water groundwater recharge line.
 - 3) Prior to parcel map approval/building permit issuance, the project shall enter into a Private Sanitary Sewer Maintenance Agreement with the City for maintenance of all private sanitary sewer facilities which includes the private sewer mains, sewer laterals, force main and lift station.
 - 4) A sanitary sewer test manhole shall be provided for each of the five buildings and shall be accessible to the Pretreatment Inspector. The

sanitary sewer test manholes shall be located within private property but adjacent to the street right-of-way or as approved by the City Engineer in conjunction with Pretreatment Inspector review.

6. Reimbursement Agreement: Prior to parcel map approval, the developer shall enter into a Reimbursement Agreement with the City for the reimbursement of the applicable portions of the cost to construct the following improvements that are beyond the developer's responsibility as determined by the City Engineer:
- i. De Paul Drive and Half Road street improvements
 - ii. Traffic signal improvements at the intersection of Cochrane Road & De Paul Drive
 - iii. Storm improvements at Half Road per City's Storm Master Plan including the proposed outfall to Madrone Channel. The developer will be reimbursed for the cost to upsize the storm main above 24" per the City's Storm Master Plan.
 - iv. Sanitary sewer improvements per the City's Sewer Master Plan with the cost based on a sewer cost allocation to be agreed upon by the City, project developer and by Dividend Homes for the Crosswinds Project. The developer will be reimbursed for the cost to upsize the sewer main from 8" (developer's responsibility) to 10" per the proposed amendment to City's Sewer Master Plan.

STANDARD ENGINEERING CONDITIONS

I. GENERAL

- A. The applicant shall cause the construction of all public and private improvements in accordance with the latest City Standard Drawings and Specifications. **(MHMC 12.02.090 A; 17.32.010 A)**
- B. The applicant shall submit as part of the improvement drawings for the project, profiles of all improvements in the project and typical cross-sections of all streets and details of curbs, gutters, and sidewalks, to be accomplished to the satisfaction of the City Engineer prior to submittal of Parcel Map. **(MHMC Sec 17.32.060 B; 17.32.070; 17.32.080 A)**
- C. Obtain necessary encroachment permits from:
 - ☒ City of Morgan Hill
 - ☒ County of Santa Clara Roads & Airports
 - ☒ Santa Clara Valley Water District (Valley Water)
 and provide guarantee covering off-site improvements. **(MHMC 12.08.040 A; 12.08.090)**
- D. Improvement plans are to show water lines, sanitary sewer, storm drain system, pavement widths, curve radius, and existing utilities.

- E. Enter into a Subdivision Improvement Agreement (SIA) with the City of Morgan Hill to cover required improvements. **(MHMC 12.02.150; 17.32.010 B; 17.32.160)**
- F. Reciprocal access easements and maintenance agreements ensuring access to all parcels and joint maintenance of all common roads, drives or parking areas shall be provided by CC&R's and by deed and shall be recorded concurrent with the map, or prior to issuance of building permit where no map is involved. **(MHMC 17.20.350 H)**
- G. **Impact Fees:** The City of Morgan Hill, pursuant to City Code Chapter 3.56 has established impact fees to finance the cost of improvements required by new development. City Code Chapter 3.56.050 provides for automatic annual (July 1st) adjustment of those fees in existence utilizing the Engineering News Record Index for the preceding twelve months. The City maintains historical records on the Engineering News Record Index. These records are available for inspection during normal business hours. **(MHMC 3.56.010; 3.56.030; 3.56.050)**

II. STREET IMPROVEMENTS

- A. **Public and Private Streets:** The applicant shall cause the design and construction of all new public and private streets serving the project. The design of all new public and private streets shall be consistent with the General Plan Land Use and Circulation Element as well as the Street Standard Details as contained within the Public Works Standards Details. The construction of the streets shall be undertaken to the lines and grades and in a manner satisfactory to the City Engineer. All street improvements shall be constructed to the satisfaction of the City Engineer. The timing of the improvements will be determined by the City. **(MHMC 12.02.010; 12.02.090; 17.32.060 B; CMH General Plan; CMH Design Standards and Standard Details for Construction)**
- B. **Installation and Dedication of Streets:** The project shall install and dedicate street improvement including, but not limited to, curb and gutter, sidewalk, compaction, street paving, oiling, storm drainage facilities, sewer and water, fire protection, undergrounding of utilities and street lighting in conformance with City of Morgan Hill requirements. **(MHMC 12.02.010; 12.02.50; 12.02.080; 12.02.100; 17.28.010; 17.32.060)**
- C. **Underground existing utilities:** All existing overhead utilities adjacent to any site boundary or along any street frontage of site shall be placed underground in accordance with City standards and affected utility company guidelines. **(MHMC 12.02.090 B; 17.32.020 E.1)**

III. SANITARY SEWER SYSTEM

- A. **Design of Sewer Improvements:** The applicant shall cause to be undertaken the design and construction of sanitary sewer improvements including, but not limited to installation of sewer line extension on the proposed public street(s) or private street(s)/drive aisle(s). The sanitary collection system shall include, but not be limited to manholes with manhole frames and covers, cleanouts, wye-branches and laterals, and separate sewer taps to each parcel. These are to be installed by the developer. **(MHMC 13.20.355; 17.32.020 C; CMH Sewer System Master Plan; CMH Design Standards and Standard Details for Construction)**
- B. All existing and future sewer lines shall be tied into the City's system and existing septic systems shall be abandoned in accordance with City requirements. **(MHMC 13.24.060; 17.32.20 C)**

IV. STORM DRAIN SYSTEM

- A. **Storm Drainage Study:** A complete storm drainage study of the proposed development must be submitted showing amount of run-off, and existing and proposed drainage structure capacities. This study shall be subject to review and approval by the City Engineer. All needed improvements will be made by the applicant. No overloading of the existing system will be permitted. **(MHMC 17.32.020 B; 17.32.090; CMH Design Standards and Standard Details for Construction)**
- B. **Storm Drainage Design:** The applicant shall cause the design and construction to be undertaken for a storm drainage collection system shown on the Tentative Map/Design Review plans. All storm drain improvements shall be constructed to the satisfaction of the City Engineer. **(MHMC 17.32.020 A & B)**
- C. **Storm Drainage Capacity:** Collection system shall be designed to be capable of handling a 10-year storm without local flooding. On-site detention facilities shall be designed to a 25-year storm capacity. Streets shall be designed to carry 100-year storm. Items of construction shall include, but not be limited to installation of storm line extension on proposed public street(s), surface and subsurface storm drain facilities, manholes with manhole frames and covers, catch basins and laterals. Note: the project may be required to **retain** stormwater runoff as part of resolution R3-2013-0032 prior to releasing discharge rates at pre-development flows. **(MHMC 17.32.020 B; 18.74.440; CMH Design Standards and Standard Details for Construction; CMH Storm Drainage System Master Plan)**
- D. **Storm Drainage General Requirements:** Prior to issuance of a grading permit, the applicant shall complete the following to the satisfaction of the City Engineer.

1. Storm drain calculations to determine detention/retention pond sizing and operations.
2. Plan describing how material excavated during construction will be controlled to prevent this material from entering the storm drain system.
3. Water Pollution Control Drawings (WPCD) for Sediment and Erosion Control. **(CMH Design Standards and Standard Details for Construction)**

- E. **Valley Water Dedications:** Where the project adjoins existing Valley Water storm drain facilities, applicant shall obtain dedication(s) of all necessary easement or right-of-way to accommodate established ultimate facilities master plan.
- F. **Tree Protection:** BMP Tree protection shall be part of the SWPPP inspections.
- G. **NPDES Construction Activity General Permit/SWPPP Requirements:** As required by the State Water Resources Control Board (SWRCB) Order No. 2009-0009-DWQ, construction activity resulting in a land disturbance of one (1) acre or more of soil, or whose projects are part of a larger common plan of development that in total disturbs more than one (1) acre, are required to obtain coverage under the National Pollutant Discharge Elimination System (NPDES) General Permit No. CAS000002 for Discharges of Storm Water Associated with Construction Activity (General Permit). To be permitted with the SWRCB under the General Permit, owners must file a complete Notice of Intent (NOI) ONLINE at: <http://smarts.waterboards.ca.gov/smarts/faces/SwSmartsLogin.jsp> and develop a Storm Water Pollution Prevention Plan (SWPPP) Manual in accordance with the General Permit. The SWPPP Manual shall follow the CASQA SWPPP template/format at <https://www.casqa.org/store/products/tabid/154/p-167-construction-handbookportal-initial-subscription.aspx> and shall be approved by Public Works Engineering. A Waste Discharger Identification (WDID) number to be issued to the construction site after the SWRCB receives and verifies the submitted ONLINE NOI information. The WDID number and approved SWPPP Manual shall be provided to Public Works and the Building Department prior to any approval of grading activities **(SWRCB NPDES General Permit CA000002)**.
- H. **NPDES GENERAL PERMIT SITE SWPPP INSPECTIONS AND COMPLIANCE:**
1. ALL project onsite and offsite construction activity shall have the site inspected by a **qualified third party SWPPP Inspector (QSD or QSP or RCE)**.
 2. SWPPP Inspections shall occur weekly during the rainy season (September 15th thru May 1st).
 3. SWPPP Inspections shall occur bi-weekly during the non-rainy season.
 4. 48 hours prior to and following a forecasted rain event, SWPPP Inspections shall occur in addition to those of items 2 or 3 above.

5. Per each of the inspection conditions 2, 3, or 4, the NPDES SWPPP Inspector shall certify in writing to the Building and Public Works Department if the site is in compliance or non-compliance with the NPDES General Permit for Stormwater, site SWPPP Manual, and Water Pollution Control Drawings (per the CMH-SWPPP Inspection Check List to be provided by Public Works). QSD/QSP SWPPP Inspectors shall forward onsite and offsite information/certification to the Building (on-site private property issues) and Public Works (public right-of-way issues) inspectors, respectively.
6. Prior to rain events, BMPs not in compliance will need to be corrected immediately.
7. Illicit discharges per the NPDES General Permit, non-compliance of tracking control, and inlet protection within the public right of way shall be address immediately.
8. Other non-compliance issues need to be addressed within a 24-hour period.
9. Non-compliance issues which have been corrected shall be verified by NPDES SWPPP Inspector by a follow up inspection.
10. BMPs maintenance/inspections shall include tree protection if applicable.

V. WATER SYSTEM

- A. **Domestic Water System:** The applicant shall cause the design and construction to be undertaken of a domestic water system to the satisfaction of the City Engineer. The water system improvements shall be constructed within public easements or street rights-of-way to the satisfaction of the City Engineer and dedicated to the City. **(MHMC 17.32.020 A & D; CMH Design Standards and Standard Details for Construction; CMH Water System Master Plan)**
- B. **Water well abandonment:** Abandonment of any existing water well shall be in conformance with Santa Clara Valley Water District (Valley Water) Ordinance 90-1. Location and disposition to be shown on the plan. Well(s) shall be properly registered with Valley Water and either be maintained or abandoned in accordance with Valley Water standards.
- C. **Water line extension:** Install water line extension on the proposed public streets and/or private streets. **(MHMC 17.32.020 A & D; CMH Water System Master Plan)**
- D. **Water Meters:** Provide separate water services and meters for each parcel. These are to be installed by developer. **(MHMC 17.32.020 D)**
- E. Provide separate fire service and double detector check with FDC per City standard detail W-8 for each parcel.

VI. OTHER CONDITIONS

- A. **Easement Dedications:** The owner shall dedicate all necessary utility easements. **(MHMC 12.02.080 D; 17.28.010 A)**
- B. **Undergrounding new utilities:** The applicant shall cause the design and construction required to underground all electric, gas, Cable TV, and communication lines within the development. Such design and construction shall be to the satisfaction of the affected utilities and the City Engineer. **(MHMC 17.32.020 E.1)**
- C. **Parcel Map:** For minor subdivision (4 lots or less), the parcel map shall be signed by the City Engineer and the Planning Commission Secretary prior to issuance of a grading permit. **(MHMC 17.20.390; 17.24.210)**

VII.NPDES WATER QUALITY STORMWATER MANAGEMENT DEVELOPMENT STANDARDS

- A. **Stormwater Management Guidance Manual for Low Impact Development State Water Resources Control Board Post Construction Requirements (PCRs):** Project shall comply with the California Regional Water Quality Control Board Central Coast Region Resolution No. R3-2013-0032 as documented by the **Stormwater Management Guidance Manual for Low Impact Development and Post-Construction Requirements** (developed from Resolution No. R-2013-0032 Attachment 1 and 2 at: http://www.waterboards.ca.gov/centralcoast/water_issues/programs/stormwater/docs/lid/lid_hydromod_charette_index.shtml). A copy of the guidance manual can be obtained through the Land Development Engineering webpage. Project shall provide Stormwater Runoff Management Plan, Stormwater Control Plan Checklist and applicable calculations per the Stormwater Management Guidance Manual for Low Impact Development and Post-Construction Requirements. Project shall meet the applicable requirements of the Stormwater Management Guidance Manual for Low Impact Development and Post-Construction Requirements:
 - 1. Performance Requirement 1: Site Design and Runoff Reduction
 - 2. Performance Requirement 2: Water Quality Treatment
 - 3. Performance Requirement 3: Runoff Retention
 - 4. Performance Requirement 4: Peak Management
- B. **Peak Storm Water Runoff Discharge Rates:** Post-development peak storm water runoff discharge rates shall not exceed the estimated pre-development rate for developments where the increased peak storm water discharge rate will result in increased potential for downstream erosion. Note: the project may be required to **retain** stormwater runoff as part of resolution R3-2013-0032 prior to releasing discharge rates at pre-development flows.
- C. **Provide Storm Drain System Stenciling and Signage:** Storm drain stencils are highly visible source controls that are typically placed directly adjacent to

storm drain inlets. The stencil contains a brief statement that prohibits the dumping of improper materials into the storm water conveyance system. Graphical icons, either illustrating anti-dumping symbols or images of receiving water fauna, are effective supplements to the anti-dumping message. All storm drain inlets and catch basins within the project area must be stenciled with prohibitive language (such as: "NO DUMPING – DRAINS TO CREEK") and/or graphical icons to discourage illegal dumping. Signs and prohibitive language and/or graphical icons, which prohibit illegal dumping, must be posted at public access points along channels and creeks within the project area. Legibility of stencils and signs must be maintained.

- D. Design Standards for Structural or Treatment Control BMPs:** The post-construction treatment control BMPs shall incorporate, at a minimum, either a volumetric or flow- based treatment control design standard, or both, as identified below to mitigate (infiltrate, filter or treat) storm water runoff:

1. Volumetric Treatment Control BMP

- a. The 85th percentile 24-hour runoff event determined as the maximized capture storm water volume for the area, from the formula recommended in Urban Runoff Quality Management, WEF Manual of Practice No. 23/ASCE Manual of Practice No. 87, (1998); or
- b. The volume of annual runoff based on unit basin storage water quality volume, to achieve 80 percent or more volume treatment by the method recommended in California Stormwater Best Management Practices Handbook – Industrial/ Commercial, (2003); or
- c. The volume of runoff produced from a historical-record based reference 24-hour rainfall criterion for "treatment" that achieves approximately the same reduction in pollutant loads achieved by the 85th percentile 24-hour runoff event.

2. Flow Based Treatment Control BMP

- a. The flow of runoff produced from a rain event equal to at least two times the 85th percentile hourly rainfall intensity for the area; or
- b. The flow of runoff produced from a rain event that will result in treatment of the same portion of runoff as treated using volumetric standards above.

- E. Stormwater Runoff Management Plan (SWRMP) required:** The stormwater runoff management plan shall include sufficient information to evaluate the environmental characteristics of affected areas, the potential impacts of the proposed development on water resources, and the effectiveness and acceptability of measures (post construction BMPs) proposed for managing stormwater runoff.

1. The stormwater runoff management plan shall be prepared under the direction of a professional civil engineer registered in the State of California. The responsible professional civil engineer shall stamp and sign the approved stormwater runoff management plan.

2. The City Engineer or designee may require a developer to provide a signed certification from the civil engineer responsible for preparing the stormwater runoff management plan that all stormwater best management practices have been designed to meet the requirements of this chapter.
3. Each certifying civil engineer shall establish to the City's satisfaction that such person has been trained on the design of stormwater quality best management practices not more than three years prior to the certification signature date.
4. Qualifying training shall be conducted by an organization with stormwater quality management expertise, such as a university, the Bay Area Stormwater Management Agencies Association, the American Society of Civil Engineers, the American Public Works Association, or the California Water Environment Association.

F. Stormwater BMP operation, maintenance, and replacement responsibility

1. All on-site stormwater management facilities shall be operated and maintained in good condition and promptly repaired/replaced by the property owner(s), an owners' association or other legal entity approved by the city.
2. Any repairs or restoration/replacement and maintenance shall be in accordance with city-approved plans.
3. The property owner(s) shall develop a maintenance schedule for the life of any stormwater management facility and shall describe the maintenance to be completed, the time period for completion, and who shall perform the maintenance. This maintenance schedule shall be included with the approved stormwater runoff management plan.

G. Stormwater BMP operation and Maintenance Agreement (SWBOMA)

required: Prior to the issuance of any building permit requiring stormwater management BMPs, the owner(s) of the site shall enter into a formal written stormwater BMP operation and maintenance agreement with the city. The City shall record this agreement, against the property or properties involved, with the County of Santa Clara and it shall be binding on all subsequent owners of land served by the storm water management treatment BMPs (City standard Stormwater BMP Operation and Maintenance Agreement to be provided by Land Development Engineering at improvement plan/building permit stage).

H. Stormwater BMP inspection responsibility

1. The property owner(s) shall be responsible for having all stormwater management facilities inspected for condition and function by a **Registered Civil Engineer (RCE)**.
2. Unless otherwise required by the City Engineer or designee, stormwater facility inspections shall be done at least twice per year (April 15th and September 15th) by the RCE. Written records shall be kept of all inspections and shall include, at minimum, the following information:
 - a. Site address;

- b. Date and time of inspection;
 - c. Name of the person conducting the inspection;
 - d. List of stormwater facilities inspected;
 - e. Condition of each stormwater facility inspected;
 - f. Description of any needed maintenance or repairs; and
 - g. As applicable, the need for site re-inspection.
3. Upon completion of each inspection, an inspection report shall be submitted to Land Development Engineering.
- I. **Records of maintenance and inspection activities:** On or before April 15th and September 15th of each year, the party responsible for the operation and maintenance of on-site stormwater management facilities under the BMP operation and maintenance agreement shall provide the City Engineer or designee with records of all inspections, maintenance and repairs.
- J. **Annual Certification of SWRMP:** On or before September 30th of each year, a Registered Civil Engineer (RCE) shall provide written certification that the developments stormwater quality design standards are properly maintained and functioning as required by the SWRMP.

ADAMS BROADWELL JOSEPH & CARDOZO

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

601 GATEWAY BOULEVARD, SUITE 1000
SOUTH SAN FRANCISCO, CA 94080-7037TEL: (650) 589-1660
FAX: (650) 589-5062

khartmann@adamsbroadwell.com

SACRAMENTO OFFICE

520 CAPITOL MALL, SUITE 350
SACRAMENTO, CA 95814-4721TEL: (916) 444-6201
FAX: (916) 444-6209DANIEL L. CARDOZO
KEVIN T. CARMICHAEL
CHRISTINA M. CARO
JAVIER J. CASTRO
THOMAS A. ENSLOW
KELILAH D. FEDERMAN
ANDREW J. GRAF
TANYA A. GULESSERIAN
KENDRA D. HARTMANN*
KYLE C. JONES
DARIEN K. KEY
RACHAEL E. KOSS
AIDAN P. MARSHALLMARC D. JOSEPH
Of Counsel*Not admitted in California.
Licensed in Colorado.

June 4, 2021

Via Electronic Submission OnlyMayor Constantine and City Council Members
c/o City Clerk Michelle Bigelow, MMC, CPMC
Morgan Hill City Council
City Hall
City of Morgan Hill
17575 Peak Avenue
Morgan Hill, CA 95037
Email: Michelle.Bigelow@morganhill.ca.gov;
general@morganhill.ca.govAdam Paszkowski, Principal Planner
Email: Adam.Paszkowski@morganhill.ca.gov[Joey Dinh, City Staff](#)
Email: Joey.Dinh@morganhill.ca.gov**Re: Notice of Appeal of Planning Commission Approvals for
Redwood Tech at 101 Project (SR2020-0029 through SR2020-0033
and SD2020-0011)**

Dear Mayor Constantine, City Council Members, Ms. Bigelow, Mr. Paszkowski, Mr. Dinh:

We are writing on behalf of Morgan Hill Residents for Responsible Development ("Residents")¹ to appeal the May 25, 2021 decision of the Morgan Hill Planning Commission to approve a Design Permit and Vesting Tentative Parcel Map, and all other related approvals, for the Redwood Tech at 101 Project, SR2020-

¹ Residents is an unincorporated association of individuals and labor organizations that may be adversely affected by the potential public and worker health and safety standards associated with Project development, as well as its potential environmental impacts.
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0029 through SR2020-0033 and SD2020-0011 (“Project”). City Staff previously determined that the Project was not required to undergo environmental review pursuant to the California Environmental Quality Act (“CEQA”) and that the only approvals required related to the Project’s design and proposed subdivision of the property’s existing 2 parcels into 4 legal lots.

This appeal is based on the City’s failure to comply with the requirements of CEQA to prepare a legally adequate Environmental Impact Report (“EIR”) for the Project, as well as violations of the Subdivision Map Act and State and local land use laws. The grounds for this appeal are set forth specifically in the attached comment letters that were submitted to the Planning Commission ahead of its hearing to consider the requested Project entitlements. Our comments were prepared with the assistance of environmental health, air quality, and GHG expert Paul E. Rosenfeld, Ph.D., and hazardous materials expert Matt Hagemann, P.G., C.Hg. of Soil Water Air Protection Enterprise (“SWAPE”), transportation expert Dan Smith, and noise expert Deborah Jue, INCE-USA (collectively, “Comment Letter”).

Residents’ Comment Letter demonstrated that the Morgan Hill 2035 General Plan EIR, which the City relied upon as a program EIR, was not intended to be used to evaluate individual future development and did not provide adequate analysis of any impacts specific to the Project. If a later project may cause significant effects on the environment that were not adequately addressed in the prior EIR, a project-level EIR must be prepared.²

Additionally, our Comment Letter established that discretionary actions such as approval of a Design Permit and Tentative Map require environmental review of Project impacts, without which the City could not make the necessary findings for those entitlements. We also established that the Project is a component of a reasonably foreseeable larger project, for which the City appears to be improperly seeking approval by breaking it up, piecemeal fashion, in order to take advantage of environmental exemptions or less rigorous CEQA review for smaller components, such as the proposed Project.

Finally, our Comment Letter provided substantial evidence that the Project may result in potentially significant, unmitigated impacts on air quality, public health, GHG emissions, noise, and transportation that must be disclosed and

² 14 C.C.R. § 15152(f).
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mitigated in an EIR. These unmitigated impacts also preclude the City from making the findings required to approve the Project under the Subdivision Map Act and the City land use codes.

Based on these legal deficiencies and potentially significant and unmitigated impacts, our comments concluded that the City, by failing to require preparation of an EIR, is in violation of CEQA's mandate to inform decision makers and the public about the potentially significant environmental impacts of a project before it is approved and implemented.

We request that the City Council review our Comment Letter in its entirety, vacate the Planning Commission's approvals, and require preparation of an EIR to adequately analyze and mitigate the Project's significant impacts.

We have included a credit card authorization form for \$627.60 for the appeal filing fee.³ Thank you for your attention to this important matter.

Sincerely,



Kendra Hartmann

Enclosures: Exhibit A: Comment Letters
Uniform Application
\$627.60 Credit Card Authorization for Appeal Filing Fee

KDH:acp

³ The City's appeal form, the "Uniform Application," includes an Indemnification Agreement which purports to obligate appellants to indemnify and defend the City by paying the City's costs, including City's attorney's fees and all other litigation costs and expenses, including expert witnesses, required to defend against any lawsuit brought as a result of City's approval or approvals of the Project. Residents presumes that the terms on the Indemnification Agreement are intended to apply to an applicant seeking entitlements from the City for a development project, and not to members of the public appealing a decision to approve the Project, as Residents do here. However, in the event that the City subsequently seeks to enforce the Indemnification Agreement against Residents, or to charge Residents or its representatives any of the costs described therein, Residents reserves its right to object as a violation of Residents' due process rights to petition the government, and/or to pay any subsequent fees under protest.

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EXHIBIT A

ADAMS BROADWELL JOSEPH & CARDOZO

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

601 GATEWAY BOULEVARD, SUITE 1000
SOUTH SAN FRANCISCO, CA 94080-7037TEL: (650) 589-1660
FAX: (650) 589-5062

khartmann@adamsbroadwell.com

SACRAMENTO OFFICE

520 CAPITOL MALL, SUITE 350
SACRAMENTO, CA 95814-4721TEL: (916) 444-6201
FAX: (916) 444-6209DANIEL L. CARDOZO
KEVIN T. CARMICHAEL
CHRISTINA M. CARO
JAVIER J. CASTRO
THOMAS A. ENSLOW
KELILAH D. FEDERMAN
ANDREW J. GRAF
TANYA A. GULESSERIAN
KENDRA D. HARTMANN*
KYLE C. JONES
DARIEN K. KEY
RACHAEL E. KOSS
AIDAN P. MARSHALLMARC D. JOSEPH
Of Counsel*Not admitted in California.
Licensed in Colorado.

May 25, 2021

Via Email OnlyMohammad Habib, Chair
Members of the Planning Commission
City of Morgan Hill
c/o Minutes Clerk
17575 Peak Avenue
Morgan Hill, CA 95037
pcpubliccomment@morganhill.ca.govJennifer Carman, Community Development Director
jennifer.carman@morganhill.ca.gov
Adam Paszkowski
Adam.Paszkowski@morganhill.ca.gov**Re: Agenda Item No. 1: Redwood Tech at 101 Project (SR2020-0029 through SR2020-0033 and SD2020-0011)**

Dear Chair Habib, Commissioners, Minutes Clerk, Ms. Carman, Mr. Paszkowski:

We are writing on behalf of Morgan Hill Residents for Responsible Development ("Residents") to provide comments to the Morgan Hill Planning Commission ("Commission") on Agenda Item No. 1, the Redwood Tech at 101 Project, SR2020-0029 through SR2020-0033 and SD2020-0011 ("Project"). Proposed by Trammel Crow Morgan Hill Ventures ("Applicant"), the Project proposes approximately 501,314 square feet of flexible industrial/commercial space spread across 5 separate buildings on four separate lots in the approximately 29-acre lot south of the former Tree Farm site on Hwy 101 south of Cochrane Road in the City of Morgan Hill ("City").

The Applicant seeks a Design Permit and a Vesting Tentative Parcel Map, both discretionary approvals, to divide the property's existing 2 parcels into 4 legal lots. In accordance with Section 18.108.040.D of the City's Municipal Code, the size

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of the Project is considered significant and, as such, the Development Services Director has elevated the Project to the Planning Commission for review and consideration of the two proposed Project entitlements. The Project proposes to construct 5 buildings on the site, all designated for flexible industrial and commercial uses, including advanced manufacturing, warehouse, supporting office, and similar industrial and commercial uses. The property has a Commercial/Industrial General Plan designation and is zoned Light Industrial (IL). Access to the property will be provided via four driveways from the extension of De Paul Drive to the south from Cochrane Road. All street frontages will be improved to City Standards with sidewalk and landscaping.

The Applicant previously submitted to the City a different project titled the Morgan Hill Technology Center (“Technology Center”), which was withdrawn by the Applicant on September 18, 2020.¹ That previous project encompassed the proposed Project site and the parcels to the north. The original Technology Center proposed a mix of industrial, commercial, and residential uses on an 89-acre site. The industrial and commercial portions of the Technology Center project proposed 1.04 million square feet of light industrial uses contained in six buildings, 45,000 square feet of industrial office in one building situated between the industrial buildings on a 2.31-acre parcel, and 50,000 square feet of retail/commercial on a 2.92-acre parcel fronting Cochrane Road.

We reviewed the Staff Report and related Project documents with the assistance of environmental health, air quality, and GHG expert Paul E. Rosenfeld, Ph.D., and hazardous materials expert Matt Hagemann, P.G., C.Hg. of Soil Water Air Protection Enterprise (“SWAPE”), transportation expert Dan Smith, and noise expert Deborah Jue, INCE-USA. Comments and curriculum vitae of SWAPE are attached to this letter as Attachment A.² Mr. Smith’s comments and curriculum vitae are included as Attachment B,³ and Ms. Jue’s comments and curriculum vitae are attached as Attachment C.⁴ All expert comments are fully incorporated herein and submitted to the City herewith. Therefore, the City must separately respond to the technical comments in Attachments A, B and C.

¹ Staff Report, p. 6; see <http://www.morgan-hill.ca.gov/1966/Morgan-Hill-Technology-Park> (last visited 5/25/21).

² **Attachment A:** Comments on Redwood Tech at 101 Project (May 21, 2021) (“SWAPE Comments”).

³ **Attachment B:** Transportation Comments re Redwood Tech@101 Project by Smith Engineering & Management (May 20, 2021) (“Smith Comments”).

⁴ **Attachment C:** Redwood Tech @ 101 Comments, Wilson Ihrig (May 25, 2021) (“Jue Comments”).
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Based on our review, it is clear that the City has not complied with the California Environmental Quality Act (“CEQA”)⁵, the Subdivision Map Act, or with local and State land use laws in its review of the Project and its proposed entitlements.

The City initially prepared a draft environmental impact report (“DEIR”) for the Technology Center Project, which found that the Technology Center Project (which included the instant Project plus the additional components) would have significant impacts on air quality, biological resources, cultural resources, greenhouse gas (“GHG”) emissions, hazardous materials, noise, and transportation which required mitigation.⁶ Before the DEIR was certified, the Project application was withdrawn. The Applicant has now repropoed the industrial/commercial component of the Technology Center Project as the Redwood 101 Project, which the City now claims does not require CEQA review because it was previously analyzed in the 2035 General Plan EIR. As discussed below, the General Plan EIR was a planning-level CEQA document which did not analyze the Project’s environmental impacts with the degree of specificity required for project-level environmental review. Nor were the project-specific impacts that were identified in the Technology Center DEIR addressed in the General Plan EIR. An EIR is required for the Project for these reasons.⁷

The City is also improperly piecemealing its environmental review of the Project from other components of the original Technology Center Project. As the Staff Report explains, the residential component of the Technology Center Project has been reduced from 319 units to 269 units and is being concurrently developed by Dividend Homes under a separate application.⁸ Two of the original project components are being reviewed by the City for a second time, yet the City failed to prepare an EIR that analyzes the impacts of both developments.

Finally, as discussed below, the Redwood 101 Project has potentially significant, unmitigated impacts on air quality, public health, GHG emissions, noise, and transportation that must be disclosed and mitigated in an EIR. These unmitigated impacts also preclude the Planning Commission from making the

⁵ Pub. Res. Code §§ 21000 et seq; 14 Cal. Code Regs. (“CCR” or “CEQA Guidelines”) §§ 150000 et seq.

⁶ See Technology Center DEIR, pp. iv-xxx, available at <https://www.morgan-hill.ca.gov/DocumentCenter/View/36693/Draft-EIR-Morgan-Hill-Tech-Center-12-May-2020-webready> (last visited 5/25/21).

⁷ See 14 CCR § 15152.

⁸ Staff Report, p. 6.

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findings required to approve the Project under the Subdivision Map Act and the City land use codes. The Planning Commission should remand the Project to staff to prepare a legally adequate EIR before the Project can be considered for approval.⁹

I. STATEMENT OF INTEREST

Residents is an unincorporated association of individuals and labor organizations that may be adversely affected by the potential public and worker health and safety standards associated with Project development, as well as its potential environmental impacts. Residents includes local unions, their members and families, and other individuals that live and/or work in the City of Morgan Hill and Santa Clara County.

Individual members of Residents and the affiliated labor organizations live, work, recreate and raise their families in the City of Morgan Hill and Santa Clara County. They would be directly affected by the Project's environmental and health and safety impacts. Individual members, including Santa Clara County resident Fermin Layos, may also work on the Project itself. Accordingly, they will be first in line to be exposed to any health and safety hazards that exist onsite. Residents have a strong interest in enforcing the State's environmental laws that encourage sustainable development and ensure a safe working environment for its members. Environmentally detrimental projects can jeopardize future jobs by making it more difficult and more expensive for business and industry to expand in the region, and by making it less desirable for businesses to locate and people to live there.

II. LEGAL STANDARD

In an effort to ensure the long-term protection of the environment of the state, CEQA requires governmental agencies at all levels to develop standards and procedures necessary to protect environmental quality. To this end, CEQA requires preparation of an EIR whenever a public agency proposes to approve or to carry out a project that may have a significant effect on the environment.¹⁰ In this way, CEQA is designed to inform decision makers and the public about the potentially

⁹ We reserve the right to supplement these comments at later hearings and proceedings on this Project. Gov. Code § 65009(b); PRC § 21177(a); *Bakersfield Citizens for Local Control v. Bakersfield ("Bakersfield")* (2004) 124 Cal. App. 4th 1184, 1199-1203; see *Galante Vineyards v. Monterey Water Dist.* (1997) 60 Cal. App. 4th 1109, 1121.

¹⁰ *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 390. 5175-002acp

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significant environmental impacts of a project before it is approved and implemented.¹¹

Described as “an environmental ‘alarm bell’ whose purpose it is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return,”¹² an EIR’s purpose is to “inform the public and its responsible officials of the environmental consequences of their decisions *before* they are made. Thus, the EIR protects not only the environment, but also informed self-government.”¹³ To fulfill this purpose, the discussion of impacts in an EIR must be detailed, complete, and “reflect a good faith effort at full disclosure.”¹⁴ Furthermore, CEQA imposes an affirmative obligation on agencies to avoid or reduce environmental harm by adopting feasible project alternatives or mitigation measures to address all potentially significant impacts identified in the agency’s CEQA analysis.¹⁵ An adequate EIR must contain facts and analysis, not just an agency’s conclusions.¹⁶

CEQA “projects” include activities undertaken by public agencies that cause direct physical changes to the environment.¹⁷ Following preliminary review of a project to determine whether an activity is subject to CEQA, a lead agency is required to prepare an initial study to identify several key objectives, including whether to prepare an EIR or negative declaration, as well as the appropriate process to be used for analysis of the project’s environmental effects and potential mitigation.¹⁸ CEQA requires an agency to analyze the potential environmental impacts of its proposed actions in an EIR except in certain limited circumstances.¹⁹

¹¹ Cal. Code Regs., tit. 14, § 15002, subd. (a)(1) (“CEQA Guidelines”); *Berkeley Keep Jets Over the Bay v. Bd. of Port Comm’rs.* (2001) 91 Cal.App.4th 1344, 1354 (“*Berkeley Jets*”); *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810.

¹² *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810.

¹³ *Citizens of Goleta Valley v. Bd. of Supervisors* (1990) 52 Cal.3d 553, 564 (internal citations omitted).

¹⁴ CEQA Guidelines, § 15151; *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 721-722.

¹⁵ Pub. Resources Code, §§ 21002-21002.1.

¹⁶ See *Citizens of Goleta Valley v. Bd. of Supervisors* (1990) 52 Cal.3d 553, 568.

¹⁷ *County of Ventura v. City of Moorpark* (2018) 24 Cal.App.5th 377, 385.

¹⁸ CEQA Guidelines, §§ 15060, 15063, subd. (c).

¹⁹ See, e.g., Pub. Resources Code, § 21100.
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III. CEQA PROHIBITS PIECEMEALING OF A PROJECT

CEQA prohibits a project proponent from seeking approval of a project by breaking it up, piecemeal fashion, in order to take advantage of environmental exemptions or less rigorous CEQA review for smaller projects.²⁰ The law mandates that “environmental considerations do not become submerged by chopping a large project into many little ones—each with a minimal potential impact on the environment—which cumulatively may have disastrous consequences.”²¹ As courts have explained, “... [t]he CEQA process is intended to be a careful examination, fully open to the public, of the environmental consequences of a given project, covering the entire project, from start to finish.”²²

Specifically, the description of a project must describe a larger future project and analyze its effects if (1) the larger project is a reasonably foreseeable consequence of the initial project, and (2) the future project will be significant in that it will likely change the scope or nature of the initial project or its environmental effects.²³ This rule applies even if (1) the Lead Agency has not yet formally approved the larger future project, and (2) it is impossible to predict with precision the environmental effects of less-than-definite future plans, as long as these effects can be discussed at least in general terms.²⁴ Difficulty in describing the effects of less-than-definite future plans does not excuse an agency from CEQA compliance, especially since CEQA provides mechanisms, such as Program EIRs and tiering of EIRs, to facilitate environmental analysis of larger future projects.²⁵

Furthermore, “[t]iering does not excuse the lead agency from adequately analyzing reasonably foreseeable significant environmental impacts of the project and does not justify deferring such analysis to a later tier EIR or negative declaration.”²⁶ If a program-level EIR has been released, it is nonetheless still not appropriate to piecemeal later tiers in order to avoid environmental review.

²⁰ *Arviv Enterprises, Inc. v. South Valley Area Planning Com.* (2002) 101 Cal. App. 4th 1336, 1340.

²¹ *Bozung v. LAFCO* (1975) 13 Cal.3d 263, 283-84; *City of Santee v. County of San Diego*, (1989) 214 Cal.App.3d 1438, 1452; *Citizens Assn. for Sensible Development of Bishop Area v. County of Inyo* (1985) 172 Cal.App.3d 151, 165.

²² *Natural Resources Defense Council v. City of Los Angeles* (2002) 103 Cal.App.4th 268, (emphasis added).

²³ *Laurel Heights Improvement Assn. v. Regents of Univ. of California* (1988) 47 Cal. 3d 376, 396.

²⁴ *Id.* at 398-99.

²⁵ *Id.* at 399, n.8.

²⁶ 14 C.C.R. § 15152 (b); *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal. 4th 412, 431, 150 P.3d 709, 720.

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A. Development of Multiple Components of the Original Morgan Hill Technology Center Project is Reasonably Foreseeable and Cumulative Impacts Must be Analyzed Together in an EIR

Similar to *Laurel Heights*, in which the Court found that future development was reasonably foreseeable and the university had to include environmental analysis of the anticipated future uses of the site, the Project is just one fragment of anticipated development of the site, which was already analyzed in an EIR.²⁷ Though the Applicant abandoned the larger project in September 2020, the proposed Project is merely a selection excerpted from that larger development, pulled out to be considered on a smaller scale.

Considering the sequence of events associated with development at the site, it is difficult to imagine a scenario in which the Applicant and the City are not attempting to piecemeal a large project into several smaller ones that will require less rigorous CEQA review—or none at all, as the City alleges here. The larger project, the impacts of which the DEIR concluded would be numerous, significant and, in some cases, unavoidable, was abruptly abandoned by the Applicant after considerable pushback from the community.²⁸ When the Applicant submitted the much-abbreviated application for the currently proposed Project, the City pointed out that a Vesting Tentative Map of five or more parcels would require additional CEQA review, after which the Applicant immediately revised the Project, reconfiguring the proposed site into four parcels.²⁹

Moreover, the residential portion of the larger project had been evaluated in the Technology Center DEIR together with all project components. It is now being developed concurrently under a separate application—and separate environmental review.³⁰ As the court in *Laurel Heights* found, “this is not the type of situation where it is unclear as to whether a parcel of land will be developed or as to whether activity will commence.”³¹ In fact, though no formal land use entitlement applications had been filed with the City at the time, the Technology Center DEIR acknowledged that “[t]he future development of [the residential component] is

²⁷ *Id.* at 399.

²⁸ See, e.g., public comment letters, <https://www.morgan-hill.ca.gov/1966/Morgan-Hill-Technology-Park>.

²⁹ See City Letter of Application Incompleteness (Jan. 11, 2021), p. 3; Applicant Response Letter (Feb. 1, 2021), p. 8.

³⁰ Morgan Hill Planning Commission Staff Report, p. 6.

³¹ *Laurel Heights*, 47 Cal.3d at 395.

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reasonably foreseeable given the existing land use designation and zoning.”³² Now that that foreseeable development has come to pass, the adjacent development projects are being evaluated separately.

By now omitting from its environmental review the reasonably foreseeable development of all projects at the same sites originally analyzed in the EIR for the Technology Center Project, the City has impermissibly engaged in piecemealing and must prepare an EIR for the entire site which fully describes, analyzes and mitigates potentially significant impacts.

IV. TIERING

In preparing an initial study, a lead agency is required to identify the appropriate level of environmental review and must determine whether a previously prepared EIR could be used with the project.³³ Tiering, in which the analysis of general matters contained in a broader EIR, such as one prepared for a general plan, is used to frame the general discussion of a later, narrower project and its specific issues and impacts, can be appropriate when considering large-scale planning approval or separate but related projects. A later EIR shall be required when the initial study or other analysis finds that the later project may cause significant effects on the environment that were not adequately addressed in the prior EIR.³⁴

Where a program EIR has been prepared that could apply to a later project, CEQA requires the lead agency to conduct a two-step process to examine the later project to determine whether additional environmental review is required.³⁵ First, the agency must consider whether the project will result in environmental effects that were not examined in the program EIR.³⁶ Whether a later activity is within the scope of a program EIR is a factual question that the lead agency determines based on substantial evidence in the record.³⁷ If the agency finds the activity would have environmental effects that were not examined in the program EIR, it must

³² Technology Center DEIR, p. 17.

³³ CEQA Guidelines, §§ 15060, 15063, subd. (c).

³⁴ 14 C.C.R. § 15152(f).

³⁵ See CEQA Guidelines, 15168, subd. (c); S. Kostka & M. Zischke, Practice Under the California Environmental Quality Act 2d, § 10.16 (Mar. 2018).

³⁶ CEQA Guidelines, § 15168, subd. (c)(1).

³⁷ *Id.* at (c)(2).

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then prepare an initial study to determine whether to prepare an EIR or negative declaration to address those effects.³⁸

Second, if the agency determines the project is covered by the program EIR, it must then consider whether any new or more significant environmental effects could occur due to changes in circumstances or project scope, or new information that could not have been considered in the program EIR.³⁹ More specifically, pursuant CEQA Guidelines section 15162, subsequent or supplemental environmental review is required when one or more of the following events occur:

- (1) Substantial changes are proposed in the project which will require major revisions of the previous EIR due to the involvement of new significant effects or a substantial increase in the severity of previously identified effects;
- (2) Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or
- (3) New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the negative declaration was adopted, shows any of the following:
 - (A) The project will have one or more significant effects not discussed in the previous EIR or negative declaration;
 - (B) Significant effects previously examined will be substantially more severe than shown in the previous EIR;
 - (C) Mitigation measures or alternatives previously found not to be feasible would in fact be feasible, and would substantially reduce one or more significant effects of the

³⁸ CEQA Guidelines, § 15168, subd. (c)(1).

³⁹ CEQA Guidelines, § 15168, subd. (c)(2).

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project, but the project proponents decline to adopt the mitigation measure or alternative; or

- (D) Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.⁴⁰

The terms “supplement” and “subsequent” are not interchangeable. “A supplement to an EIR is a document that contains additions or changes needed to make the previous EIR adequate ... In contrast ... a subsequent EIR revises the previous EIR, rather than simply supplements it.”⁴¹ With subsequent review the “revised EIR must receive the same circulation and review as the original EIR.”⁴²

Similarly, Section 15183 provides a streamlined process for environmental review of projects that are “consistent with the development density established by existing zoning, community plan, or general plan policies for which an EIR was certified,” authorizing agencies to avoid duplicative environmental review “except as might be necessary to examine whether there are project-specific significant effects which are peculiar to the project or its site.”⁴³

Courts have held that if “no EIR has been prepared for a nonexempt project, but substantial evidence in the record supports a fair argument that the project may result in significant adverse impacts, the proper remedy is to order preparation of an EIR.”⁴⁴ The fair argument standard creates a “low threshold” favoring environmental review through an EIR, rather than through issuance of a negative declaration.⁴⁵ An agency’s decision not to require an EIR can be upheld only when there is no credible evidence to the contrary.⁴⁶

⁴⁰ CEQA Guidelines, § 15162, subd. (a)(1)-(3); see also Pub. Resources Code, § 21166.

⁴¹ S. Koskte & M. Zischke, Practice Under the Environmental Quality Act 2d., § 19.4, p. 19-8 (Mar. 2018).

⁴² S. Koskte & M. Zischke, Practice Under the Environmental Quality Act 2d., § 19.4, p. 19-8, (Mar. 2018), emphasis added; see also CEQA Guidelines, §§ 15162, 15163.

⁴³ 14 C.C.R. § 15183(a).

⁴⁴ See, e.g., *Communities for a Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal.4th 310, 319-320.

⁴⁵ *Citizens Action to Serve All Students v. Thornley* (1990) 222 Cal.App.3d 748, 754.

⁴⁶ *Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th, 1307, 1318; see also *Friends of B Street v. City of Hayward* (1980) 106 Cal.App.3d 988, 1002 (“If there was substantial evidence that the proposed

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A. The Project Was Not Analyzed by the 2035 General Plan EIR

In 2016, the Morgan Hill City Council certified the Morgan Hill 2035 General Plan EIR analyzing “land use, urban design, circulation, public services, natural resources, and safety goals, policies, and actions to guide investment and development” in the City over a 20-year period. Prepared as a program EIR pursuant to CEQA Guidelines Section 15168, the EIR states that its intended purpose is to serve as a long-term “policy document[] guiding future development activities and City actions.”⁴⁷

The Staff Report asserts that the General Plan EIR “adequately addressed the potential environmental impacts associated with the comprehensive update of the City’s constitution for growth including certain implementation activities and provided for streamlining of the environmental review process for projects proposed subsequent to the certification of the EIR.”⁴⁸ The Report’s entire analysis of the EIR’s evaluation of impacts from activities specific to the Project consists of the following paragraph:

The proposed project entails dividing the subject property and constructing buildings consistent with the General Plan. The division and development of parcels consistent with the General Plan was addressed in the program EIR for the 2035 General Plan and, therefore, pursuant to Section 15162 and Section 15183 of the State CEQA Guidelines, no additional review under the California Environmental Quality Act is required for the proposed project.⁴⁹

It is unclear from this description how the General Plan EIR’s analysis of development and population growth over the next 15 years applies to the Project’s specific impacts, let alone how those impacts are examined in enough detail as to make further environmental review unnecessary. The Staff Report appears to conclude that, in light of the Project’s proposal to divide “the subject property and construct[] buildings,” the General Plan EIR’s analysis of the “division and development of parcels” is sufficiently adequate that no further review is

project might have a significant environmental impact, evidence to the contrary is not sufficient to support a decision to dispense with preparation of an EIR and adopt a negative declaration, because it could be ‘fairly argued’ that the project might have a significant environmental impact”).

⁴⁷ General Plan EIR, p. 2-2.

⁴⁸ Staff Report, p. 19.

⁴⁹ Staff Report, p. 15.

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warranted. A thorough search of the General Plan EIR, however, reveals that it does not analyze impacts from specific subdivisions or construction whatsoever. In fact, specifics of any kind associated with the Project—environmental setting, baseline, potential impacts from development, subdivision or construction, mitigation—are nowhere to be found in the EIR.

In its insistence that the General Plan EIR’s analysis of future impacts renders any further environmental review unnecessary, the Staff Report seems to unequivocally reject the EIR’s stated objective with respect to its status as a program EIR. Recognizing the utility of program EIRs when a project “consists of a series of actions related to the issuance of rules, regulations, and other planning criteria,” the EIR distinguishes itself as a document that serves to guide policy and City actions over time, rather than as a benchmark for specific project impacts:

No specific development projects are proposed as part of the proposed Project. Therefore, this EIR is a program-level EIR that analyzes the potential significant environmental effects of the adoption of the proposed Project. As a program EIR, it is not project-specific, and does not evaluate the impacts of individual projects that may be proposed under the General Plan. Such subsequent projects will require a separate environmental review, when applicable as required by CEQA, which could be in the form of a Negative Declaration, Mitigated Negative Declaration, or a Subsequent EIR, to secure the necessary development permits. Therefore, while subsequent environmental review may be tiered from this EIR, this EIR is not intended to address project-specific impacts of individual projects.⁵⁰

The City had to make a significant effort to disregard this statement in the EIR, whose preparers went so far as to announce no less than 7 times that it was not to be used to evaluate individual projects.⁵¹ The City cannot do an about-face now to claim that its own General Plan EIR analyzed something which the City has previously and unequivocally stated it did not.

Section 15168’s two-step inquiry of a program EIR’s applicability to later activities holds that “if a later activity would have effects that were not examined in the program EIR, a new initial study would need to be prepared leading to either an

⁵⁰ General Plan EIR, p. 2-2.

⁵¹ See, e.g., pp. 2-2, 3-1fn.2, 3-42, 4.3-34, 4.3-37, 4.3-38, 4.3-53.
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EIR or a negative declaration.”⁵² The City insists that, pursuant to sections 15162 and 15183, the Project is within the scope of the program EIR and no subsequent EIR is required. “Whether a later activity is within the scope of a program EIR is a factual question that the lead agency determines based on substantial evidence in the record.”⁵³ The City does not offer any substantial evidence to support its dubious conclusion. At most, it suggests a vague association between the EIR’s illusory “division and development of parcels” and the Project’s subdivision and development.

In contrast, as demonstrated below and supported by substantial evidence, the Project is likely to result in significant impacts to transportation, air quality, and public health—impacts specific to its development and that were not contemplated by the General Plan EIR. Since the EIR, by its own admission, did not evaluate the impacts of any specific projects, a subsequent EIR to examine “project-specific significant effects which are peculiar to the project or its site” should be prepared.⁵⁴

V. ENVIRONMENTAL REVIEW IS REQUIRED FOR DISCRETIONARY ACTIONS

In addition to claiming that the program-level General Plan EIR adequately analyzed impacts of future development, including the Project, the City advised the Applicant that the Project was further excused from CEQA review because “Environmental Review is not required for Design Review or Tentative Parcel Map applications.”⁵⁵ This conclusion is patently false for the reasons that follow.

A. Design Review

The City’s conclusion that environmental review is not required for Design Review is incorrect. Per the City’s own Municipal Code, a Design Review permit, which is required for significant projects like the Applicant’s,⁵⁶ “is a discretionary action that enables the city to ensure that proposed development exhibits high

⁵² 14 C.C.R. § 15168(c)(1).

⁵³ *Id.*

⁵⁴ 14 C.C.R. § 15183(a).

⁵⁵ City of Morgan Hill Development Services Center Completeness Comment Letter, February 16, 2021, p. 3.

⁵⁶ Municipal Code 18.108.040(D)(2) states that “[a]ny structure with more than seventy-five thousand square feet of floor area is presumed significant.”

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quality design consistent with the general plan and any other applicable specific plan or area plan adopted by the city council.”⁵⁷ CEQA clearly requires environmental review of all “discretionary projects proposed to be carried out or approved by public agencies.”⁵⁸

The Staff Report notes the receipt of a letter on behalf of the Applicant asserting that the Planning Commission “lacks discretion to address potential environmental effects, making the Project ministerial for CEQA purposes.”⁵⁹ Analogizing to a case in which a court found that approval of a design review permit limited the reviewing agency to consideration of design-related issues, the letter attempts to establish that the Planning Commission has no discretion to consider the Project’s potential environmental impacts. This is because, as the letter contends, the discretion granted to the Commission by the Municipal Code refers only to discretionary review of a project’s design elements. The letter’s interpretation of the case law, however, suffers from two fundamental flaws: (1) it attempts to apply the court’s reasoning to an inapposite set of facts, and (2) it overlooks the other discretionary approval sought for this Project, the Vesting Tentative Parcel Map.

The letter attempts to draw parallels where they do not exist, asserting that “[l]ike the fourteen design review criteria applied by St. Helena in *McCorkle*, the City’s design review criteria are limited to design review and not environmental issues.”⁶⁰ In that case, the St. Helena City Council found the local design review ordinances prevented it from disapproving the project for non-design related matters. Those ordinances did not include any required findings related to CEQA review or otherwise allow the agency to “shape the project in any way which could respond to any of the concerns which might be identified in an environmental impact report.”⁶¹ Here, on the other hand, Morgan Hill’s design review ordinance requires a finding that a project has been reviewed in compliance with CEQA, as well as a determination that it will not be “detrimental to the public health, safety, or welfare or materially injurious to the properties or improvements in the vicinity”—distinctly discretionary actions that require consideration of the Project’s effects on the environment and potential mitigation.⁶²

⁵⁷ MHMC 18.108.040(A).

⁵⁸ Pub. Resources Code § 21080(a).

⁵⁹ Staff Report, p. 19.

⁶⁰ Staff Report, p. 72.

⁶¹ *McCorkle Eastside Neighborhood Group v. City of St. Helena* (2018) 31 Cal.App 5th 80, 90.

⁶² Zoning Code, § 18.108.040.

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Furthermore, even if a design permit did limit the Planning Commission to consideration only of design-related elements, the Project also seeks a Vesting Tentative Parcel Map, a discretionary permit subject to the provisions of CEQA.⁶³ As discussed above, it is well established that a project cannot be divided into smaller parts that individually will not have a significant effect on the environment. This rule is applicable even if one of the smaller parts might require only ministerial, rather than discretionary, approval.⁶⁴ Moreover, when a project “involves an approval that contains elements of both a ministerial action and a discretionary action, the project will be deemed to be discretionary.”⁶⁵

B. Vesting Tentative Parcel Map

The Project requires a Vesting Tentative Parcel Map to subdivide the existing two parcels into four separate parcels, approval of which requires that the Tentative Map is consistent with all applicable city ordinances, general and specific plans adopted by the city, and the State Subdivision Map Act (“Map Act”).⁶⁶ The Map Act, as well as the Morgan Hill Municipal Code, requires specific environmental findings before a parcel map can be approved. A map shall not be approved, for example, if its design or proposed improvements are “likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat,” or are “likely to cause serious public health problems.”⁶⁷ Regulating land subdivisions in Morgan Hill, according to the Municipal Code, is “necessary for the preservation of the public health, safety and general welfare, to promote orderly growth and development and to promote open space, conservation, protection and proper use of land and to insure provision for adequate traffic circulation, utilities and services.”⁶⁸

Once again, making these findings confers on the agency a discretionary duty to determine compliance with the statute.⁶⁹ This discretion, furthermore, involves

⁶³ See, e.g., Pub. Resources Code § 21080: “this division shall apply to discretionary projects proposed to be carried out or approved by public agencies, including, but not limited to, the enactment and amendment of zoning ordinances, the issuance of zoning variances, the issuance of conditional use permits, and the approval of tentative subdivision maps ...”

⁶⁴ *Orinda Assoc. v. Board of Supervisors* (1986) 182 Cal.App.3d 1145, 1171–1172.

⁶⁵ 14 C.C.R. § 15268(d).

⁶⁶ MHMC § 17.24.050 A; 17.24.070 A; .

⁶⁷ Gov. Code § 66474(e), (f); MHMC § 17.20.100.

⁶⁸ MHMC, § 17.04.020.

⁶⁹ Pub. Res. Code § 21080(a); *Rominger v. County of Colusa* (2014) 229 Cal.App.4th 690. 5175-002acp

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consideration of activities that have the “potential to cause a direct physical change or a reasonably foreseeable indirect physical change in the environment.”⁷⁰

The City, in an exercise of this discretionary duty, states in the Staff Report that the Project “will not be detrimental to the public health, safety, or welfare, and will not be materially injurious to the properties or improvements in the vicinity.”⁷¹ As it had previously concluded that no environmental review was required,⁷² however, it is unclear how it reached this determination, and no substantial evidence is offered in support of this conclusory statement. In addition, as discussed in Section VI. below, there is substantial evidence demonstrating that the Project is likely to have potentially significant and unmitigated impacts on air quality, public health, climate change, and traffic. As a result of these unmitigated impacts, the Project fails to comply with the Map Act and Municipal Code and the City cannot make the requisite findings to approve the Project’s Tentative Map.

VI. THE CITY MUST PREPARE AN EIR TO ANALYZE THE PROJECT’S POTENTIALLY SIGNIFICANT ENVIRONMENTAL IMPACTS THAT WERE NOT ANALYZED IN THE MORGAN HILL 2035 GENERAL PLAN EIR

Agencies must fully disclose all potentially significant impacts of a project, and must implement all feasible mitigation to reduce those impacts to less than significant levels. The lead agency’s significance determination with regard to each impact must be supported by accurate scientific and factual data.⁷³ An agency cannot conclude that an impact is less than significant unless it produces rigorous analysis and concrete substantial evidence justifying the finding.⁷⁴

Moreover, the failure to provide information required by CEQA is a failure to proceed in the manner required by CEQA.⁷⁵ Challenges to an agency’s failure to proceed in the manner required by CEQA, such as the failure to disclose

⁷⁰ *Id.*

⁷¹ Staff Report, p. 16.

⁷² Asserting that the Project “is consistent with the development projections analyzed in the Morgan Hill 2035 General Plan program EIR for the project site” and that it “is designed to be consistent with the development standards in the General Plan and Zoning Code” the City concluded that no further environmental review would be required. Staff Report, p. 52.

⁷³ 14 CCR § 15064(b).

⁷⁴ *Kings Cty. Farm Bur. v. Hanford* (1990) 221 Cal.App.3d 692, 732.

⁷⁵ *Sierra Club v. State Bd. Of Forestry* (1994) 7 Cal.4th 1215, 1236.

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information about a project's environmental effects or alternatives, are subject to a less deferential standard than challenges to an agency's factual conclusions.⁷⁶ In reviewing challenges to an agency's approval of an EIR based on a lack of substantial evidence, the court will "determine de novo whether the agency has employed the correct procedures, scrupulously enforcing all legislatively mandated CEQA requirements."⁷⁷

As explained above, where a program EIR has been prepared that can apply to a later project, CEQA requires the lead agency to conduct a two-step process to examine the later project to determine whether additional environmental review is required.⁷⁸ First, the agency must consider whether the project will result in environmental effects that were not examined in the program EIR.⁷⁹ If the later activity involves site-specific operations, as it does here, the City must evaluate the site and activity to determine whether the environmental effects were covered in the program EIR and document its findings by a checklist.⁸⁰ If the agency finds the activity would have environmental effects that were not examined in the program EIR, it must then prepare an initial study to determine whether to prepare an EIR or negative declaration to address those effects.⁸¹

Because the 2035 General Plan EIR did not address any project-specific impacts of future projects, significant effects resulting from the Project will be substantially more severe than anything analyzed in the General Plan EIR. Without completing additional environmental analysis, the Project cannot satisfy the requirements for disclosure and analysis under CEQA and must complete a subsequent EIR.

⁷⁶ *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 435.

⁷⁷ *Id.*, *Madera Oversight Coal., Inc. v. County of Madera* (2011) 199 Cal. App. 4th 48, 102.

⁷⁸ See CEQA Guidelines, 15168, subd. (c); S. Kostka & M. Zischke, Practice Under the California Environmental Quality Act 2d, § 10.16 (Mar. 2018).

⁷⁹ CEQA Guidelines, § 15168, subd. (c)(1).

⁸⁰ 14 CCR §15168(c)(4).

⁸¹ CEQA Guidelines, § 15168, subd. (c)(1).

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A. Air Quality

i. Updated Analysis Provides Substantial Evidence of Potentially Significant Air Quality Impacts

Using Project-specific information, as well as site-specific information such as land use type, meteorological data, total acreage, and typical equipment, experts from SWAPE estimated the Project's construction and operational emissions using the most updated version of CalEEMod.⁸² SWAPE found that emissions of VOCs from construction at the Project site would be 268.96 lb/day, nearly twice the BAAQMD threshold of 137 lb/day.⁸³

This is new information about significant impacts that were not analyzed in the General Plan EIR because this specific development project was not before the City at the time the General Plan was approved. The results substantiate the conclusion that impacts to air quality will be significant and must be analyzed and mitigated in a project-specific EIR.

ii. A Health Risk Analysis Must be Prepared

SWAPE found that potentially significant impacts to public health were undisclosed and the Project failed to provide sufficient information regarding the Project's potential health risk impacts.⁸⁴ The Project will produce emissions of diesel particulate matter ("DPM") through the exhaust stacks of construction equipment throughout its construction period, and will generate daily vehicle trips, which will generate additional exhaust emissions and continue to expose nearby sensitive receptors to DPM emissions.⁸⁵ The City, however, failed to make a reasonable effort to connect the Project's construction-related and operational toxic air contaminant ("TAC") emissions to the potential health risks posed to nearby receptors.⁸⁶ These pose a significant risk to public health, and should be disclosed and mitigated in an EIR.

⁸² SWAPE Comments, p. 3.

⁸³ Id.; California Environmental Quality Act Air Quality Guidelines. BAAQMD, May 2017, *available at*: https://www.baaqmd.gov/~media/files/planning-and-research/ceqa/ceqa_guidelines_may2017-pdf.pdf?la=en, p. 2-2, Table 2-1.

⁸⁴ SWAPE Comments, p. 4.

⁸⁵ Id.

⁸⁶ Id.

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CEQA requires that a lead agency analyze the human health effects of the air emissions generated by a development project.⁸⁷ Additionally, as SWAPE explained, the Office of Environmental Health Hazard Assessment (“OEHHA”), recommends that exposure from projects lasting more than 6 months be evaluated for the duration of the project and recommends that an exposure duration of 30 years be used to estimate individual cancer risk for the maximally exposed individual resident (“MEIR”).⁸⁸

SWAPE calculated the Project’s excess cancer risk to the MEIR using applicable HRA methodologies prescribed by OEHHA:

Consistent with the default CalEEMod construction schedule, the annualized average concentration for construction was used for the entire third trimester of pregnancy (0.25 years) and the first 1.28 years of the infantile stage of life (0 – 2 years). The annualized averaged concentration for operation was used for the remainder of the 30-year exposure period, which makes up the remainder of the infantile stage of life, and the entire child and adult stages of life (2 – 16 years) and (16 – 30 years), respectively.⁸⁹

Consistent with OEHHA, as recommended by SCAQMD, BAAQMD, and SJVAPCD guidance, we used Age Sensitivity Factors (“ASFs”) to account for the heightened susceptibility of young children to the

⁸⁷ CEQA Appendix G, Section III.D; CEQA Guidelines section 15126.2(a) (“health and safety problems caused by the physical changes” that the proposed project will precipitate); *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 516; *Berkeley Keep Jets. v. Bd. of Port Comrs.* (“*Berkeley Jets*”) (2001) 91 Cal.App.4th 1344, 1369; *Bakersfield*, 124 Cal.App.4th at 1219–1220.

⁸⁸ SWAPE Comments, p. 4; Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments. OEHHA, February 2015, available at: http://oehha.ca.gov/air/hot_spots/2015/2015GuidanceManual.pdf, p. 8-6, 8-15

⁸⁹ SWAPE Comments, p. 5.
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carcinogenic toxicity of air pollution.^{90, 91, 92, 93} According to this guidance, the quantified cancer risk should be multiplied by a factor of ten during the third trimester of pregnancy and during the first two years of life (infant) as well as multiplied by a factor of three during the child stage of life (2 – 16 years). Furthermore, in accordance with the guidance set forth by OEHHA, we used the 95th percentile breathing rates for infants.⁹⁴ Finally, according to BAAQMD guidance, we used a Fraction of Time At Home (“FAH”) value of 0.85 for the 3rd trimester and infant receptors, 0.72 for child receptors, and 0.73 for the adult receptors.⁹⁵ We used a cancer potency factor of 1.1 (mg/kg-day)⁻¹ and an averaging time of 25,550 days.

The resulting impacts, SWAPE found, were highly significant and demonstrate a high risk to the health and welfare of the public from the Project:

The excess cancer risk to adults, children, infants, and during the 3rd trimester of pregnancy at the MEIR located approximately 300 meters away, over the course of Project construction and operation, utilizing

⁹⁰ “Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments.” OEHHA, February 2015, *available at*:

<https://oehha.ca.gov/media/downloads/crn/2015guidancemanual.pdf>.

⁹¹ “Draft Environmental Impact Report (DEIR) for the Proposed The Exchange (SCH No. 2018071058).” SCAQMD, March 2019, *available at*: <http://www.aqmd.gov/docs/default-source/ceqa/comment-letters/2019/march/RVC190115-03.pdf?sfvrsn=8>, p. 4.

⁹² “California Environmental Quality Act Air Quality Guidelines.” BAAQMD, May 2017, *available at*: http://www.baaqmd.gov/~media/files/planning-and-research/ceqa/ceqa_guidelines_may2017-pdf.pdf?la=en, p. 56; see also “Recommended Methods for Screening and Modeling Local Risks and Hazards.” BAAQMD, May 2011, *available at*: <http://www.baaqmd.gov/~media/Files/Planning%20and%20Research/CEQA/BAAQMD%20Modeling%20Approach.ashx>, p. 65, 86.

⁹³ “Update to District’s Risk Management Policy to Address OEHHA’s Revised Risk Assessment Guidance Document.” SJVAPCD, May 2015, *available at*: <https://www.valleyair.org/busind/pto/staff-report-5-28-15.pdf>, p. 8, 20, 24.

⁹⁴ “Supplemental Guidelines for Preparing Risk Assessments for the Air Toxics ‘Hot Spots’ Information and Assessment Act,” June 5, 2015, *available at*: <http://www.aqmd.gov/docs/default-source/planning/risk-assessment/ab2588-risk-assessment-guidelines.pdf?sfvrsn=6>, p. 19. “Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments.” OEHHA, February 2015, *available at*:

<https://oehha.ca.gov/media/downloads/crn/2015guidancemanual.pdf>

⁹⁵ “Air Toxics NSR Program Health Risk Assessment (HRA) Guidelines.” BAAQMD, January 2016, *available at*: http://www.baaqmd.gov/~media/files/planning-and-research/rules-and-regs/workshops/2016/reg-2-5/hra-guidelines_clean_jan_2016-pdf.pdf?la=en

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ASFs, are approximately 2.4, 15, 23, and 1.1 in one million, respectively. We estimate an excess cancer risk of approximately 42 in one million over the course of a residential lifetime (30 years), utilizing ASFs. The infant, child, and lifetime cancer risks exceed the BAAQMD threshold of 10 in one million, thus resulting in a potentially significant impact.

Neither the General Plan EIR nor the Staff Report disclose this potentially significant health risk impact from the Project. This is new information about significant impacts that were not analyzed in the General Plan EIR because this specific development project was not before the City at the time the General Plan was approved. The City must prepare an EIR to fully disclose the health risk posed to nearby, existing receptors from Project construction and operation, and to require binding mitigation measures to reduce the health impacts from the Project's DPM emissions to less than significant levels.

iii. GHG Emissions Will be Significant

Because the City failed to conduct any project-specific impact analysis, the Staff Report and supporting documentation lack sufficient information regarding the Project's potentially significant GHG emissions.

SWAPE conducted an analysis of the Project's GHG emissions utilizing its CalEEMod model, with the 2030 "Substantial Progress" threshold of 660 metric tons of carbon dioxide equivalents per year ("MT CO₂e/year").⁹⁶ The CalEEMod output files, modeled by SWAPE with Project-specific information, showed "the Project's mitigated emissions, which include approximately 1,389 MT CO₂e of total construction emissions (sum of 2021 and 2022 emissions) and approximately 5,250 MT CO₂e/year of annual operational emissions (sum of area, energy, mobile, waste,

⁹⁶ SWAPE Comments, p. 9; See: JEFFERSON UNION HIGH SCHOOL DISTRICT FACULTY & STAFF HOUSING PROJECT AIR QUALITY & GREENHOUSE GAS ASSESSMENT. City of Daly City, June 2019, available at: https://files.ceqanet.opr.ca.gov/257215-2/attachment/k-aC8VdC7LV3xz75yuUmtGiiExH-Y7HEPQ-dU-YIxuhNp95Dx9bK_TbVP3sWar00-Zx87dh7ji80vbRH0, p. 7; "TO 20-01 PAPÉ MACHINERY AIR QUALITY & GREENHOUSE GAS EMISSIONS ASSESSMENT." City of Fremont, February 2020, available at: "SOLAR4AMERICA ICE FACILITY EXPANSION AIR QUALITY AND GREENHOUSE GAS EMISSION ASSESSMENT." City of San Jose, September 2019, available at: https://www.fremont.gov/DocumentCenter/View/44974/4_Appendix-1_Air-Quality-GHG-Assessment, p. 18; and <https://www.sanjoseca.gov/Home/ShowDocument?id=45200>, p. 6. 5175-002acp

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and water-related emissions). When compared to the Project's net annual GHG emissions of 853 MT CO₂e/year to the Bay Area Air Quality Management District's ("BAAQMD") 2030 "Substantial Progress" threshold of 660 MT CO₂e/year, SWAPE found a potentially significant GHG impact, exceeding the "Substantial Progress" threshold by eightfold.⁹⁷

The Project's potentially significant GHG impacts are new information that was not analyzed in the General Plan EIR which must be fully disclosed and mitigated in an EIR.

B. Transportation

The City asserts that CEQA review is not required for the Project because the General Plan EIR evaluated impacts specific enough to release the Applicant or agency from any duty to perform subsequent environmental review. As Mr. Smith points out, however, the projected 2035 impacts to the intersections surrounding the Project site that are listed in the General Plan EIR are far less significant than those anticipated as a result of the Morgan Hill Technology Center in that project's DEIR.⁹⁸ Some of the relevant intersections, meanwhile, were not evaluated at all in the General Plan EIR. Impacts resulting from specific development of the Project site were clearly not evaluated in the General Plan EIR, necessitating further environmental review.⁹⁹

⁹⁷ SWAPE Comments, p. 9; See: "JEFFERSON UNION HIGH SCHOOL DISTRICT FACULTY & STAFF HOUSING PROJECT AIR QUALITY & GREENHOUSE GAS ASSESSMENT." City of Daly City, June 2019, available at: https://files.ceqanet.opr.ca.gov/257215-2/attachment/k-aC8VdC7LV3xz75yuUmtGiiExH-Y7HEPQ-dU-YIxuhNp95Dx9bK_TbVP3sWar00-Zx87dh7ji80vbRH0, p. 7; "TO 20-01 PAPÉ MACHINERY AIR QUALITY & GREENHOUSE GAS EMISSIONS ASSESSMENT." City of Fremont, February 2020, available at: "SOLAR4AMERICA ICE FACILITY EXPANSION AIR QUALITY AND GREENHOUSE GAS EMISSION ASSESSMENT." City of San Jose, September 2019, available at: https://www.fremont.gov/DocumentCenter/View/44974/4_Appendix-1_Air-Quality-GHG-Assessment, p. 18; and <https://www.sanjoseca.gov/Home/ShowDocument?id=45200>, p. 6.

⁹⁸ The General Plan EIR estimated that the intersection of Cochrane Road and DePaul Drive would operate at average delays per vehicle of 18.6 seconds and 19.8 seconds in the morning and evening peak periods, respectively. It found that the intersection of Cochrane Road and Mission View Drive would operate at average delays per vehicle of 20.2 seconds and 19.0 seconds in the morning and evening peaks. These values are characteristic of what the Morgan Hill Technology Center DEIR reports as *existing conditions*. It estimates significantly higher impacts to the intersections as a result of that larger project. General Plan EIR 4.14-43.

⁹⁹ Smith Comments, p. 4.
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Furthermore, Mr. Smith explains, the DEIR prepared for the Morgan Hill Technology Center project acknowledged that the General Plan EIR did not contemplate the development at issue in that project.¹⁰⁰ As one of its project alternatives, it compared potential project impacts with those estimated in the General Plan EIR buildout of the site. A Traffic Analysis concluded that, using the City's Travel Demand Forecasting Model and the General Plan's 20-year estimation for buildout of the site, VMT would increase significantly with development of the Technology Park project.¹⁰¹ That project, the analysis determined, would result in nearly double the number of miles traveled.¹⁰² The DEIR, however, attempted to cast doubt on the veracity of this conclusion by asserting that the development projections included in the General Plan EIR were "significantly lower" in intensity and "not reflective of the maximum allowed uses under the existing General Plan designations and zoning districts."¹⁰³ The DEIR acknowledges, therefore, that the Technology Park project and its specific development could not have been under consideration in the General Plan's environmental review. Likewise, the General Plan could not have contemplated this Project, as the larger Technology Center encompassed this Project's development.¹⁰⁴

Mr. Smith examined the DEIR prepared for the larger project proposed at the site. The traffic analysis performed for that DEIR, he found, showed highly significant deteriorations at the intersections surrounding the project site, from LOS B or C to LOS F in one or the other of the peak hours:

- The intersection of Cochrane Road with DePaul Drive would deteriorate in the PM peak hour from 18.7 seconds average delay per vehicle and LOS B to 101 seconds per vehicle and LOS F.
- The intersection of Cochrane Road and Mission View Drive would deteriorate in the AM peak hour from 23.0 seconds average delay per vehicle and LOS C to 94.6 seconds per vehicle and LOS F.
- The intersection of Mission View Drive and Half Road would deteriorate from 22.6 seconds average delay per vehicle and LOS C in the PM peak hour to 136.9 seconds and LOS F.¹⁰⁵

¹⁰⁰ *Id.*

¹⁰¹ Technology Park DEIR, p. 160; Technology Park DEIR Traffic Impact Analysis, Appendix H, p. 79.

¹⁰² *Id.*

¹⁰³ Technology Park DEIR, p. 201; Smith Comments, p. 4.

¹⁰⁴ MHMC, Sustainable Building Regulations, § 17.32.040.

¹⁰⁵ Smith Comments, p. 3.

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He further explained: If one takes the trip generation for the RedwoodTech@101 Project as fairly calculated in the section above and assumes its share of responsibility for the delay increments disclosed in the Morgan Hill Technology Center Mixed-Use Project DEIR is proportional to the ratio of its trip generation to that of the whole Mixed-Use Project, then the following results are obtained:

- The RedwoodTech@101 Project would cause the intersection of Cochrane Road with DePaul Drive to deteriorate in the PM peak hour from 18.7 seconds average delay per vehicle and LOS B to approximately 63.55 seconds delay and LOS E in the PM peak.
- The intersection of Cochrane Road and Mission View Drive would deteriorate in the AM peak hour from 23.0 seconds average delay per vehicle and LOS C to approximately 78.99 seconds and LOS E in the AM peak.
- The intersection of Mission View Drive and Half Road would deteriorate from 22.6 seconds average delay per vehicle and LOS C in the PM peak hour to approximately 84.89 seconds and LOS F.¹⁰⁶

“The fact that the revised and renamed Project,” Mr. Smith stated, “could have effects on this scale should have been obvious to the City.”¹⁰⁷ This is new information about significant transportation impacts that were not analyzed in the General Plan EIR because this specific development project was not before the City at the time the General Plan was approved. The City must prepare an EIR to disclose and mitigate these impacts.

C. Noise

Noise expert Deborah Jue, in examining the DEIR prepared for the prior Technology Center Project, found that noise impacts were not properly identified, relying on incorrect distances between the noise sensitive land use and the project construction.¹⁰⁸ This error, she explained, may result in an inaccurate analysis of impacts for the Redwood 101 Project.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ Jue Comments, p. 1: “Construction noise analyses can be done using the shortest distance between the noise sensitive land use and the work area for the project, or it can be done using the distance from the noise sensitive land use to the center, or possibly the centroid of the project. Given 5175-002acp

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The prior analysis identified a significance threshold of 60 dBA hourly Leq for construction noise received at residential land use and 70 dBA hourly Leq received at commercial land use. Ambient noise in excess of these thresholds by at least 5 dBA for more than one year would constitute a significant temporary noise increase.¹⁰⁹

Ms. Jue explained the measurements contained in the prior analysis:

[O]nly a short-term noise measurement was made near the residential neighborhood on Tolusa Place (ST-1) measuring two short 10-minute periods ranging from 58 to 62 dBA Leq; given the location's distance from the main arterial and highway noise sources, it is expected that the ambient at the future residential project, which is being permitted concurrently, would be more similar to the noise measurement data collected at ST-2 near the medical facilities which yielded 64 dBA Leq. According to the prior analysis, construction noise which exceeds 60 dBA Leq and 63 dBA Leq over the course of a year would be significant at the Tolusa Place residents, and construction noise which exceeds 60 dBA Leq and 68 dBA Leq over the course of the year would be significant at the future residential project.¹¹⁰

Putting this one-year allowance into context, Ms. Jue pointed out that the Oakland Noise Ordinance limits long-term construction projects that last more than 10 days to 65 dBA at residential land use and 70 at commercial land use, regardless of the existing ambient conditions. From this perspective, Ms. Jue stated, "the one-year requirement to determine significance seems particularly lenient."¹¹¹

Since the Project is being permitted concurrently with the residential component of the Technology Center project, residents could experience a full year or more of cumulative construction noise. The noise levels at the east residential neighborhood would exceed 60 dBA Leq and the existing environment of 58 dBA would be increased by 5 dBA or more for a period of a year or more.¹¹²

that the extent of the prior project was so large (89 acres), using either of these distances would potentially over-estimate or under-estimate the actual impacts, respectively."

¹⁰⁹ Jue Comments, p. 1.

¹¹⁰ Jue Comments, pp. 1–2.

¹¹¹ Jue Comments, p. 2.

¹¹² Jue Comments, p. 2

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The concurrent residential project would be slightly closer to existing noise sources such as Hwy 101, but still within 50 ft of the project construction. If completed prior to the commercial project, Ms. Jue explained, “some number of homes within the future residential project would be exposed to a significant noise impact as shown in Table 3. The noise levels would exceed 60 dBA Leq and the existing environment of 64 dBA would be increased by 5 dBA or more for a period of a year or more.”¹¹³

Table 1 Construction Noise Impacts from Commercial Buildings at Future Residential Project

Construction Phase	Commercial Project Source to Future Residential	
	Distance to Center: 515 ft	Distance to nearest PL 50 ft
Site Preparation	64	84
Grading	65	85
Trenching	59	79
Build Exterior	63	83
Build Interior	55	75
Paving	63	83

CEQA impact analysis, Ms. Jue points out, is necessary to determine the best mitigation measures to address these temporary, substantial noise impacts. Such measures could include buffer distances and sound barriers. Adequate materials for such sound barriers, she explains, would include “temporary barriers using STC 20-25 blankets on a tubular steel frame or scaffolding or 3 PSF wood frame barriers (e.g., using ¾” thick plywood).”¹¹⁴ The material, she said, should overlap or otherwise be constructed to avoid gaps of any size, and should be high enough to block the line of sight between the construction noise sources and the affected windows.¹¹⁵ “The sound barrier has to interrupt the line of sight between the source(s) and the receiver(s) and the best placement to maximize the sound barrier benefit is close the source or close to the receiver.”¹¹⁶

¹¹³ Jue Comments, 3.

¹¹⁴ Jue Comments, p. 3.

¹¹⁵ *Id.*

¹¹⁶ *Id.*

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Ms. Jue concluded that, because the noise analysis prepared for the prior project appears to contain some errors “which could lead one to conclude that construction activities for the proposed project and the future residential project could be less than significant.”¹¹⁷ This is new information about significant impacts that were not analyzed in the General Plan EIR because this specific development project was not before the City at the time the General Plan was approved. An EIR must be prepared to disclose and mitigate these impacts.

VII. THE CITY CANNOT MAKE THE NECESSARY FINDINGS TO ISSUE A DESIGN PERMIT OR TENTATIVE MAP FOR THE PROJECT

Approval of the Project’s Design Permit and Tentative Map requires factual findings, supported by substantial evidence, pursuant to the Morgan Hill Municipal Code and the State Subdivision Map Act that a proposed subdivision is consistent with the City’s general plan and specific plans, and does not have any detrimental environmental or public health effects.¹¹⁸

The Staff Report claims that the Project is in compliance with the General Plan, Zoning Code and other City Codes as required by Section 17.50.030 of the Municipal Code, but nowhere does it make findings, or offer substantial evidence, that the Project will not have any detrimental environmental or public health effects.

As discussed in Section VI above, substantial evidence demonstrates that the Project is likely to have potentially significant impacts on air quality, public health, climate change, noise, and traffic. Silicon Valley Residents’ experts have provided ample evidence demonstrating the Project’s significant impacts, including:

- Emissions of VOCs and TACs from Project construction and operation will be significant.
- DPM emissions from construction and operation
- The cancer risk from the Project to nearby receptors would be 42 in one million over 30 years, exceeding the BAAQMD threshold of 10 in one million.¹¹⁹

¹¹⁷ Jue Comments, p. 4.

¹¹⁸ Gov Code §§66473.5, 66474; MHMC 18.108.040(A).

¹¹⁹ SWAPE Comments, p. 8.

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- Traffic and transportation in the Project vicinity could be significantly impacted by Project construction and operation.
- Nearby residents could experience significant impacts from noise for a year or more.

These effects have not been disclosed or analyzed by the City, which continues to claim that the General Plan EIR is sufficient to address any potential impacts, despite that document's repeated claim that it did not analyze any project-specific impacts. As a result, the Project fails to comply with mandatory Map Act requirements. The City, therefore, cannot make the requisite findings pursuant to Government Code Sections 66473.5 and 66474 and must deny the Project's Design Permit and Tentative Map.

VIII. CONCLUSION

The City has improperly tried to rely on the 2035 General Plan EIR as a program EIR with analysis sufficient to satisfy CEQA. That EIR, however, was never meant to serve as a review document for specific projects. Many of the impacts likely to result from the Project will be significantly more severe than what was evaluated in the General Plan EIR, while others were never analyzed at all.

Furthermore, the Design Review Permit and Vesting Tentative Map required for the Project cannot be issued. As supported by substantial evidence above and in expert comment letters attached herein, the Project will result in significant and unmitigated impacts that are not disclosed or analyzed by the General Plan EIR. Without further mitigation measures to reduce the Project's significant impacts, the City cannot find that it is not detrimental to public health, safety, or welfare, and thus cannot approve the permits necessary for the Project to move forward.

Sincerely,



Kendra Hartmann

KDH:acp
Attachments

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ATTACHMENT A



Technical Consultation, Data Analysis and
Litigation Support for the Environment

2656 29th Street, Suite 201
Santa Monica, CA 90405

Matt Hagemann, P.G., C.Hg.
(949) 887-9013
mhagemann@swape.com

Paul E. Rosenfeld, PhD
(310) 795-2335
prosenfeld@swape.com

May 24, 2021

Kendra Hartmann
Adams Broadwell Joseph & Cardozo
601 Gateway Blvd #1000
South San Francisco, CA 94080

Subject: Comments on the De Paul – TC Morgan Hill Venture (Redwood Tech at 101) Project

Dear Ms. Hartmann,

We have reviewed the February 2021 Completeness Comment Letter (“Completeness Letter”) for the De Paul – TC Morgan Hill Venture (Redwood Tech at 101) (“Project”) located in the City of Morgan Hill (“City”). The Project proposes to construct five buildings consisting of 501,314-SF of flexible industrial/commercial space and 854 parking spaces on the 28.96-acre site.

Our review concludes that the Completeness Letter fails to adequately evaluate the Project’s air quality, health risk, and greenhouse gas impacts. As a result, emissions and health risk impacts associated with construction and operation of the proposed Project are underestimated and inadequately addressed. An analysis should be prepared to adequately assess and mitigate the potential air quality, health risk, and greenhouse gas impacts that the project may have on the surrounding environment.

Air Quality & Greenhouse Gas

Failure to Evaluate Potential Environmental Impacts

Regarding the Project’s completeness of application, the Completeness Letter states:

“Pursuant to the Permit Streamlining Act (Government Code Chapter 4.5 of Title 7), your application is complete” (p. 1).

Furthermore, regarding the Project’s environmental impacts, the Completeness Letter states:

“Your application is consistent with the existing zoning and General Plan designation of the site. In addition, Environmental Review is not required for Design Review or Tentative Parcel Map

Attachment: Appeal by Adams Broadwell Joseph & Cardozo (3130 : Trammell Crow Redwood Tech at 101 Appeal)

applications; therefore, Environmental Review is not required for the resubmitted project” (p. 3).

As demonstrated above, the Completeness Letter concludes that the Project does not require environmental review. However, this conclusion is unsubstantiated. According to the Permit Streamlining Act:

(a) The information compiled pursuant to Section 65940 shall also indicate the criteria which the agency will apply in order to determine the completeness of any application submitted to it for a development project.

(b) If a public agency is a lead or responsible agency for purposes of the California Environmental Quality Act, Division 13 (commencing with Section 21000) of the Public Resources Code, that criteria shall not require the applicant to submit the informational equivalent of an environmental impact report as part of a complete application, or to otherwise require proof of compliance with that act as a prerequisite to a permit application being deemed complete. However, that criteria may require sufficient information to permit the agency to make the determination required by Section 21080.1 of the Public Resources Code (emphasis added).¹

Section 21080.1 of the Public Resources Code states:

“The lead agency shall be responsible for determining whether an environmental impact report, a negative declaration, or a mitigated negative declaration shall be required for any project which is subject to this division.”²

As demonstrated in the excerpts above, the criteria required to determine the completeness of an application does not require the applicant to submit information equivalent to an environmental impact report pursuant to CEQA. However, sufficient information is necessary for a lead agency to determine whether an environmental impact report, a negative declaration, or a mitigated negative declaration is required for the project. Thus, as the Completeness Letter concludes that the Project does not require environmental review, sufficient information regarding the Project’s potential environmental impacts is not available, and the agency is unable to make an informed determination, as required by Section 21080.1 of the Public Resources Code.

¹ “TITLE 7. Planning and Land Use, DIVISION 1. Planning and Zoning, CHAPTER 4.5. Review and Approval of Development Projects, ARTICLE 3. Applications for Development Projects.” California Legislative Information, available at: https://leginfo.ca.gov/faces/codes_displayText.xhtml?lawCode=GOV&division=1.&title=7.&part=&chapter=4.5.&article=3.

² “PUBLIC RESOURCES CODE DIVISION 13 ENVIRONMENTAL QUALITY CHAPTER 2.6 General.” California Legislative Information, available at: https://leginfo.ca.gov/faces/codes_displaySection.xhtml?lawCode=PRC§ionNum=21080.1.

As such, we recommend that the Project not be approved until the preparation of an adequate environmental analysis evaluates the potential air quality, health risk, and greenhouse gas impacts the Project may have on the surrounding environment.

Updated Analysis Indicates a Potentially Significant Air Quality Impact

In an effort to estimate the Project's construction-related and operational emissions, we utilized CalEEMod.2016.3.2, as well as the Project-specific information provided by the Completeness Letter.³ CalEEMod provides recommended default values based on site-specific information, such as land use type, meteorological data, total lot acreage, project type and typical equipment associated with project type. In our model, we included 501,314-SF of "General Light Industry" and 854 spaces of "Parking Lot." We assumed that the Project would be located within Climate Zone 3⁴ and the Project's utilities would be provided by the Pacific Gas and Electric Company.⁵ All other values were left as default.

Our updated analysis estimates that the Project's construction-related VOC emissions exceed the applicable BAAQMD threshold of 54 pounds per day ("lbs/day") (see table below).⁶

Maximum Daily Construction-Related Emissions:

Model	ROG
SWAPE Construction	268.96
BAAQMD Threshold (lbs/day)	137
Threshold Exceeded?	Yes

As you can see in the excerpt above, the Project's construction-related VOC emissions, as estimated by SWAPE, exceed the applicable BAAQMD significance threshold. Thus, our model demonstrates that the Project would result in a potentially significant air quality impact that was not previously identified or addressed in the Completeness Letter. As a result, an EIR should be prepared to adequately assess and mitigate the potential air quality impacts that the Project may have on the surrounding environment.

Diesel Particulate Matter Health Risk Emissions Inadequately Evaluated

As previously stated, the Completeness Letter concludes the Project does not require environmental review. However, the Completeness Letter fails to provide sufficient information regarding the Project's potential health risk impacts. We recommend the Project conduct a quantified construction and operational health risk analysis ("HRA") for the following three reasons.

³ CAPCOA (November 2017) CalEEMod User's Guide, http://www.aqmd.gov/docs/default-source/caleemod/01_user-39-s-guide2016-3-2_15november2017.pdf?sfvrsn=4.

⁴ "Appendix F Climate Zones Lookup." CAPCOA, September 2016, available at: http://www.aqmd.gov/docs/default-source/caleemod/upgrades/2016.3/07_appendix-f2016-3-1.pdf?sfvrsn=2, p. F-17.

⁵ "Electric Service Area Maps." Pacific Gas and Electric Company, November 2014, available at: https://www.pge.com/tariffs/assets/pdf/tariffbook/ELEC_MAPS_Service%20Area%20Map.pdf, pp. 2.

⁶ "California Environmental Quality Act Air Quality Guidelines." BAAQMD, May 2017, available at: https://www.baaqmd.gov/~media/files/planning-and-research/ceqa/ceqa_guidelines_may2017-pdf.pdf?la=en, p. 2-2, Table 2-1.

First, construction of the proposed Project will produce emissions of diesel particulate matter (“DPM”) through the exhaust stacks of construction equipment throughout its construction period. Furthermore, the proposed land uses will generate daily vehicle trips, which will generate additional exhaust emissions and continue to expose nearby sensitive receptors to DPM emissions. However, the Completeness Letter fails to make a reasonable effort to connect the Project’s construction-related and operational toxic air contaminant (“TAC”) emissions to the potential health risks posed to nearby receptors. As a result, the Project fails to provide sufficient information regarding the Project’s potential health risk impacts.

Second, the Office of Environmental Health Hazard Assessment (“OEHHA”), the organization responsible for providing guidance on conducting HRAs in California, released its most recent *Risk Assessment Guidelines: Guidance Manual for Preparation of Health Risk Assessments* in February 2015.⁷ This guidance document describes the types of projects that warrant the preparation of an HRA. The OEHHA document recommends that all short-term projects lasting at least two months be evaluated for cancer risks to nearby sensitive receptors.⁸ As Project construction would last approximately 13 months, the anticipated construction duration would exceed the 2-month recommendation set forth by OEHHA, thus meeting the threshold warranting a quantified HRA under OEHHA guidance (Project Description, p. 3).

Furthermore, the OEHHA document recommends that exposure from projects lasting more than 6 months be evaluated for the duration of the project and recommends that an exposure duration of 30 years be used to estimate individual cancer risk for the maximally exposed individual resident (“MEIR”).⁹ Even though we were not provided with the expected lifetime of the Project, we can reasonably assume that the Project will operate for at least 30 years, if not more. Therefore, we recommend that health risk impacts from Project operation also be evaluated, as a 30-year exposure duration vastly exceeds the 6-month recommendation set forth by OEHHA. These recommendations reflect the most recent state health risk policies, and as such, we recommend the Project not be approved until an adequate analysis of the health risk impacts posed to nearby sensitive receptors from Project construction and operation is prepared.

Third, the Project fails to compare the excess health risk impact to the applicable BAAQMD numeric threshold of 10 in one million.¹⁰ Thus, an analysis of the health risk posed to nearby, existing receptors from Project construction and operation should be conducted.

⁷ “Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments.” OEHHA, February 2015, available at: http://oehha.ca.gov/air/hot_spots/hotspots2015.html

⁸ “Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments.” OEHHA, February 2015, available at: http://oehha.ca.gov/air/hot_spots/2015/2015GuidanceManual.pdf, p. 8-18

⁹ “Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments.” OEHHA, February 2015, available at: http://oehha.ca.gov/air/hot_spots/2015/2015GuidanceManual.pdf, p. 8-6, 8-15

¹⁰ “California Environmental Quality Act Air Quality Guidelines.” BAAQMD, May 2017, available at: https://www.baaqmd.gov/~/media/files/planning-and-research/ceqa/ceqa_guidelines_may2017-pdf.pdf?la=en, p. 2-2, Table 2-1.

Screening-Level Analysis Demonstrates Significant Impacts

In order to conduct our screening-level risk assessment we relied upon AERSCREEN, which is a screening level air quality dispersion model.¹¹ The model replaced SCREEN3, and AERSCREEN is included in the OEHHA¹² and the California Air Pollution Control Officers Associated (“CAPCOA”)¹³ guidance as the appropriate air dispersion model for Level 2 health risk screening assessments (“HRSAs”). A Level 2 HRSA utilizes a limited amount of site-specific information to generate maximum reasonable downwind concentrations of air contaminants to which nearby sensitive receptors may be exposed. If an unacceptable air quality hazard is determined to be possible using AERSCREEN, a more refined modeling approach is required prior to approval of the Project.

We prepared a preliminary HRA of the Project’s construction and operational health-related impact to residential sensitive receptors using the annual PM₁₀ exhaust estimates from SWAPE’s air model. Consistent with recommendations set forth by OEHHA, we assumed residential exposure begins during the third trimester stage of life. SWAPE’s CalEEMod output files indicate that construction activities will generate approximately 299 pounds of DPM over the CalEEMod default 559-day construction period. The AERSCREEN model relies on a continuous average emission rate to simulate maximum downward concentrations from point, area, and volume emission sources. To account for the variability in equipment usage and truck trips over Project construction, we calculated an average DPM emission rate by the following equation:

$$\text{Emission Rate} \left(\frac{\text{grams}}{\text{second}} \right) = \frac{298.6 \text{ lbs}}{559 \text{ days}} \times \frac{453.6 \text{ grams}}{\text{lbs}} \times \frac{1 \text{ day}}{24 \text{ hours}} \times \frac{1 \text{ hour}}{3,600 \text{ seconds}} = 0.0028 \text{ g/s}$$

Using this equation, we estimated a construction emission rate of 0.0028 grams per second (“g/s”). Subtracting the 559-day construction period from the total residential duration of 30 years, we assumed that after Project construction, the sensitive receptor would be exposed to the Project’s operational DPM for an additional 28.47 years, approximately. SWAPE’s CalEEMod output indicate that operational activities will generate approximately 123 pounds of DPM per year throughout operation. Applying the same equation used to estimate the construction DPM rate, we estimated the following emission rate for Project operation:

$$\text{Emission Rate} \left(\frac{\text{grams}}{\text{second}} \right) = \frac{123.4 \text{ lbs}}{365 \text{ days}} \times \frac{453.6 \text{ grams}}{\text{lbs}} \times \frac{1 \text{ day}}{24 \text{ hours}} \times \frac{1 \text{ hour}}{3,600 \text{ seconds}} = 0.00177 \text{ g/s}$$

Using this equation, we estimated an operational emission rate of 0.00177 g/s. Construction and operational activity was simulated as a 29-acre rectangular area source in AERSCREEN with dimensions of 500 by 235 meters. A release height of three meters was selected to represent the height of exhaust stacks on operational equipment and other heavy-duty vehicles, and an initial vertical dimension of one-

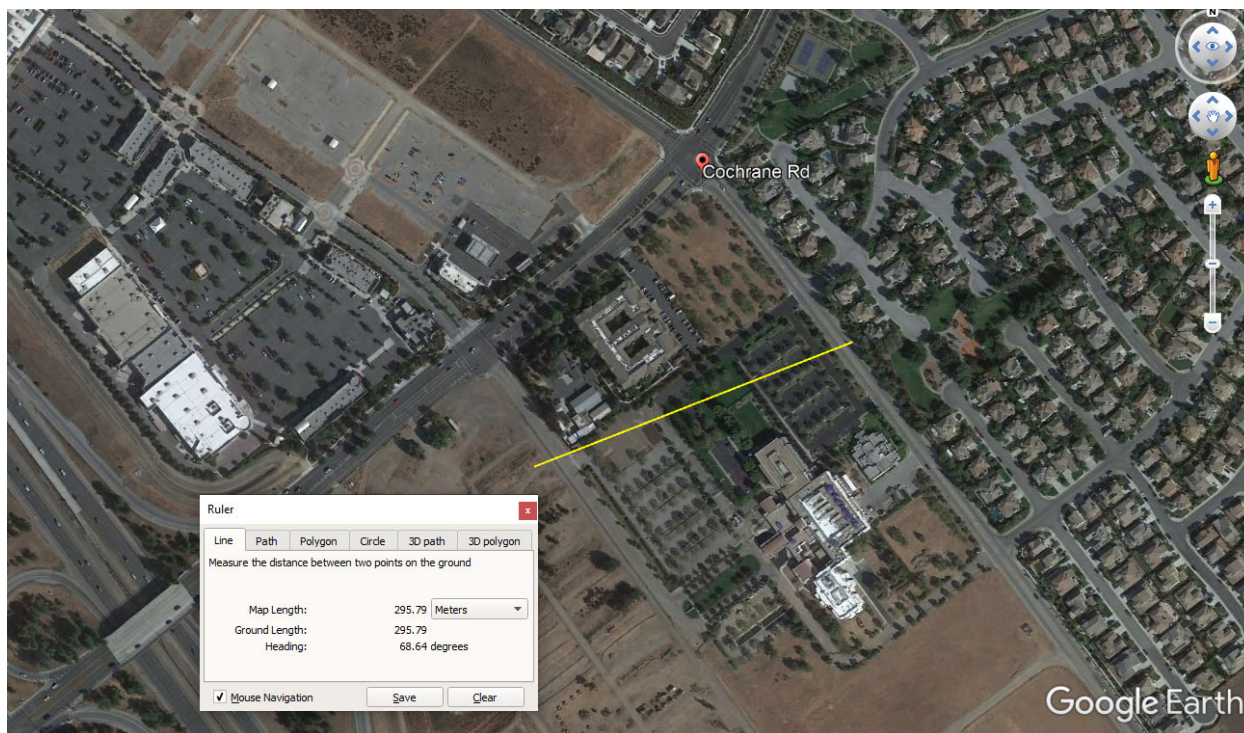
¹¹ U.S. EPA (April 2011) AERSCREEN Released as the EPA Recommended Screening Model, http://www.epa.gov/ttn/scram/guidance/clarification/20110411_AERSCREEN_Release_Memo.pdf

¹² OEHHA (February 2015) Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments, <https://oehha.ca.gov/media/downloads/cnr/2015guidancemanual.pdf>.

¹³ CAPCOA (July 2009) Health Risk Assessments for Proposed Land Use Projects, http://www.capcoa.org/wp-content/uploads/2012/03/CAPCOA_HRA_LU_Guidelines_8-6-09.pdf.

and-a-half meters was used to simulate instantaneous plume dispersion upon release. An urban meteorological setting was selected with model-default inputs for wind speed and direction distribution.

The AERSCREEN model generates maximum reasonable estimates of single-hour DPM concentrations from the Project site. EPA guidance suggests that in screening procedures, the annualized average concentration of an air pollutant be estimated by multiplying the single-hour concentration by 10%.¹⁴ Google Earth demonstrates that the closest sensitive receptors are located approximately 300 meters from the Project site (see excerpt below).



Thus, the single-hour concentration estimated by AERSCREEN for Project construction is approximately $0.934 \mu\text{g}/\text{m}^3$ DPM at approximately 300 meters downwind. Multiplying this single-hour concentration by 10%, we get an annualized average concentration of $0.0934 \mu\text{g}/\text{m}^3$ for Project construction at the MEIR. For Project operation, the single-hour concentration estimated by AERSCREEN is $0.5913 \mu\text{g}/\text{m}^3$ DPM at approximately 300 meters downwind. Multiplying this single-hour concentration by 10%, we get an annualized average concentration of $0.05913 \mu\text{g}/\text{m}^3$ for Project operation at the MEIR.

We calculated the excess cancer risk to the MEIR using applicable HRA methodologies prescribed by OEHHA. Consistent with the default CalEEMod construction schedule, the annualized average concentration for construction was used for the entire third trimester of pregnancy (0.25 years) and the first 1.28 years of the infantile stage of life (0 – 2 years). The annualized averaged concentration for

¹⁴ "Screening Procedures for Estimating the Air Quality Impact of Stationary Sources Revised." EPA, 1992, available at: http://www.epa.gov/ttn/scram/guidance/guide/EPA-454R-92-019_OCR.pdf; see also "Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments." OEHHA, February 2015, available at: <https://oehha.ca.gov/media/downloads/cnr/2015guidancemanual.pdf> p. 4-36.

operation was used for the remainder of the 30-year exposure period, which makes up the remainder of the infantile stage of life, and the entire child and adult stages of life (2 – 16 years) and (16 – 30 years), respectively.

Consistent with OEHHA, as recommended by SCAQMD, BAAQMD, and SJVAPCD guidance, we used Age Sensitivity Factors (“ASFs”) to account for the heightened susceptibility of young children to the carcinogenic toxicity of air pollution.^{15, 16, 17, 18} According to this guidance, the quantified cancer risk should be multiplied by a factor of ten during the third trimester of pregnancy and during the first two years of life (infant) as well as multiplied by a factor of three during the child stage of life (2 – 16 years). Furthermore, in accordance with the guidance set forth by OEHHA, we used the 95th percentile breathing rates for infants.¹⁹ Finally, according to BAAQMD guidance, we used a Fraction of Time At Home (“FAH”) value of 0.85 for the 3rd trimester and infant receptors, 0.72 for child receptors, and 0.73 for the adult receptors.²⁰ We used a cancer potency factor of 1.1 (mg/kg-day)⁻¹ and an averaging time of 25,550 days. The results of our calculations are shown below.

¹⁵ “Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments.” OEHHA, February 2015, available at: <https://oehha.ca.gov/media/downloads/cnr/2015guidancemanual.pdf>.

¹⁶ “Draft Environmental Impact Report (DEIR) for the Proposed The Exchange (SCH No. 2018071058).” SCAQMD, March 2019, available at: <http://www.aqmd.gov/docs/default-source/ceqa/comment-letters/2019/march/RVC190115-03.pdf?sfvrsn=8>, p. 4.

¹⁷ “California Environmental Quality Act Air Quality Guidelines.” BAAQMD, May 2017, available at: http://www.baaqmd.gov/~media/files/planning-and-research/ceqa/ceqa_guidelines_may2017-pdf.pdf?la=en, p. 56; see also “Recommended Methods for Screening and Modeling Local Risks and Hazards.” BAAQMD, May 2011, available at: <http://www.baaqmd.gov/~media/Files/Planning%20and%20Research/CEQA/BAAQMD%20Modeling%20Approach.ashx>, p. 65, 86.

¹⁸ “Update to District’s Risk Management Policy to Address OEHHA’s Revised Risk Assessment Guidance Document.” SJVAPCD, May 2015, available at: <https://www.valleyair.org/busind/pto/staff-report-5-28-15.pdf>, p. 8, 20, 24.

¹⁹ “Supplemental Guidelines for Preparing Risk Assessments for the Air Toxics ‘Hot Spots’ Information and Assessment Act,” June 5, 2015, available at: <http://www.aqmd.gov/docs/default-source/planning/risk-assessment/ab2588-risk-assessment-guidelines.pdf?sfvrsn=6>, p. 19.

“Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments.” OEHHA, February 2015, available at: <https://oehha.ca.gov/media/downloads/cnr/2015guidancemanual.pdf>

²⁰ “Air Toxics NSR Program Health Risk Assessment (HRA) Guidelines.” BAAQMD, January 2016, available at: http://www.baaqmd.gov/~media/files/planning-and-research/rules-and-regs/workshops/2016/reg-2-5/hra-guidelines_clean_jan_2016-pdf.pdf?la=en

The Closest Exposed Individual at an Existing Residential Receptor

Activity	Duration (years)	Concentration (ug/m3)	Breathing Rate (L/kg-day)	Cancer Risk without ASFs*	ASF	Cancer Risk with ASFs*
Construction	0.25	0.0934	361	1.1E-07	10	1.1E-06
3rd Trimester Duration	0.25			1.1E-07	3rd Trimester Exposure	1.1E-06
Construction	1.28	0.0934	1090	1.7E-06	10	1.7E-05
Operation	0.72	0.05913	1090	7.0E-07	10	5.9E-06
Infant Exposure Duration	2.00			2.4E-06	Infant Exposure	2.3E-05
Operation	14.00	0.05913	572	5.1E-06	3	1.5E-05
Child Exposure Duration	14.00			5.1E-06	Child Exposure	1.5E-05
Operation	14.00	0.05913	261	2.4E-06	1	2.4E-06
Adult Exposure Duration	14.00			2.4E-06	Adult Exposure	2.4E-06
Lifetime Exposure Duration	30.00			1.0E-05	Lifetime Exposure	4.2E-05

* We, along with CARB and BAAQMD, recommend using the more updated and health protective 2015 OEHHA guidance, which includes ASFs.

As demonstrated in the table above, the excess cancer risk to adults, children, infants, and during the 3rd trimester of pregnancy at the MEIR located approximately 300 meters away, over the course of Project construction and operation, utilizing ASFs, are approximately 2.4, 15, 23, and 1.1 in one million, respectively. We estimate an excess cancer risk of approximately 42 in one million over the course of a residential lifetime (30 years), utilizing ASFs. The infant, child, and lifetime cancer risks exceed the BAAQMD threshold of 10 in one million, thus resulting in a potentially significant impact.

Utilizing ASFs is the most conservative, health-protective analysis according to the most recent guidance by OEHHA and reflects recommendations from the air district. Results without ASFs are presented in the table above, although we **do not** recommend utilizing these values for health risk analysis. Regardless, the estimated excess cancer risk to adults, children, infants, and during the 3rd trimester of pregnancy at the MEIR located approximately 300 meters away, over the course of Project construction and operation, without ASFs, are approximately 2.4, 5.1, 2.4, and 0.11 in one million, respectively. The estimated excess cancer risk over the course of a residential lifetime (30 years), without ASFs, is approximately 10 in one million.

An agency must include an analysis of health risks that connects the Project's air emissions with the health risk posed by those emissions. Our analysis represents a screening-level HRA, which is known to

be conservative and tends to err on the side of health protection.²¹ The purpose of the screening-level construction and operational HRA shown above is to demonstrate the link between the proposed Project's emissions and the potential health risk. Our screening-level HRA demonstrates that construction and operation of the Project could result in a potentially significant health risk impact, when correct exposure assumptions and up-to-date, applicable guidance are used. Thus, the City should prepare a quantified air pollution model as well as a quantified refined HRA that adequately and accurately evaluates health risk impacts associated with both Project construction and operation.

Screening-Level Assessment Indicates Significant Greenhouse Gas Impacts

As discussed above, the Completeness Letter concludes the Project does not require environmental review. As a result, the Completeness Letter fails to provide sufficient information regarding the Project's potential greenhouse gas ("GHG") impacts. However, as discussed above, the Project would result in potentially significant air quality and health risk impacts. Thus, we recommend that a full environmental analysis, including estimated GHG emissions, be prepared for the Project, prior to approval.

In an effort to evaluate the Project's GHG impacts, we conducted an analysis of the Project's GHG emissions utilizing SWAPE's CalEEMod model, as previously described. To evaluate the Project's estimated GHG emissions, we recommend the use of the widely used 2030 "Substantial Progress" threshold of 660 metric tons of carbon dioxide equivalents per year ("MT CO₂e/year").²² The CalEEMod output files, modeled by SWAPE with Project-specific information, disclose the Project's mitigated emissions, which include approximately 1,389 MT CO₂e of total construction emissions (sum of 2021 and 2022 emissions) and approximately 5,250 MT CO₂e/year of annual operational emissions (sum of area, energy, mobile, waste, and water-related emissions). When we compare the Project's net annual GHG emissions of 853 MT CO₂e/year to the 2030 "Substantial Progress" threshold of 660 MT CO₂e/year, we find a potentially significant GHG impact (see table below).²³

²¹ "Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments." OEHHA, February 2015, available at: <https://oehha.ca.gov/media/downloads/crn/2015guidancemanual.pdf>, p. 1-5

²² See: "JEFFERSON UNION HIGH SCHOOL DISTRICT FACULTY & STAFF HOUSING PROJECT AIR QUALITY & GREENHOUSE GAS ASSESSMENT." City of Daly City, June 2019, available at: https://files.ceganet.opr.ca.gov/257215-2/attachment/k-aC8VdC7LV3xz75yuUmtGiiExH-Y7HEPQ-dU-YlxuhNp95Dx9bK_TbVP3sWar00-Zx87dh7ji80vbRH0, p. 7; "TO 20-01 PAPÉ MACHINERY AIR QUALITY & GREENHOUSE GAS EMISSIONS ASSESSMENT." City of Fremont, February 2020, available at: "SOLAR4AMERICA ICE FACILITY EXPANSION AIR QUALITY AND GREENHOUSE GAS EMISSION ASSESSMENT." City of San Jose, September 2019, available at: https://www.fremont.gov/DocumentCenter/View/44974/4_Appendix-1_Air-Quality-GHG-Assessment, p. 18; and <https://www.sanjoseca.gov/Home/ShowDocument?id=45200>, p. 6.

²³ See: "JEFFERSON UNION HIGH SCHOOL DISTRICT FACULTY & STAFF HOUSING PROJECT AIR QUALITY & GREENHOUSE GAS ASSESSMENT." City of Daly City, June 2019, available at: https://files.ceganet.opr.ca.gov/257215-2/attachment/k-aC8VdC7LV3xz75yuUmtGiiExH-Y7HEPQ-dU-YlxuhNp95Dx9bK_TbVP3sWar00-Zx87dh7ji80vbRH0, p. 7; "TO 20-01 PAPÉ MACHINERY AIR QUALITY & GREENHOUSE GAS EMISSIONS ASSESSMENT." City of Fremont, February 2020, available at: "SOLAR4AMERICA ICE FACILITY EXPANSION AIR QUALITY AND GREENHOUSE GAS EMISSION ASSESSMENT." City of San Jose, September 2019, available at: https://www.fremont.gov/DocumentCenter/View/44974/4_Appendix-1_Air-Quality-GHG-Assessment, p. 18; and <https://www.sanjoseca.gov/Home/ShowDocument?id=45200>, p. 6.

SWAPE Greenhouse Gas Emissions	
Project Phase	Proposed Project (MT CO ₂ e/year)
Construction (amortized over 30 years)	46.29
Area	0.03
Energy	1,887.88
Mobile	2,708.28
Waste	312.61
Water	341.00
Net Annual GHG Emissions	5,296
Threshold	660
<i>Exceed?</i>	<i>Yes</i>

As the table above demonstrates, the Project's net annual GHG emissions, as estimated by SWAPE, exceed the 2030 "Substantial Progress" bright-line threshold, thus demonstrating a potentially significant impact. Therefore, since our screening-level quantitative GHG analysis indicates a potentially significant impact, the City should prepare a Project-specific environmental analysis in order to further evaluate the Project's GHG impacts.

Feasible Mitigation Measures Available to Reduce Emissions

Our analysis demonstrates that the Project would result in potentially significant air quality, health risk, and GHG impacts that should be mitigated further. In an effort to reduce the Project's emissions, we identified several mitigation measures that are applicable to the proposed Project. Feasible mitigation measures can be found in the Department of Justice Warehouse Project Best Practices document.²⁴ Therefore, to reduce the Project's emissions, consideration of the following measures should be made:

- Requiring off-road construction equipment to be zero-emission, where available, and all diesel-fueled off-road construction equipment, to be equipped with CARB Tier IV-compliant engines or better, and including this requirement in applicable bid documents, purchase orders, and contracts, with successful contractors demonstrating the ability to supply the compliant construction equipment for use prior to any ground-disturbing and construction activities.
- Prohibiting off-road diesel-powered equipment from being in the "on" position for more than 10 hours per day.
- Requiring on-road heavy-duty haul trucks to be model year 2010 or newer if diesel-fueled.
- Providing electrical hook ups to the power grid, rather than use of diesel-fueled generators, for electric construction tools, such as saws, drills and compressors, and using electric tools whenever feasible.
- Limiting the amount of daily grading disturbance area.

²⁴ "Warehouse Projects: Best Practices and Mitigation Measures to Comply with the California Environmental Quality Act." State of California Department of Justice.

- Prohibiting grading on days with an Air Quality Index forecast of greater than 100 for particulates or ozone for the project area.
- Forbidding idling of heavy equipment for more than two minutes.
- Keeping onsite and furnishing to the lead agency or other regulators upon request, all equipment maintenance records and data sheets, including design specifications and emission control tier classifications.
- Conducting an on-site inspection to verify compliance with construction mitigation and to identify other opportunities to further reduce construction impacts.
- Using paints, architectural coatings, and industrial maintenance coatings that have volatile organic compound levels of less than 10 g/L.
- Providing information on transit and ridesharing programs and services to construction employees.
- Providing meal options onsite or shuttles between the facility and nearby meal destinations for construction employees.
- Requiring that all facility-owned and operated fleet equipment with a gross vehicle weight rating greater than 14,000 pounds accessing the site meet or exceed 2010 model-year emissions equivalent engine standards as currently defined in California Code of Regulations Title 13, Division 3, Chapter 1, Article 4.5, Section 2025. Facility operators shall maintain records on-site demonstrating compliance with this requirement and shall make records available for inspection by the local jurisdiction, air district, and state upon request.
- Requiring all heavy-duty vehicles entering or operated on the project site to be zero-emission beginning in 2030.
- Requiring on-site equipment, such as forklifts and yard trucks, to be electric with the necessary electrical charging stations provided.
- Requiring tenants to use zero-emission light- and medium-duty vehicles as part of business operations.
- Forbidding trucks from idling for more than two minutes and requiring operators to turn off engines when not in use.
- Posting both interior- and exterior-facing signs, including signs directed at all dock and delivery areas, identifying idling restrictions and contact information to report violations to CARB, the air district, and the building manager.

These measures offer a cost-effective, feasible way to incorporate lower-emitting design features into the proposed Project, which subsequently, reduce emissions released during Project construction and operation. An adequate environmental review should be prepared to include all feasible mitigation measures, as well as include an updated air quality, health risk, and GHG analysis to ensure that the necessary mitigation measures are implemented to reduce emissions to below thresholds.

Disclaimer

SWAPE has received limited discovery regarding this project. Additional information may become available in the future; thus, we retain the right to revise or amend this report when additional information becomes available. Our professional services have been performed using that degree of

care and skill ordinarily exercised, under similar circumstances, by reputable environmental consultants practicing in this or similar localities at the time of service. No other warranty, expressed or implied, is made as to the scope of work, work methodologies and protocols, site conditions, analytical testing results, and findings presented. This report reflects efforts which were limited to information that was reasonably accessible at the time of the work, and may contain informational gaps, inconsistencies, or otherwise be incomplete due to the unavailability or uncertainty of information obtained or provided by third parties.

Sincerely,



Matt Hagemann, P.G., C.Hg.



Paul E. Rosenfeld, Ph.D.

Attachment A:	SWAPE Health Risk Calculations
Attachment B:	SWAPE Project CalEEMod Modeling
Attachment C:	SWAPE Project AERSCREEN Modeling
Attachment D:	Paul Rosenfeld CV
Attachment E:	Matt Hagemann CV

Tel: (949) 887-9013

Email: mhagemann@swape.com

Matthew F. Hagemann, P.G., C.Hg., QSD, QSP

**Geologic and Hydrogeologic Characterization
Investigation and Remediation Strategies
Litigation Support and Testifying Expert
Industrial Stormwater Compliance
CEQA Review**

Education:

M.S. Degree, Geology, California State University Los Angeles, Los Angeles, CA, 1984.

B.A. Degree, Geology, Humboldt State University, Arcata, CA, 1982.

Professional Certifications:

California Professional Geologist

California Certified Hydrogeologist

Qualified SWPPP Developer and Practitioner

Professional Experience:

Matt has 30 years of experience in environmental policy, contaminant assessment and remediation, stormwater compliance, and CEQA review. He spent nine years with the U.S. EPA in the RCRA and Superfund programs and served as EPA's Senior Science Policy Advisor in the Western Regional Office where he identified emerging threats to groundwater from perchlorate and MTBE. While with EPA, Matt also served as a Senior Hydrogeologist in the oversight of the assessment of seven major military facilities undergoing base closure. He led numerous enforcement actions under provisions of the Resource Conservation and Recovery Act (RCRA) and directed efforts to improve hydrogeologic characterization and water quality monitoring. For the past 15 years, as a founding partner with SWAPE, Matt has developed extensive client relationships and has managed complex projects that include consultation as an expert witness and a regulatory specialist, and a manager of projects ranging from industrial stormwater compliance to CEQA review of impacts from hazardous waste, air quality and greenhouse gas emissions.

Positions Matt has held include:

- Founding Partner, Soil/Water/Air Protection Enterprise (SWAPE) (2003 – present);
- Geology Instructor, Golden West College, 2010 – 2014, 2017;
- Senior Environmental Analyst, Komex H2O Science, Inc. (2000 -- 2003);

- Executive Director, Orange Coast Watch (2001 – 2004);
- Senior Science Policy Advisor and Hydrogeologist, U.S. Environmental Protection Agency (1989–1998);
- Hydrogeologist, National Park Service, Water Resources Division (1998 – 2000);
- Adjunct Faculty Member, San Francisco State University, Department of Geosciences (1993 – 1998);
- Instructor, College of Marin, Department of Science (1990 – 1995);
- Geologist, U.S. Forest Service (1986 – 1998); and
- Geologist, Dames & Moore (1984 – 1986).

Senior Regulatory and Litigation Support Analyst:

With SWAPE, Matt's responsibilities have included:

- Lead analyst and testifying expert in the review of over 300 environmental impact reports and negative declarations since 2003 under CEQA that identify significant issues with regard to hazardous waste, water resources, water quality, air quality, greenhouse gas emissions, and geologic hazards. Make recommendations for additional mitigation measures to lead agencies at the local and county level to include additional characterization of health risks and implementation of protective measures to reduce worker exposure to hazards from toxins and Valley Fever.
- Stormwater analysis, sampling and best management practice evaluation at more than 100 industrial facilities.
- Expert witness on numerous cases including, for example, MTBE litigation, air toxins at hazards at a school, CERCLA compliance in assessment and remediation, and industrial stormwater contamination.
- Technical assistance and litigation support for vapor intrusion concerns.
- Lead analyst and testifying expert in the review of environmental issues in license applications for large solar power plants before the California Energy Commission.
- Manager of a project to evaluate numerous formerly used military sites in the western U.S.
- Manager of a comprehensive evaluation of potential sources of perchlorate contamination in Southern California drinking water wells.
- Manager and designated expert for litigation support under provisions of Proposition 65 in the review of releases of gasoline to sources drinking water at major refineries and hundreds of gas stations throughout California.

With Komex H2O Science Inc., Matt's duties included the following:

- Senior author of a report on the extent of perchlorate contamination that was used in testimony by the former U.S. EPA Administrator and General Counsel.
- Senior researcher in the development of a comprehensive, electronically interactive chronology of MTBE use, research, and regulation.
- Senior researcher in the development of a comprehensive, electronically interactive chronology of perchlorate use, research, and regulation.
- Senior researcher in a study that estimates nationwide costs for MTBE remediation and drinking water treatment, results of which were published in newspapers nationwide and in testimony against provisions of an energy bill that would limit liability for oil companies.
- Research to support litigation to restore drinking water supplies that have been contaminated by MTBE in California and New York.

- Expert witness testimony in a case of oil production-related contamination in Mississippi.
- Lead author for a multi-volume remedial investigation report for an operating school in Los Angeles that met strict regulatory requirements and rigorous deadlines.
- Development of strategic approaches for cleanup of contaminated sites in consultation with clients and regulators.

Executive Director:

As Executive Director with Orange Coast Watch, Matt led efforts to restore water quality at Orange County beaches from multiple sources of contamination including urban runoff and the discharge of wastewater. In reporting to a Board of Directors that included representatives from leading Orange County universities and businesses, Matt prepared issue papers in the areas of treatment and disinfection of wastewater and control of the discharge of grease to sewer systems. Matt actively participated in the development of countywide water quality permits for the control of urban runoff and permits for the discharge of wastewater. Matt worked with other nonprofits to protect and restore water quality, including Surfrider, Natural Resources Defense Council and Orange County CoastKeeper as well as with business institutions including the Orange County Business Council.

Hydrogeology:

As a Senior Hydrogeologist with the U.S. Environmental Protection Agency, Matt led investigations to characterize and cleanup closing military bases, including Mare Island Naval Shipyard, Hunters Point Naval Shipyard, Treasure Island Naval Station, Alameda Naval Station, Moffett Field, Mather Army Airfield, and Sacramento Army Depot. Specific activities were as follows:

- Led efforts to model groundwater flow and contaminant transport, ensured adequacy of monitoring networks, and assessed cleanup alternatives for contaminated sediment, soil, and groundwater.
- Initiated a regional program for evaluation of groundwater sampling practices and laboratory analysis at military bases.
- Identified emerging issues, wrote technical guidance, and assisted in policy and regulation development through work on four national U.S. EPA workgroups, including the Superfund Groundwater Technical Forum and the Federal Facilities Forum.

At the request of the State of Hawaii, Matt developed a methodology to determine the vulnerability of groundwater to contamination on the islands of Maui and Oahu. He used analytical models and a GIS to show zones of vulnerability, and the results were adopted and published by the State of Hawaii and County of Maui.

As a hydrogeologist with the EPA Groundwater Protection Section, Matt worked with provisions of the Safe Drinking Water Act and NEPA to prevent drinking water contamination. Specific activities included the following:

- Received an EPA Bronze Medal for his contribution to the development of national guidance for the protection of drinking water.
- Managed the Sole Source Aquifer Program and protected the drinking water of two communities through designation under the Safe Drinking Water Act. He prepared geologic reports, conducted

public hearings, and responded to public comments from residents who were very concerned about the impact of designation.

- Reviewed a number of Environmental Impact Statements for planned major developments, including large hazardous and solid waste disposal facilities, mine reclamation, and water transfer.

Matt served as a hydrogeologist with the RCRA Hazardous Waste program. Duties were as follows:

- Supervised the hydrogeologic investigation of hazardous waste sites to determine compliance with Subtitle C requirements.
- Reviewed and wrote "part B" permits for the disposal of hazardous waste.
- Conducted RCRA Corrective Action investigations of waste sites and led inspections that formed the basis for significant enforcement actions that were developed in close coordination with U.S. EPA legal counsel.
- Wrote contract specifications and supervised contractor's investigations of waste sites.

With the National Park Service, Matt directed service-wide investigations of contaminant sources to prevent degradation of water quality, including the following tasks:

- Applied pertinent laws and regulations including CERCLA, RCRA, NEPA, NRDA, and the Clean Water Act to control military, mining, and landfill contaminants.
- Conducted watershed-scale investigations of contaminants at parks, including Yellowstone and Olympic National Park.
- Identified high-levels of perchlorate in soil adjacent to a national park in New Mexico and advised park superintendent on appropriate response actions under CERCLA.
- Served as a Park Service representative on the Interagency Perchlorate Steering Committee, a national workgroup.
- Developed a program to conduct environmental compliance audits of all National Parks while serving on a national workgroup.
- Co-authored two papers on the potential for water contamination from the operation of personal watercraft and snowmobiles, these papers serving as the basis for the development of nation-wide policy on the use of these vehicles in National Parks.
- Contributed to the Federal Multi-Agency Source Water Agreement under the Clean Water Action Plan.

Policy:

Served senior management as the Senior Science Policy Advisor with the U.S. Environmental Protection Agency, Region 9.

Activities included the following:

- Advised the Regional Administrator and senior management on emerging issues such as the potential for the gasoline additive MTBE and ammonium perchlorate to contaminate drinking water supplies.
- Shaped EPA's national response to these threats by serving on workgroups and by contributing to guidance, including the Office of Research and Development publication, Oxygenates in Water: Critical Information and Research Needs.
- Improved the technical training of EPA's scientific and engineering staff.
- Earned an EPA Bronze Medal for representing the region's 300 scientists and engineers in negotiations with the Administrator and senior management to better integrate scientific

principles into the policy-making process.

- Established national protocol for the peer review of scientific documents.

Geology:

With the U.S. Forest Service, Matt led investigations to determine hillslope stability of areas proposed for timber harvest in the central Oregon Coast Range. Specific activities were as follows:

- Mapped geology in the field, and used aerial photographic interpretation and mathematical models to determine slope stability.
- Coordinated his research with community members who were concerned with natural resource protection.
- Characterized the geology of an aquifer that serves as the sole source of drinking water for the city of Medford, Oregon.

As a consultant with Dames and Moore, Matt led geologic investigations of two contaminated sites (later listed on the Superfund NPL) in the Portland, Oregon, area and a large hazardous waste site in eastern Oregon. Duties included the following:

- Supervised year-long effort for soil and groundwater sampling.
- Conducted aquifer tests.
- Investigated active faults beneath sites proposed for hazardous waste disposal.

Teaching:

From 1990 to 1998, Matt taught at least one course per semester at the community college and university levels:

- At San Francisco State University, held an adjunct faculty position and taught courses in environmental geology, oceanography (lab and lecture), hydrogeology, and groundwater contamination.
- Served as a committee member for graduate and undergraduate students.
- Taught courses in environmental geology and oceanography at the College of Marin.

Matt is currently a part time geology instructor at Golden West College in Huntington Beach, California where he taught from 2010 to 2014 and in 2017.

Invited Testimony, Reports, Papers and Presentations:

Hagemann, M.F., 2008. Disclosure of Hazardous Waste Issues under CEQA. Presentation to the Public Environmental Law Conference, Eugene, Oregon.

Hagemann, M.F., 2008. Disclosure of Hazardous Waste Issues under CEQA. Invited presentation to U.S. EPA Region 9, San Francisco, California.

Hagemann, M.F., 2005. Use of Electronic Databases in Environmental Regulation, Policy Making and Public Participation. Brownfields 2005, Denver, Colorado.

Hagemann, M.F., 2004. Perchlorate Contamination of the Colorado River and Impacts to Drinking Water in Nevada and the Southwestern U.S. Presentation to a meeting of the American Groundwater Trust, Las Vegas, NV (served on conference organizing committee).

Hagemann, M.F., 2004. Invited testimony to a California Senate committee hearing on air toxins at schools in Southern California, Los Angeles.

Brown, A., Farrow, J., Gray, A. and **Hagemann, M.**, 2004. An Estimate of Costs to Address MTBE Releases from Underground Storage Tanks and the Resulting Impact to Drinking Water Wells. Presentation to the Ground Water and Environmental Law Conference, National Groundwater Association.

Hagemann, M.F., 2004. Perchlorate Contamination of the Colorado River and Impacts to Drinking Water in Arizona and the Southwestern U.S. Presentation to a meeting of the American Groundwater Trust, Phoenix, AZ (served on conference organizing committee).

Hagemann, M.F., 2003. Perchlorate Contamination of the Colorado River and Impacts to Drinking Water in the Southwestern U.S. Invited presentation to a special committee meeting of the National Academy of Sciences, Irvine, CA.

Hagemann, M.F., 2003. Perchlorate Contamination of the Colorado River. Invited presentation to a tribal EPA meeting, Pechanga, CA.

Hagemann, M.F., 2003. Perchlorate Contamination of the Colorado River. Invited presentation to a meeting of tribal representatives, Parker, AZ.

Hagemann, M.F., 2003. Impact of Perchlorate on the Colorado River and Associated Drinking Water Supplies. Invited presentation to the Inter-Tribal Meeting, Torres Martinez Tribe.

Hagemann, M.F., 2003. The Emergence of Perchlorate as a Widespread Drinking Water Contaminant. Invited presentation to the U.S. EPA Region 9.

Hagemann, M.F., 2003. A Deductive Approach to the Assessment of Perchlorate Contamination. Invited presentation to the California Assembly Natural Resources Committee.

Hagemann, M.F., 2003. Perchlorate: A Cold War Legacy in Drinking Water. Presentation to a meeting of the National Groundwater Association.

Hagemann, M.F., 2002. From Tank to Tap: A Chronology of MTBE in Groundwater. Presentation to a meeting of the National Groundwater Association.

Hagemann, M.F., 2002. A Chronology of MTBE in Groundwater and an Estimate of Costs to Address Impacts to Groundwater. Presentation to the annual meeting of the Society of Environmental Journalists.

Hagemann, M.F., 2002. An Estimate of the Cost to Address MTBE Contamination in Groundwater (and Who Will Pay). Presentation to a meeting of the National Groundwater Association.

Hagemann, M.F., 2002. An Estimate of Costs to Address MTBE Releases from Underground Storage Tanks and the Resulting Impact to Drinking Water Wells. Presentation to a meeting of the U.S. EPA and State Underground Storage Tank Program managers.

Hagemann, M.F., 2001. From Tank to Tap: A Chronology of MTBE in Groundwater. Unpublished report.

Hagemann, M.F., 2001. Estimated Cleanup Cost for MTBE in Groundwater Used as Drinking Water. Unpublished report.

Hagemann, M.F., 2001. Estimated Costs to Address MTBE Releases from Leaking Underground Storage Tanks. Unpublished report.

Hagemann, M.F., and VanMouwerik, M., 1999. Potential Water Quality Concerns Related to Snowmobile Usage. Water Resources Division, National Park Service, Technical Report.

VanMouwerik, M. and **Hagemann, M.F.** 1999, Water Quality Concerns Related to Personal Watercraft Usage. Water Resources Division, National Park Service, Technical Report.

Hagemann, M.F., 1999, Is Dilution the Solution to Pollution in National Parks? The George Wright Society Biannual Meeting, Asheville, North Carolina.

Hagemann, M.F., 1997, The Potential for MTBE to Contaminate Groundwater. U.S. EPA Superfund Groundwater Technical Forum Annual Meeting, Las Vegas, Nevada.

Hagemann, M.F., and Gill, M., 1996, Impediments to Intrinsic Remediation, Moffett Field Naval Air Station, Conference on Intrinsic Remediation of Chlorinated Hydrocarbons, Salt Lake City.

Hagemann, M.F., Fukunaga, G.L., 1996, The Vulnerability of Groundwater to Anthropogenic Contaminants on the Island of Maui, Hawaii. Hawaii Water Works Association Annual Meeting, Maui, October 1996.

Hagemann, M. F., Fukunaga, G. L., 1996, Ranking Groundwater Vulnerability in Central Oahu, Hawaii. Proceedings, Geographic Information Systems in Environmental Resources Management, Air and Waste Management Association Publication VIP-61.

Hagemann, M.F., 1994. Groundwater Characterization and Cleanup at Closing Military Bases in California. Proceedings, California Groundwater Resources Association Meeting.

Hagemann, M.F. and Sabol, M.A., 1993. Role of the U.S. EPA in the High Plains States Groundwater Recharge Demonstration Program. Proceedings, Sixth Biennial Symposium on the Artificial Recharge of Groundwater.

Hagemann, M.F., 1993. U.S. EPA Policy on the Technical Impracticability of the Cleanup of DNAPL-contaminated Groundwater. California Groundwater Resources Association Meeting.

Hagemann, M.F., 1992. Dense Nonaqueous Phase Liquid Contamination of Groundwater: An Ounce of Prevention... Proceedings, Association of Engineering Geologists Annual Meeting, v. 35.

Other Experience:

Selected as subject matter expert for the California Professional Geologist licensing examinations, 2009-2011.



Technical Consultation, Data Analysis and
Litigation Support for the Environment

SOIL WATER AIR PROTECTION ENTERPRISE

1640 Fifth Street, Suite 204
Santa Monica, California 90401
Attn: Paul Rosenfeld, Ph.D.
Mobil: (310) 795-2335
Office: (310) 434-0110
Fax: (310) 434-0011
Email: prosenfeld@swape.com

Paul Rosenfeld, Ph.D.

Principal Environmental Chemist

Chemical Fate and Transport & Air Dispersion Modeling

Risk Assessment & Remediation Specialist

Education

Ph.D. Soil Chemistry, University of Washington, 1999. Dissertation on VOC filtration.

M.S. Environmental Science, U.C. Berkeley, 1995. Thesis on organic waste economics.

B.A. Environmental Studies, U.C. Santa Barbara, 1991. Thesis on wastewater treatment.

Professional Experience

Dr. Rosenfeld is the Co-Founder and Principal Environmental Chemist at Soil Water Air Protection Enterprise (SWAPE). His focus is the fate and transport of environmental contaminants, risk assessment, and ecological restoration. His project experience ranges from monitoring and modeling of pollution sources as they relate to human and ecological health. Dr. Rosenfeld has investigated and designed remediation programs and risk assessments for contaminated sites containing, petroleum, MtBE and fuel oxygenates, chlorinated solvents, pesticides, radioactive waste, PCBs, PAHs, dioxins, furans, volatile organics, semi-volatile organics, perchlorate, heavy metals, asbestos, PFOA, unusual polymers, and odor. Significant projects performed by Dr. Rosenfeld include the following:

Litigation Support

Client: Missouri Department of Natural Resources (Jefferson City, Missouri)

Serving as an expert in evaluating air pollution and odor emissions from a Republic Landfill in St. Louis, Missouri. Conducted. Project manager overseeing daily, weekly and comprehensive sampling of odor and chemicals.

Client: Louisiana Department of Transportation and Development (Baton Rouge, Louisiana)

Serving as an expert witness, conducting groundwater modeling of an ethylene dichloride DNAPL and soluble plume resulting from spill caused by Conoco Phillips.

Client: Missouri Department of Natural Resources (St. Louis, Missouri)

Serving as a consulting expert and potential testifying expert regarding a landfill fire directly adjacent to another landfill containing radioactive waste. Implemented an air monitoring program testing for over 100 different compounds using approximately 12 different analytical methods.

Client: Baron & Budd, P.C. (Dallas, Texas) and Weitz & Luxenberg (New York, New York)

Served as a consulting expert in MTBE Federal Multi District Litigation (MDL) in New York. Consolidated ground water data, created maps for test cases, constructed damage model, evaluated taste and odor threshold levels. Resulted in a settlement of over \$440 million.

Client: The Buzbee Law Firm (Houston, Texas)

Served as a as an expert in ongoing litigation involving over 50,000+ plaintiffs who are seeking compensation for chemical exposure and reduction in property value resulting from chemicals released from the BP facility.

Client: Environmental Litigation Group (Birmingham, Alabama)

Serving as an expert on property damage, medical monitoring and toxic tort claims that have been filed on behalf of over 13,000 plaintiffs who were exposed to PCBs and dioxins/furans resulting from emissions from Monsanto and Cerro Copper's operations in Sauget, Illinois. Developed AERMOD models to demonstrate plaintiff's exposure.

Client: Baron & Budd P.C. (Dallas Texas) and Korein Tillery (St. Louis, Missouri)

Served as a consulting expert for a Class Action defective product claim filed in Madison County, Illinois against Syngenta and five other manufacturers for atrazine. Evaluated health issues associated with atrazine and determined treatment cost for filtration of public drinking water supplies. Resulted in \$105 million dollar settlement.

Client: The Buzbee Law Firm (Houston, Texas)

Served as a consulting expert in catalyst release and refinery emissions cases against the BP Refinery in Texas City. A jury verdict for 10 employees exposed to catalyst via BP's irresponsible behavior.

Client: Baron & Budd, P.C. (Dallas, Texas)

Served as a consulting expert to calculate the Maximum Allowable Dose Level (MADL) and No Significant Risk Level (NSRL), based on Cal EPA and OEHHA guidelines, for Polychlorinated Biphenyls (PCBs) in fish oil dietary supplements.

Client: Girardi Keese (Los Angeles, California)

Served as an expert testifying on hydrocarbon exposure of a woman who worked on a fuel barge operated by Chevron. Demonstrated that the plaintiff was exposed to excessive amounts of benzene.

Client: Mason & Cawood (Annapolis, Maryland) and Girardi & Keese (Los Angeles, California)

Serving as an expert consultant on the Battlefield Golf Club fly ash disposal site in Chesapeake, VA, where arsenic, other metals and radionuclides are leaching into groundwater, and ash is blowing off-site onto the surrounding communities.

Client: California Earth Mineral Corporation (Culver City, California)

Evaluating the montmorillonite clay deposit located near El Centro, California. Working as a Defense Expert representing an individual who owns a 2,500 acre parcel that will potentially be seized by the United States Navy via eminent domain.

Client: Matthews & Associates (Houston, Texas)

Serving as an expert witness, preparing air model demonstrating residential exposure via emissions from fracking in natural gas wells in Duncan, Texas.

Client: Baron & Budd P.C. (Dallas, Texas) and Korein Tillery (St. Louis, Missouri)

Served as a consulting expert for analysis of private wells relating to litigation regarding compensation of private well owners for MTBE testing. Coordinated data acquisition and GIS analysis evaluating private well proximity to leaking underground storage tanks.

Client: Lurie & Park LLP (Los Angeles, California)

Served as an expert witness evaluating a vapor intrusion toxic tort case that resulted in a settlement. The Superfund site is a 4 ½ mile groundwater plume of chlorinated solvents in Whittier, California.

Client: Mason & Cawood (Annapolis, Maryland)

Evaluated data from the Hess Gasoline Station in northern Baltimore, Maryland that had a release resulting in flooding of plaintiff's homes with gasoline-contaminated water, foul odor, and biofilm growth.

Client: The Buzbee Law Firm (Houston, Texas)

Evaluated air quality resulting from grain processing emissions in Muscatine, Iowa.

Client: Anderson Kill & Olick, P.C. (Ventura, California)

Evaluated historical exposure and lateral and vertical extent of contamination resulting from a ~150 million gallon Exxon Mobil tank farm located near Watts, California.

Client: Packard Law Firm (Petaluma, California)

Served as an expert witness, evaluated lead in Proposition 65 Case where various products were found to have elevated lead levels.

Client: The Buzbee Law Firm (Houston, Texas)

Evaluated data resulting from an oil spill in Port Arthur, Texas.

Client: Nexsen Pruet, LLC (Charleston, South Carolina)

Serving as expert in chlorine exposure in a railroad tank car accident where approximately 120,000 pounds of chlorine were released.

Client: Girardi & Keese (Los Angeles, California)

Serving as an expert investigating hydrocarbon exposure and property damage for ~600 individuals and ~280 properties in Carson, California where homes were constructed above a large tank farm formerly owned by Shell.

Client: Brent Coon Law Firm (Cleveland, Ohio)

Served as an expert, calculating an environmental exposure to benzene, PAHs, and VOCs from a Chevron Refinery in Hooven, Ohio. Conducted AERMOD modeling to determine cumulative dose.

Client: Lundy Davis (Lake Charles, Louisiana)

Served as consulting expert on an oil field case representing the lease holder of a contaminated oil field. Conducted field work evaluating oil field contamination in Sulphur, Louisiana. Property is owned by Conoco Phillips, but leased by Yellow Rock, a small oil firm.

Client: Cox Cox Filo (Lake Charles, Louisiana)

Served as testifying expert on a multimillion gallon oil spill in Lake Charles which occurred on June 19, 2006, resulting in hydrocarbon vapor exposure to hundreds of workers and residents. Prepared air model and calculated exposure concentration. Demonstrated that petroleum odor alone can result in significant health harms.

Client: Cotchett Pitre & McCarthy (San Francisco, California)

Served as testifying expert representing homeowners who unknowingly purchased homes built on an old oil field in Santa Maria, California. Properties have high concentrations of petroleum hydrocarbons in subsurface soils resulting in diminished property value.

Client: Law Offices Of Anthony Liberatore P.C. (Los Angeles, California)

Served as testifying expert representing individuals who rented homes on the Inglewood Oil Field in California. Plaintiffs were exposed to hydrocarbon contaminated water and air, and experienced health harms associated with the petroleum exposure.

Client: Orange County District Attorney (Orange County, California)

Coordinated a review of 143 ARCO gas stations in Orange County to assist the District Attorney's prosecution of CCR Title 23 and California Health and Safety Code violators.

Client: Environmental Litigation Group (Birmingham, Alabama)

Served as a testifying expert in a health effects case against ABC Coke/Drummond Company for polluting a community with PAHs, benzene, particulate matter, heavy metals, and coke oven emissions. Created air dispersion models and conducted attic dust sampling, exposure modeling, and risk assessment for plaintiffs.

Client: Masry & Vitatoe (Westlake Village, California), Engstrom Lipscomb Lack (Los Angeles, California) and Baron & Budd P.C. (Dallas, Texas)

Served as a consulting expert in Proposition 65 lawsuit filed against major oil companies for benzene and toluene releases from gas stations and refineries resulting in contaminated groundwater. Settlement included over \$110 million dollars in injunctive relief.

Client: Tommy Franks Law Firm (Austin, Texas)

Served as expert evaluating groundwater contamination which resulted from the hazardous waste injection program and negligent actions of Morton Thiokol and Rohm Hass. Evaluated drinking water contamination and community exposure.

Client: Baron & Budd P.C. (Dallas, Texas) and Sher Leff (San Francisco, California)

Served as consulting expert for several California cities that filed defective product cases against Dow Chemical and Shell for 1,2,3-trichloropropane groundwater contamination. Generated maps showing capture zones of impacted wells for various municipalities.

Client: Weitz & Luxenberg (New York, New York)

Served as expert on Property Damage and Nuisance claims resulting from emissions from the Countywide Landfill in Ohio. The landfill had an exothermic reaction or fire resulting from aluminum dross dumping, and the EPA fined the landfill \$10,000,000 dollars.

Client: Baron & Budd P.C. (Dallas, Texas)

Served as a consulting expert for a groundwater contamination case in Pensacola, Florida where fluorinated compounds contaminated wells operated by Escambia County.

Client: Environmental Litigation Group (Birmingham, Alabama)

Served as an expert on groundwater case where Exxon Mobil and Helena Chemical released ethylene dichloride into groundwater resulting in a large plume. Prepared report on the appropriate treatment technology and cost, and flaws with the proposed on-site remediation.

Client: Environmental Litigation Group (Birmingham, Alabama)

Served as an expert on air emissions released when a Bartlo Packaging Incorporated facility in West Helena, Arkansas exploded resulting in community exposure to pesticides and smoke from combustion of pesticides.

Client: Omara & Padilla (San Diego, California)

Served as a testifying expert on nuisance case against Nutro Dogfood Company that constructed a large dog food processing facility in the middle of a residential community in Victorville, California with no odor control devices. The facility has undergone significant modifications, including installation of a regenerative thermal oxidizer.

Client: Environmental Litigation Group (Birmingham, Alabama)

Serving as an expert on property damage and medical monitoring claims that have been filed against International Paper resulting from chemical emissions from facilities located in Bastrop, Louisiana; Prattville, Alabama; and Georgetown, South Carolina.

Client: Estep and Shafer L.C. (Kingwood, West Virginia)

Served as expert calculating acid emissions doses to residents resulting from coal-fired power plant emissions in West Virginia using various air models.

Client: Watts Law Firm (Austin, Texas), Woodfill & Pressler (Houston, Texas) and Woska & Associates (Oklahoma City, Oklahoma)

Served as testifying expert on community and worker exposure to CCA, creosote, PAHs, and dioxins/furans from a BNSF and Koppers Facility in Somerville, Texas. Conducted field sampling, risk assessment, dose assessment and air modeling to quantify exposure to workers and community members.

Client: Environmental Litigation Group (Birmingham, Alabama)

Served as expert regarding community exposure to CCA, creosote, PAHs, and dioxins/furans from a Louisiana Pacific wood treatment facility in Florala, Alabama. Conducted blood sampling and environmental sampling to determine environmental exposure to dioxins/furans and PAHs.

Client: Sanders Law Firm (Colorado Springs, Colorado) and Vamvoras & Schwartzberg (Lake Charles, Louisiana)

Served as an expert calculating chemical exposure to over 500 workers from large ethylene dichloride spill in Lake Charles, Louisiana at the Conoco Phillips Refinery.

Client: Baron & Budd P.C. (Dallas, Texas)

Served as consulting expert in a defective product lawsuit against Dow Agroscience focusing on Clopyralid, a recalcitrant herbicide that damaged numerous compost facilities across the United States.

Client: Sullivan Papain Block McGrath & Cannavo (New York, New York) and The Cochran Firm (Dothan, Mississippi)

Served as an expert regarding community exposure to metals, PAHs PCBs, and dioxins/furans from the burning of Ford paint sludge and municipal solid waste in Ringwood, New Jersey.

Client: Rose, Klein & Marias LLP (Los Angeles, California)

Served as an expert in 55 Proposition 65 cases against individual facilities in the Port of Los Angeles and Port of Long Beach. Prepared air dispersion and risk models to demonstrate that each facility emits diesel particulate matter that results in risks exceeding 1/100,000, hence violating the Proposition 65 Statute.

Client: Rose, Klein & Marias LLP (Los Angeles, California) and Environmental Law Foundation (San Francisco, California)

Served as an expert in a Proposition 65 case against potato chip manufacturers. Conducted an analysis of several brands of potato chips for acrylamide concentrations and found that all samples exceeded Proposition 65 No Significant Risk Levels.

Client: Gonzales & Robinson (Westlake Village, California)

Served as a testifying expert in a toxic tort case against Chevron (Ortho) for allowing a community to be contaminated with lead arsenate pesticide. Created air dispersion and soil vadose zone transport models, and evaluated bioaccumulation of lead arsenate in food.

Client: Environment Now (Santa Monica, California)

Served as expert for Environment Now to convince the State of California to file a nuisance claim against automobile manufactures to recover MediCal damages from expenditures on asthma-related health care costs.

Client: Trutanich Michell (Long Beach, California)

Served as expert representing San Pedro Boat Works in the Port of Los Angeles. Prepared air dispersion, particulate air dispersion, and storm water discharge models to demonstrate that Kaiser Bulk Loading is responsible for copper concentrate accumulating in the bay sediment.

Client: Azurix of North America (Fort Myers, Florida)

Provided expert opinions, reports and research pertaining to a proposed County Ordinance requiring biosolids applicators to measure VOC and odor concentrations at application sites' boundaries.

Client: MCP Polyurethane (Pittsburg, Kansas)

Provided expert opinions and reports regarding metal-laden landfill runoff that damaged a running track by causing the reversion of the polyurethane due to its catalytic properties.

Risk Assessment And Air Modeling

Client: Hager, Dewick & Zuengler, S.C. (Green Bay, Wisconsin)

Conducted odor audit of rendering facility in Green Bay, Wisconsin.

Client: ABT-Haskell (San Bernardino, California)

Prepared air dispersion model for a proposed state-of-the-art enclosed compost facility. Prepared a traffic analysis and developed odor detection limits to predict 1, 8, and 24-hour off-site concentrations of sulfur, ammonia, and amine.

Client: Jefferson PRP Group (Los Angeles, California)

Evaluated exposure pathways for chlorinated solvents and hexavalent chromium for human health risk assessment of Los Angeles Academy (formerly Jefferson New Middle School) operated by Los Angeles Unified School District.

Client: Covanta (Susanville, California)

Prepared human health risk assessment for Covanta Energy focusing on agricultural worker exposure to caustic fertilizer.

Client: CIWMB (Sacramento, California)

Used dispersion models to estimate traveling distance and VOC concentrations downwind from a composting facility for the California Integrated Waste Management Board.

Client: Carboquimeca (Bogotá, Columbia)

Evaluated exposure pathways for human health risk assessment for a confidential client focusing on significant concentrations of arsenic and chlorinated solvents present in groundwater used for drinking water.

Client: Navy Base Realignment and Closure Team (Treasure Island, California)

Used Johnson-Ettinger model to estimate indoor air PCB concentrations and compared estimated values with empirical data collected in homes.

Client: San Diego State University (San Diego, California)

Measured CO₂ flux from soils amended with different quantities of biosolids compost at Camp Pendleton to determine CO₂ credit values for coastal sage under fertilized and non-fertilized conditions.

Client: Navy Base Realignment and Closure Team (MCAS Tustin, California)

Evaluated cumulative risk of a multiple pathway scenario for a child resident and a construction worker. Evaluated exposure to air and soil via particulate and vapor inhalation, incidental soil ingestion, and dermal contact with soil.

Client: MCAS Miramar (San Diego, California)

Evaluated exposure pathways of metals in soil by comparing site data to background data. Risk assessment incorporated multiple pathway scenarios assuming child resident and construction worker particulate and vapor inhalation, soil ingestion, and dermal soil contact.

Client: Naval Weapons Station (Seal Beach, California)

Used a multiple pathway model to generate dust emission factors from automobiles driving on dirt roads. Calculated bioaccumulation of metals, PCBs, dioxin congeners and pesticides to estimate human and ecological risk.

Client: King County, Douglas County (Washington State)

Measured PM₁₀ and PM_{2.5} emissions from windblown soil treated with biosolids and a polyacrylamide polymer in Douglas County, Washington. Used Pilat Mark V impactor for measurement and compared data to EPA particulate regulations.

Client: King County (Seattle, Washington)

Created emission inventory for several compost and wastewater facilities comparing VOC, particulate, and fungi concentrations to NIOSH values estimating risk to workers and individuals at neighboring facilities.

Air Pollution Investigation and Remediation**Client: Republic Landfill (Santa Clarita, California)**

Managed a field investigation of odor around a landfill during 30+ events. Used hedonic tone, butanol scale, dilution-to-threshold values, and odor character to evaluate odor sources and character and intensity.

Client: California Biomass (Victorville, California)

Managed a field investigation of odor around landfill during 9+ events. Used hedonic tone, butanol scale, dilution-to-threshold values, and odor character to evaluate odor sources, character and intensity.

Client: ABT-Haskell (Redlands, California)

Assisted in permitting a compost facility that will be completely enclosed with a complex scrubbing system using acid scrubbers, base scrubbers, biofilters, heat exchangers and chlorine to reduce VOC emissions by 99 percent.

Client: Synagro (Corona, California)

Designed and monitored 30-foot by 20-foot by 6-foot biofilter for VOC control at an industrial composting facility in Corona, California to reduce VOC emissions by 99 percent.

Client: Jeff Gage (Tacoma, Washington)

Conducted emission inventory at industrial compost facility using GC/MS analyses for VOCs. Evaluated effectiveness of VOC and odor control systems and estimated human health risk.

Client: Daishowa America (Port Angeles Mill, Washington)

Analyzed industrial paper sludge and ash for VOCs, heavy metals and nutrients to develop a land application program. Metals were compared to federal guidelines to determine maximum allowable land application rates.

Client: Jeff Gage (Puyallup, Washington)

Measured effectiveness of biofilters at composting facility and conducted EPA dispersion models to estimate traveling distance of odor and human health risk from exposure to volatile organics.

Surface Water, Groundwater, and Wastewater Investigation/Remediation**Client: Confidential (Downey, California)**

Managed groundwater investigation to determine horizontal extent of 1,000 foot TCE plume associated with a metal finishing shop.

Client: Confidential (West Hollywood, California)

Designing soil vapor extraction system that is currently being installed for confidential client. Managing groundwater investigation to determine horizontal extent of TCE plume associated with dry cleaning.

Client: Synagro Technologies (Sacramento, California)

Managed groundwater investigation to determine if biosolids application impacted salinity and nutrient concentrations in groundwater.

Client: Navy Base Realignment and Closure Team (Treasure Island, California)

Assisted in the design and remediation of PCB, chlorinated solvent, hydrocarbon and lead contaminated groundwater and soil on Treasure Island. Negotiated screening levels with DTSC and Water Board. Assisted in the preparation of FSP/QAPP, RI/FS, and RAP documents and assisted in CEQA document preparation.

Client: Navy Base Realignment and Closure Team (MCAS Tustin, California)

Assisted in the design of groundwater monitoring systems for chlorinated solvents at Tustin MCAS. Contributed to the preparation of FS for groundwater treatment.

Client: Mission Cleaning Facility (Salinas, California)

Prepared a RAP and cost estimate for using an oxygen releasing compound (ORC) and molasses to oxidize diesel fuel in soil and groundwater at Mission Cleaning in Salinas.

Client: King County (Washington)

Established and monitored experimental plots at a US EPA Superfund Site in wetland and upland mine tailings contaminated with zinc and lead in Smelterville, Idaho. Used organic matter and pH adjustment for wetland remediation and erosion control.

Client: City of Redmond (Richmond, Washington)

Collected storm water from compost-amended and fertilized turf to measure nutrients in urban runoff. Evaluated effectiveness of organic matter-lined detention ponds on reduction of peak flow during storm events. Drafted compost amended landscape installation guidelines to promote storm water detention and nutrient runoff reduction.

Client: City of Seattle (Seattle, Washington)

Measured VOC emissions from Renton wastewater treatment plant in Washington. Ran GC/MS, dispersion models, and sensory panels to characterize, quantify, control and estimate risk from VOCs.

Client: Plumas County (Quincy, California)

Installed wetland to treat contaminated water containing 1% copper in an EPA Superfund site. Revegetated 10 acres of acidic and metal laden sand dunes resulting from hydraulic mining. Installed and monitored piezometers in wetland estimating metal loading.

Client: Adams Egg Farm (St. Kitts, West Indies)

Designed, constructed, and maintained 3 anaerobic digesters at Springfield Egg Farm, St. Kitts. Digesters treated chicken excrement before effluent discharged into sea. Chicken waste was converted into methane cooking gas.

Client: BLM (Kremmling, Colorado)

Collected water samples for monitoring program along upper stretch of the Colorado River. Rafted along river and protected water quality by digging and repairing latrines.

Soil Science and Restoration Projects

Client: Hefner, Stark & Marois, LLP (Sacramento, California)

Facilitated in assisting Hefner, Stark & Marois, LLP in working with the Regional Water Quality board to determine how to utilize Calcium Particulate as a by-product of processing sugar beets.

Client: Kinder Morgan (San Diego County, California)

Designed and monitored the restoration of a 110-acre project on Camp Pendleton along a 26-mile pipeline. Managed crew of 20, planting coastal sage, riparian, wetland, native grassland, and marsh ecosystems. Negotiated with the CDFW concerning species planting list and success standards.

Client: NAVY BRAC (Orote Landfill, Guam)

Designed and monitored pilot landfill cap mimicking limestone forest. Measured different species' root-penetration into landfill cap. Plants were used to evapotranspire water, reducing water leaching through soil profile.

Client: LA Sanitation District Puente Hills Landfill (Whittier, California)

Monitored success of upland and wetland mitigation at Puente Hills Landfill operated by Sanitation Districts of Los Angeles. Negotiated with the Army Corps of Engineers and CDFG to obtain an early sign-off.

Client: City of Escondido (Escondido, California)

Designed, managed, installed, and monitored a 20-acre coastal sage scrub restoration project at Kit Carson Park, Escondido, California.

Client: Home Depot (Encinitas, California)

Designed, managed, installed and monitored a 15-acre coastal sage scrub and wetland restoration project at Home Depot in Encinitas, California.

Client: Alvarado Water Filtration Plant (San Diego, California)

Planned, installed and monitored 2-acre riparian and coastal sage scrub mitigation in San Diego California.

Client: Monsanto and James River Corporation (Clatskanie, Oregon)

Served as a soil scientist on a 50,000-acre hybrid poplar farm. Worked on genetically engineering study of Poplar trees to see if glyphosate resistant poplar clones were economically viable.

Client: World Wildlife Fund (St. Kitts, West Indies)

Managed 2-year biodiversity study, quantifying and qualifying the various flora and fauna in St. Kitts' expanding volcanic rainforest. Collaborated with skilled botanists, ornithologists and herpetologists.

Publications

Chen, J. A., Zapata, A R., Sutherland, A. J., Molmen, D. R., Chow, B. S., Wu, L. E., **Rosenfeld, P. E.**, Hesse, R. C., (2012) Sulfur Dioxide and Volatile Organic Compound Exposure To A Community In Texas City Texas Evaluated Using Aermid and Empirical Data. American Journal of Environmental Science, 2012, 8 (6), 622-632

Rosenfeld, P.E. & Feng, L. (2011). *The Risks of Hazardous Waste*, Amsterdam: Elsevier Publishing.

Cheremisinoff, N.P., & **Rosenfeld, P.E.** (2011). *Handbook of Pollution Prevention and Cleaner Production: Best Practices in the Agrochemical Industry*, Amsterdam: Elsevier Publishing.

Gonzalez, J., Feng, L., Sutherland, A., Waller, C., Sok, H., Hesse, R., **Rosenfeld, P.** (2011). PCBs and Dioxins/Furans in Attic Dust Collected Near Former PCB Production and Secondary Copper Facilities in Sauget, IL. *Procedia Environmental Sciences* 4(2011):113-125.

Feng, L., Wu, C., Tam, L., Sutherland, A.J., Clark, J.J., **Rosenfeld, P.E.**, (2010). Dioxin and Furan Blood Lipid and Attic Dust Concentrations in Populations Living Near Four Wood Treatment Facilities in the United States. *Journal of Environmental Health* 73(6):34-46.

Cheremisinoff, N.P., & **Rosenfeld, P.E.** (2010). *Handbook of Pollution Prevention and Cleaner Production: Best Practices in the Wood and Paper Industries*, Amsterdam: Elsevier Publishing.

Cheremisinoff, N.P., & **Rosenfeld, P.E.** (2009). *Handbook of Pollution Prevention and Cleaner Production: Best Practices in the Petroleum Industry*, Amsterdam: Elsevier Publishing.

Wu, C., Tam, L., Clark, J., **Rosenfeld, P.** (2009). 'Dioxin and furan blood lipid concentrations in populations living near four wood treatment facilities in the United States', in Brebbia, C.A. and Popov, V., eds., *Air Pollution XVII: Proceedings of the Seventeenth International Conference on Modelling, Monitoring and Management of Air Pollution*, Tallinn, Estonia. 20-22 July, 2009, Southampton, Boston. WIT Press.

Tam L. K., Wu C. D., Clark J. J. and **Rosenfeld, P.E.** (2008) A Statistical Analysis Of Attic Dust And Blood Lipid Concentrations Of Tetrachloro-p-Dibenzodioxin (TCDD) Toxicity Equivalency Quotients (TEQ) In Two Populations Near Wood Treatment Facilities. *Organohalogen Compounds*, Volume 70 (2008) page 002254.

Tam L. K., Wu C. D., Clark J. J. and **Rosenfeld, P.E.** (2008) Methods For Collect Samples For Assessing Dioxins And Other Environmental Contaminants In Attic Dust: A Review. *Organohalogen Compounds*, Volume 70 (2008) page 000527.

Hensley, A.R. A. Scott, J. J. J. Clark, **P. E. Rosenfeld** (2007) "Attic Dust and Human Blood Samples Collected near a Former Wood Treatment Facility" *Environmental Research*. 105, pp 194-197.

Rosenfeld, P.E., J. J. J. Clark, A. R. Hensley, M. Suffet. (2007) "The Use of an Odor Wheel Classification for Evaluation of Human Health Risk Criteria for Compost Facilities" –*Water Science & Technology* 55(5): 345-357.

Rosenfeld, P. E., M. Suffet. (2007) "The Anatomy Of Odour Wheels For Odours Of Drinking Water, Wastewater, Compost And The Urban Environment " *Water Science & Technology* 55(5): 335-344.

Sullivan, P. J. Clark, J.J.J., Agardy, F. J., **Rosenfeld, P.E.**, (2007) "Toxic Legacy, Synthetic Toxins in the Food, Water, and Air in American Cities," Elsevier Publishing, Boston Massachusetts.

Rosenfeld P.E., and Suffet, I.H. (Mel) (2007) "Anatomy Of An Odor Wheel" *Water Science and Technology*, In Press.

Rosenfeld, P.E., Clark, J.J.J., Hensley A.R., Suffet, I.H. (Mel) (2007) "The use of an odor wheel classification for evaluation of human health risk criteria for compost facilities." *Water Science And Technology*, In Press.

Hensley A.R., Scott, A., **Rosenfeld P.E.**, Clark, J.J.J. (2006) "Dioxin Containing Attic Dust And Human Blood Samples Collected Near A Former Wood Treatment Facility." The 26th International Symposium on Halogenated Persistent Organic Pollutants – DIOXIN2006, August 21 – 25, 2006. Radisson SAS Scandinavia Hotel in Oslo Norway.

Rosenfeld, P.E., and Suffet I.H. (2004) "Control of Compost Odor Using High Carbon Wood Ash", Water Science and Technology, Vol. 49, No. 9. pp. 171-178.

Rosenfeld, P.E., Clark J. J. and Suffet, I.H. (2004) "Value of and Urban Odor Wheel." (2004). WEFTEC 2004. New Orleans, October 2 - 6, 2004.

Rosenfeld, P.E., and Suffet, I.H. (2004) "Understanding Odorants Associated With Compost, Biomass Facilities, and the Land Application of Biosolids" Water Science and Technology. Vol. 49, No. 9. pp 193-199.

Rosenfeld, P.E., and Suffet I.H. (2004) "Control of Compost Odor Using High Carbon Wood Ash", Water Science and Technology, Vol. 49, No. 9. pp. 171-178.

Rosenfeld, P. E., Grey, M. A., Sellew, P. (2004) Measurement of Biosolids Odor and Odorant Emissions from Windrows, Static Pile and Biofilter. Water Environment Research. 76 (4): 310-315 JUL-AUG 2004.

Rosenfeld, P. E., Grey, M., (2003) Two stage biofilter for biosolids composting odor control. Seventh International In Situ And On Site Bioremediation Symposium. Batelle Conference Orlando Florida. June 2 and June 6, 2003.

Rosenfeld, P.E., Grey, M and Suffet, M. 2002. "Controlling Odors Using High Carbon Wood Ash." Biocycle, March 2002, Page 42.

Rosenfeld, P.E., Grey, M and Suffet, M. (2002). "Compost Demonstration Project, Sacramento, California Using High-Carbon Wood Ash to Control Odor at a Green Materials Composting Facility Integrated Waste Management Board Public Affairs Office, Publications Clearinghouse (MS-6), Sacramento, CA Publication #442-02-008. April 2002.

Rosenfeld, P.E., and C.L. Henry. 2001. Characterization of odor emissions from three different biosolids. Water Soil and Air pollution. Vol. 127 Nos. 1-4, pp. 173-191.

Rosenfeld, P.E., and Henry C. L., 2000. Wood ash control of odor emissions from biosolids application. Journal of Environmental Quality. 29:1662-1668.

Rosenfeld, P.E., C.L. Henry and D. Bennett. 2001. Wastewater dewatering polymer affect on biosolids odor emissions and microbial activity. Water Environment Research. 73: 363-367.

Rosenfeld, P.E., and C.L. Henry. 2001. Activated Carbon and Wood Ash Sorption of Wastewater, Compost, and Biosolids Odorants Water Environment Research, 73: 388-392.

Rosenfeld, P.E., and Henry C. L., 2001. High carbon wood ash effect on biosolids microbial activity and odor. Water Environment Research. Volume 131 No. 1-4, pp. 247-262.

Rosenfeld, P.E., C.L. Henry, R. Harrison. 1998. Oat and Grass Seed Germination and Nitrogen and Sulfur Emissions Following Biosolids Incorporation With High-Carbon Wood-Ash. Water Environment Federation 12th Annual Residuals and Biosolids Management Conference Proceedings. Bellevue Washington.

Chollack, T. and **P. Rosenfeld.** 1998. Compost Amendment Handbook For Landscaping. Prepared for and distributed by the City of Redmond, Washington State.

P. Rosenfeld. 1992. The Mount Liamuiga Crater Trail. Heritage Magazine of St. Kitts, Vol. 3 No. 2.

P. Rosenfeld. 1993. High School Biogas Project to Prevent Deforestation On St. Kitts. Biomass Users Network, Vol. 7, No. 1, 1993.

P. Rosenfeld. 1992. British West Indies, St. Kitts. Surf Report, April issue.

P. Rosenfeld. 1998. Characterization, Quantification, and Control of Odor Emissions From Biosolids Application To Forest Soil. Doctoral Thesis. University of Washington College of Forest Resources.

P. Rosenfeld. 1994. Potential Utilization of Small Diameter Trees On Sierra County Public Land. Masters thesis reprinted by the Sierra County Economic Council. Sierra County, California.

P. Rosenfeld. 1991. How to Build a Small Rural Anaerobic Digester & Uses Of Biogas In The First And Third World. Bachelors Thesis. University of California.

England Environmental Agency, 2002. Landfill Gas Control Technologies. Publishing Organization Environment Agency, Rio House, Waterside Drive, Aztec West, Almondsbury BRISTOL, BS32 4UD.

Presentations

Sok, H.L.; Waller, C.C.; Feng, L.; Gonzalez, J.; Sutherland, A.J.; Wisdom-Stack, T.; Sahai, R.K.; Hesse, R.C.; **Rosenfeld, P.E.** "Atrazine: A Persistent Pesticide in Urban Drinking Water." Urban Environmental Pollution, Boston, MA, June 20-23, 2010.

Feng, L.; Gonzalez, J.; Sok, H.L.; Sutherland, A.J.; Waller, C.C.; Wisdom-Stack, T.; Sahai, R.K.; La, M.; Hesse, R.C.; **Rosenfeld, P.E.** "Bringing Environmental Justice to East St. Louis, Illinois." Urban Environmental Pollution, Boston, MA, June 20-23, 2010.

Rosenfeld, P.E. (2009) "Perfluorooctanoic Acid (PFOA) and Perfluorooctane Sulfonate (PFOS) Contamination in Drinking Water From the Use of Aqueous Film Forming Foams (AFFF) at Airports in the United States" Presentation at the 2009 Ground Water Summit and 2009 Ground Water Protection Council Spring Meeting, April 19-23, 2009. Tuscon, AZ.

Rosenfeld, P.E. (2009) "Cost to Filter Atrazine Contamination from Drinking Water in the United States" Contamination in Drinking Water From the Use of Aqueous Film Forming Foams (AFFF) at Airports in the United States" Presentation at the 2009 Ground Water Summit and 2009 Ground Water Protection Council Spring Meeting, April 19-23, 2009. Tuscon, AZ.

Rosenfeld, P. E. (2007) "Moss Point Community Exposure To Contaminants From A Releasing Facility" Platform Presentation at the 23rd Annual International Conferences on Soils Sediment and Water, October 15-18, 2007. University of Massachusetts, Amherst MA.

Rosenfeld, P. E. (2007) "The Repeated Trespass of Tritium-Contaminated Water Into A Surrounding Community Form Repeated Waste Spills From A Nuclear Power Plant" Platform Presentation at the 23rd Annual International Conferences on Soils Sediment and Water, October 15-18, 2007. University of Massachusetts, Amherst MA.

Rosenfeld, P. E. (2007) "Somerville Community Exposure To Contaminants From Wood Treatment Facility Emissions" Poster Presentation at the 23rd Annual International Conferences on Soils Sediment and Water, October 15-18, 2007. University of Massachusetts, Amherst MA.

Rosenfeld P. E. "Production, Chemical Properties, Toxicology, & Treatment Case Studies of 1,2,3-Trichloropropane (TCP)" – Platform Presentation at the Association for Environmental Health and Sciences (AEHS) Annual Meeting, San Diego, CA, 3/2007.

Rosenfeld P. E. "Blood and Attic Sampling for Dioxin/Furan, PAH, and Metal Exposure in Florala, Alabama" – Platform Presentation at the AEHS Annual Meeting, San Diego, CA, 3/2007.

Hensley A.R., Scott, A., **Rosenfeld P.E.**, Clark, J.J.J. (2006) "Dioxin Containing Attic Dust And Human Blood Samples Collected Near A Former Wood Treatment Facility." APHA 134 Annual Meeting & Exposition, Boston Massachusetts. November 4 to 8th, 2006.

Paul Rosenfeld Ph.D. “Fate, Transport and Persistence of PFOA and Related Chemicals.” Mealey’s C8/PFOA Science, Risk & Litigation Conference” October 24, 25. The Rittenhouse Hotel, Philadelphia.

Paul Rosenfeld Ph.D. “Brominated Flame Retardants in Groundwater: Pathways to Human Ingestion, Toxicology and Remediation PEMA Emerging Contaminant Conference. September 19. Hilton Hotel, Irvine California.

Paul Rosenfeld Ph.D. “Fate, Transport, Toxicity, And Persistence of 1,2,3-TCP.” PEMA Emerging Contaminant Conference. September 19. Hilton Hotel in Irvine, California.

Paul Rosenfeld Ph.D. “Fate, Transport and Persistence of PDBEs.” Mealey’s Groundwater Conference. September 26, 27. Ritz Carlton Hotel, Marina Del Ray, California.

Paul Rosenfeld Ph.D. “Fate, Transport and Persistence of PFOA and Related Chemicals.” International Society of Environmental Forensics: Focus On Emerging Contaminants. June 7,8. Sheraton Oceanfront Hotel, Virginia Beach, Virginia.

Paul Rosenfeld Ph.D. “Rate Transport, Persistence and Toxicology of PFOA and Related Perfluorochemicals”. 2005 National Groundwater Association Ground Water And Environmental Law Conference. July 21-22, 2005. Wyndham Baltimore Inner Harbor, Baltimore Maryland.

Paul Rosenfeld Ph.D. “Brominated Flame Retardants in Groundwater: Pathways to Human Ingestion, Toxicology and Remediation.” 2005 National Groundwater Association Ground Water And Environmental Law Conference. July 21-22, 2005. Wyndham Baltimore Inner Harbor, Baltimore Maryland.

Paul Rosenfeld, Ph.D. and James Clark Ph.D. and Rob Hesse R.G. Tert-butyl Alcohol Liability and Toxicology, A National Problem and Unquantified Liability. National Groundwater Association. Environmental Law Conference. May 5-6, 2004. Congress Plaza Hotel, Chicago Illinois.

Paul Rosenfeld, Ph.D., 2004. Perchlorate Toxicology. Presentation to a meeting of the American Groundwater Trust. March 7th, 2004. Pheonix Arizona.

Hagemann, M.F., **Paul Rosenfeld, Ph.D.** and Rob Hesse, 2004. Perchlorate Contamination of the Colorado River. Invited presentation to a meeting of tribal representatives, Parker, AZ.

Paul Rosenfeld, Ph.D. A National Damage Assessment Model For PCE and Dry Cleaners. Drycleaner Symposium. California Ground Water Association. Radison Hotel, Sacramento, California. April 7, 2004.

Paul Rosenfeld, Ph.D. and James Clark Ph.D. Understanding Historical Use, Chemical Properties, Toxicity and Regulatory Guidance of 1,4 Dioxane. National Groundwater Association. Southwest Focus Conference. Water Supply and Emerging Contaminants. February 20-21, 2003. Hyatt Regency Phoenix Arizona.

Paul Rosenfeld, Ph.D. Underground Storage Tank Litigation and Remediation. California CUPA Forum. Marriott Hotel. Anaheim California. February 6-7, 2003.

Paul Rosenfeld, Ph.D. Underground Storage Tank Litigation and Remediation. EPA Underground Storage Tank Roundtable. Sacramento California. October 23, 2002.

Rosenfeld, P.E. and Suffet, M. 2002. Understanding Odor from Compost, Wastewater and Industrial Processes. Sixth Annual Symposium On Off Flavors in the Aquatic Environment. International Water Association. Barcelona Spain. October 7- 10.

Rosenfeld, P.E. and Suffet, M. 2002. Using High Carbon Wood Ash to Control Compost Odor. Sixth Annual Symposium On Off Flavors in the Aquatic Environment. International Water Association. Barcelona Spain. October 7- 10.

Rosenfeld, P.E. and Grey, M. A. 2002. Biocycle Composting For Coastal Sage Restoration. Northwest Biosolids Management Association. Vancouver Washington. September 22-24.

Rosenfeld, P.E. and Grey, M. A. 2002. Soil Science Society Annual Conference. Indianapolis, Maryland. November 11-14.

Rosenfeld, P.E. 2000. Two stage biofilter for biosolids composting odor control. Water Environment Federation. Anaheim California. September 16, 2000.

Rosenfeld, P. E. 2000. Wood ash and biofilter control of compost odor. Biofest. October 16, 2000. Ocean Shores, California.

Rosenfeld, P. E. 2000. Bioremediation Using Organic Soil Amendments. California Resource Recovery Association. Sacramento California.

Rosenfeld, P.E., C.L. Henry, R. Harrison. 1998. Oat and Grass Seed Germination and Nitrogen and Sulfur Emissions Following Biosolids Incorporation With High-Carbon Wood-Ash. Water Environment Federation 12th Annual Residuals and Biosolids Management Conference Proceedings. Bellevue Washington.

Rosenfeld, P.E., and C.L. Henry. 1999. An evaluation of ash incorporation with biosolids for odor reduction. Soil Science Society of America. Salt Lake City Utah.

Rosenfeld, P.E., C.L. Henry, R. Harrison. 1998. Comparison of Microbial Activity and Odor Emissions from Three Different Biosolids Applied to Forest Soil. Brown and Caldwell, Seattle Washington.

Rosenfeld, P.E., C.L. Henry. 1998. Characterization, Quantification, and Control of Odor Emissions from Biosolids Application To Forest Soil. Biofest Lake Chelan, Washington.

Rosenfeld, P.E., C.L. Henry, R. B. Harrison, and R. Dills. 1997. Comparison of Odor Emissions From Three Different Biosolids Applied to Forest Soil. Soil Science Society of America, Anaheim California.

Professional History

Soil Water Air Protection Enterprise (SWAPE); 2003 to present; Founding And Managing Partner
 UCLA School of Public Health; 2007 to 2010; Lecturer (Asst Res)
 UCLA School of Public Health; 2003 to 2006; Adjunct Professor
 UCLA Environmental Science and Engineering Program; 2002-2004; Doctoral Intern Coordinator
 UCLA Institute of the Environment, 2001-2002; Research Associate
 Komex H₂O Science, 2001 to 2003; Senior Remediation Scientist
 National Groundwater Association, 2002-2004; Lecturer
 San Diego State University, 1999-2001; Adjunct Professor
 Anteon Corp., San Diego, 2000-2001; Remediation Project Manager
 Ogden (now Amec), San Diego, 2000-2000; Remediation Project Manager
 Bechtel, San Diego, California, 1999 – 2000; Risk Assessor
 King County, Seattle, 1996 – 1999; Scientist
 James River Corp., Washington, 1995-96; Scientist
 Big Creek Lumber, Davenport, California, 1995; Scientist
 Plumas Corp., California and USFS, Tahoe 1993-1995; Scientist
 Peace Corps and World Wildlife Fund, St. Kitts, West Indies, 1991-1993; Scientist
 Bureau of Land Management, Kremmling Colorado 1990; Scientist

Teaching Experience

UCLA Department of Environmental Health (Summer 2003 through 2010) Taught Environmental Health Science 100 to students, including undergrad, medical doctors, public health professionals and nurses. Course focuses on the health effects of environmental contaminants.

National Ground Water Association, Successful Remediation Technologies. Custom Course In Sante Fe, New Mexico. May 21, 2002. Focused on fate and transport of fuel contaminants associated with underground storage tanks.

National Ground Water Association; Successful Remediation Technologies Course in Chicago Illinois. April 1, 2002. Focused on fate and transport of contaminants associated with Superfund and RCRA sites.

California Integrated Waste Management Board, April and May, 2001. Alternative Landfill Caps Seminar in San Diego, Ventura, and San Francisco. Focused on both prescriptive and innovative landfill cover design.

UCLA Department of Environmental Engineering, February 5 2002 Seminar on Successful Remediation Technologies focusing on Groundwater Remediation.

University Of Washington, Soil Science Program, Teaching Assistant for several courses including: Soil Chemistry, Organic Soil Amendments, and Soil Stability.

U.C. Berkeley, Environmental Science Program Teaching Assistant for Environmental Science 10.

Academic Grants Awarded

California Integrated Waste Management Board. \$41,000 grant awarded to UCLA Institute of the Environment. Goal: To investigate effect of high carbon wood ash on volatile organic emissions from compost. 2001.

Synagro Technologies, Corona California: \$10,000 grant awarded to San Diego State University. Goal: investigate effect of biosolids for restoration and remediation of degraded coastal sage soils. 2000.

King County, Department of Research and Technology, Washington State. \$100,000 grant awarded to University of Washington: Goal: To investigate odor emissions from biosolids application and the effect of polymers and ash on VOC emissions. 1998.

Northwest Biosolids Management Association, Washington State. \$20,000 grant awarded to investigate effect of polymers and ash on VOC emissions from biosolids. 1997.

James River Corporation, Oregon: \$10,000 grant was awarded to investigate the success of genetically engineered Poplar trees with resistance to round-up. 1996.

United State Forest Service, Tahoe National Forest: \$15,000 grant was awarded to investigating fire ecology of the Tahoe National Forest. 1995.

Kellogg Foundation, Washington D.C. \$500 grant was awarded to construct a large anaerobic digester on St. Kitts in West Indies. 1993.

Cases that Dr. Rosenfeld Provided Deposition or Trial Testimony

In the Court of Common Pleas of Tuscarawas County Ohio

John Michael Abicht, et al., *Plaintiffs*, vs. Republic Services, Inc., et al., *Defendants*

Case Number: 2008 CT 10 0741 (Cons. w/ 2009 CV 10 0987)

In the Court of Common Pleas for the Second Judicial Circuit, State of South Carolina, County of Aiken

David Anderson, et al., *Plaintiffs*, vs. Norfolk Southern Corporation, et al., *Defendants*.

Case Number: 2007-CP-02-1584

In the Circuit Court of Jefferson County Alabama

Jaeanette Moss Anthony, et al., *Plaintiffs*, vs. Drummond Company Inc., et al., *Defendants*

Civil action No. CV 2008-2076

In the Ninth Judicial District Court, Parish of Rapides, State of Louisiana

Roger Price, et al., *Plaintiffs*, vs. Roy O. Martin, L.P., et al., *Defendants*.

Civil Suit Number 224,041 Division G

In the United States District Court, Western District Lafayette Division

Ackle et al., *Plaintiffs*, vs. Citgo Petroleum Corporation, et al., *Defendants*.

Case Number 2:07CV1052

In the United States District Court for the Southern District of Ohio

Carolyn Baker, et al., *Plaintiffs*, vs. Chevron Oil Company, et al., *Defendants*.

Case Number 1:05 CV 227

In the Fourth Judicial District Court, Parish of Calcasieu, State of Louisiana

Craig Steven Arabie, et al., *Plaintiffs*, vs. Citgo Petroleum Corporation, et al., *Defendants*.

Case Number 07-2738 G

In the Fourteenth Judicial District Court, Parish of Calcasieu, State of Louisiana

Leon B. Brydels, *Plaintiffs*, vs. Conoco, Inc., et al., *Defendants*.

Case Number 2004-6941 Division A

In the District Court of Tarrant County, Texas, 153rd Judicial District

Linda Faust, *Plaintiff*, vs. Burlington Northern Santa Fe Rail Way Company, Witco Chemical Corporation A/K/A Witco Corporation, Solvents and Chemicals, Inc. and Koppers Industries, Inc., *Defendants*.

Case Number 153-212928-05

In the Superior Court of the State of California in and for the County of San Bernardino

Leroy Allen, et al., *Plaintiffs*, vs. Nutro Products, Inc., a California Corporation and DOES 1 to 100, inclusive, *Defendants*.

John Loney, Plaintiff, vs. James H. Didion, Sr.; Nutro Products, Inc.; DOES 1 through 20, inclusive, *Defendants*.

Case Number VCVVS044671

In the United States District Court for the Middle District of Alabama, Northern Division

James K. Benefield, et al., *Plaintiffs*, vs. International Paper Company, *Defendant*.

Civil Action Number 2:09-cv-232-WHA-TFM

In the Superior Court of the State of California in and for the County of Los Angeles

Leslie Hensley and Rick Hensley, *Plaintiffs*, vs. Peter T. Hoss, as trustee on behalf of the Cone Fee Trust; Plains Exploration & Production Company, a Delaware corporation; Rayne Water Conditioning, Inc., a California corporation; and DOES 1 through 100, *Defendants*.

Case Number SC094173

In the Superior Court of the State of California in and for the County of Santa Barbara, Santa Maria Branch
Clifford and Shirley Adelhelm, et al., all individually, *Plaintiffs*, vs. Unocal Corporation, a Delaware
Corporation; Union Oil Company of California, a California corporation; Chevron Corporation, a
California corporation; ConocoPhillips, a Texas corporation; Kerr-McGee Corporation, an Oklahoma
corporation; and DOES 1 through 100, *Defendants*.

Case Number 1229251 (Consolidated with case number 1231299)

In the United States District Court for Eastern District of Arkansas, Eastern District of Arkansas
Harry Stephens Farms, Inc, and Harry Stephens, individual and as managing partner of Stephens
Partnership, *Plaintiffs*, vs. Helena Chemical Company, and Exxon Mobil Corp., successor to Mobil
Chemical Co., *Defendants*.

Case Number 2:06-CV-00166 JMM (Consolidated with case number 4:07CV00278 JMM)

In the United States District Court for the Western District of Arkansas, Texarkana Division
Rhonda Brasel, et al., *Plaintiffs*, vs. Weyerhaeuser Company and DOES 1 through 100, *Defendants*.
Civil Action Number 07-4037

In The Superior Court of the State of California County of Santa Cruz
Constance Acevedo, et al. *Plaintiffs* Vs. California Spray Company, et al. *Defendants*
Case No CV 146344

In the District Court of Texas 21st Judicial District of Burleson County
Dennis Davis, *Plaintiff*, vs. Burlington Northern Santa Fe Rail Way Company, *Defendant*.
Case Number 25,151

In the United States District Court of Southern District of Texas Galveston Division
Kyle Cannon, Eugene Donovan, Genaro Ramirez, Carol Sassler, and Harvey Walton, each Individually and
on behalf of those similarly situated, *Plaintiffs*, vs. BP Products North America, Inc., *Defendant*.
Case 3:10-cv-00622

Attachment: Appeal by Adams Broadwell Joseph & Cardozo (3130 : Trammell Crow Redwood Tech at 101 Appeal)

ATTACHMENT B



SMITH ENGINEERING & MANAGEMENT

May 20, 2021

Ms. Kendra Hartmann
Adams Broadwell Joseph & Cardozo
601 Gateway Boulevard, Suite 1000
South San Francisco, CA 94080-7037

Subject: RedwoodTech@101 Project

P21015

Dear Ms. Hartmann:

Per your request, I reviewed the Documentation for the RedwoodTech@101 Project (the "Project") in the City of Morgan Hill (the "City"). My review is with respect to transportation and circulation considerations despite the fact that the current documentation contains no transportation analysis.

My qualifications to perform this review include registration as a Civil and Traffic Engineer in California, over 50 years professional consulting practice in these fields and both preparation and review of the traffic and transportation components of numerous environmental documents prepared under the California Environmental Quality Act ("CEQA"). My professional resume is attached hereto.

The Project Is Best Described as a Business Park, a Category of Land Use That Generates Significant Numbers of Daily, AM and PM Peak Trips.

The Applicant's documentation describes the Project as follows: "The property will be reconfigured into 4 legal lots with 5 buildings designated for flexible industrial and commercial uses, including advanced manufacturing, warehouse, supporting office, and similar industrial and commercial uses totaling up to 501,314 square feet." The documentation goes on to state that "All 5 buildings are designed to be divisible into 2 or 3 tenant spaces." This description

Ms. Kendra Hartmann
 Adams Broadwell Joseph & Cardozo
 May 20, 2021
 Page 2

corresponds to the description for Land Use Category 770, Business Park in the Institute of Transportation Engineers' *Trip Generation, 10th Edition*. That description states "A business park consists of a group of flex-type or incubator one- or two-story buildings served by a common roadway system. The tenant space is flexible and lends itself to a variety of uses; the rear side of the building is usually served by a garage door. Tenants may be start-up companies or small mature companies that require a variety of space. The space may include offices, retail and wholesale stores, restaurants, recreational areas and warehousing, manufacturing, light industrial, or scientific research functions."

Trip Generation, 10th Edition indicates the following equations for estimating daily trips at a Business Park:

Daily: $T = 10.62(X) = 715.67$
 AM Peak $\ln(T) = .97 \ln(X) + 0.49$
 PM Peak $\ln(T) = .90 \ln(X) + 0.85$ where T equals trips and X equals building floor area in thousands of square feet.

With the Project's building area of 501.314 thousand square feet, these equations give trip totals of 6040 trips daily, 818 in the AM peak hour and 629 in the PM peak hour. The peak hour trip totals far exceed both the City and the Santa Clara County Valley Transportation Authority ("VTA") guidelines for new peak hour trip levels where a Transportation Impact Report becomes required.¹ Yet no transportation impact analysis for the Project has been performed.

The City Knew or Should Have Known that the Project Would Cause Intersections in the Vicinity to Operate at Worse than LOS D

In May 2020 the City circulated a Draft EIR for a larger development project, the Morgan Hill Technology Center Mixed Use Project, which included the current RedwoodTech@101 Project as a part. That DEIR disclosed that the mixed-use project would have caused conditions at three intersections in the immediate vicinity to deteriorate from LOS B or C to LOS F in one or the other of the peak hours:

- The intersection of Cochrane Road with DePaul Drive would deteriorate in the PM peak hour from 18.7 seconds average delay per vehicle and LOS B to 101 seconds per vehicle and LOS F.

¹ The VTA policy requires a transportation impact analysis to be performed whenever a project adds 100 or more peak hour trips to the roadway system. The City policy is slightly more stringent, requiring a transportation impact report when a project adds 50 to 99 peak hour trips that would logically affect a nearby intersection or intersections operating at LOS D or worse or one(s) that are projected to operate at LOS D or worse when traffic from already approved but not yet completed projects is added. At or above 100 peak hour trips, the VTA requirement kicks in without necessarily identifying a nearby intersection at LOS D or worse.

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 Adams Broadwell Joseph & Cardozo
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- The intersection of Cochrane Road and Mission View Drive would deteriorate in the AM peak hour from 23.0 seconds average delay per vehicle and LOS C to 94.6 seconds per vehicle and LOS F.
- The intersection of Mission View Drive and Half Road would deteriorate from 22.6 seconds average delay per vehicle and LOS C in the PM peak hour to 136.9 seconds and LOS F.

If one takes the trip generation for the RedwoodTech@101 Project as fairly calculated in the section above and assumes its share of responsibility for the delay increments disclosed in the Morgan Hill Technology Center Mixed-Use Project DEIR is proportional to the ratio of its trip generation to that of the whole Mixed-Use Project, then the following results are obtained:

- The RedwoodTech@101 Project would cause the intersection of Cochrane Road with DePaul Drive to deteriorate in the PM peak hour from 18.7 seconds average delay per vehicle and LOS B to approximately 63.55 seconds delay and LOS E in the PM peak.
- The intersection of Cochrane Road and Mission View Drive would deteriorate in the AM peak hour from 23.0 seconds average delay per vehicle and LOS C to approximately 78.99 seconds and LOS E in the AM peak.
- The intersection of Mission View Drive and Half Road would deteriorate from 22.6 seconds average delay per vehicle and LOS C in the PM peak hour to approximately 84.89 seconds and LOS F.

The fact that the revised and renamed Project could have effects on this scale should have been obvious to the City, but apparently nobody gave it any thought.

Some may argue that none of the above matters because CEQA has transitioned to the VMT metric for transportation analysis. This, however, ignores the explicit policy stated in the City's 2035 General Plan that the City continues to use LOS to evaluate impacts to transportation. Failure to conform to General Plan policies remains a matter of significance under CEQA.

There Is No Basis for A Claim That the Project Was Somehow Analyzed In the 2035 General Plan EIR

There is no basis for a claim that this Project was somehow analyzed in the 2035 General Plan EIR. That EIR found that at 2035 development level the intersection of Cochrane Road with DePaul Drive would operate at average delays per vehicle of 18.6 seconds and 19.8 seconds in the AM and PM peaks, respectively. It found that the intersection of Cochrane Road with Mission View Drive would operate at average delays per vehicle of 20.2 seconds and 19.0 seconds in the AM and PM peaks, respectively LOS C and B. These reported 2035 values are characteristic of what the Morgan Hill Technology Center Mixed

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Use Project DEIR reports as *existing conditions* and nothing like what it reports as conditions with development of that project. Moreover, the 2035 General Plan EIR did not even evaluate the intersection of Mission View Drive and Half Road. It would defy common sense to assert that the impacts of the current RedwoodTech@101 Project were already disclosed in the 2035 General Plan EIR.

Furthermore, preparers of the Morgan Hill Technology Center DEIR performed an analysis of projected VMT for that project and compared the results to a “No Project” alternative using the development intensity anticipated by the 2035 General Plan. The comparison indicated that development of the Technology Park would result in significantly more VMT than that anticipated by the General Plan. In attempting to cast doubt on the significance of this result, the DEIR stated this: “At the time that the General Plan EIR was prepared, it was assumed that the project site would be developed at a low intensity within the 20-year period. The development assumptions for the site included in the City’s TDF model are significantly lower than development allowed on-site based on the existing General Plan and zoning designations (refer to Section 7.6.3, No Project/Existing General Plan/Zoning Development Alternative in this EIR).”² By acknowledging that the development of the site anticipated by the General Plan EIR was significantly less intense than that proposed by that project, the DEIR recognized that the 2035 General Plan EIR clearly does not reflect the current Project.

Placed In Context, Approval of RedwoodTech@101 Appears To Be a Project Segmentation That Is Improper Under CEQA

Considering that the proposed Project consists of one component, proposed by the same applicant under a new name, of the recently withdrawn Morgan Hill Technology Center Mixed Use Project, appears to be a case of project segmentation that is improper under CEQA. The City must explain how this is not a matter of piecemealing. Given the City’s admission in the Staff Report that it is undertaking concurrent review of a 269-unit residential development on another portion of the former Morgan Hill Technology Center Mixed Use Project, the evidence of piecemealing is clear.

Conclusion

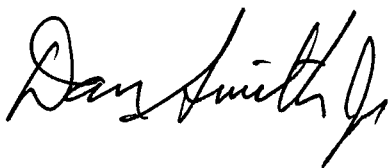
Given the above, the Project cannot be approved without further CEQA review. A full EIR on the whole of the Project should be prepared and circulated in “draft” status.

² See Morgan Hill Technology Center Mixed Use Project Draft EIR, page 160.

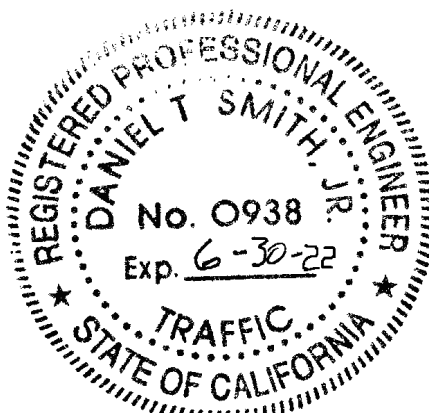
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Sincerely,

Smith Engineering & Management
A California Corporation



Daniel T. Smith Jr., P.E.
President



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 Adams Broadwell Joseph & Cardozo
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SMITH ENGINEERING & MANAGEMENT

DANIEL T. SMITH, Jr. President

EDUCATION

Bachelor of Science, Engineering and Applied Science, Yale University, 1967
 Master of Science, Transportation Planning, University of California, Berkeley, 1968

PROFESSIONAL REGISTRATION

California No. 21913 (Civil) Nevada No. 7969 (Civil) Washington No. 29337 (Civil)
 California No. 938 (Traffic) Arizona No. 22131 (Civil)

PROFESSIONAL EXPERIENCE

Smith Engineering & Management, 1993 to present. President.
 DKS Associates, 1979 to 1993. Founder, Vice President, Principal Transportation Engineer.
 De Leuw, Cather & Company, 1968 to 1979. Senior Transportation Planner.
 Personal specialties and project experience include:

Litigation Consulting. Provides consultation, investigations and expert witness testimony in highway design, transit design and traffic engineering matters including condemnations involving transportation access issues; traffic accidents involving highway design or traffic engineering factors; land use and development matters involving access and transportation impacts; parking and other traffic and transportation matters.

Urban Corridor Studies/Alternatives Analysis. Principal-in-charge for State Route (SR) 102 Feasibility Study, a 35-mile freeway alignment study north of Sacramento. Consultant on I-280 Interstate Transfer Concept Program, San Francisco, an AA/EIS for completion of I-280, demolition of Embarcadero freeway, substitute light rail and commuter rail projects. Principal-in-charge, SR 238 corridor freeway/expressway design/environmental study, Hayward (Calif.) Project manager, Sacramento Northeast Area multi-modal transportation corridor study. Transportation planner for I-80N West Terminal Study, and Harbor Drive Traffic Study, Portland, Oregon. Project manager for design of surface segment of Woodward Corridor LRT, Detroit, Michigan. Directed staff on I-80 National Strategic Corridor Study (Sacramento-San Francisco), US 101-Sonoma freeway operations study, SR 92 freeway operations study, I-880 freeway operations study, SR 152 alignment studies, Sacramento RTD light rail systems study, Tasman Corridor LRT AA/EIS, Fremont-Warm Springs BART extension plan/EIR, SRs 70/99 freeway alternatives study, and Richmond Parkway (SR 93) design study.

Area Transportation Plans. Principal-in charge for transportation element of City of Los Angeles General Plan Framework, shaping nations largest city two decades into 21st century. Project manager for the transportation element of 300-acre Mission Bay development in downtown San Francisco. Mission Bay involves 7 million gsf office/commercial space, 8,500 dwelling units, and community facilities. Transportation features include relocation of commuter rail station; extension of MUNI-Metro LRT; a multi-modal terminal for LRT, commuter rail and local bus; removal of a quarter mile elevated freeway; replacement by new ramps and a boulevard; an internal roadway network overcoming constraints imposed by an internal tidal basin; freeway structures and rail facilities; and concept plans for 20,000 structured parking spaces. Principal-in-charge for circulation plan to accommodate 9 million gsf of office/commercial growth in downtown Bellevue (Wash.). Principal-in-charge for 64 acre, 2 million gsf multi-use complex for FMC adjacent to San Jose International Airport. Project manager for transportation element of Sacramento Capitol Area Plan for the state governmental complex, and for Downtown Sacramento Redevelopment Plan. Project manager for Napa (Calif.) General Plan Circulation Element and Downtown Riverfront Redevelopment Plan, on parking program for downtown Walnut Creek, on downtown transportation plan for San Mateo and redevelopment plan for downtown Mountain View (Calif.), for traffic circulation and safety plans for California cities of Davis, Pleasant Hill and Hayward, and for Salem, Oregon.

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Transportation Centers. Project manager for Daly City Intermodal Study which developed a \$7 million surface bus terminal, traffic access, parking and pedestrian circulation improvements at the Daly City BART station plus development of functional plans for a new BART station at Colma. Project manager for design of multi-modal terminal (commuter rail, light rail, bus) at Mission Bay, San Francisco. In Santa Clarita Long Range Transit Development Program, responsible for plan to relocate system's existing timed-transfer hub and development of three satellite transfer hubs. Performed airport ground transportation system evaluations for San Francisco International, Oakland International, Sea-Tac International, Oakland International, Los Angeles International, and San Diego Lindberg.

Campus Transportation. Campus transportation planning assignments for UC Davis, UC Berkeley, UC Santa Cruz and UC San Francisco Medical Center campuses; San Francisco State University; University of San Francisco; and the University of Alaska and others. Also developed master plans for institutional campuses including medical centers, headquarters complexes and research & development facilities.

Special Event Facilities. Evaluations and design studies for football/baseball stadiums, indoor sports arenas, horse and motor racing facilities, theme parks, fairgrounds and convention centers, ski complexes and destination resorts throughout western United States.

Parking. Parking programs and facilities for large area plans and individual sites including downtowns, special event facilities, university and institutional campuses and other large site developments; numerous parking feasibility and operations studies for parking structures and surface facilities; also, resident preferential parking .

Transportation System Management & Traffic Restraint. Project manager on FHWA program to develop techniques and guidelines for neighborhood street traffic limitation. Project manager for Berkeley, (Calif.), Neighborhood Traffic Study, pioneered application of traffic restraint techniques in the U.S. Developed residential traffic plans for Menlo Park, Santa Monica, Santa Cruz, Mill Valley, Oakland, Palo Alto, Piedmont, San Mateo County, Pasadena, Santa Ana and others. Participated in development of photo/radar speed enforcement device and experimented with speed humps. Co-author of Institute of Transportation Engineers reference publication on neighborhood traffic control.

Bicycle Facilities. Project manager to develop an FHWA manual for bicycle facility design and planning, on bikeway plans for Del Mar, (Calif.), the UC Davis and the City of Davis. Consultant to bikeway plans for Eugene, Oregon, Washington, D.C., Buffalo, New York, and Skokie, Illinois. Consultant to U.S. Bureau of Reclamation for development of hydraulically efficient, bicycle safe drainage inlets. Consultant on FHWA research on effective retrofits of undercrossing and overcrossing structures for bicyclists, pedestrians, and handicapped.

MEMBERSHIPS

Institute of Transportation Engineers Transportation Research Board

PUBLICATIONS AND AWARDS

Residential Street Design and Traffic Control, with W. Homburger *et al.* Prentice Hall, 1989.

Co-recipient, Progressive Architecture Citation, *Mission Bay Master Plan*, with I.M. Pei WRT Associated, 1984.

Residential Traffic Management, State of the Art Report, U.S. Department of Transportation, 1979.

Improving The Residential Street Environment, with Donald Appleyard *et al.*, U.S. Department of Transportation, 1979.

Strategic Concepts in Residential Neighborhood Traffic Control, International Symposium on Traffic Control Systems, Berkeley, California, 1979.

Planning and Design of Bicycle Facilities: Pitfalls and New Directions, Transportation Research Board, Research Record 570, 1976.

Co-recipient, Progressive Architecture Award, *Livable Urban Streets, San Francisco Bay Area and London*, with Donald Appleyard, 1979.

ATTACHMENT C



WILSON IHRIG

ACOUSTICS, NOISE & VIBRATION

CALIFORNIA
WASHINGTON
NEW YORK

WI #21-xxx

May 25, 2021

Kendra Hartmann, Esq.
Christina Caro, Esq.
Adams Broadwell Joseph & Cardozo
601 Gateway Blvd, Suite 1000
South San Francisco, California 94080

SUBJECT: Redwood Tech @1010 Comments on the CEQA document

Dear Ms. Hartmann and Ms. Caro,

Per your request, I have reviewed the background documents for the subject matter project, Redwood Tech @ 101, a new industrial park providing five new buildings on a vacant lot. The staff report indicates that no separate CEQA analysis is required. A previous project was proposed in this area, which also included a residential development on an adjacent lot to the east. The noise and vibration technical report for that project were reviewed for context (Morgan Hill Technology Park, Draft EIR, Appendix G, "Fry's Site Noise and Vibration Assessment – Morgan Hill, California," March 9, 2020, prepared by Illingworth and Rodkin,) referenced as "prior analysis".

Noise Impacts at Noise Sensitive Land Uses not Properly Identified

The construction noise analysis in the prior analysis appears to rely on incorrect distances between the noise sensitive land use and the project construction. Construction noise analyses can be done using the shortest distance between the noise sensitive land use and the work area for the project, or it can be done using the distance from the noise sensitive land use to the center, or possibly the centroid of the project. Given that the extent of the prior project was so large (89 acres), using either of these distances would potentially over-estimate or under-estimate the actual impacts, respectively.

The prior analysis identified a significance threshold of 60 dBA hourly Leq for construction noise received at residential land use and 70 dBA hourly Leq received at commercial land use and exceed the ambient noise environment by at least 5 dBA for more than one year would constitute a significant temporary noise increase.

In the prior analysis, only a short-term noise measurement was made near the residential neighborhood on Tolusa Place (ST-1) measuring two short 10-minute periods ranging from 58 to 62 dBA Leq; given the location's distance from the main arterial and highway noise sources, it is

expected that the ambient at the future residential project, which is being permitted concurrently, would be more similar to the noise measurement data collected at ST-2 near the medical facilities which yielded 64 dBA Leq. According to the prior analysis, construction noise which exceeds 60 dBA Leq and 63 dBA Leq over the course of a year would be significant at the Tolusa Place residents, and construction noise which exceeds 60 dBA Leq and 68 dBA Leq over the course of the year would be significant at the future residential project.

For context, the Oakland Noise Ordinance limits long-term construction projects that last more than 10 days to 65 dBA at residential land use and 70 at commercial land use, regardless of the existing ambient conditions¹. From this perspective the one year requirement to determine significance seems particularly lenient.

The prior analysis relies upon construction equipment noise provided by the FHWA in their Roadway Construction Noise Model. This is common practice as there are many similarities in equipment and noise levels. The prior analysis does not disclose the specific noise level assumptions for each construction phase. Table 1 below extrapolates those values, and these extrapolated source levels provide the same values reported in Tables 7 and 8 of the prior analysis.

Table 1 Extrapolated Construction Source Levels and Activity Duration from Prior Analysis

Construction Phase	Housing Project		Office/Light Industrial	
	Construction Noise Source Levels ¹ (dBA)	Duration (Days)	Construction Noise Source Levels ¹ (dBA)	Duration (Days)
Site Preparation	84	20	84	5
Grading	87	45	85	8
Trenching	79	20	79	10
Build Exterior	80	440	83	230
Build Interior	72	35	75	18
Paving	82	35	83	18
Note 1: noise levels at 50 ft distance				

Focusing attention only on the residential area on Tolusa Place and the future residential project, Tables 2 and 3 provide updated analyses of the construction noise impacts. Since the current project and the residential project are being permitted concurrently, the cumulative effect could be to cause the residents in this area to experience a full year or more of construction noise. The noise levels at the east residential neighborhood would exceed 60 dBA Leq and the existing environment of 58 dBA would be increased by 5 dBA or more for a period of a year or more.

Table 2 Construction Noise Impacts at East Residential Neighborhood

Construction Phase	Residential Construction Source to Tolusa Pl	Commercial Project Source to Tolusa Pl
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¹ Oakland Planning Code 17.120.050, Table 17.120.05, accessed via the web on 5/24/21.

https://library.municode.com/ca/oakland/codes/planning_code?nodeId=TIT17PL_CH17.120PEST_17.120.050NO

	Distance to Center: 440 ft	Distance to nearest PL 50 ft	Distance to Center: 1340 ft	Distance to nearest PL 880 ft
Site Preparation	65	84	55	59
Grading	68	87	56	60
Trenching	60	79	50	54
Build Exterior	61	80	54	58
Build Interior	53	72	46	50
Paving	63	82	54	58

The future residential project would be slightly closer to existing noise sources such as Hwy 101, but still within 50 ft of the project construction. If completed prior to the commercial project, some number of homes within the future residential project would be exposed to a significant noise impact as shown in Table 3. The noise levels would exceed 60 dBA Leq and the existing environment of 64 dBA would be increased by 5 dBA or more for a period of a year or more.

Table 3 Construction Noise Impacts from Commercial Buildings at Future Residential Project

Construction Phase	Commercial Project Source to Future Residential Project	
	Distance to Center: 515 ft	Distance to nearest PL 50 ft
Site Preparation	64	84
Grading	65	85
Trenching	59	79
Build Exterior	63	83
Build Interior	55	75
Paving	63	83

CEQA impact analysis should be provided to determine mitigation measures to address these temporary, substantial noise impacts such as buffer distances and sound barriers. Adequate materials for such sound barriers would include temporary barriers using STC 20-25 blankets on a tubular steel frame or scaffolding or 3 PSF wood frame barriers (e.g., using $\frac{3}{4}$ " thick plywood)². In any case the material should overlap or otherwise be constructed to avoid gaps of any size, and should be high enough to block line of sight between the construction noise sources and the affected windows. The sound barrier has to interrupt the line of sight between the source(s) and the receiver(s) and the best placement to maximize the sound barrier benefit is close the source or close to the receiver.

² FHWA *Highway Noise Barrier Design Handbook*, February 2020, pp. 25-27, indicates that materials with a transmission loss of 20 dB or better are well suited for noise barriers, and that the corresponding STC rating is usually 5 to 10 points less than its transmission loss. Practically speaking, many common materials are available with STC 25 or TL 20 to the necessary performance for a construction sound wall. Accessed via the web March 18, 2021. https://rosap.nhtl.bts.gov/view/dot/38373/dot_38373_DS1.pdf

WILSON IHRIG
RedwoodTech @101 CEQA

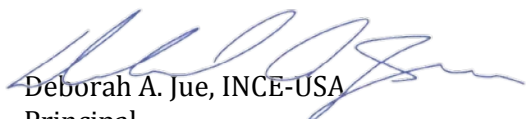
Conclusions

The construction noise analysis for the prior project appears to contain some errors which could lead one to conclude that construction activities for the proposed project and the future residential project could be less than significant. Mitigation measures would be required to reduce the construction noise impact.

Please feel free to contact me with any questions on this information.

Very truly yours,

WILSON IHRIG


Deborah A. Jue, INCE-USA
Principal

redwoodtech @ 101_noise review_wilson ihrig.docx

Attachment: Appeal by Adams Broadwell Joseph & Cardozo (3130 : Trammell Crow Redwood Tech at 101 Appeal)



DEBORAH JUE

Principal

Since joining Wilson Ihrig in 1990, Ms. Jue has been involved in with many projects from environmental assessments and entitlements, through design development, construction documents and construction administration support. As an acoustical consultant, she has provided noise measurement, analysis and recommendations to control noise and vibration both at the interior of the project and at the neighboring properties. She has authored many reports concerning compliance with the requirements of California Noise Insulation Standards, Title 24, local Noise Elements, environmental assessments and Federal noise criteria, and is well aware of the additional design and construction technique requirements to achieve industry standards. Ms. Jue has authored or provided input for many environmental documents and technical studies in accordance with NEPA and California's CEQA regulations, most of them related to surface transportation, and she gives presentations to public officials when necessary to explain construction noise problems, noise mitigation goals, and noise control methods. She can develop construction noise and vibration criteria to address vibration damage potential to nearby buildings and sensitive structures, and vibration annoyance or disruption potential for occupants of nearby buildings.

Education

- M.S. in Mechanical Engineering, University of California, Berkeley, 1998
- B.S. in General Engineering: Acoustics, Stanford University, 1988

Professional Associations (Member)

- American Society of Mechanical Engineers
- Acoustical Society of America
- National Council of Acoustical Consultants
- Institute of Noise Control Engineering
- WTS
- Transportation Research Board, AEP80 Standing Committee Member (2021-2024)

Research and Published Papers

- ACRP Report 175, ACRP 07-14, *Improving Intelligibility of Airport Terminal Public Address Systems*
- NCHRP 25-25, *Current Practices to Address Construction Vibration and Potential Effects to Historic Buildings Adjacent to Transportation Projects*
- *Transportation Research Record*, V. 2502, "Considerations to Establish Ground-Borne Noise Criteria to Define Mitigation for Noise-Sensitive Spaces"

Relevant Experience

- California High Speed Rail Caltrain Corridor EIR/EIS, San Francisco to San Jose
- UC Berkeley Northgate Hall A/V Renovations, Berkeley
- MacArthur Station, *long-term construction noise and vibration monitoring*, Oakland
- Safeway @ Claremont & College, *HVAC noise and construction noise monitoring*, Oakland
- ACTC I-80/Ashby, *interchange traffic noise analysis*, Berkeley and Emeryville
- ACTC I-680 Express Lanes, *traffic noise analysis*, Contra Costa County, CA
- Chase Arena, *construction noise and vibration monitoring*, San Francisco

[VIA Hand Delivery]

June 4, 2021

Michelle Bigelow, City Clerk
Morgan Hill City Clerk's Office
17575 Peak Avenue
Morgan Hill, CA 95037

Re: Notice of Appeal Planning Commission Approval of Resolutions 21-04 and 21-05

Dear Ms. Bigelow:

Pursuant to Chapter 18.112 of the Morgan Hill Municipal Code, I hereby submit, representing the Morgan Hill Responsible Growth Coalition (MHRGC), this Notice of Appeal with associated references, a Completed Uniform Application and a check in the amount of \$627.60 for the posted application fee.

The **specific action being appealed** is the City of Morgan Hill Planning Commission approval of Resolutions NO. 21-04 and 21-05. Resolution 21-04, "approving a design permit to allow for the construction of the Redwood Tech at 101 project" and Resolution 21-05, "approving a vesting tentative parcel map for a 4-lot parcel map on a 28-acre site located on the northern intersection of Condit Road and Half Road (APNS 728-30-006 AND 728-30-009) were approved as part of the agenda item #1, Public Hearing ([SD2020-0011/SR2020-0029 THROUGH SR2020-0033 DE PAUL - TC MORGAN HILL VENTURE: REQUEST FOR A TENTATIVE PARCEL MAP AND DESIGN PERMITS FOR THE REDWOOD TECH AT 101, A FIVE BUILDING INDUSTRIAL PARK, ON A 29± ACRE SITE \(APNS 728-30-006 AND 728-30-009\)](#) on May 25th, 2021.

The specific grounds for this appeal are:

- 1) Neither resolution is consistent with the General Plan. General Plan Policies CNF-18.3 and CNF-18.4 were both objected to not being considered by a Planning Commissioner and by the public and there is nothing in the record which supports the staff's claim that the City Attorney's office has made a 'determination' which allowed those General Plan requirements to be waived for the case at hand.
- 2) The Planning Commission could not make the necessary findings to approve a design permit or tentative map for the project based on information in the record. The MHRGC agrees with and by reference includes all the grounds and all of the analysis included in public comments Supplement #1 (http://morganhillca.igm2.com/Citizens/Detail_Meeting.aspx?ID=2033) by Michael Lozeau and Supplement #3 (http://morganhillca.igm2.com/Citizens/Detail_Meeting.aspx?ID=2033) by Kendra Hartmann. In summary, as taken directly (all text in italics) from Ms. Hartmann's public comment:

Approval of the Project's Design Permit and Tentative Map requires factual findings, supported by substantial evidence, pursuant to the Morgan Hill Municipal Code and the State Subdivision Map Act that a proposed subdivision is consistent with the City's general plan and specific plans, and does not have any detrimental environmental or public health effects.

"The Staff Report claims that the Project is in compliance with the General Plan, Zoning Code and other City Codes as required by Section 17.50.030 of the Municipal Code, but nowhere does it make findings, or offer substantial evidence, that the Project will not have any detrimental environmental or public health effects."

Ms. Hartman's submittal and other information provide substantial evidence that *demonstrates that the Project is likely to have potentially significant impacts on air quality, public health, climate change, noise, and traffic. Silicon Valley Residents' experts have provided ample evidence demonstrating the Project's significant impacts, including:*

- *Emissions of VOCs and TACs from Project construction and operation will be significant.*
- *DPM emissions from construction and operation*
- *The cancer risk from the Project to nearby receptors would be 42 in one million over 30 years, exceeding the BAAQMD threshold of 10 in one million.*
- *Traffic and transportation in the Project vicinity could be significantly impacted by Project construction and operation.*
- *Nearby residents could experience significant impacts from noise for a year or more.*

These effects have not been disclosed or analyzed by the City, which continues to claim that the General Plan EIR is sufficient to address any potential impacts, despite that document's repeated claim that it did not analyze any project specific impacts. As a result, the Project fails to comply with mandatory Map Act requirements. The City, therefore, cannot make the requisite findings pursuant to Government Code Sections 66473.5 and 66474 and must deny the Project's Design Permit and Tentative Map.

In addition, the MHRGC notes that the City received the results of the Citygate Standards of Coverage Assessment for Fire and EMS services in 2019 and is fully aware that there are issues with Emergency Service response times, with the area in which the project is located (the North-East quadrant) being one of the most effected locations in the entire City. The 2035 General Plan EIR certainly did not adequately analyze the Redwood Tech @ 101 project's impact on Emergency Services response times and public safety as required.

The City has improperly tried to rely on the 2035 General Plan EIR as a program EIR with analysis sufficient to satisfy CEQA. That EIR, however, was never meant to serve as a review document for specific projects. Many of the impacts likely to result from the Project will be significantly more severe than what was evaluated in the General Plan EIR, while others were never analyzed at all.

The Design Review Permit and Vesting Tentative Map required for the Project cannot be issued. As supported by substantial evidence, the Project will result in significant and unmitigated impacts that are not disclosed or analyzed by the General Plan EIR. Without further mitigation measures to reduce the Project's significant impacts, the City cannot find that it is not detrimental to public health, safety, or welfare, and thus cannot approve the permits necessary for the Project to move forward.

Because the Citizens of Morgan Hill are, unfortunately, keenly aware of the Shoe Palace project which was approved without requiring a Conditional Use Permit, we wish to also highlight the following portions of Mr. Lozeau's public comment (text in italics is directly quoted):

The CEQA analysis presented in the staff report is fundamentally flawed because it improperly recommends for the City to approve the Project prior to complying with CEQA for the whole project, i.e., its foreseeable uses. Staff suggests that the City may make a CEQA determination and approve the proposed Design Permit and the Vesting Tentative Parcel Map separate from any future conditional use permits for the Project. Staff claims that “[n]o other approvals are required at this time.” Packet Pg. 7. Staff further asserts that “[s]hould a future use on the site require a conditional use permit, that user will be responsible for conducting environmental review for the proposed use as required under CEQA.” Id., p. 19. This two-tiered approach to the Project’s CEQA review violates CEQA’s prohibition on approving any aspect of a proposed project prior to completing the environmental review for the whole project required by CEQA. Moreover, it is inconsistent with the City’s requirements for processing a proposed vested tentative map.

The proposed action items include both the Project’s design permit and a vesting tentative parcel map. The City’s Code sets forth the process and information required to process a vesting tentative parcel map application. The City’s approval of a vesting tentative map provides the applicant with a vested right to proceed with the proposed development: “When the city approves or conditionally approves a vesting tentative map, that approval shall confer a vested right to proceed with development in substantial compliance with the ordinances, policies and standards in effect on the date the city has determined that the application for approval of the vesting tentative map is complete pursuant to Section 65943 of the Government Code.” Muni. Code §17.50.040(A). As a result, the City’s Code requires additional information and considerations that the City must consider in making its discretionary decision whether or not to approve a proposed vesting tentative parcel map. In particular, the City is not authorized to defer or not address the proposed uses of the development proposed by the tentative map. Moreover, given the vesting implications of the City’s decision, the decisionmakers must have access to an environmental review of the whole Project, including its uses and not just its building design or proposed number of parcels.

Particularly relevant here is the express requirement that, “[i]f a conditional use permit is required, such permit shall be **processed prior or concurrently with the vesting tentative map**. Muni. Code § 17.50.060(B)(2) (emphasis added). As described in the staff report, the Project includes 232,000 square feet of warehousing use. Packet Pg. 13. The Project site’s zoning of Light Industrial requires a conditional use permit for “Warehousing and Distribution, Large. (the MH Zoning Code defines the threshold for ‘Large’ as 75,000 square feet)..... the proposed 232,000 square feet of warehousing is large. As a result, the conditional use permit necessary for the proposed warehousing use must be proposed and processed prior to or concurrently with the vesting tentative map. Muni. Code § 17.50.060(B)(2). By choosing to ignore the Project’s uses, the staff report’s CEQA recommendations are deficient as a matter of law, having failed to consider the potential environmental effects of the Project’s warehousing and other uses, including impacts from additional truck trips on air quality and wildlife, additional vehicle miles traveled and transportation impacts as a result of the Project, operational and construction-related noise and health impacts on residents located adjacent to the south corner of the Project site, the impacts of Project design features, such as the large glass facades, on bird-life and other potential impacts. As a result, any CEQA determination by the City must consider the Project’s contemplated uses now.

In addition, underscoring the need for staff to address the impacts of the anticipated uses, “[d]evelopment’ means the uses to which the land which is the subject of the map shall be put, the buildings to be constructed on it and all alterations of the land and construction incident thereto.” Muni. Code §17.08.055 (emphasis added). Thus, rather than defer any consideration of the Project’s uses, the vesting tentative parcel map procedure requires the applicant to submit “[t]he height, size, location, preliminary or conceptual architectural plans and use of all buildings to be constructed within the subdivision....” Muni. Code §17.50.060(B)(4) (emphasis added). Relatedly, to qualify for approval of a vested tentative

parcel map, the applicant must provide "[s]pecific information on the uses to which the proposed buildings will be put...." Muni. Code §17.50.060(B)(10). Thus, should the Planning Commission accept staff's invitation to put off addressing the Project's uses, any decision will be contrary to the City's ordinances.

In addition, CEQA forbids putting off environmental review of the whole project subsequent to approving any of its components. This is especially true for a decision to approve a vesting right in a development. The necessary CEQA document must be prepared and approved prior to any approval of a project subject to CEQA. "Before granting any approval of a project subject to CEQA, every lead agency or responsible agency shall consider a final EIR or negative declaration or another document authorized by these guidelines to be used in the place of an EIR or negative declaration." (14 CCR § 15004(a) [emphasis added].) "EIRs and negative declarations should be prepared as early as feasible in the planning process to enable environmental considerations to influence project program and design" (14 CCR § 15004(b).) Consistent with that goal: The environmental document preparation and review should be coordinated in a timely fashion with the existing planning, review, and project approval processes being used by each public agency. These procedures, to the maximum extent feasible, are to run concurrently, not consecutively. (14 CCR § 15004(c); see also PRC § 21003(a).) By attempting to defer addressing impacts from the Project's anticipated uses until the future, staff's proposals violate these fundamental tenets of CEQA.

Note: As mentioned above, this notice of appeal incorporates, by reference, the entirety of Supplement #1 and Supplement #3 of Agenda Item #1 of the May 25th, 2021 Planning Commission Meeting (http://morganhillca.igm2.com/Citizens/Detail_Meeting.aspx?ID=2033). For reference, the text of those public comment submittals are attached to this appeal but due to the large size the attachments included with Supplement #3 are not.

The **specific relief and actions** which the applicant requests from the City Council are:

- 1) Protect the health, safety and public welfare of Morgan Hill Citizens and follow your commitment to abide by the General Plan, the Morgan Hill Municipal Code, California State law and CEQA Guidelines by overturning the Planning Commission's approval of Resolutions 21-04 and 21-05.
- 2) Require that the General Plan be interpreted as written even if it is inconvenient to a particular project and may be in the process of revision. Treat every applicant according to the currently approved version. Instruct staff to follow General Plan policies CNF-18.3 and CNF-18.4, or to revise the General Plan and have an amended version adopted before the approval of a Design Permit and Vesting Tentative Parcel Map for Redwood Tech @101 project is reconsidered.
- 3) Recognize the public's legitimate and acute concern for the potential environmental and safety impacts which a 510,000 square foot industrial project that allows for the installation of up to 76 dock-high doors and is located near senior living, a high school, the DePaul Health center and multiple existing and proposed residential neighborhoods and is in a location which has been identified as subject to Emergency Response time issues may have. While substantial evidence exists and should be the basis for your decision, also use your common sense to recognize that when the following language appears **seven times** in the 2035 General Plan EIR:

No specific development projects are proposed as part of the proposed Project. Therefore, this EIR is a program-level EIR that analyzes the potential significant environmental effects

of the adoption of the proposed Project. As a program EIR, it is not project-specific, and does not evaluate the impacts of individual projects that may be proposed under the General Plan. Such subsequent projects will require a separate environmental review, when applicable as required by CEQA, which could be in the form of a Negative Declaration, Mitigated Negative Declaration, or a Subsequent EIR, to secure the necessary development permits. Therefore, while subsequent environmental review may be tiered from this EIR, this EIR is not intended to address project-specific impacts of individual projects.

there is no way the 2035 General Plan EIR can be used to justify that this project is consistent for the project site **without completely losing public trust.**

Instruct staff to prepare an Initial Study and either an MND or EIR to identify, analyze and mitigate the Project's adverse environmental impact including analyzing the project's impact on Emergency Response Times.

Should you have any questions or comments, please do not hesitate to contact me and thank you in advance for your assistance.

Joe Baranowski
joe.b@mh-rgc.org
408-674-2846



Community Development Agency
Planning Division
17575 Peak Avenue
Morgan Hill, CA 95037-4128
Phone: (408) 778-6480
Fax: (408) 779-7236
www.morganhill.ca.gov

UNIFORM APPLICATION

The City of Morgan Hill Planning Division has designed this application in order to obtain important information about your proposed project that will help to expedite the application review process. Please complete all sections, providing as much detail as possible regarding the scope of your proposal.

PROJECT SITE INFORMATION

Project Location: Northern Intersection of Condit Road and Half Road

Street Address: n/a

Assessor's Parcel Number(s): 728-30-006 and 728-30-009

Site Acreage: 29

Zoning: Light Industrial (IL)

General Plan: Commercial/Industrial

Specific Plan and/or PD Overlay(s): Planned Development Combining District (PD)

Project Request: Select all that apply

- | | |
|---|--|
| ☐ Admin. Development Plan Review | ☐ General Plan Amendment |
| ☐ Annexation | ☐ Minor Exception |
| ☒ Appeal | ☐ Parcel Map |
| ☐ Conceptual Plan Review | ☐ Preliminary Plan Review |
| ☐ Conditional Use Permit | ☐ Planned Development |
| ☐ Cultural Resource Alteration/Designation | ☐ Sign Permit, Uniform Sign Program |
| ☐ Design Review | ☐ Subdivision |
| ☐ Development Agreement | ☐ Temporary Use Permit |
| ☐ Development Approval Amendment | ☐ Urban Service Area Amendment |
| ☐ Environmental Assessment | ☐ Variance |
| ☐ Extension of Time | ☐ Zoning Amendment |

☐ Other:

OWNER INFORMATION

Contact Name: Don Little

Company Name: TC Morgan Hill Venture

Mailing Address: unknown by applicant

City:

State:

Zip:

Phone: unknown by applicant

Email Address: unknown by applicant

CONTINUED ON NEXT PAGE

STAFF USE ONLY

Date Received:	Received By:	Complete: ☐ yes ☐ no	Fees Collected:
File Number(s):			
Related File(s):			
Notes:			

APPLICANT INFORMATION

Contact Name: Joe Baranowski

Company Name: Morgan Hill Responsible Growth Coalition

Mailing Address: 17500 Monterey Highway, 178

City: Morgan Hill

State: CA

Zip: 95038

Phone: 408-674-2846

Email Address: joe.b@mh-rgc.org

ENGINEER/ARCHITECT INFORMATION

Contact Name: N/A

Company Name:

Mailing Address:

City:

State:

Zip:

Phone:

Email Address:

NOTE: The individual(s) listed above will receive correspondence from the City regarding this application.

Attachment: Appeal by Morgan Hill Responsible Growth Coalition (3130 : Trammell Crow Redwood Tech at 101 Appeal)

CONTINUED ON NEXT PAGE

CITY OF MORGAN HILL
Letter of Agency

If the applicant is not the owner of record of the subject site, a Letter of Agency from the owner or the owner's authorized representative must be submitted which grants the applicant permission to submit an application for the requested entitlement(s).

PROPERTY OWNER INFORMATION

Property Owner Name: n/a Phone: () -
Address: _____ City: _____ Zip: _____
Email: _____

Date: _____

To: City of Morgan Hill
Development Services Department
Planning Division
17575 Peak Avenue
Morgan Hill, CA 95037

Development Services Department:

I, the undersigned legal owner of record, hereby grant permission to: _____

Applicant: _____ Phone Number: () -
Address: _____ City: _____ Zip: _____

To apply for the following entitlement(s): _____

For the subject property located at: _____

Address of Owner of Record: _____ Phone: () -

Assessor's Parcel Number: _____

Signature of Owner of Record: _____

(must be original signature)

Attachment: Appeal by Morgan Hill Responsible Growth Coalition (3130 : Trammell Crow Redwood Tech at 101 Appeal)

INDEMNIFICATION AGREEMENT

As part of, and in connection, with this application to the City of Morgan Hill, Applicant agrees to defend, indemnify, and hold harmless the City of Morgan Hill, its officers, agents, employees, officials and representatives (Indemnitees) from and against any and all claims, actions, or proceedings arising from any suit for damages or for equitable or injunctive relief which is filed against City to attack, set aside, void or annul its approval of this application or any related decision, or the adoption of any environmental documents which relates to said approval. The City shall promptly notify the Applicant of any such claim, action or proceeding and the City shall cooperate fully in the defense thereof. In the event that Applicant is required to defend Indemnitees in connection with the proceeding, Indemnitees shall retain the right to approve (a) the counsel to so defend Indemnitees; (b) all significant decisions concerning the manner in which the defense is conducted; and (c) any and all settlements, which approval shall not be unreasonably withheld. This indemnification shall include, but is not limited to, (a) all pre-tender litigation costs incurred on behalf of the City, including City's attorney's fees and all other litigation costs and expenses, including expert witnesses, required to defend against any lawsuit brought as a result of City's approval or approvals; (b) reasonable internal City administrative costs, including but not limited to staff time and expense spent on the litigation, after tender is accepted; and (c) all damages, costs, expenses, attorney fees or expert witness fees that may be awarded to the prevailing party arising out of or in connection with the approval of the application or related decision. City may, in its sole discretion, participate in the defense of such action; but such participation shall not relieve Applicant of its obligations under this condition. The undersigned hereby represents that they are the Applicant or are fully empowered by the Applicant as their agent to agree to provide the indemnification, defense and hold harmless obligations, and the signature below represents the unconditional agreement by Applicant to be bound by such conditions.

AFTER REVIEW AND CONSIDERATION OF ALL OF THE FOREGOING TERMS AND CONDITIONS, APPLICANT, BY ITS SIGNATURE BELOW, HEREBY AGREES TO BE BOUND BY AND TO FULLY AND TIMELY COMPLY WITH ALL OF THE FOREGOING TERMS AND CONDITIONS.

Applicant (Print): Joe Baranowski

Date: 06/04/2021

Applicant Signature:

Joe Baranowski

Digitally signed by Joe Baranowski

Date: 2021.06.04 10:30:07 -07'00'

Attachment: Appeal by Morgan Hill Responsible Growth Coalition (3130 : Trammell Crow Redwood Tech at 101 Appeal)

PUBLIC NOTICE/PROJECT IDENTIFICATION SIGN

A. PROCEDURE

A public notice project identification sign shall be posted by the applicant a minimum of 10-days prior to the date of the public hearing or project approval by the Development Services Department. If the notice sign is not posted on the project site before end of business on the posting deadline, the project's public hearing or approval date will be rescheduled until the sign is posted for the minimum 10-day period. The posted notice shall be maintained and remain on the project site until after the City renders a decision on the project. The hearing notice shall be removed from the project site within seven days after the City has rendered a final decision on the project, although the portion of the sign which does not mentioned the hearing may remain to identify the project.

B. SIGN REQUIREMENTS:

There are two sizes of public notice signs:

- 2' x 3' with a maximum overall height of 8' for "minor" projects. Minor projects consist of Minor Subdivisions of four or fewer parcels and Conditional Use Permits or Design Reviews which do not involve the establishment of new buildings on vacant sites.
- 4' x 8' with a maximum overall height of 8' for "major" projects. Major projects include Subdivision of five or more parcels, Conditional Use Permits or Design Reviews which involve the establishment of new buildings on vacant sites.

The notice sign content must contain but is not limited to the following information:

- a) Approval requested by applicant
- b) General description of project/scope of work
- c) Project site identification information such as (address and APN)
- d) Detailed site plan or colored elevation of project

The final version of the notice sign shall be approved by the Planning Division prior to posting to ensure accuracy of information and consistency of design.

I hereby agree to post the subject property with a Public Notice/Project Identification Sign at least ten days prior to the public hearing or final action date. The sign shall be posted on the subject property in a visible location at least five feet behind the property line.

Applicant Name (Print)

Applicant's Signature

Date

Jenna Luna

From: Alisha C. Pember <apember@adamsbroadwell.com>
Sent: Tuesday, May 25, 2021 6:39 PM
To: PC Public Comment; Jennifer Carman; Adam Paszkowski
Subject: [EXTERNAL] Agenda Item No. 1: Redwood Tech at 101 Project (SR2020-0029 through SR2020-0033 and SD2020-0011)
Attachments: 5175-002acp - Redwood Tech at 101 comments 05.25.21 with Attachments A-C.pdf
Follow Up Flag: Follow up
Flag Status: Flagged

Good evening,

Please see the attached **Comments on Agenda Item No. 1: Redwood Tech at 101 Project (SR2020-0029 through SR2020-0033 and SD2020-0011)** and **Attachments A-C**.

We are also providing a Dropbox link containing references in support of

Attachments: <https://www.dropbox.com/sh/svh1g5h9gg0bx1r/AABFq1jmYW5mlAV6upl2bU9sa?dl=0>.

If you have any questions, please contact Kendra Hartmann.

Thank you.

Alisha Pember

Alisha C. Pember
 Adams Broadwell Joseph & Cardozo
 601 Gateway Boulevard, Suite 1000
 South San Francisco, CA 94080
 (650) 589-1660 voice, Ext. 24
apember@adamsbroadwell.com

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Attachment: Appeal by Morgan Hill Responsible Growth Coalition (3130 : Trammell Crow Redwood Tech at 101 Appeal)

ADAMS BROADWELL JOSEPH & CARDOZO

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

601 GATEWAY BOULEVARD, SUITE 1000
SOUTH SAN FRANCISCO, CA 94080-7037

TEL: (650) 589-1660

FAX: (650) 589-5062

khartmann@adamsbroadwell.com

SACRAMENTO OFFICE

520 CAPITOL MALL, SUITE 360
SACRAMENTO, CA 95814-4721

TEL: (916) 444-6201

FAX: (916) 444-6209

DANIEL L. CARDOZO
KEVIN T. CARMICHAEL
CHRISTINA M. CARO
JAVIER J. CASTRO
THOMAS A. ENSLOW
KELILAH D. FEDERMAN
ANDREW J. GRAF
TANYA A. GULESSERIAN
KENDRA D. HARTMANN*
KYLE C. JONES
DARIEN K. KEY
RACHAEL E. KOSS
AIDAN P. MARSHALLMARC D. JOSEPH
Of Counsel*Not admitted in California.
Licensed in Colorado.

May 25, 2021

Via Email OnlyMohammad Habib, Chair
Members of the Planning Commission
City of Morgan Hill
c/o Minutes Clerk
17575 Peak Avenue
Morgan Hill, CA 95037
pcpubliccomment@morganhill.ca.govJennifer Carman, Community Development Director
jennifer.carman@morganhill.ca.gov
Adam Paszkowski
Adam.Paszkowski@morganhill.ca.gov**Re: Agenda Item No. 1: Redwood Tech at 101 Project (SR2020-0029 through SR2020-0033 and SD2020-0011)**

Dear Chair Habib, Commissioners, Minutes Clerk, Ms. Carman, Mr. Paszkowski:

We are writing on behalf of Morgan Hill Residents for Responsible Development ("Residents") to provide comments to the Morgan Hill Planning Commission ("Commission") on Agenda Item No. 1, the Redwood Tech at 101 Project, SR2020-0029 through SR2020-0033 and SD2020-0011 ("Project"). Proposed by Trammel Crow Morgan Hill Ventures ("Applicant"), the Project proposes approximately 501,314 square feet of flexible industrial/commercial space spread across 5 separate buildings on four separate lots in the approximately 29-acre lot south of the former Tree Farm site on Hwy 101 south of Cochrane Road in the City of Morgan Hill ("City").

The Applicant seeks a Design Permit and a Vesting Tentative Parcel Map, both discretionary approvals, to divide the property's existing 2 parcels into 4 legal lots. In accordance with Section 18.108.040.D of the City's Municipal Code, the size

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of the Project is considered significant and, as such, the Development Services Director has elevated the Project to the Planning Commission for review and consideration of the two proposed Project entitlements. The Project proposes to construct 5 buildings on the site, all designated for flexible industrial and commercial uses, including advanced manufacturing, warehouse, supporting office, and similar industrial and commercial uses. The property has a Commercial/Industrial General Plan designation and is zoned Light Industrial (IL). Access to the property will be provided via four driveways from the extension of De Paul Drive to the south from Cochrane Road. All street frontages will be improved to City Standards with sidewalk and landscaping.

The Applicant previously submitted to the City a different project titled the Morgan Hill Technology Center ("Technology Center"), which was withdrawn by the Applicant on September 18, 2020.¹ That previous project encompassed the proposed Project site and the parcels to the north. The original Technology Center proposed a mix of industrial, commercial, and residential uses on an 89-acre site. The industrial and commercial portions of the Technology Center project proposed 1.04 million square feet of light industrial uses contained in six buildings, 45,000 square feet of industrial office in one building situated between the industrial buildings on a 2.31-acre parcel, and 50,000 square feet of retail/commercial on a 2.92-acre parcel fronting Cochrane Road.

We reviewed the Staff Report and related Project documents with the assistance of environmental health, air quality, and GHG expert Paul E. Rosenfeld, Ph.D., and hazardous materials expert Matt Hagemann, P.G., C.Hg. of Soil Water Air Protection Enterprise ("SWAPE"), transportation expert Dan Smith, and noise expert Deborah Jue, INCE-USA. Comments and curriculum vitae of SWAPE are attached to this letter as Attachment A.² Mr. Smith's comments and curriculum vitae are included as Attachment B,³ and Ms. Jue's comments and curriculum vitae are attached as Attachment C.⁴ All expert comments are fully incorporated herein and submitted to the City herewith. Therefore, the City must separately respond to the technical comments in Attachments A, B and C.

¹ Staff Report, p. 6; see <http://www.morgan-hill.ca.gov/1966/Morgan-Hill-Technology-Park> (last visited 5/25/21).

² **Attachment A:** Comments on Redwood Tech at 101 Project (May 21, 2021) ("SWAPE Comments").

³ **Attachment B:** Transportation Comments re Redwood Tech@101 Project by Smith Engineering & Management (May 20, 2021) ("Smith Comments").

⁴ **Attachment C:** Redwood Tech @ 101 Comments, Wilson Ihrig (May 25, 2021) ("Jue Comments").
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Based on our review, it is clear that the City has not complied with the California Environmental Quality Act ("CEQA")⁵, the Subdivision Map Act, or with local and State land use laws in its review of the Project and its proposed entitlements.

The City initially prepared a draft environmental impact report ("DEIR") for the Technology Center Project, which found that the Technology Center Project (which included the instant Project plus the additional components) would have significant impacts on air quality, biological resources, cultural resources, greenhouse gas ("GHG") emissions, hazardous materials, noise, and transportation which required mitigation.⁶ Before the DEIR was certified, the Project application was withdrawn. The Applicant has now repropoed the industrial/commercial component of the Technology Center Project as the Redwood 101 Project, which the City now claims does not require CEQA review because it was previously analyzed in the 2035 General Plan EIR. As discussed below, the General Plan EIR was a planning-level CEQA document which did not analyze the Project's environmental impacts with the degree of specificity required for project-level environmental review. Nor were the project-specific impacts that were identified in the Technology Center DEIR addressed in the General Plan EIR. An EIR is required for the Project for these reasons.⁷

The City is also improperly piecemealing its environmental review of the Project from other components of the original Technology Center Project. As the Staff Report explains, the residential component of the Technology Center Project has been reduced from 319 units to 269 units and is being concurrently developed by Dividend Homes under a separate application.⁸ Two of the original project components are being reviewed by the City for a second time, yet the City failed to prepare an EIR that analyzes the impacts of both developments.

Finally, as discussed below, the Redwood 101 Project has potentially significant, unmitigated impacts on air quality, public health, GHG emissions, noise, and transportation that must be disclosed and mitigated in an EIR. These unmitigated impacts also preclude the Planning Commission from making the

⁵ Pub. Res. Code §§ 21000 et seq; 14 Cal. Code Regs. ("CCR" or "CEQA Guidelines") §§ 150000 et seq.

⁶ See Technology Center DEIR, pp. iv-xxx, available at <https://www.morgan-hill.ca.gov/DocumentCenter/View/36693/Draft-EIR-Morgan-Hill-Tech-Center-12-May-2020-webready> (last visited 5/25/21).

⁷ See 14 CCR § 15152.

⁸ Staff Report, p. 6.
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findings required to approve the Project under the Subdivision Map Act and the City land use codes. The Planning Commission should remand the Project to staff to prepare a legally adequate EIR before the Project can be considered for approval.⁹

I. STATEMENT OF INTEREST

Residents is an unincorporated association of individuals and labor organizations that may be adversely affected by the potential public and worker health and safety standards associated with Project development, as well as its potential environmental impacts. Residents includes local unions, their members and families, and other individuals that live and/or work in the City of Morgan Hill and Santa Clara County.

Individual members of Residents and the affiliated labor organizations live, work, recreate and raise their families in the City of Morgan Hill and Santa Clara County. They would be directly affected by the Project's environmental and health and safety impacts. Individual members, including Santa Clara County resident Fermin Layos, may also work on the Project itself. Accordingly, they will be first in line to be exposed to any health and safety hazards that exist onsite. Residents have a strong interest in enforcing the State's environmental laws that encourage sustainable development and ensure a safe working environment for its members. Environmentally detrimental projects can jeopardize future jobs by making it more difficult and more expensive for business and industry to expand in the region, and by making it less desirable for businesses to locate and people to live there.

II. LEGAL STANDARD

In an effort to ensure the long-term protection of the environment of the state, CEQA requires governmental agencies at all levels to develop standards and procedures necessary to protect environmental quality. To this end, CEQA requires preparation of an EIR whenever a public agency proposes to approve or to carry out a project that may have a significant effect on the environment.¹⁰ In this way, CEQA is designed to inform decision makers and the public about the potentially

⁹ We reserve the right to supplement these comments at later hearings and proceedings on this Project. Gov. Code § 65009(b); PRC § 21177(a); *Bakersfield Citizens for Local Control v. Bakersfield ("Bakersfield")* (2004) 124 Cal. App. 4th 1184, 1199-1203; see *Galante Vineyards v. Monterey Water Dist.* (1997) 60 Cal. App. 4th 1109, 1121.

¹⁰ *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 390. 5175-002acp

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significant environmental impacts of a project before it is approved and implemented.¹¹

Described as “an environmental ‘alarm bell’ whose purpose it is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return,”¹² an EIR’s purpose is to “inform the public and its responsible officials of the environmental consequences of their decisions *before* they are made. Thus, the EIR protects not only the environment, but also informed self-government.”¹³ To fulfill this purpose, the discussion of impacts in an EIR must be detailed, complete, and “reflect a good faith effort at full disclosure.”¹⁴ Furthermore, CEQA imposes an affirmative obligation on agencies to avoid or reduce environmental harm by adopting feasible project alternatives or mitigation measures to address all potentially significant impacts identified in the agency’s CEQA analysis.¹⁵ An adequate EIR must contain facts and analysis, not just an agency’s conclusions.¹⁶

CEQA “projects” include activities undertaken by public agencies that cause direct physical changes to the environment.¹⁷ Following preliminary review of a project to determine whether an activity is subject to CEQA, a lead agency is required to prepare an initial study to identify several key objectives, including whether to prepare an EIR or negative declaration, as well as the appropriate process to be used for analysis of the project’s environmental effects and potential mitigation.¹⁸ CEQA requires an agency to analyze the potential environmental impacts of its proposed actions in an EIR except in certain limited circumstances.¹⁹

¹¹ Cal. Code Regs., tit. 14, § 15002, subd. (a)(1) (“CEQA Guidelines”); *Berkeley Keep Jets Over the Bay v. Bd. of Port Comm’rs.* (2001) 91 Cal.App.4th 1344, 1354 (“*Berkeley Jets*”); *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810.

¹² *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810.

¹³ *Citizens of Goleta Valley v. Bd. of Supervisors* (1990) 52 Cal.3d 553, 564 (internal citations omitted).

¹⁴ CEQA Guidelines, § 15151; *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 721-722.

¹⁵ Pub. Resources Code, §§ 21002-21002.1.

¹⁶ See *Citizens of Goleta Valley v. Bd. of Supervisors* (1990) 52 Cal.3d 553, 568.

¹⁷ *County of Ventura v. City of Moorpark* (2018) 24 Cal.App.5th 377, 385.

¹⁸ CEQA Guidelines, §§ 15060, 15063, subd. (c).

¹⁹ See, e.g., Pub. Resources Code, § 21100.
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III. CEQA PROHIBITS PIECEMEALING OF A PROJECT

CEQA prohibits a project proponent from seeking approval of a project by breaking it up, piecemeal fashion, in order to take advantage of environmental exemptions or less rigorous CEQA review for smaller projects.²⁰ The law mandates that “environmental considerations do not become submerged by chopping a large project into many little ones—each with a minimal potential impact on the environment—which cumulatively may have disastrous consequences.”²¹ As courts have explained, “... [t]he CEQA process is intended to be a careful examination, fully open to the public, of the environmental consequences of a given project, *covering the entire project, from start to finish.*”²²

Specifically, the description of a project must describe a larger future project and analyze its effects if (1) the larger project is a reasonably foreseeable consequence of the initial project, and (2) the future project will be significant in that it will likely change the scope or nature of the initial project or its environmental effects.²³ This rule applies even if (1) the Lead Agency has not yet formally approved the larger future project, and (2) it is impossible to predict with precision the environmental effects of less-than-definite future plans, as long as these effects can be discussed at least in general terms.²⁴ Difficulty in describing the effects of less-than-definite future plans does not excuse an agency from CEQA compliance, especially since CEQA provides mechanisms, such as Program EIRs and tiering of EIRs, to facilitate environmental analysis of larger future projects.²⁵

Furthermore, “[t]iering does not excuse the lead agency from adequately analyzing reasonably foreseeable significant environmental impacts of the project and does not justify deferring such analysis to a later tier EIR or negative declaration.”²⁶ If a program-level EIR has been released, it is nonetheless still not appropriate to piecemeal later tiers in order to avoid environmental review.

²⁰ *Arviv Enterprises, Inc. v. South Valley Area Planning Com.* (2002) 101 Cal. App. 4th 1336, 1340.

²¹ *Bozung v. LAFCO* (1975) 13 Cal.3d 263, 283-84; *City of Santee v. County of San Diego*, (1989) 214 Cal.App.3d 1438, 1452; *Citizens Assn. for Sensible Development of Bishop Area v. County of Inyo* (1985) 172 Cal.App.3d 151, 165.

²² *Natural Resources Defense Council v. City of Los Angeles* (2002) 103 Cal.App.4th 268, (emphasis added).

²³ *Laurel Heights Improvement Assn. v. Regents of Univ. of California* (1988) 47 Cal. 3d 376, 396.

²⁴ *Id.* at 398-99.

²⁵ *Id.* at 399, n.8.

²⁶ 14 C.C.R. § 15152 (b); *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal. 4th 412, 431, 150 P.3d 709, 720.

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A. Development of Multiple Components of the Original Morgan Hill Technology Center Project is Reasonably Foreseeable and Cumulative Impacts Must be Analyzed Together in an EIR

Similar to *Laurel Heights*, in which the Court found that future development was reasonably foreseeable and the university had to include environmental analysis of the anticipated future uses of the site, the Project is just one fragment of anticipated development of the site, which was already analyzed in an EIR.²⁷ Though the Applicant abandoned the larger project in September 2020, the proposed Project is merely a selection excerpted from that larger development, pulled out to be considered on a smaller scale.

Considering the sequence of events associated with development at the site, it is difficult to imagine a scenario in which the Applicant and the City are not attempting to piecemeal a large project into several smaller ones that will require less rigorous CEQA review—or none at all, as the City alleges here. The larger project, the impacts of which the DEIR concluded would be numerous, significant and, in some cases, unavoidable, was abruptly abandoned by the Applicant after considerable pushback from the community.²⁸ When the Applicant submitted the much-abbreviated application for the currently proposed Project, the City pointed out that a Vesting Tentative Map of five or more parcels would require additional CEQA review, after which the Applicant immediately revised the Project, reconfiguring the proposed site into four parcels.²⁹

Moreover, the residential portion of the larger project had been evaluated in the Technology Center DEIR together with all project components. It is now being developed concurrently under a separate application—and separate environmental review.³⁰ As the court in *Laurel Heights* found, “this is not the type of situation where it is unclear as to whether a parcel of land will be developed or as to whether activity will commence.”³¹ In fact, though no formal land use entitlement applications had been filed with the City at the time, the Technology Center DEIR acknowledged that “[t]he future development of [the residential component] is

²⁷ *Id.* at 399.

²⁸ See, e.g., public comment letters, <https://www.morgan-hill.ca.gov/1966/Morgan-Hill-Technology-Park>.

²⁹ See City Letter of Application Incompleteness (Jan. 11, 2021), p. 3; Applicant Response Letter (Feb. 1, 2021), p. 8.

³⁰ Morgan Hill Planning Commission Staff Report, p. 6.

³¹ *Laurel Heights*, 47 Cal.3d at 395.

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reasonably foreseeable given the existing land use designation and zoning.”³² Now that that foreseeable development has come to pass, the adjacent development projects are being evaluated separately.

By now omitting from its environmental review the reasonably foreseeable development of all projects at the same sites originally analyzed in the EIR for the Technology Center Project, the City has impermissibly engaged in piecemealing and must prepare an EIR for the entire site which fully describes, analyzes and mitigates potentially significant impacts.

IV. TIERING

In preparing an initial study, a lead agency is required to identify the appropriate level of environmental review and must determine whether a previously prepared EIR could be used with the project.³³ Tiering, in which the analysis of general matters contained in a broader EIR, such as one prepared for a general plan, is used to frame the general discussion of a later, narrower project and its specific issues and impacts, can be appropriate when considering large-scale planning approval or separate but related projects. A later EIR shall be required when the initial study or other analysis finds that the later project may cause significant effects on the environment that were not adequately addressed in the prior EIR.³⁴

Where a program EIR has been prepared that could apply to a later project, CEQA requires the lead agency to conduct a two-step process to examine the later project to determine whether additional environmental review is required.³⁵ First, the agency must consider whether the project will result in environmental effects that were not examined in the program EIR.³⁶ Whether a later activity is within the scope of a program EIR is a factual question that the lead agency determines based on substantial evidence in the record.³⁷ If the agency finds the activity would have environmental effects that were not examined in the program EIR, it must

³² Technology Center DEIR, p. 17.

³³ CEQA Guidelines, §§ 15060, 15063, subd. (c).

³⁴ 14 C.C.R. § 15152(f).

³⁵ See CEQA Guidelines, 15168, subd. (c); S. Kostka & M. Zischke, Practice Under the California Environmental Quality Act 2d, § 10.16 (Mar. 2018).

³⁶ CEQA Guidelines, § 15168, subd. (c)(1).

³⁷ *Id.* at (c)(2).

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then prepare an initial study to determine whether to prepare an EIR or negative declaration to address those effects.³⁸

Second, if the agency determines the project is covered by the program EIR, it must then consider whether any new or more significant environmental effects could occur due to changes in circumstances or project scope, or new information that could not have been considered in the program EIR.³⁹ More specifically, pursuant CEQA Guidelines section 15162, subsequent or supplemental environmental review is required when one or more of the following events occur:

- (1) Substantial changes are proposed in the project which will require major revisions of the previous EIR due to the involvement of new significant effects or a substantial increase in the severity of previously identified effects;
- (2) Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or
- (3) New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the negative declaration was adopted, shows any of the following:
 - (A) The project will have one or more significant effects not discussed in the previous EIR or negative declaration;
 - (B) Significant effects previously examined will be substantially more severe than shown in the previous EIR;
 - (C) Mitigation measures or alternatives previously found not to be feasible would in fact be feasible, and would substantially reduce one or more significant effects of the

³⁸ CEQA Guidelines, § 15168, subd. (c)(1).

³⁹ CEQA Guidelines, § 15168, subd. (c)(2).

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project, but the project proponents decline to adopt the mitigation measure or alternative; or

- (D) Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.⁴⁰

The terms “supplement” and “subsequent” are not interchangeable. “A supplement to an EIR is a document that contains additions or changes needed to make the previous EIR adequate ... In contrast ... a subsequent EIR revises the previous EIR, rather than simply supplements it.”⁴¹ With subsequent review the “revised EIR must receive the same circulation and review as the original EIR.”⁴²

Similarly, Section 15183 provides a streamlined process for environmental review of projects that are “consistent with the development density established by existing zoning, community plan, or general plan policies for which an EIR was certified,” authorizing agencies to avoid duplicative environmental review “except as might be necessary to examine whether there are project-specific significant effects which are peculiar to the project or its site.”⁴³

Courts have held that if “no EIR has been prepared for a nonexempt project, but substantial evidence in the record supports a fair argument that the project may result in significant adverse impacts, the proper remedy is to order preparation of an EIR.”⁴⁴ The fair argument standard creates a “low threshold” favoring environmental review through an EIR, rather than through issuance of a negative declaration.⁴⁵ An agency’s decision not to require an EIR can be upheld only when there is no credible evidence to the contrary.⁴⁶

⁴⁰ CEQA Guidelines, § 15162, subd. (a)(1)-(3); see also Pub. Resources Code, § 21166.

⁴¹ S. Koskte & M. Zischke, Practice Under the Environmental Quality Act 2d., § 19.4, p. 19-8 (Mar. 2018).

⁴² S. Koskte & M. Zischke, Practice Under the Environmental Quality Act 2d., § 19.4, p. 19-8, (Mar. 2018), emphasis added; see also CEQA Guidelines, §§ 15162, 15163.

⁴³ 14 C.C.R. § 15183(a).

⁴⁴ See, e.g., *Communities for a Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal.4th 310, 319-320.

⁴⁵ *Citizens Action to Serve All Students v. Thornley* (1990) 222 Cal.App.3d 748, 754.

⁴⁶ *Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th, 1307, 1318; see also *Friends of B Street v. City of Hayward* (1980) 106 Cal.App.3d 988, 1002 (“If there was substantial evidence that the proposed

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A. The Project Was Not Analyzed by the 2035 General Plan EIR

In 2016, the Morgan Hill City Council certified the Morgan Hill 2035 General Plan EIR analyzing “land use, urban design, circulation, public services, natural resources, and safety goals, policies, and actions to guide investment and development” in the City over a 20-year period. Prepared as a program EIR pursuant to CEQA Guidelines Section 15168, the EIR states that its intended purpose is to serve as a long-term “policy document[] guiding future development activities and City actions.”⁴⁷

The Staff Report asserts that the General Plan EIR “adequately addressed the potential environmental impacts associated with the comprehensive update of the City’s constitution for growth including certain implementation activities and provided for streamlining of the environmental review process for projects proposed subsequent to the certification of the EIR.”⁴⁸ The Report’s entire analysis of the EIR’s evaluation of impacts from activities specific to the Project consists of the following paragraph:

The proposed project entails dividing the subject property and constructing buildings consistent with the General Plan. The division and development of parcels consistent with the General Plan was addressed in the program EIR for the 2035 General Plan and, therefore, pursuant to Section 15162 and Section 15183 of the State CEQA Guidelines, no additional review under the California Environmental Quality Act is required for the proposed project.⁴⁹

It is unclear from this description how the General Plan EIR’s analysis of development and population growth over the next 15 years applies to the Project’s specific impacts, let alone how those impacts are examined in enough detail as to make further environmental review unnecessary. The Staff Report appears to conclude that, in light of the Project’s proposal to divide “the subject property and construct[] buildings,” the General Plan EIR’s analysis of the “division and development of parcels” is sufficiently adequate that no further review is

project might have a significant environmental impact, evidence to the contrary is not sufficient to support a decision to dispense with preparation of an EIR and adopt a negative declaration, because it could be ‘fairly argued’ that the project might have a significant environmental impact”).

⁴⁷ General Plan EIR, p. 2-2.

⁴⁸ Staff Report, p. 19.

⁴⁹ Staff Report, p. 15.

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warranted. A thorough search of the General Plan EIR, however, reveals that it does not analyze impacts from specific subdivisions or construction whatsoever. In fact, specifics of any kind associated with the Project—environmental setting, baseline, potential impacts from development, subdivision or construction, mitigation—are nowhere to be found in the EIR.

In its insistence that the General Plan EIR's analysis of future impacts renders any further environmental review unnecessary, the Staff Report seems to unequivocally reject the EIR's stated objective with respect to its status as a program EIR. Recognizing the utility of program EIRs when a project "consists of a series of actions related to the issuance of rules, regulations, and other planning criteria," the EIR distinguishes itself as a document that serves to guide policy and City actions over time, rather than as a benchmark for specific project impacts:

No specific development projects are proposed as part of the proposed Project. Therefore, this EIR is a program-level EIR that analyzes the potential significant environmental effects of the adoption of the proposed Project. As a program EIR, it is not project-specific, and does not evaluate the impacts of individual projects that may be proposed under the General Plan. Such subsequent projects will require a separate environmental review, when applicable as required by CEQA, which could be in the form of a Negative Declaration, Mitigated Negative Declaration, or a Subsequent EIR, to secure the necessary development permits. Therefore, while subsequent environmental review may be tiered from this EIR, this EIR is not intended to address project-specific impacts of individual projects.⁵⁰

The City had to make a significant effort to disregard this statement in the EIR, whose preparers went so far as to announce no less than 7 times that it was not to be used to evaluate individual projects.⁵¹ The City cannot do an about-face now to claim that its own General Plan EIR analyzed something which the City has previously and unequivocally stated it did not.

Section 15168's two-step inquiry of a program EIR's applicability to later activities holds that "if a later activity would have effects that were not examined in the program EIR, a new initial study would need to be prepared leading to either an

⁵⁰ General Plan EIR, p. 2-2.

⁵¹ See, e.g., pp. 2-2, 3-1fn.2, 3-42, 4.3-34, 4.3-37, 4.3-38, 4.3-53.
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EIR or a negative declaration.”⁵² The City insists that, pursuant to sections 15162 and 15183, the Project is within the scope of the program EIR and no subsequent EIR is required. “Whether a later activity is within the scope of a program EIR is a factual question that the lead agency determines based on substantial evidence in the record.”⁵³ The City does not offer any substantial evidence to support its dubious conclusion. At most, it suggests a vague association between the EIR’s illusory “division and development of parcels” and the Project’s subdivision and development.

In contrast, as demonstrated below and supported by substantial evidence, the Project is likely to result in significant impacts to transportation, air quality, and public health—impacts specific to its development and that were not contemplated by the General Plan EIR. Since the EIR, by its own admission, did not evaluate the impacts of any specific projects, a subsequent EIR to examine “project-specific significant effects which are peculiar to the project or its site” should be prepared.⁵⁴

V. ENVIRONMENTAL REVIEW IS REQUIRED FOR DISCRETIONARY ACTIONS

In addition to claiming that the program-level General Plan EIR adequately analyzed impacts of future development, including the Project, the City advised the Applicant that the Project was further excused from CEQA review because “Environmental Review is not required for Design Review or Tentative Parcel Map applications.”⁵⁵ This conclusion is patently false for the reasons that follow.

A. Design Review

The City’s conclusion that environmental review is not required for Design Review is incorrect. Per the City’s own Municipal Code, a Design Review permit, which is required for significant projects like the Applicant’s,⁵⁶ “is a discretionary action that enables the city to ensure that proposed development exhibits high

⁵² 14 C.C.R. § 15168(c)(1).

⁵³ *Id.*

⁵⁴ 14 C.C.R. § 15183(a).

⁵⁵ City of Morgan Hill Development Services Center Completeness Comment Letter, February 16, 2021, p. 3.

⁵⁶ Municipal Code 18.108.040(D)(2) states that “[a]ny structure with more than seventy-five thousand square feet of floor area is presumed significant.”

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quality design consistent with the general plan and any other applicable specific plan or area plan adopted by the city council.”⁵⁷ CEQA clearly requires environmental review of all “discretionary projects proposed to be carried out or approved by public agencies.”⁵⁸

The Staff Report notes the receipt of a letter on behalf of the Applicant asserting that the Planning Commission “lacks discretion to address potential environmental effects, making the Project ministerial for CEQA purposes.”⁵⁹ Analogizing to a case in which a court found that approval of a design review permit limited the reviewing agency to consideration of design-related issues, the letter attempts to establish that the Planning Commission has no discretion to consider the Project’s potential environmental impacts. This is because, as the letter contends, the discretion granted to the Commission by the Municipal Code refers only to discretionary review of a project’s design elements. The letter’s interpretation of the case law, however, suffers from two fundamental flaws: (1) it attempts to apply the court’s reasoning to an inapposite set of facts, and (2) it overlooks the other discretionary approval sought for this Project, the Vesting Tentative Parcel Map.

The letter attempts to draw parallels where they do not exist, asserting that “[l]ike the fourteen design review criteria applied by St. Helena in *McCorkle*, the City’s design review criteria are limited to design review and not environmental issues.”⁶⁰ In that case, the St. Helena City Council found the local design review ordinances prevented it from disapproving the project for non-design related matters. Those ordinances did not include any required findings related to CEQA review or otherwise allow the agency to “shape the project in any way which could respond to any of the concerns which might be identified in an environmental impact report.”⁶¹ Here, on the other hand, Morgan Hill’s design review ordinance requires a finding that a project has been reviewed in compliance with CEQA, as well as a determination that it will not be “detrimental to the public health, safety, or welfare or materially injurious to the properties or improvements in the vicinity”—distinctly discretionary actions that require consideration of the Project’s effects on the environment and potential mitigation.⁶²

⁵⁷ MHMC 18.108.040(A).

⁵⁸ Pub. Resources Code § 21080(a).

⁵⁹ Staff Report, p. 19.

⁶⁰ Staff Report, p. 72.

⁶¹ *McCorkle Eastside Neighborhood Group v. City of St. Helena* (2018) 31 Cal.App 5th 80, 90.

⁶² Zoning Code, § 18.108.040.

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Furthermore, even if a design permit did limit the Planning Commission to consideration only of design-related elements, the Project also seeks a Vesting Tentative Parcel Map, a discretionary permit subject to the provisions of CEQA.⁶³ As discussed above, it is well established that a project cannot be divided into smaller parts that individually will not have a significant effect on the environment. This rule is applicable even if one of the smaller parts might require only ministerial, rather than discretionary, approval.⁶⁴ Moreover, when a project “involves an approval that contains elements of both a ministerial action and a discretionary action, the project will be deemed to be discretionary.”⁶⁵

B. Vesting Tentative Parcel Map

The Project requires a Vesting Tentative Parcel Map to subdivide the existing two parcels into four separate parcels, approval of which requires that the Tentative Map is consistent with all applicable city ordinances, general and specific plans adopted by the city, and the State Subdivision Map Act (“Map Act”).⁶⁶ The Map Act, as well as the Morgan Hill Municipal Code, requires specific environmental findings before a parcel map can be approved. A map shall not be approved, for example, if its design or proposed improvements are “likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat,” or are “likely to cause serious public health problems.”⁶⁷ Regulating land subdivisions in Morgan Hill, according to the Municipal Code, is “necessary for the preservation of the public health, safety and general welfare, to promote orderly growth and development and to promote open space, conservation, protection and proper use of land and to insure provision for adequate traffic circulation, utilities and services.”⁶⁸

Once again, making these findings confers on the agency a discretionary duty to determine compliance with the statute.⁶⁹ This discretion, furthermore, involves

⁶³ See, e.g., Pub. Resources Code § 21080: “this division shall apply to discretionary projects proposed to be carried out or approved by public agencies, including, but not limited to, the enactment and amendment of zoning ordinances, the issuance of zoning variances, the issuance of conditional use permits, and the approval of tentative subdivision maps ...”

⁶⁴ *Orinda Assoc. v. Board of Supervisors* (1986) 182 Cal.App.3d 1145, 1171–1172.

⁶⁵ 14 C.C.R. § 15268(d).

⁶⁶ MHMC § 17.24.050 A; 17.24.070 A; .

⁶⁷ Gov. Code § 66474(e), (f); MHMC § 17.20.100.

⁶⁸ MHMC, § 17.04.020.

⁶⁹ Pub. Res. Code § 21080(a); *Rominger v. County of Colusa* (2014) 229 Cal.App.4th 690. 5175-002acp

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consideration of activities that have the “potential to cause a direct physical change or a reasonably foreseeable indirect physical change in the environment.”⁷⁰

The City, in an exercise of this discretionary duty, states in the Staff Report that the Project “will not be detrimental to the public health, safety, or welfare, and will not be materially injurious to the properties or improvements in the vicinity.”⁷¹ As it had previously concluded that no environmental review was required,⁷² however, it is unclear how it reached this determination, and no substantial evidence is offered in support of this conclusory statement. In addition, as discussed in Section VI. below, there is substantial evidence demonstrating that the Project is likely to have potentially significant and unmitigated impacts on air quality, public health, climate change, and traffic. As a result of these unmitigated impacts, the Project fails to comply with the Map Act and Municipal Code and the City cannot make the requisite findings to approve the Project’s Tentative Map.

VI. THE CITY MUST PREPARE AN EIR TO ANALYZE THE PROJECT’S POTENTIALLY SIGNIFICANT ENVIRONMENTAL IMPACTS THAT WERE NOT ANALYZED IN THE MORGAN HILL 2035 GENERAL PLAN EIR

Agencies must fully disclose all potentially significant impacts of a project, and must implement all feasible mitigation to reduce those impacts to less than significant levels. The lead agency’s significance determination with regard to each impact must be supported by accurate scientific and factual data.⁷³ An agency cannot conclude that an impact is less than significant unless it produces rigorous analysis and concrete substantial evidence justifying the finding.⁷⁴

Moreover, the failure to provide information required by CEQA is a failure to proceed in the manner required by CEQA.⁷⁵ Challenges to an agency’s failure to proceed in the manner required by CEQA, such as the failure to disclose

⁷⁰ *Id.*

⁷¹ Staff Report, p. 16.

⁷² Asserting that the Project “is consistent with the development projections analyzed in the Morgan Hill 2035 General Plan program EIR for the project site” and that it “is designed to be consistent with the development standards in the General Plan and Zoning Code” the City concluded that no further environmental review would be required. Staff Report, p. 52.

⁷³ 14 CCR § 15064(b).

⁷⁴ *Kings Cty. Farm Bur. v. Hanford* (1990) 221 Cal.App.3d 692, 732.

⁷⁵ *Sierra Club v. State Bd. Of Forestry* (1994) 7 Cal.4th 1215, 1236.

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information about a project's environmental effects or alternatives, are subject to a less deferential standard than challenges to an agency's factual conclusions.⁷⁶ In reviewing challenges to an agency's approval of an EIR based on a lack of substantial evidence, the court will "determine de novo whether the agency has employed the correct procedures, scrupulously enforcing all legislatively mandated CEQA requirements."⁷⁷

As explained above, where a program EIR has been prepared that can apply to a later project, CEQA requires the lead agency to conduct a two-step process to examine the later project to determine whether additional environmental review is required.⁷⁸ First, the agency must consider whether the project will result in environmental effects that were not examined in the program EIR.⁷⁹ If the later activity involves site-specific operations, as it does here, the City must evaluate the site and activity to determine whether the environmental effects were covered in the program EIR and document its findings by a checklist.⁸⁰ If the agency finds the activity would have environmental effects that were not examined in the program EIR, it must then prepare an initial study to determine whether to prepare an EIR or negative declaration to address those effects.⁸¹

Because the 2035 General Plan EIR did not address any project-specific impacts of future projects, significant effects resulting from the Project will be substantially more severe than anything analyzed in the General Plan EIR. Without completing additional environmental analysis, the Project cannot satisfy the requirements for disclosure and analysis under CEQA and must complete a subsequent EIR.

⁷⁶ *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 435.

⁷⁷ *Id.*, *Madera Oversight Coal., Inc. v. County of Madera* (2011) 199 Cal. App. 4th 48, 102.

⁷⁸ See CEQA Guidelines, 15168, subd. (c); S. Kostka & M. Zischke, Practice Under the California Environmental Quality Act 2d, § 10.16 (Mar. 2018).

⁷⁹ CEQA Guidelines, § 15168, subd. (c)(1).

⁸⁰ 14 CCR §15168(c)(4).

⁸¹ CEQA Guidelines, § 15168, subd. (c)(1).

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A. Air Quality

i. Updated Analysis Provides Substantial Evidence of Potentially Significant Air Quality Impacts

Using Project-specific information, as well as site-specific information such as land use type, meteorological data, total acreage, and typical equipment, experts from SWAPE estimated the Project's construction and operational emissions using the most updated version of CalEEMod.⁸² SWAPE found that emissions of VOCs from construction at the Project site would be 268.96 lb/day, nearly twice the BAAQMD threshold of 137 lb/day.⁸³

This is new information about significant impacts that were not analyzed in the General Plan EIR because this specific development project was not before the City at the time the General Plan was approved. The results substantiate the conclusion that impacts to air quality will be significant and must be analyzed and mitigated in a project-specific EIR.

ii. A Health Risk Analysis Must be Prepared

SWAPE found that potentially significant impacts to public health were undisclosed and the Project failed to provide sufficient information regarding the Project's potential health risk impacts.⁸⁴ The Project will produce emissions of diesel particulate matter ("DPM") through the exhaust stacks of construction equipment throughout its construction period, and will generate daily vehicle trips, which will generate additional exhaust emissions and continue to expose nearby sensitive receptors to DPM emissions.⁸⁵ The City, however, failed to make a reasonable effort to connect the Project's construction-related and operational toxic air contaminant ("TAC") emissions to the potential health risks posed to nearby receptors.⁸⁶ These pose a significant risk to public health, and should be disclosed and mitigated in an EIR.

⁸² SWAPE Comments, p. 3.

⁸³ Id.; California Environmental Quality Act Air Quality Guidelines. BAAQMD, May 2017, available at: https://www.baaqmd.gov/~media/files/planning-and-research/ceqa/ceqa_guidelines_may2017-pdf.pdf?la=en, p. 2-2, Table 2-1.

⁸⁴ SWAPE Comments, p. 4.

⁸⁵ Id.

⁸⁶ Id.

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CEQA requires that a lead agency analyze the human health effects of the air emissions generated by a development project.⁸⁷ Additionally, as SWAPE explained, the Office of Environmental Health Hazard Assessment (“OEHHA”), recommends that exposure from projects lasting more than 6 months be evaluated for the duration of the project and recommends that an exposure duration of 30 years be used to estimate individual cancer risk for the maximally exposed individual resident (“MEIR”).⁸⁸

SWAPE calculated the Project’s excess cancer risk to the MEIR using applicable HRA methodologies prescribed by OEHHA:

Consistent with the default CalEEMod construction schedule, the annualized average concentration for construction was used for the entire third trimester of pregnancy (0.25 years) and the first 1.28 years of the infantile stage of life (0 – 2 years). The annualized averaged concentration for operation was used for the remainder of the 30-year exposure period, which makes up the remainder of the infantile stage of life, and the entire child and adult stages of life (2 – 16 years) and (16 – 30 years), respectively.⁸⁹

Consistent with OEHHA, as recommended by SCAQMD, BAAQMD, and SJVAPCD guidance, we used Age Sensitivity Factors (“ASFs”) to account for the heightened susceptibility of young children to the

⁸⁷ CEQA Appendix G, Section III.D; CEQA Guidelines section 15126.2(a) (“health and safety problems caused by the physical changes” that the proposed project will precipitate); *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 516; *Berkeley Keep Jets. v. Bd. of Port Comrs.* (“*Berkeley Jets*”) (2001) 91 Cal.App.4th 1344, 1369; *Bakersfield*, 124 Cal.App.4th at 1219–1220.

⁸⁸ SWAPE Comments, p. 4; Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments. OEHHA, February 2015, *available at*: http://oehha.ca.gov/air/hot_spots/2015/2015GuidanceManual.pdf, p. 8-6, 8-15

⁸⁹ SWAPE Comments, p. 5.
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carcinogenic toxicity of air pollution.^{90, 91, 92, 93} According to this guidance, the quantified cancer risk should be multiplied by a factor of ten during the third trimester of pregnancy and during the first two years of life (infant) as well as multiplied by a factor of three during the child stage of life (2 – 16 years). Furthermore, in accordance with the guidance set forth by OEHHA, we used the 95th percentile breathing rates for infants.⁹⁴ Finally, according to BAAQMD guidance, we used a Fraction of Time At Home (“FAH”) value of 0.85 for the 3rd trimester and infant receptors, 0.72 for child receptors, and 0.73 for the adult receptors.⁹⁵ We used a cancer potency factor of 1.1 (mg/kg-day)⁻¹ and an averaging time of 25,550 days.

The resulting impacts, SWAPE found, were highly significant and demonstrate a high risk to the health and welfare of the public from the Project:

The excess cancer risk to adults, children, infants, and during the 3rd trimester of pregnancy at the MEIR located approximately 300 meters away, over the course of Project construction and operation, utilizing

⁹⁰ “Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments.” OEHHA, February 2015, *available at*:

<https://oehha.ca.gov/media/downloads/crn/2015guidancemanual.pdf>.

⁹¹ “Draft Environmental Impact Report (DEIR) for the Proposed The Exchange (SCH No. 2018071058).” SCAQMD, March 2019, *available at*: <http://www.aqmd.gov/docs/default-source/ceqa/comment-letters/2019/march/RVC190115-03.pdf?sfvrsn=8>, p. 4.

⁹² “California Environmental Quality Act Air Quality Guidelines.” BAAQMD, May 2017, *available at*: http://www.baaqmd.gov/~media/files/planning-and-research/ceqa/ceqa_guidelines_may2017-pdf.pdf?la=en, p. 56; see also “Recommended Methods for Screening and Modeling Local Risks and Hazards.” BAAQMD, May 2011, *available at*:

<http://www.baaqmd.gov/~media/Files/Planning%20and%20Research/CEQA/BAAQMD%20Modeling%20Approach.ashx>, p. 65, 86.

⁹³ “Update to District’s Risk Management Policy to Address OEHHA’s Revised Risk Assessment Guidance Document.” SJVAPCD, May 2015, *available at*: <https://www.valleyair.org/busind/pto/staff-report-5-28-15.pdf>, p. 8, 20, 24.

⁹⁴ “Supplemental Guidelines for Preparing Risk Assessments for the Air Toxics ‘Hot Spots’ Information and Assessment Act,” June 5, 2015, *available at*: <http://www.aqmd.gov/docs/default-source/planning/risk-assessment/ab2588-risk-assessment-guidelines.pdf?sfvrsn=6>, p. 19.

“Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments.” OEHHA, February 2015, *available at*:

<https://oehha.ca.gov/media/downloads/crn/2015guidancemanual.pdf>

⁹⁵ “Air Toxics NSR Program Health Risk Assessment (HRA) Guidelines.” BAAQMD, January 2016, *available at*: http://www.baaqmd.gov/~media/files/planning-and-research/rules-and-regs/workshops/2016/reg-2-5/hra-guidelines_clean_jan_2016-pdf.pdf?la=en

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ASFs, are approximately 2.4, 15, 23, and 1.1 in one million, respectively. We estimate an excess cancer risk of approximately 42 in one million over the course of a residential lifetime (30 years), utilizing ASFs. The infant, child, and lifetime cancer risks exceed the BAAQMD threshold of 10 in one million, thus resulting in a potentially significant impact.

Neither the General Plan EIR nor the Staff Report disclose this potentially significant health risk impact from the Project. This is new information about significant impacts that were not analyzed in the General Plan EIR because this specific development project was not before the City at the time the General Plan was approved. The City must prepare an EIR to fully disclose the health risk posed to nearby, existing receptors from Project construction and operation, and to require binding mitigation measures to reduce the health impacts from the Project's DPM emissions to less than significant levels.

iii. GHG Emissions Will be Significant

Because the City failed to conduct any project-specific impact analysis, the Staff Report and supporting documentation lack sufficient information regarding the Project's potentially significant GHG emissions.

SWAPE conducted an analysis of the Project's GHG emissions utilizing its CalEEMod model, with the 2030 "Substantial Progress" threshold of 660 metric tons of carbon dioxide equivalents per year ("MT CO₂e/year").⁹⁶ The CalEEMod output files, modeled by SWAPE with Project-specific information, showed "the Project's mitigated emissions, which include approximately 1,389 MT CO₂e of total construction emissions (sum of 2021 and 2022 emissions) and approximately 5,250 MT CO₂e/year of annual operational emissions (sum of area, energy, mobile, waste,

⁹⁶ SWAPE Comments, p. 9; See: JEFFERSON UNION HIGH SCHOOL DISTRICT FACULTY & STAFF HOUSING PROJECT AIR QUALITY & GREENHOUSE GAS ASSESSMENT. City of Daly City, June 2019, available at: https://files.ceqanet.opr.ca.gov/257215-2/attachment/k-aC8VdC7LV3xz75yuUmtGiiExH-Y7HEPQ-dU-YIxuhNp95Dx9bK_TbVP3sWar00-Zx87dh7ji80vbRH0, p. 7; "TO 20-01 PAPÉ MACHINERY AIR QUALITY & GREENHOUSE GAS EMISSIONS ASSESSMENT." City of Fremont, February 2020, available at: "SOLAR4AMERICA ICE FACILITY EXPANSION AIR QUALITY AND GREENHOUSE GAS EMISSION ASSESSMENT." City of San Jose, September 2019, available at: https://www.fremont.gov/DocumentCenter/View/44974/4_Appendix-1_Air-Quality-GHG-Assessment, p. 18; and <https://www.sanjoseca.gov/Home/ShowDocument?id=45200>, p. 6.

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and water-related emissions). When compared to the Project's net annual GHG emissions of 853 MT CO₂e/year to the Bay Area Air Quality Management District's ("BAAQMD") 2030 "Substantial Progress" threshold of 660 MT CO₂e/year, SWAPE found a potentially significant GHG impact, exceeding the "Substantial Progress" threshold by eightfold.⁹⁷

The Project's potentially significant GHG impacts are new information that was not analyzed in the General Plan EIR which must be fully disclosed and mitigated in an EIR.

B. Transportation

The City asserts that CEQA review is not required for the Project because the General Plan EIR evaluated impacts specific enough to release the Applicant or agency from any duty to perform subsequent environmental review. As Mr. Smith points out, however, the projected 2035 impacts to the intersections surrounding the Project site that are listed in the General Plan EIR are far less significant than those anticipated as a result of the Morgan Hill Technology Center in that project's DEIR.⁹⁸ Some of the relevant intersections, meanwhile, were not evaluated at all in the General Plan EIR. Impacts resulting from specific development of the Project site were clearly not evaluated in the General Plan EIR, necessitating further environmental review.⁹⁹

⁹⁷ SWAPE Comments, p. 9; See: "JEFFERSON UNION HIGH SCHOOL DISTRICT FACULTY & STAFF HOUSING PROJECT AIR QUALITY & GREENHOUSE GAS ASSESSMENT." City of Daly City, June 2019, *available at*: https://files.ceqanet.opr.ca.gov/257215-2/attachment/k-aC8VdC7LV3xz75yuUmtGiiExH-Y7HEPQ-dU-YIxuhNp95Dx9bK_TbVP3sWar00-Zx87dh7ji80vbRRH0, p. 7; "TO 20-01 PAPÉ MACHINERY AIR QUALITY & GREENHOUSE GAS EMISSIONS ASSESSMENT." City of Fremont, February 2020, *available at*: "SOLAR4AMERICA ICE FACILITY EXPANSION AIR QUALITY AND GREENHOUSE GAS EMISSION ASSESSMENT." City of San Jose, September 2019, *available at*: https://www.fremont.gov/DocumentCenter/View/44974/4_Appendix-1_Air-Quality-GHG-Assessment, p. 18; and <https://www.sanjoseca.gov/Home/ShowDocument?id=45200>, p. 6.

⁹⁸ The General Plan EIR estimated that the intersection of Cochrane Road and DePaul Drive would operate at average delays per vehicle of 18.6 seconds and 19.8 seconds in the morning and evening peak periods, respectively. It found that the intersection of Cochrane Road and Mission View Drive would operate at average delays per vehicle of 20.2 seconds and 19.0 seconds in the morning and evening peaks. These values are characteristic of what the Morgan Hill Technology Center DEIR reports as *existing conditions*. It estimates significantly higher impacts to the intersections as a result of that larger project. General Plan EIR 4.14-43.

⁹⁹ Smith Comments, p. 4.

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Furthermore, Mr. Smith explains, the DEIR prepared for the Morgan Hill Technology Center project acknowledged that the General Plan EIR did not contemplate the development at issue in that project.¹⁰⁰ As one of its project alternatives, it compared potential project impacts with those estimated in the General Plan EIR buildout of the site. A Traffic Analysis concluded that, using the City's Travel Demand Forecasting Model and the General Plan's 20-year estimation for buildout of the site, VMT would increase significantly with development of the Technology Park project.¹⁰¹ That project, the analysis determined, would result in nearly double the number of miles traveled.¹⁰² The DEIR, however, attempted to cast doubt on the veracity of this conclusion by asserting that the development projections included in the General Plan EIR were "significantly lower" in intensity and "not reflective of the maximum allowed uses under the existing General Plan designations and zoning districts."¹⁰³ The DEIR acknowledges, therefore, that the Technology Park project and its specific development could not have been under consideration in the General Plan's environmental review. Likewise, the General Plan could not have contemplated this Project, as the larger Technology Center encompassed this Project's development.¹⁰⁴

Mr. Smith examined the DEIR prepared for the larger project proposed at the site. The traffic analysis performed for that DEIR, he found, showed highly significant deteriorations at the intersections surrounding the project site, from LOS B or C to LOS F in one or the other of the peak hours:

- The intersection of Cochrane Road with DePaul Drive would deteriorate in the PM peak hour from 18.7 seconds average delay per vehicle and LOS B to 101 seconds per vehicle and LOS F.
- The intersection of Cochrane Road and Mission View Drive would deteriorate in the AM peak hour from 23.0 seconds average delay per vehicle and LOS C to 94.6 seconds per vehicle and LOS F.
- The intersection of Mission View Drive and Half Road would deteriorate from 22.6 seconds average delay per vehicle and LOS C in the PM peak hour to 136.9 seconds and LOS F.¹⁰⁵

¹⁰⁰ *Id.*

¹⁰¹ Technology Park DEIR, p. 160; Technology Park DEIR Traffic Impact Analysis, Appendix H, p. 79.

¹⁰² *Id.*

¹⁰³ Technology Park DEIR, p. 201; Smith Comments, p. 4.

¹⁰⁴ MHMC, Sustainable Building Regulations, § 17.32.040.

¹⁰⁵ Smith Comments, p. 3.

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He further explained: If one takes the trip generation for the RedwoodTech@101 Project as fairly calculated in the section above and assumes its share of responsibility for the delay increments disclosed in the Morgan Hill Technology Center Mixed-Use Project DEIR is proportional to the ratio of its trip generation to that of the whole Mixed-Use Project, then the following results are obtained:

- The RedwoodTech@101 Project would cause the intersection of Cochrane Road with DePaul Drive to deteriorate in the PM peak hour from 18.7 seconds average delay per vehicle and LOS B to approximately 63.55 seconds delay and LOS E in the PM peak.
- The intersection of Cochrane Road and Mission View Drive would deteriorate in the AM peak hour from 23.0 seconds average delay per vehicle and LOS C to approximately 78.99 seconds and LOS E in the AM peak.
- The intersection of Mission View Drive and Half Road would deteriorate from 22.6 seconds average delay per vehicle and LOS C in the PM peak hour to approximately 84.89 seconds and LOS F.¹⁰⁶

“The fact that the revised and renamed Project,” Mr. Smith stated, “could have effects on this scale should have been obvious to the City.”¹⁰⁷ This is new information about significant transportation impacts that were not analyzed in the General Plan EIR because this specific development project was not before the City at the time the General Plan was approved. The City must prepare an EIR to disclose and mitigate these impacts.

C. Noise

Noise expert Deborah Jue, in examining the DEIR prepared for the prior Technology Center Project, found that noise impacts were not properly identified, relying on incorrect distances between the noise sensitive land use and the project construction.¹⁰⁸ This error, she explained, may result in an inaccurate analysis of impacts for the Redwood 101 Project.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ Jue Comments, p. 1: “Construction noise analyses can be done using the shortest distance between the noise sensitive land use and the work area for the project, or it can be done using the distance from the noise sensitive land use to the center, or possibly the centroid of the project. Given 5175-002acp

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The prior analysis identified a significance threshold of 60 dBA hourly Leq for construction noise received at residential land use and 70 dBA hourly Leq received at commercial land use. Ambient noise in excess of these thresholds by at least 5 dBA for more than one year would constitute a significant temporary noise increase.¹⁰⁹

Ms. Jue explained the measurements contained in the prior analysis:

[O]nly a short-term noise measurement was made near the residential neighborhood on Tolusa Place (ST-1) measuring two short 10-minute periods ranging from 58 to 62 dBA Leq; given the location's distance from the main arterial and highway noise sources, it is expected that the ambient at the future residential project, which is being permitted concurrently, would be more similar to the noise measurement data collected at ST-2 near the medical facilities which yielded 64 dBA Leq. According to the prior analysis, construction noise which exceeds 60 dBA Leq and 63 dBA Leq over the course of a year would be significant at the Tolusa Place residents, and construction noise which exceeds 60 dBA Leq and 68 dBA Leq over the course of the year would be significant at the future residential project.¹¹⁰

Putting this one-year allowance into context, Ms. Jue pointed out that the Oakland Noise Ordinance limits long-term construction projects that last more than 10 days to 65 dBA at residential land use and 70 at commercial land use, regardless of the existing ambient conditions. From this perspective, Ms. Jue stated, "the one-year requirement to determine significance seems particularly lenient."¹¹¹

Since the Project is being permitted concurrently with the residential component of the Technology Center project, residents could experience a full year or more of cumulative construction noise. The noise levels at the east residential neighborhood would exceed 60 dBA Leq and the existing environment of 58 dBA would be increased by 5 dBA or more for a period of a year or more.¹¹²

that the extent of the prior project was so large (89 acres), using either of these distances would potentially over-estimate or under-estimate the actual impacts, respectively."

¹⁰⁹ Jue Comments, p. 1.

¹¹⁰ Jue Comments, pp. 1-2.

¹¹¹ Jue Comments, p. 2.

¹¹² Jue Comments, p. 2

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The concurrent residential project would be slightly closer to existing noise sources such as Hwy 101, but still within 50 ft of the project construction. If completed prior to the commercial project, Ms. Jue explained, "some number of homes within the future residential project would be exposed to a significant noise impact as shown in Table 3. The noise levels would exceed 60 dBA Leq and the existing environment of 64 dBA would be increased by 5 dBA or more for a period of a year or more."¹¹³

Table 1 Construction Noise Impacts from Commercial Buildings at Future Residential Project

Construction Phase	Commercial Project Source to Future Residential	
	Distance to Center: 515	Distance to nearest PL 50
Site Preparation	64	84
Grading	65	85
Trenching	59	79
Build Exterior	63	83
Build Interior	55	75
Paving	63	83

CEQA impact analysis, Ms. Jue points out, is necessary to determine the best mitigation measures to address these temporary, substantial noise impacts. Such measures could include buffer distances and sound barriers. Adequate materials for such sound barriers, she explains, would include "temporary barriers using STC 20-25 blankets on a tubular steel frame or scaffolding or 3 PSF wood frame barriers (e.g., using $\frac{3}{4}$ " thick plywood)."¹¹⁴ The material, she said, should overlap or otherwise be constructed to avoid gaps of any size, and should be high enough to block the line of sight between the construction noise sources and the affected windows.¹¹⁵ "The sound barrier has to interrupt the line of sight between the source(s) and the receiver(s) and the best placement to maximize the sound barrier benefit is close the source or close to the receiver."¹¹⁶

¹¹³ Jue Comments, 3.

¹¹⁴ Jue Comments, p. 3.

¹¹⁵ *Id.*

¹¹⁶ *Id.*

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Ms. Jue concluded that, because the noise analysis prepared for the prior project appears to contain some errors “which could lead one to conclude that construction activities for the proposed project and the future residential project could be less than significant.”¹¹⁷ This is new information about significant impacts that were not analyzed in the General Plan EIR because this specific development project was not before the City at the time the General Plan was approved. An EIR must be prepared to disclose and mitigate these impacts.

VII. THE CITY CANNOT MAKE THE NECESSARY FINDINGS TO ISSUE A DESIGN PERMIT OR TENTATIVE MAP FOR THE PROJECT

Approval of the Project’s Design Permit and Tentative Map requires factual findings, supported by substantial evidence, pursuant to the Morgan Hill Municipal Code and the State Subdivision Map Act that a proposed subdivision is consistent with the City’s general plan and specific plans, and does not have any detrimental environmental or public health effects.¹¹⁸

The Staff Report claims that the Project is in compliance with the General Plan, Zoning Code and other City Codes as required by Section 17.50.030 of the Municipal Code, but nowhere does it make findings, or offer substantial evidence, that the Project will not have any detrimental environmental or public health effects.

As discussed in Section VI above, substantial evidence demonstrates that the Project is likely to have potentially significant impacts on air quality, public health, climate change, noise, and traffic. Silicon Valley Residents’ experts have provided ample evidence demonstrating the Project’s significant impacts, including:

- Emissions of VOCs and TACs from Project construction and operation will be significant.
- DPM emissions from construction and operation
- The cancer risk from the Project to nearby receptors would be 42 in one million over 30 years, exceeding the BAAQMD threshold of 10 in one million.¹¹⁹

¹¹⁷ Jue Comments, p. 4.

¹¹⁸ Gov Code §§66473.5, 66474; MHMC 18.108.040(A).

¹¹⁹ SWAPE Comments, p. 8.

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- Traffic and transportation in the Project vicinity could be significantly impacted by Project construction and operation.
- Nearby residents could experience significant impacts from noise for a year or more.

These effects have not been disclosed or analyzed by the City, which continues to claim that the General Plan EIR is sufficient to address any potential impacts, despite that document's repeated claim that it did not analyze any project-specific impacts. As a result, the Project fails to comply with mandatory Map Act requirements. The City, therefore, cannot make the requisite findings pursuant to Government Code Sections 66473.5 and 66474 and must deny the Project's Design Permit and Tentative Map.

VIII. CONCLUSION

The City has improperly tried to rely on the 2035 General Plan EIR as a program EIR with analysis sufficient to satisfy CEQA. That EIR, however, was never meant to serve as a review document for specific projects. Many of the impacts likely to result from the Project will be significantly more severe than what was evaluated in the General Plan EIR, while others were never analyzed at all.

Furthermore, the Design Review Permit and Vesting Tentative Map required for the Project cannot be issued. As supported by substantial evidence above and in expert comment letters attached herein, the Project will result in significant and unmitigated impacts that are not disclosed or analyzed by the General Plan EIR. Without further mitigation measures to reduce the Project's significant impacts, the City cannot find that it is not detrimental to public health, safety, or welfare, and thus cannot approve the permits necessary for the Project to move forward.

Sincerely,



Kendra Hartmann

KDH:acp
Attachments

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T 510.836.4200
F 510.836.4205

1939 Harrison Street, Ste. 150
Oakland, CA 94612

www.lozeaudrury.com
paige@lozeaudrury.com

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Via E-mail

Mohammad Habib - Chair
Malisha Kumar - Vice-Chair
Joseph Mueller
Wayne Tanda
Laura Gonzalez-Escoto
Liam Downey
Juan Miguel Munoz-Morris
Jennifer Carman, Community Services Director
Planning Commission
City of Morgan Hill
17575 Peak Avenue
Morgan Hill, CA 95037
pcpubliccomment@morganhill.ca.gov
Planning_Commission@morganhill.ca.gov
jennifer.carman@morganhill.ca.gov

Re: Comments Regarding The Redwood Tech at 101 - SD2020-0011/SR2020-0029 Through SR2020-0033 (APNS 728-30-006 AND 728-30-009)

Dear Chair Habib, Vice-Chair Kumar, Commissioners Mueller, Tanda, Gonzalez-Escoto, Downey, Munoz-Morris, and Ms. Carman:

I am writing on behalf of the Laborers International Union of North America, Local Union 270 and its members living in the City of Morgan Hill ("LIUNA") regarding the proposed The Redwood Tech at 101 Project, SD2020-0011/SR2020-0029 Through SR2020-0033, a proposed industrial park consisting of five concrete tilt-up buildings totaling about 501,000 square feet in to be constructed on four separate lots of about 29 acres at 1065 Half Road, on the north side of the intersection of Condit Road and Half Road (APN728-30-006 and 728-30-009) ("Project").

LIUNA is concerned that the City of Morgan Hill ("City") is proposing to approve the Project without adequate environmental review under the California Environmental Quality Act ("CEQA"), Public Resources Code section 21000, *et seq.* The staff report improperly proposes to exclude the Project's uses from the CEQA analysis for the development, thus undermining the already truncated CEQA analysis. The staff report also suggests inaccurately that the 2035 General Plan programmatic environmental impact report ("General Plan EIR") addressed this site-specific Project sufficiently to rely upon 14 Cal. Admin. Code 15183 or without preparing a tiered environmental review. Staff's cursory analysis, prepared without the benefit of an initial

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study reviewing the whole project's potential impacts, does not comply with CEQA's requirements and is inconsistent with the City's process for reviewing proposed vesting tentative parcel maps.

LIUNA respectfully requests that the Planning Commission not approve the Project until such time as the City has prepared an initial study followed by either a mitigated negative declaration ("MND") or an EIR for the Project prior to any approvals involving the Project.

I. LEGAL STANDARD

Once a program EIR has been prepared, "[s]ubsequent activities in the program must be examined in light of the program EIR to determine whether an additional environmental document must be prepared." 14 CCR ("CEQA Guidelines") § 15168(c). The first consideration is whether the activity proposed is covered by the PEIR. *Id.* If a later project is outside the scope of the program, then it is treated as a separate project and the PEIR may not be relied upon in further review. *Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th 1307. The second consideration is whether the "later activity would have effects that were not examined in the program EIR." CEQA Guidelines § 15168(c)(1). A PEIR may only serve "to the extent that it contemplates and adequately analyzes the potential environmental impacts of the project." *Sierra Nevada Conservation v. County of El Dorado* ("El Dorado") (2012) 202 Cal.App.4th 1156. If the PEIR does not evaluate the environmental impacts of the project, a tiered EIR must be completed before the project is approved. *Id.* For these inquiries, the "fair argument test" applies. *Sierra Club*, 6 Cal.App.4th 1307, 1318; *See also Sierra Club v. County of San Diego* (2014) 231 Cal.App.4th 1152, 1164 ("when a prior EIR has been prepared and certified for a program or plan, the question for a court reviewing an agency's decision not to use a tiered EIR for a later project 'is one of law, i.e., the sufficiency of the evidence to support a fair argument.'").

Under the fair argument test, a new EIR must be prepared "whenever it can be fairly argued on the basis of substantial evidence that the project may have significant environmental impact." *Sierra Club*, 6 Cal. App. 4th at 1316 (quotations omitted). When applying the fair argument test, "deference to the agency's determination is not appropriate and its decision not to require an EIR can be upheld only when there is no credible evidence to the contrary." *Id.* at 1312. "[I]f there is substantial evidence in the record that the later project may arguably have a significant adverse effect on the environment which was not examined in the prior program EIR, doubts must be resolved in favor of environmental review and the agency must prepare a new tiered EIR, notwithstanding the existence of contrary evidence." *Id.* at 1319.

In *Friends of College of San Mateo Gardens* the California Supreme Court explained the differing analyses that apply when a project EIR was originally approved and changes are being made to the project, and when a tiered program EIR was originally prepared and a subsequent project is proposed consistent with the program or plan:

For project EIRs, of course, a subsequent or supplemental impact report is required in the event there are substantial changes to the project or its circumstances, or in the event of material new and previously unavailable information. (*Friends of Mammoth*, citing §

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21166.) In contrast, when a tiered EIR has been prepared, review of a subsequent project proposal is more searching. **If the subsequent project is consistent with the program or plan for which the EIR was certified, then ‘CEQA requires a lead agency to prepare an initial study to determine if the later project may cause significant environmental effects not examined in the first tier EIR.’** (*Ibid.* citing Pub. Resources Code, § 21094, subds. (a), (c).) ‘If the subsequent project is not consistent with the program or plan, it is treated as a new project and must be fully analyzed in a project—or another tiered EIR if it may have a significant effect on the environment.’ (*Friends of Mammoth*, at pp. 528–529, 98 Cal.Rptr.2d 334.)

Friends of Coll. of San Mateo Gardens v. San Mateo County Cmty. Coll. Dist. (“*San Mateo Gardens*”) (2016) 1 Cal.5th 937, 960.

The City’s General Plan EIR was prepared in accordance with CEQA’s PEIR provisions and subsequent projects must undergo the tiered review process just described. *See* General Plan DEIR, p. 2-2. CEQA requires the City to prepare an initial study to determine if the Project *may* cause significant environmental effects not examined in the General Plan EIR. Pub. Res. Code § 21094. As discussed below, there is substantial evidence supporting a fair argument that the Project may result in a number of potential environmental impacts that were not previously analyzed in any of these EIRs. Accordingly, an initial study followed by an MND or EIR must be prepared for the Project.

II. ARGUMENT

A. The City Must Comply With CEQA for the Whole Project Prior to Issuing Any Approvals of the Project.

The CEQA analysis presented in the staff report is fundamentally flawed because it improperly recommends for the City to approve the Project prior to complying with CEQA for the whole project, *i.e.*, its foreseeable uses. Staff suggests that the City may make a CEQA determination and approve the proposed Design Permit and the Vesting Tentative Parcel Map separate from any future conditional use permits for the Project. Staff claims that “[n]o other approvals are required at this time.” Packet Pg. 7. Staff further asserts that “[s]hould a future use on the site require a conditional use permit, that user will be responsible for conducting environmental review for the proposed use as required under CEQA.” *Id.*, p. 19. This two-tiered approach to the Project’s CEQA review violates CEQA’s prohibition on approving any aspect of a proposed project prior to completing the environmental review for the whole project required by CEQA. Moreover, it is inconsistent with the City’s requirements for processing a proposed vested tentative map.

The proposed action items include both the Project’s design permit and a vesting tentative parcel map. The City’s Code sets forth the process and information required to process a vesting tentative parcel map application. The City’s approval of a vesting tentative map provides the applicant with a vested right to proceed with the proposed development: “When the

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city approves or conditionally approves a vesting tentative map, that approval shall confer a vested right to proceed with development in substantial compliance with the ordinances, policies and standards in effect on the date the city has determined that the application for approval of the vesting tentative map is complete pursuant to Section 65943 of the Government Code.” Muni. Code §17.50.040(A). As a result, the City’s Code requires additional information and considerations that the City must consider in making its discretionary decision whether or not to approve a proposed vesting tentative parcel map. In particular, the City is not authorized to defer or not address the proposed uses of the development proposed by the tentative map. Moreover, given the vesting implications of the City’s decision, the decisionmakers must have access to an environmental review of the whole Project, including its uses and not just its building design or proposed number of parcels.

Particularly relevant here is the express requirement that, “[i]f a conditional use permit is required, such permit shall be processed **prior or concurrently with the vesting tentative map**. Muni. Code § 17.50.060(B)(2) (emphasis added). As described in the staff report, the Project includes 232,000 square feet of warehousing use. Packet Pg. 13. The Project site’s zoning of Light Industrial requires a conditional use permit for “Warehousing and Distribution, Large.” The ordinance does not specify a square footage above which warehousing is large. For parcel hubs, which are not authorized, a building over 75,000 square feet is large. Municipal Code, §18.26.020(A), Table 18.26-1. By that measure, or any commonsense measure, the proposed 232,000 square feet of warehousing is large. As a result, the conditional use permit necessary for the proposed warehousing use must be proposed and processed prior to or concurrently with the vesting tentative map. Muni. Code § 17.50.060(B)(2). By choosing to ignore the Project’s uses, the staff report’s CEQA recommendations are deficient as a matter of law, having failed to consider the potential environmental effects of the Project’s warehousing and other uses, including impacts from additional truck trips on air quality and wildlife, additional vehicle miles traveled and transportation impacts as a result of the Project, operational and construction-related noise and health impacts on residents located adjacent to the south corner of the Project site, the impacts of Project design features, such as the large glass facades, on bird-life and other potential impacts. As a result, any CEQA determination by the City must consider the Project’s contemplated uses now.

In addition, underscoring the need for staff to address the impacts of the anticipated uses, “[d]evelopment’ means **the uses to which the land which is the subject of the map shall be put**, the buildings to be constructed on it and all alterations of the land and construction incident thereto.” Muni. Code §17.08.055 (emphasis added). Thus, rather than defer any consideration of the Project’s uses, the vesting tentative parcel map procedure requires the applicant to submit “[t]he height, size, location, preliminary or conceptual architectural plans and **use of all buildings** to be constructed within the subdivision....” Muni. Code §17.50.060(B)(4) (emphasis added). Relatedly, to qualify for approval of a vested tentative parcel map, the applicant must provide “[s]pecific information on the uses to which the proposed buildings will be put....” Muni. Code §17.50.060(B)(10). Thus, should the Planning Commission accept staff’s invitation to put off addressing the Project’s uses, any decision will be contrary to the City’s ordinances.

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In addition, CEQA forbids putting off environmental review of the whole project subsequent to approving any of its components. This is especially true for a decision to approve a vesting right in a development. The necessary CEQA document must be prepared and approved prior to any approval of a project subject to CEQA. ***“Before granting any approval of a project subject to CEQA, every lead agency or responsible agency shall consider a final EIR or negative declaration or another document authorized by these guidelines to be used in the place of an EIR or negative declaration.”*** (14 CCR § 15004(a) [emphasis added].) ***“EIRs and negative declarations should be prepared as early as feasible in the planning process to enable environmental considerations to influence project program and design”*** (14 CCR § 15004(b).) Consistent with that goal:

The environmental document preparation and review should be coordinated in a timely fashion with the existing planning, review, and project approval processes being used by each public agency. These procedures, to the maximum extent feasible, are to run concurrently, not consecutively.

(14 CCR § 15004(c); *see also* PRC § 21003(a).) By attempting to defer addressing impacts from the Project’s anticipated uses until the future, staff’s proposals violate these fundamental tenets of CEQA.

B. CEQA Guidelines Section 15183 is Not Available for the Project.

The staff report proposes that the City rely on CEQA Guidelines § 15183 to claim that no CEQA review of the Project is required. Section 15183 provides that:

CEQA mandates that projects which are consistent with the development density established by existing zoning, community plan, or general plan policies for which an EIR was certified shall not require additional environmental review, ***except as might be necessary to examine whether there are project-specific significant effects which are peculiar to the project or its site.*** This streamlines the review of such projects and reduces the need to prepare repetitive environmental studies.

CEQA Guidelines § 15183(a) (emphasis added). The situations requiring additional review are set forth in the provision:

In approving a project meeting the requirements of this section, a public agency shall limit its examination of environmental effects to those which the agency determines, in an initial study or other analysis:

- (1) Are peculiar to the project or the parcel on which the project would be located,
- (2) Were not analyzed as significant effects in a prior EIR on the zoning action, general plan or community plan with which the project is consistent,

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- (3) Are potentially significant off-site impacts and cumulative impacts which were not discussed in the prior EIR prepared for the general plan, community plan or zoning action, *or*
- (4) Are previously identified significant effects which, as a result of substantial new information which was not known at the time the EIR was certified, are determined to have a more severe adverse impact than discussed in the prior EIR.

CEQA Guidelines § 15193(b).

Here, it does not appear that the City made a determination as to whether there are environmental effects “peculiar to the project” or whether the other factors in § 15193(b) are met, as case law requires. *See Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1407. Nor does it appear that, in the alternative, the City found that the impacts of the Project “ha[ve] been addressed as a significant effect in the prior EIR, or can be substantially mitigated by the imposition of uniformly applied development policies or standards.” CEQA Guidelines § 15183(c). Nor has the City explained why the Project otherwise meets the requirements of § 15183. Indeed, § 15183(j) specifically provides: “This section does not affect any requirement to analyze potentially significant offsite or cumulative impacts if those impacts were not adequately discussed in the prior EIR.” It does not appear that the City has analyzed the impacts specific to this Project in the prior EIR. Rather, the City has discussed generally “research and development (R&D), warehouse, and industrial buildings.” General Plan DEIR, 3-33. There is no mention in the General plan EIR of any proposed warehouse buildings at the proposed location. That the City may have generally discussed the effects of warehouse and distribution facilities does not make the specific Project on this site exempt from CEQA. A full CEQA analysis is required.

Indeed, under staff’s proposed process, the City will fail to implement mitigations mandated by the General Plan 2035 EIR. For example, Mitigation Measure AQ-4a requires that:

Applicants for future non-residential land uses within the City that: 1) have the potential to generate 100 or more diesel truck trips per day or have 40 or more trucks with operating diesel-powered TRUs, and 2) are within 1,000 feet of a sensitive land use (e.g., residential, schools, hospitals, nursing homes), as measured from the property line of the proposed Project to the property line of the nearest sensitive use, ***shall submit a health risk assessment (HRA) to the City of Morgan Hill prior to future discretionary Project approval.***

General Plan EIR, p. 1-9 (emphasis added). Several houses are located across the street from the Project’s south corner that are within 1,000 feet of the Project site. The staff report makes no mention of this required mitigation measure or how granting a vested right to the Project would affect the City’s enforcement of this measure.

The City may not rely on 14 Cal. Admin. Code § 15183 for the Project. Section 15183 does not relieve the City of reviewing environmental effects that “[w]ere not analyzed as

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significant effects in a prior EIR on the zoning action, general plan or community plan with which the project is consistent.” 14 Cal. Admin. Code § 15183(b)(2). Section 15183 also excludes exempting impacts that are “peculiar” to the Project. Peculiar is a term of art specifically defined by the regulation:

An effect of a project on the environment shall not be considered peculiar to the project or the parcel for the purposes of this section if uniformly applied development policies or standards have been previously adopted by the city or county with a finding that the development policies or standards will substantially mitigate that environmental effect when applied to future projects, unless substantial new information shows that the policies or standards will not substantially mitigate the environmental effect.

14 Cal. Admin. Code § 15183(f). The General Plan EIR did not address the potential significant environmental impacts of bird strikes with new buildings to be constructed in Morgan Hill. Nor does the EIR address direct and cumulative off-site impacts on wildlife from collisions with additional truck and vehicle traffic associated with large warehousing projects. Nor can the City identify development standards or the findings identified by Section 15183 addressing these two categories of impacts that could make those impacts not peculiar to the Project. Other impacts peculiar to the proposed Project site include the health and noise impacts to the adjacent, off-site residents and impacts to wildlife likely present at the site, including burrowing owls and other sensitive species. None of these site-specific and off-site impacts were addressed in the General Plan EIR. The City should prepare an initial study and, based on that review, either an EIR or a mitigated negative declaration to address the Project’s potential impacts.

C. CEQA Guidelines § 15162 Does Not Apply Because the Project Is Not Within the Scope of the Program EIR Prepared for the General Plan

The alternative suggestion in the staff report that the Project is within the scope of the program EIR prepared for the General Plan and the City should rely on CEQA Guidelines § 15162 also is incorrect. Packet Pg. 19. Once a program EIR has been prepared, “[s]ubsequent activities in the program must be examined in light of the program EIR to determine whether an additional environmental document must be prepared.” CEQA Guidelines § 15168(c). The first consideration is whether the activity proposed is covered by the PEIR. *Id.* If a later project is outside the scope of the program, then it is treated as a separate project and the PEIR may not be relied upon in further review. *Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th 1307. The second consideration is whether the “later activity would have effects that were not examined in the program EIR.” CEQA Guidelines § 15168(c)(1). A PEIR may only serve “to the extent that it contemplates and adequately analyzes the potential environmental impacts of the project.” *Sierra Nevada Conservation v. County of El Dorado* (“*El Dorado*”) (2012) 202 Cal.App.4th 1156. If the PEIR does not evaluate the environmental impacts of the project, a tiered EIR must be completed before the project is approved. *Id.* For these inquiries, the “fair argument test” applies. *Sierra Club*, 6 Cal.App.4th 1307, 1318; *See also Sierra Club v. County of San Diego* (2014) 231 Cal.App.4th 1152, 1164 (“when a prior EIR has been prepared and certified for a program or

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plan, the question for a court reviewing an agency's decision not to use a tiered EIR for a later project 'is one of law, i.e., the sufficiency of the evidence to support a fair argument.'").

Under the fair argument test, a new EIR must be prepared "whenever it can be fairly argued on the basis of substantial evidence that the project may have significant environmental impact." *Sierra Club*, 6 Cal.App.4th at 1316 (quotations omitted). When applying the fair argument test, "deference to the agency's determination is not appropriate and its decision not to require an EIR can be upheld only when there is no credible evidence to the contrary." *Id.* at 1312. "[I]f there is substantial evidence in the record that the later project may arguably have a significant adverse effect on the environment which was not examined in the prior program EIR, doubts must be resolved in favor of environmental review and the agency must prepare a new tiered EIR, notwithstanding the existence of contrary evidence." *Id.* at 1319.

In *Friends of College of San Mateo Gardens*, the California Supreme Court explained the differing analyses that apply when a project EIR was originally approved and changes are being made to the project, and when a tiered program EIR was originally prepared and a subsequent project is proposed consistent with the program or plan:

For project EIRs, of course, a subsequent or supplemental impact report is required in the event there are substantial changes to the project or its circumstances, or in the event of material new and previously unavailable information. (*Friends of Mammoth*, citing § 21166.) In contrast, when a tiered EIR has been prepared, review of a subsequent project proposal is more searching. **If the subsequent project is consistent with the program or plan for which the EIR was certified, then 'CEQA requires a lead agency to prepare an initial study to determine if the later project may cause significant environmental effects not examined in the first tier EIR.'** (*Ibid.* citing Pub. Resources Code, § 21094, subds. (a), (c).) 'If the subsequent project is not consistent with the program or plan, it is treated as a new project and must be fully analyzed in a project—or another tiered EIR if it may have a significant effect on the environment.' (*Friends of Mammoth*, at pp. 528–529, 98 Cal.Rptr.2d 334.)

Friends of Coll. of San Mateo Gardens v. San Mateo County Cmty. Coll. Dist. (2016) 1 Cal.5th 937, 960.

The City's General Plan EIR were prepared in accordance with CEQA's PEIR provisions and subsequent projects must undergo the tiered review process just described. As the General Plan EIR states:

[T]his EIR is a program-level EIR that analyzes the potential significant environmental effects of the adoption of the proposed Project. As a program EIR, it is not project-specific, and does not evaluate the impacts of individual projects that may be proposed under the General Plan. Such subsequent projects will require a separate environmental review, when applicable as required by CEQA, which could be in the form of a Negative Declaration, Mitigated Negative Declaration, or a Subsequent EIR, to secure the necessary development permits. Therefore, while

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subsequent environmental review may be tiered from this EIR, this EIR is not intended to address project-specific impacts of individual projects.

General Plan DEIR, p. 2-2. CEQA requires the City to prepare an initial study to determine if the Project *may* cause significant environmental effects not examined in the General Plan EIR. Pub. Res. Code § 21094. As discussed above, there are a number of effects that an initial study should address, including impacts to wildlife at the site, impacts of the Project from bird collisions with the expansive glass façade, off-site impacts to wildlife from collisions with the many vehicle trips that will be generated by a project of this size, off-site transportation impacts on GHG emissions from the Project's increases in vehicle miles travelled, and off-site health and noise impacts from construction and operation on nearby residents. Accordingly, an initial study followed by an MND or EIR must be prepared for the Project.

D. Contrary to the Applicant's Assertion, the Project is Discretionary and Subject to CEQA.

Ignoring its client's request for a vesting tentative parcel map, the applicant's attorneys argue that the Project is ministerial and thus not a "project" under CEQA. Counsel claims that the decision in *McCorkle Eastside Neighborhood Group. v. City of St. Helena* (2018) 31 Cal. App. 5th 80 ("*McCorkle*") is instructive. It is not. Unlike the *McCorkle* decision, the Redwood Tech at 101 project involves multiple discretionary decisions by the City. The City's review and any approval of the proposed vesting tentative parcel map is a discretionary decision. *See* Municipal Code §17.20.090 ("The planning commission may modify or delete any of the conditions of approval recommended in the community development department's report, except conditions required by city ordinance or by the city engineer, related to public health and safety or standards approved by the city engineer, or add additional requirements as a condition of its approval"). Even the City's design review is endowed with discretion to deny the Project in order to make the required finding that "[t]he proposed development will not be detrimental to the public health, safety, or welfare or materially injurious to the properties or improvements in the vicinity." Muni. Code §18.108.040(J)(5). *See also* §18.108.040(A) ("A design permit is a discretionary action"). *McCorkle* involved the City of St. Helena's approval of demolition and design review permits for an in-fill housing development. No vesting tentative map was at issue in that case. Nor was there any potential need for any future CUP in that case. And the City's ordinances strictly limited the design permit review to the specified design criteria and did not encompass a finding such as is required in Morgan Hill, that the development "will not be detrimental to the public health, safety, or welfare or materially injurious to the properties or improvements in the vicinity." *See* 31 Cal.App.5th at 92-93.

The CUP required for the proposed warehousing uses also confirms that the Project is discretionary under CEQA. "Where a project involves an approval that contains elements of both a ministerial action and a discretionary action, the project will be deemed to be discretionary and will be subject to the requirements of CEQA." 14 CCR § 15268(d); *POW*, 10 Cal.5th at 497; *Miller v. City of Hermosa Beach* (1993) 13 Cal.App.4th 1118, 1139; *Friends of Westwood, Inc.*

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v. City of Los Angeles (1987) 191 Cal.App.3d 259, 270-71.) Furthermore, “any doubt whether a project is ministerial or discretionary should be resolved in favor of the latter characterization.” *POW*, 10 Cal.5th at 497. Because both CEQA as well as the City’s ordinance confirm that CEQA review must occur prior to any approvals for the project, whether ministerial or discretionary, even assuming the design review permit is ministerial, the City cannot proceed with that or any other approval until it has completed a legitimate CEQA review. Morgan Hill has discretion to address any potential impacts identified in a CEQA review as a result of its design review authority, its vesting tentative map approval authority, and the CUP authority. Accordingly, *McCorkle* has no bearing on the City’s review of the Project pursuant to CEQA.

III. Conclusion

LIUNA respectfully requests that the Planning Commission not approve these components of the Project and instead instruct staff to prepare an initial study and either an MND or EIR to identify, analyze and mitigate the Project’s adverse environmental impacts. Thank you for considering these comments.

Sincerely,



Michael R. Lozeau



Development Services
17575 Peak Avenue
Morgan Hill, CA 95037-4128
TEL: (408) 778-6480
FAX: (408) 779-7236
www.morganhill.ca.gov

David H. Blackwell, Esq.
Allen Matkins Leck Gamble Mallory & Natsis LLP
Three Embarcadero Center, 12th Floor
San Francisco, CA 94111

RE: Request for PUD Zoning Interpretation

Dear Mr. Blackwell:

This is in response to your letter seeking an interpretation of Morgan Hill Municipal Code (MHMC) section 18.14.020.C relating to Legacy Zoning Districts. You have specifically requested an interpretation regarding the land uses and development standards that apply to Planned Unit Development (PUD) legacy districts that do not have an approved Master Plan. Please accept the following interpretation:

Text of Relevant Code Section:

18.14.020 Zoning Districts

C. Legacy Zones.

1. A legacy zone is base zoning district, overlay zone, or combining district which was applied to a property prior to July 7, 2018, remains the zoning in effect for the property, but which may not be applied to any additional properties as of July 7, 2018. All rules and regulations of the legacy zone, and any subsequent amendments thereto, continue to apply to the subject property.
2. The Zoning Map shows the following three legacy zones:
 - a. Residential planned development (RPD) overlay district.
 - b. Planned unit development (PUD) base zoning district.
 - c. Conditional (C) base zoning district.
3. Where a legacy zone is shown on the zoning map, the requirements of that legacy zone as originally applied to a property remain in full force and effect.
4. Permitted land uses, development standards, and other provisions that apply within a legacy zone may be amended in accordance with [Chapter 18.114](#) (Zoning Code Amendments).

Permitted Uses and Development Standards in the PUD Zoning Districts:

Areas designated on the Zoning Map as PUD districts that do not have an active Master Plan or Development Agreement, have a base zoning district, such as PUD(IL), PUD(CG), etc. In those cases, the uses and standards allowed in those zones are limited to the uses and standards set forth within the base zoning district. Despite the PUD zoning, a new approved Master Plan would be needed to allow any deviation from the standards and regulations under the base zoning.

Areas designated on the Zoning Map as PUD districts with an approved and active Master Plan are limited to the uses and development standards of the applicable Master Plan.

Analysis:

Under Government Code section 65850, a general law city may regulate the use of buildings and structures as well as development standards such as: (1) the location, height, bulk, number of stories and size of buildings and structures; (2) the size and use of lots, yards, courts and other open spaces; (3) the percentage of a lot which may be occupied by a building or structure; and (4) the intensity of land use. The uses and standards for development, consistent with the Morgan Hill 2035 General Plan, are found in the base zoning districts.

Under MHMC section 18.30.050, a Master Plan controls the permitted uses and development standards in districts with PD or PUD zoning and an approved Master Plan. A Master Plan may be approved on parcels with existing PUD zoning but no Master Plan under the procedures outlined in MHMC section 18.30.050(H). As required under 18.30.050(H)(4)(b), a Master Plan application must describe how the project as proposed is superior to the development that occur under the base zoning, and how it will achieve substantial public benefits.

Under MHMC section 18.30.050(H)(8), a substantial public benefit “is a project feature not otherwise required by the zoning code or any other provision of local, state, or federal law that substantially exceeds the city’s minimum development standards and significantly advances goals of the general plan. A project must include one or more substantial public benefits to be rezoned as a planned development. The public benefit provided shall be of sufficient value as determined by city council to justify deviation from the standards of the zoning district that currently apply to the property.”

Absent an approved Master Plan, a project may be developed under the base zoning. Except under limited circumstances, a property owner has a right to develop property in accordance with the existing established standards. See e.g. *Building Industry Legal Defense Foundation v. Superior Court (City of San Juan Capistrano)*, (1999) 72 Cal. App.4th 1410. Further, “[t]he power to establish uses does not include the power to fix procedures for processing development applications. Zoning ordinances merely determine what uses are permitted where. Once a permitted use is identified by the applicable zoning ordinance, the procedure for processing a development application is established by state laws other than zoning.” *Id.* at p. 1416-1417.¹

Conclusion:

Absent an approved Master Plan, properties in an existing PUD combining district may develop only to the base zoning. Properties in the PUD(IL) district would be subject to the uses and standards set forth in the IL zoning district. Similarly, the PUD(CH) and PUD(CO) districts would be subject to the uses and standards set forth in the CH and CO zoning districts respectively.

If you have any questions, please contact me or City Attorney Don Larkin at the contact information included below.

Sincerely,



Jennifer Carman
Development Services Director
jennifer.carman@morganhill.ca.gov

Donald Larkin

Donald Larkin
City Attorney
donald.larkin@morganhill.ca.gov

¹ However, cities may apply additional procedural requirements that do not conflict with state law. See e.g. *Tashner v. City Council*, (1973) 31 Cal.App.3d 48.



Special - Regular Meeting Agenda

City Council

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

Wednesday, June 23, 2021 5:30 p.m.

Virtual Meeting

AMENDED AGENDA

Please note that the recommended actions for item 1 have been amended to add a new recommendation ([changes in red below](#)).

PUBLIC NOTICE

The Public Hearing to consider Vehicle-Miles-Traveled (VMT) screening criteria and thresholds of significance regarding the City's implementation of State Senate Bill 743 (SB 743) transition from Level-of-Service (LOS) to VMT as the metric for transportation analysis under the California Environmental Quality Act (CEQA) for development projects that was noticed for consideration by the City Council at this meeting will be continued to a date uncertain. This will be duly noticed.

VIRTUAL MEETING GUIDELINES AND PUBLIC COMMENT

In accordance with Executive Order N-25-20 and guidance from the California Department of Public Health on gatherings, remote public participation is allowed. Physical meetings will not be in the City Council Chamber until further notice.

City Council meetings will be live streamed on Channel 17, on the City's website and on the City's Facebook page. Those members of the community that would like to participate in the meetings remotely may do so by joining the virtual meeting at: [<https://bit.ly/MHCityCouncilMeeting>](https://bit.ly/MHCityCouncilMeeting) or by calling in to: (669) 900-9128, then enter the webinar id: 873 3200 8380#.

Public comment may be provided in the following ways:

- Join the virtual City Council meeting via the link above, when public comment is opened, raise your virtual hand and be called upon to speak for up to 3 minutes
 - In order to speak, please be sure that your version of Zoom is up to date.
- Join the virtual meeting by calling in to the number above, dial *9 to raise your hand and be called upon to speak for up to 3 minutes

- Send public comments in writing to the City Clerk at ccpubliccomment@morganhill.ca.gov <<mailto:ccpubliccomment@morganhill.ca.gov>>

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

SPECIAL/REGULAR MEETING

A special meeting of the City Council is called at 5:30 p.m. for the purpose of conducting a Housing Sustainability Workshop and a closed session.

5:30 p.m. Housing Sustainability Workshop

6:30 p.m. Closed Session

7:00 p.m. Regular Meeting

SPECIAL MEETING

5:30 p.m. Housing Sustainability Workshop

6:30 p.m. Closed Session

CALL TO ORDER

Mayor Constantine

ROLL CALL ATTENDANCE

City Clerk Michelle Bigelow

DECLARATION OF POSTING AGENDA

Per Government Code Section 54954.2

City Clerk Michelle Bigelow

WORKSHOP

This workshop is the fourth in a series of Housing Workshops that will look at the current and future state of housing in Morgan Hill. This workshop is called "Housing Sustainability." Staff will present and discuss the following:

- o How the City plans for infrastructure needs, including planning for water, sewer, roads, police, and fire.
- o How the City can maintain long-term sustainability in the context of all of the new State-mandated housing production.

CLOSED SESSION

OPPORTUNITY FOR PUBLIC COMMENT

ADJOURN TO CLOSED SESSION

CONFERENCE WITH REAL PROPERTY NEGOTIATORS (Gov. Code section 54956.8.)

June 23, 2021

Property: APN's - 817-06-001
Agency negotiator: Christina Turner and Chris Ghione
Negotiating parties: Chu, John C. and May-Jih C.
Under negotiation: Price and Terms of Payment

CONFERENCE WITH REAL PROPERTY NEGOTIATORS (Gov. Code section 54956.8.)

Property: APN's - 762-61-3052 (Community and Cultural Center)
Agency negotiator: Christina Turner and Chris Ghione
Under negotiation: Price and Terms of Lease

CONFERENCE WITH LEGAL COUNSEL-ANTICIPATED LITIGATION (Gov. Code section 54956.9(d)(2).): (one case).

REGULAR MEETING

7:00 p.m.

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.

PROCLAMATIONS

Proclaiming the month of July as Parks & Recreation Month

RECOGNITIONS

Recognizing Fred Gomez for his years of service to Morgan Hill

CITY COUNCIL REPORTS

Council Member Spring

CITY MANAGER'S REPORT

City Manager Christina Turner

CITY ATTORNEY'S REPORT

City Attorney Donald Larkin

OTHER REPORTS

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. APPROVE AN IMPROVEMENT AGREEMENT AND A DEFERRED IMPROVEMENT AGREEMENT WITH TSC MOTORS INC. (MORGAN HILL CDR+J DEALERSHIP), AND AUTHORIZE THE CITY MANAGER TO EXECUTE AN ASSOCIATED RIGHT-OF-WAY ACQUISITION AGREEMENT WITH THE OWNER OF THE PROPERTY WITH ASSESSOR'S PARCEL NUMBER (APN) 728-17-032

Recommendation:

1. Approve an Improvement Agreement with TSC Motors Inc.;
2. Approve a Deferred Improvement Agreement with TSC Motors Inc.;
3. [Authorize the City Attorney to review and approve an alternative form of security to be provided by TSC Motors Inc. as part of the Improvement Agreement for the Morgan Hill CDR+J Dealership Project;](#)
4. Authorize the City Manager to execute the Improvement Agreement and Deferred Improvement Agreement;
5. Authorize the recordation of the Improvement Agreement and Deferred Improvement Agreement; and
6. Authorize the City Manager to negotiate and execute a Right-of-Way Acquisition Agreement with the Owner of the property with Assessor's Parcel Number (APN) 728-17-032.

2. APPROVE SECOND AMENDMENT TO MAINTENANCE SERVICE AGREEMENT WITH ANIMAL DAMAGE MANAGEMENT, INC.

Recommendation:

1. Determine that competitive bids upon notice would not likely result in a lower price to the City from a responsible bidder or would cause unnecessary expense or delay under the circumstances per Section 3.04.150 (1) of the Morgan Hill Municipal Code; and
2. Authorize the City Manager to execute and administer the Second Amendment to the Maintenance Service Agreement with Animal Damage Management, Inc., extending the agreement for one additional year of service at annual amount of \$35,160 for a new total contract amount of \$140,640 over 4 years.

3. APPROVE THIRD AMENDMENT TO AGREEMENT WITH INNOVATIVE CLAIMS SOLUTIONS, INC.

Recommendation:

Authorize the City Manager to execute and administer a Third Amendment to Agreement with Innovative Claims Solutions, Inc. to provide third party claims administration for workers' compensation extending the agreement for one additional year of service at annual amount of \$34,380, for a new total contract amount of \$206,600 over 6 years.

4. APPROVE THE JUNE 16, 2021 MEETING MINUTES

Recommendation:

Approve Minutes.

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

Recommendation:

1. Award Vehicle Service Agreement to Frank's Auto Service for a total not-to-exceed amount of \$368,308 over three years; and
2. Authorize City Manager to Execute the Agreement.

6. AWARD COMMUNITY AND CULTURAL CENTER BOILER REPLACEMENT PROJECT TO STEPHEN CIARI PLUMBING AND HEATING, INC.

Recommendation:

1. Adopt resolution amending the Fiscal Year 2020-21 Adopted Budget to appropriate an additional \$28,101 from the Building Replacement Fund (741) for the Community and Cultural Center Boiler Replacement Project;
2. Award contract to Stephen Ciari Plumbing and Heating, Inc. in the amount of \$98,274 and authorize the expenditure of (10%) contingency funds not to exceed \$9,827 for a total authorization of \$108,101; and
3. Authorize the City Manager to execute and administer that certain contract with Stephen Ciari Plumbing and Heating, Inc.

7. AWARD OF EAST FIFTH STREET SEWER MAIN PROJECT TO PACIFIC UNDERGROUND CONSTRUCTION, INC.

Recommendation:

1. Approve East 5th Street Sewer Main Project plans and specifications;
2. Award contract to Pacific Underground Construction, Inc. for the East 5th Street Sewer Main Project in the amount of \$1,226,730;
3. Authorize expenditure of construction contingency not to exceed \$122,673; and
4. Authorize the City Manager to execute and administer the construction contract with Pacific Underground Construction, Inc.

PUBLIC HEARING

8. ADOPT RESOLUTION ESTABLISHING CREDIT CARD PAYMENT SERVICE FEE

Recommendation:

1. Open/Close public hearing; and
2. Adopt resolution establishing new credit card service fee for development fees and transient occupancy tax payments by credit card.

Estimated Time: 15 Minutes

9. CONSIDER APPEAL OF PLANNING COMMISSION'S APPROVAL OF SD2020-0011/SR2020-0029 THROUGH SR2020-0033 DE PAUL - TRAMMELL CROW MORGAN HILL VENTURE: REQUEST FOR A TENTATIVE PARCEL MAP AND DESIGN PERMITS FOR THE REDWOOD TECH AT 101, A FIVE BUILDING INDUSTRIAL PARK, ON A 29± ACRE SITE (APNS 728-30-006 AND 728-30-009). (AAE2021-0004 AND AAE2021-0005)

Recommendation:

1. Grant a hearing de novo;
2. Open/close public hearing; and
3. Adopt Resolution denying the appeals and reaffirming the decision of the Planning Commission to approve the project subject to Conditions of Approval.

Estimated Time: 120 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

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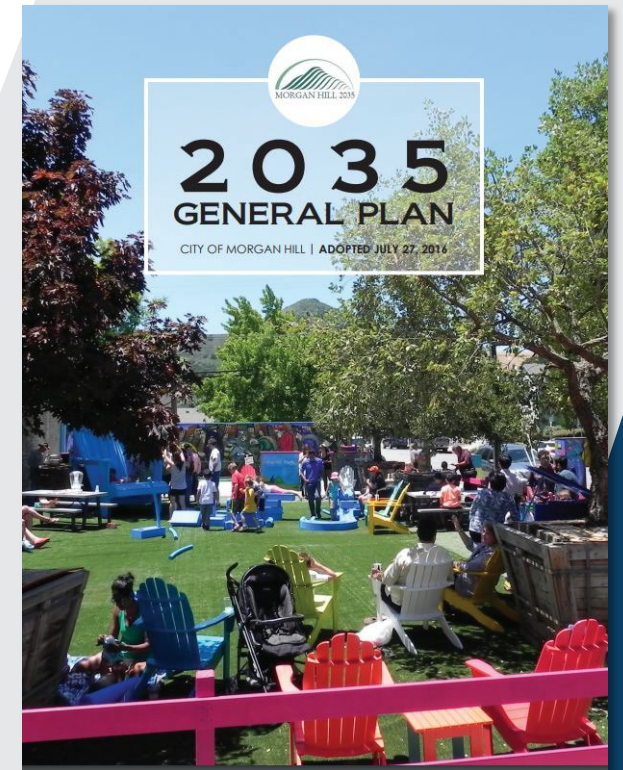
Housing and Sustainability



SUSTAINABILITY VISION

GENERAL PLAN

- Build new housing to meet the full range of future community housing needs, including affordability and accessibility, for all age groups, served by transit, recreational amenities, shopping, and health and personal services, that allow residents to age in place
- Encourage a balance and match between jobs and housing

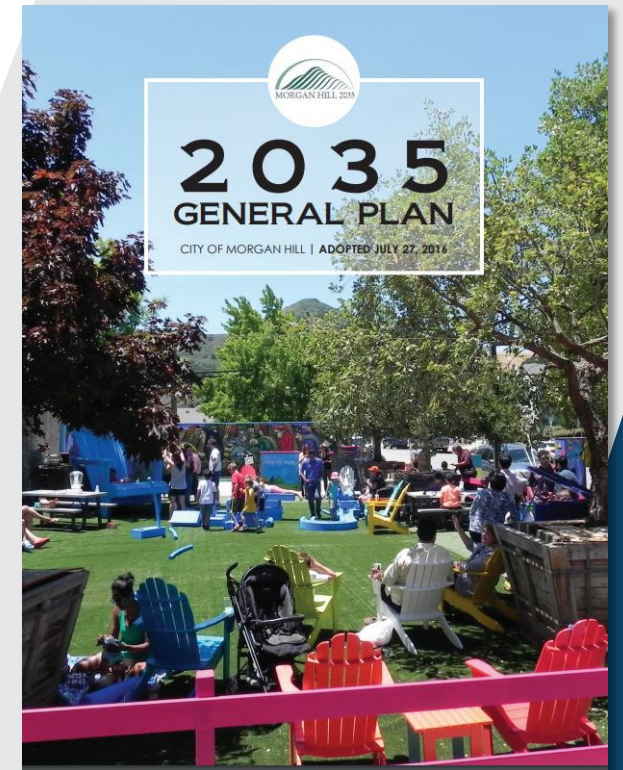


SUSTAINABILITY VISION



GENERAL PLAN

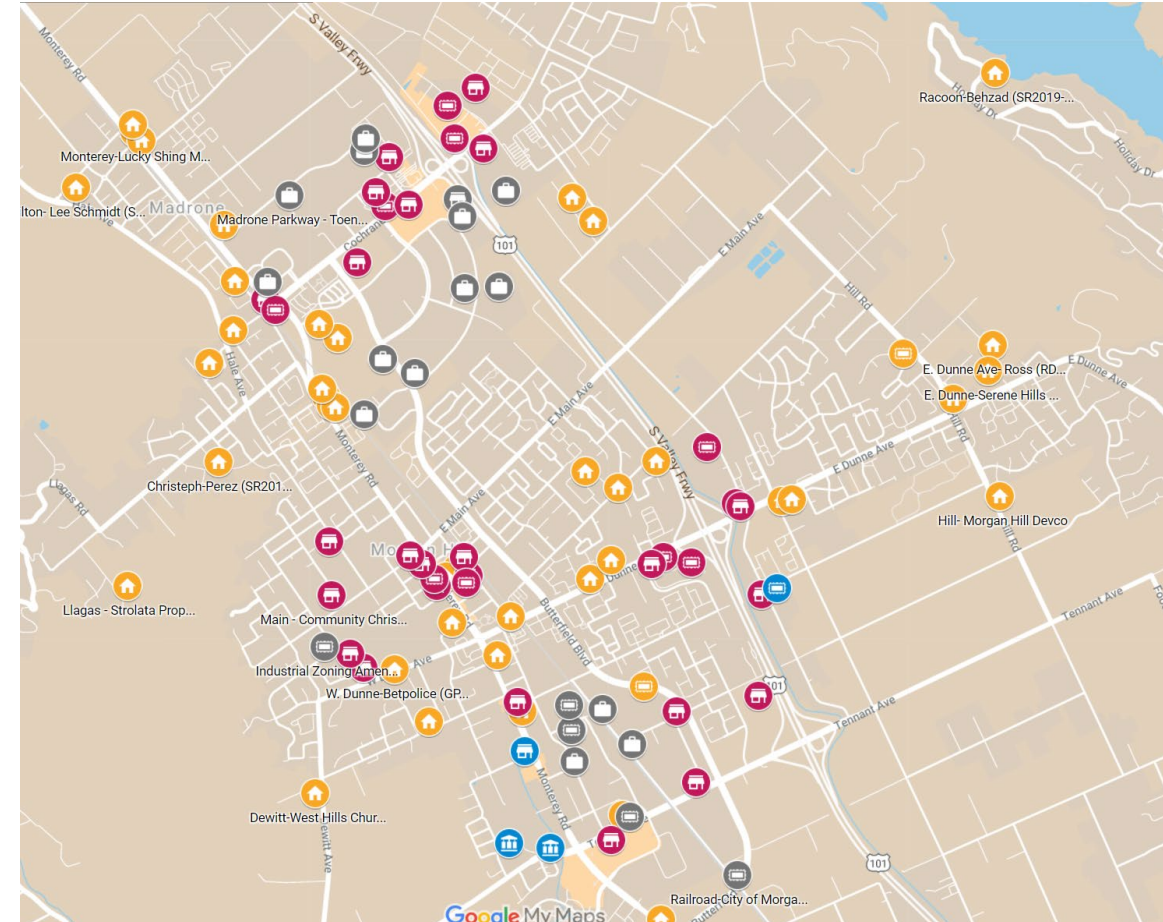
- Aim to develop a robust mix of land uses that support the City's fiscal sustainability, decrease the need for local residents to commute, create a thriving downtown, and enhance Morgan Hill's appeal as a tourist destination
- Planning for fiscal sustainability will help the City ensure that it has the financial resources to develop and maintain high-quality public infrastructure and services



What the community should know!

- Morgan Hill has been growing at a steady 2% rate
- No longer have the Residential Development Control System (RDCS), and cannot control growth
- 70% of residential land is for single family homes
- Currently processing 13 housing projects
- Future housing will likely be denser & taller

HOUSING



Next RHNA Cycle

Income Group	VLI	LI	MOD	MOD+	Total
Jurisdiction					
Campbell	752	434	499	1,292	2,977
Cupertino	1,193	687	755	1,953	4,588
Gilroy	669	385	200	519	1,773
Los Altos	501	288	326	843	1,958
Los Altos Hills	125	72	82	210	489
Los Gatos	537	310	320	826	1,993
Milpitas	1,685	970	1,131	2,927	6,713
Monte Sereno	53	30	31	79	163
Morgan Hill	262	151	174	450	1,037
Mountain View	2,773	1,597	1,885	4,880	11,135
Palo Alto	1,556	896	1,013	2,621	6,086
San Jose	15,088	8,687	10,711	27,714	62,200
Santa Clara	2,872	1,653	1,981	5,126	11,632
Saratoga	454	261	278	719	1,712
Sunnyvale	2,968	1,709	2,032	5,257	11,966
Unincorporated Santa Clara	828	477	508	1,312	3,125

HOUSING -Challenges

- No RDCS
- SB330 Streamlines Housing Projects
- Limited Hearings
- Limited City Regulation
- Six (6) 100% Affordable Projects
- 193 very low-income units needed for current RHNA Cycle
- Current projects could yield 256 very low-income (surplus of 63)

What the community should know!

- Housing is more expensive to maintain in the long run
- Affordable Housing has the implication of less property taxes
- Commercial lands at risk
- Need to have a job/housing balance
- 70% of residents commute for work
- Sales Tax, TOT & Property Tax help pay for services for the community

ECONOMIC SUSTAINABILITY



VACANT LAND 5+ ACRES



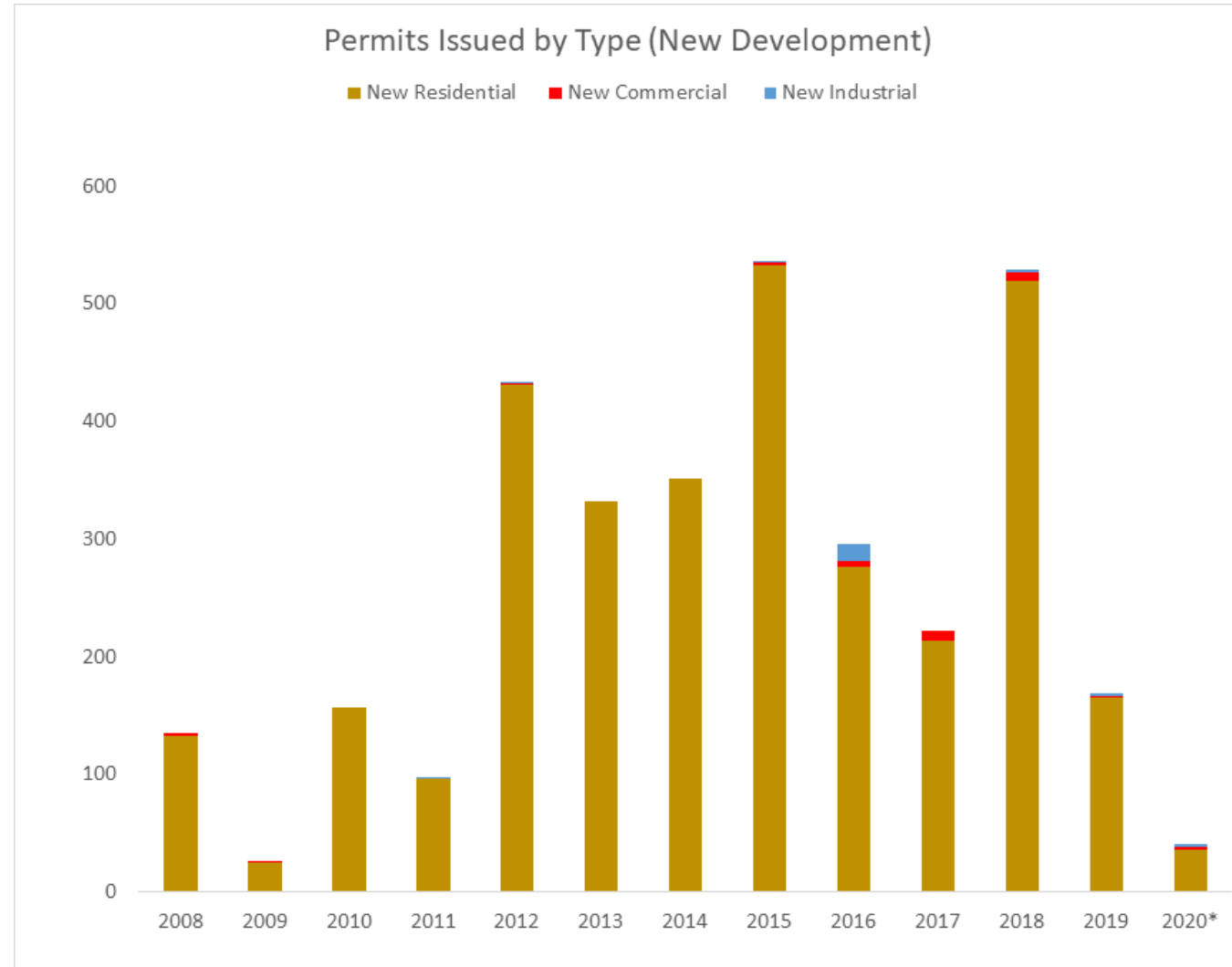
Vacant Acres	Commercial	Industrial	Total
Available	62	119	180
Constrained	28	29	57
New Projects	34	36	70
Entitled	46	2	47
	169	186	354

18-48 Years of
Industrial Land
Supply Left

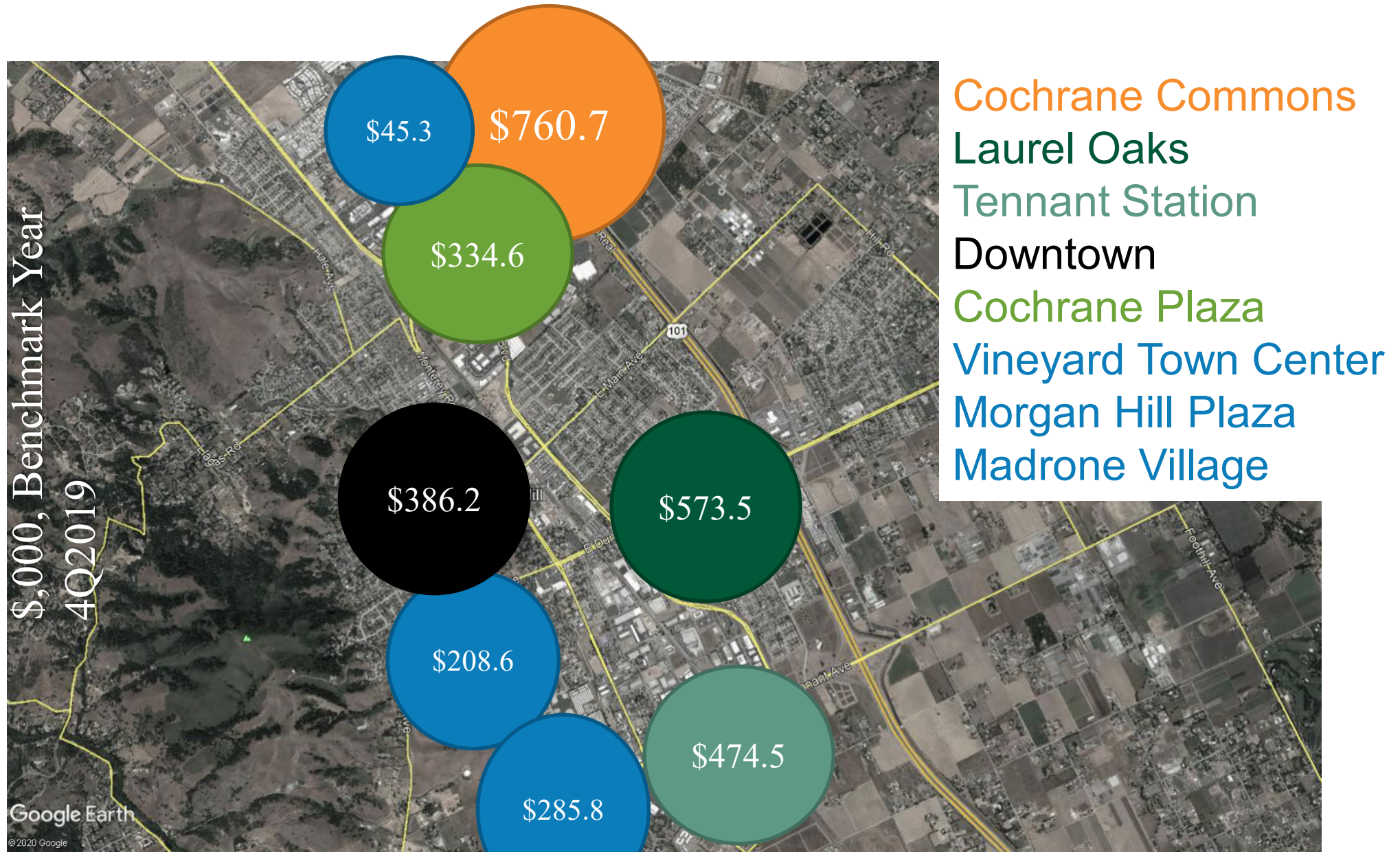
Industrial Development

For the last 10 years (2011-2020) We developed 2,955 units of housing resulting in an estimated 9,144 residents

During that same period, we issued 52 commercial/industrial permits resulting in an estimated 894 jobs



ANNUAL SALES FOR SHOPPING DISTRICTS



Did you know?

Tax revenue from new businesses helps our community.



 **TAX**
Revenue



1 Hotel



1.5 Police
Officers



 **TAX**
Revenue



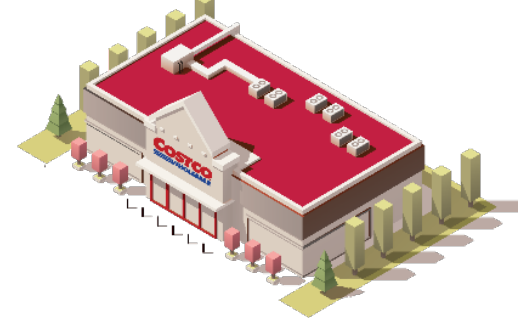
1 Dealership



2.5 Police
Officers



 **TAX**
Revenue



1 Costco



4.5 Police
Officers





Infrastructure and Development

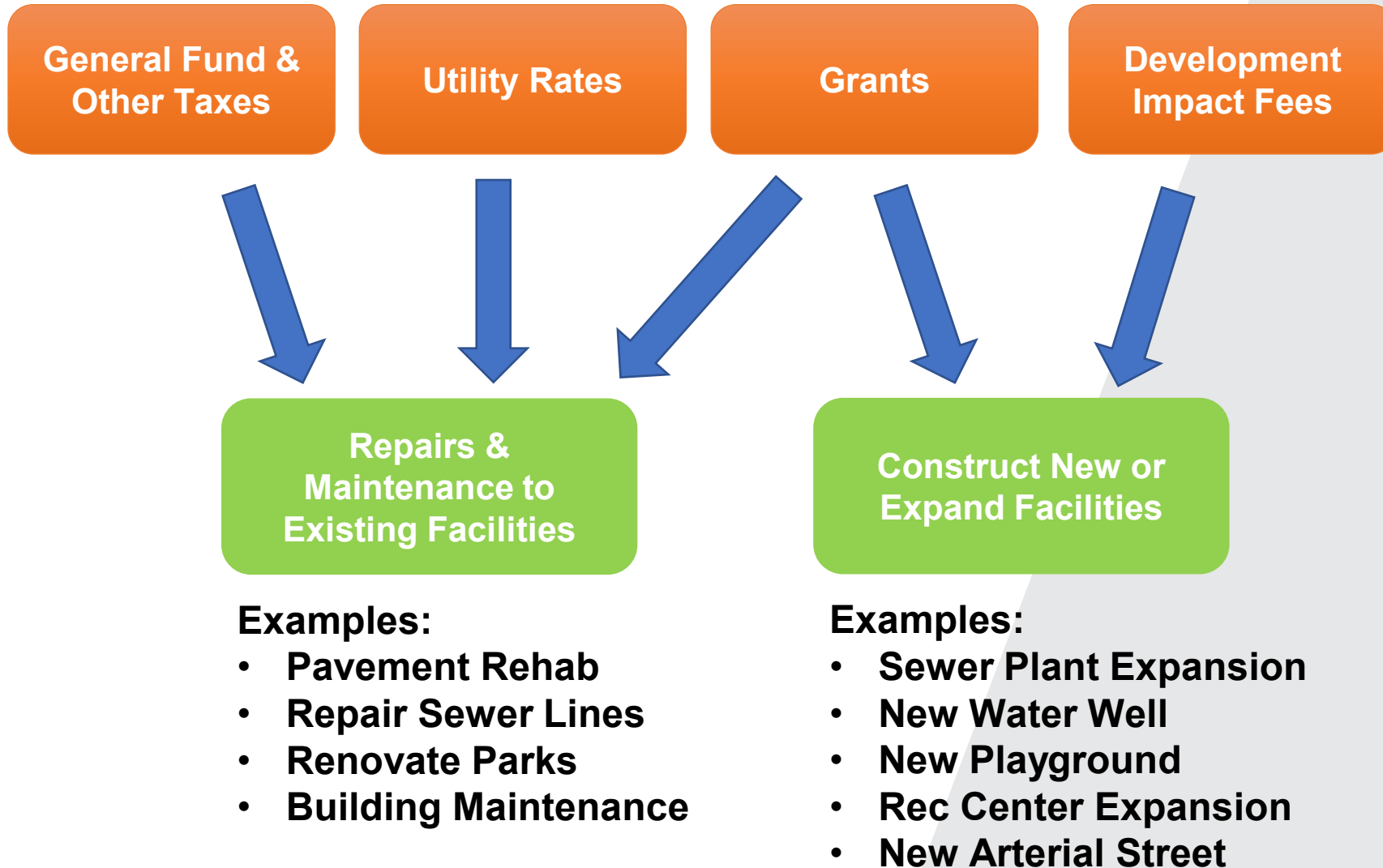


INFRASTRUCTURE

Areas of Infrastructure

- Water System
- Wastewater System
- Roadways/Streets/Sidewalks
- Storm Drain System
- Parks, Trails & Open Space
- Building and Facility Maintenance
- Downtown Facilities

Infrastructure Funding



Water System

Primary Funding Sources

- Customer Fees
- Impact Fees

Infrastructure Status

- System is well maintained
- Water System Needs increase with development

Impact fees for that planned growth

- New Lines
- New Wells
- New Reservoirs



Water System

Current Water Source

- City Gets 100% of Water Delivered from Groundwater
- Groundwater (Natural Recharge + Imported Water)
- Imported Water Travels Through Delta
- The entire County relies on Valley Water to manage the water supply

Future Alternate Water Sources

- Recycled Water



Wastewater System

Primary Funding Sources

- Customer Fees
- Impact Fees

Infrastructure Status

- System is well maintained, but has significant improvements planned for aging infrastructure
 - I & I Projects
- Wastewater Capacity Needs increase with development
- Impact fees for that planned growth.
 - Treatment Plant Expansion
 - Second Trunk Line to Treatment Plant



Roadways Streets & Sidewalks

Streets and Sidewalks

- Roadways are in good condition
Avg PCI of 73
- City has increased funding for maintenance over last several years
- Streets in new development cost far less to maintain
- Impact fees fund traffic congestion improvements
 - Signals
 - Hale Avenue



Roadways Streets & Sidewalks

Traffic

- New Development contributes to increased traffic
- Impact fee funded projects are designed to support congestion management
- The City cannot effectively mitigate cut-through traffic brought from development outside the City



Parks and Recreation



Parks

- Facilities are maintained in average condition
- New facilities can and will be constructed via impact fees
- New development will create more users
- The difficulty will continue to be maintaining parks spaces

Recreation

- Recreation's cost recovery model will be impacted positively by new growth



Summary



Infrastructure

- Maintenance of the City's infrastructure continues to improve
- Unfunded infrastructure need has been reduced from \$5.8 million annually in 2014 to just over \$600,000.

Future Risks

- Legislation aimed at reducing impact fees that can be collected
- State requirements for storm water management

POLICE DEPARTMENT

- Workload Study: Records, Dispatch, Evidence, Officers, Administration
- Funding for Technology Needs
- Impacts of Increased Unhoused/Mental Health Population
- Alternative Policing/Response Models
- Police Facility Expansion



BROADBAND SERVICES

Growth drives the need for increased Broadband services



FIRE DEPARTMENT

The Fire Department is engaged at every step of development

- Beginning with conceptual design review
 - Emergency access and egress
 - Firefighting water supplies
 - Addressing and street names
 - Construction types and materials
 - Automatic detection and suppression
- Recurring inspections ensure fire safety for the life of a building



Monitoring and Adjusting to Meet the Need

- 77% of calls for service are medical in nature
- Your Fire Department meets response time obligations for EMS calls
- Adding a Squad this summer to address increasing workload

FIRE DEPARTMENT



FIRE DEPARTMENT

Monitoring and Adjusting to Meet the Need

- Soliciting bids for the design of a third fire station
- Cooperative Fire Protection agreements benefit Morgan Hill, Gilroy, and unincorporated South Santa Clara County



In conclusion...

- Aim to develop a robust mix of land uses that support the City's fiscal sustainability, decrease the need for local residents to commute, create a thriving downtown, and enhance Morgan Hill's appeal as a tourist destination
- City has plans in place to support long term sustainability - the General Plan is our guiding document that gives us direction as to what and when to implement
- Our systems are in place to master plan and charge adequate fees that will pay for our needed infrastructure
- To support long term economic sustainability, we need to have: 1. A diversified tax base, 2. A balanced mix of uses, industrial revenue generating lands to match the pace of housing we are building. Sustainability is associated with the number of jobs and the revenues to maintain the quality of life we promise our community

In conclusion...

- Unknown legislation could be a challenge and could permit commercial land conversion to residential and eliminate impact fees
- Infrastructure and support for future development is in place, all of which is happening with the lowest per capita tax rate in the County
- Morgan Hill has long term financial unfunded infrastructure needs that we will, as a community, need to solve for



Special - Regular Meeting Agenda
City Council

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

Wednesday, June 23, 2021 5:30 p.m.

Virtual Meeting

PUBLIC NOTICE

The Public Hearing to consider Vehicle-Miles-Traveled (VMT) screening criteria and thresholds of significance regarding the City's implementation of State Senate Bill 743 (SB 743) transition from Level-of-Service (LOS) to VMT as the metric for transportation analysis under the California Environmental Quality Act (CEQA) for development projects that was noticed for consideration by the City Council at this meeting will be continued to a date uncertain. This will be duly noticed.

VIRTUAL MEETING GUIDELINES AND PUBLIC COMMENT

In accordance with Executive Order N-25-20 and guidance from the California Department of Public Health on gatherings, remote public participation is allowed. Physical meetings will not be in the City Council Chamber until further notice.

City Council meetings will be live streamed on Channel 17, on the City's website and on the City's Facebook page. Those members of the community that would like to participate in the meetings remotely may do so by joining the virtual meeting at: <https://bit.ly/MHCityCouncilMeeting> or by calling in to: (669) 900-9128, then enter the webinar id: 873 3200 8380#.

Public comment may be provided in the following ways:

- Join the virtual City Council meeting via the link above, when public comment is opened, raise your virtual hand and be called upon to speak for up to 3 minutes
 - In order to speak, please be sure that your version of Zoom is up to date.
- Join the virtual meeting by calling in to the number above, dial *9 to raise your hand and be called upon to speak for up to 3 minutes
- Send public comments in writing to the City Clerk at ccpubliccomment@morganhill.ca.gov [<mailto:ccpubliccomment@morganhill.ca.gov>](mailto:ccpubliccomment@morganhill.ca.gov)

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

SPECIAL/REGULAR MEETING

A special meeting of the City Council is called at 5:30 p.m. for the purpose of conducting a Housing Sustainability Workshop and a closed session.

5:30 p.m. Housing Sustainability Workshop

6:30 p.m. Closed Session

7:00 p.m. Regular Meeting

SPECIAL MEETING

5:30 p.m. Housing Sustainability Workshop

6:30 p.m. Closed Session

CALL TO ORDER

Mayor Constantine

ROLL CALL ATTENDANCE

City Clerk Michelle Bigelow

DECLARATION OF POSTING AGENDA

Per Government Code Section 54954.2

City Clerk Michelle Bigelow

WORKSHOP

This workshop is the fourth in a series of Housing Workshops that will look at the current and future state of housing in Morgan Hill. This workshop is called "Housing Sustainability." Staff will present and discuss the following:

- o How the City plans for infrastructure needs, including planning for water, sewer, roads, police, and fire.
- o How the City can maintain long-term sustainability in the context of all of the new State-mandated housing production.

CLOSED SESSION

OPPORTUNITY FOR PUBLIC COMMENT

ADJOURN TO CLOSED SESSION

CONFERENCE WITH REAL PROPERTY NEGOTIATORS (Gov. Code section 54956.8.)

Property: APN's - 817-06-001

Agency negotiator: Christina Turner and Chris Ghione

June 23, 2021

Negotiating parties: Chu, John C. and May-Jih C.
Under negotiation: Price and Terms of Payment

CONFERENCE WITH REAL PROPERTY NEGOTIATORS (Gov. Code section 54956.8.)

Property: APN's - 762-61-3052 (Community and Cultural Center)
Agency negotiator: Christina Turner and Chris Ghione
Under negotiation: Price and Terms of Lease

CONFERENCE WITH LEGAL COUNSEL-ANTICIPATED LITIGATION (Gov. Code section 54956.9(d)(2).): (one case).

REGULAR MEETING

7:00 p.m.

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.

PROCLAMATIONS

Proclaiming the month of July as Parks & Recreation Month

RECOGNITIONS

Recognizing Fred Gomez for his years of service to Morgan Hill

CITY COUNCIL REPORTS

Council Member Spring

CITY MANAGER'S REPORT

City Manager Christina Turner

CITY ATTORNEY'S REPORT

City Attorney Donald Larkin

OTHER REPORTS

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. APPROVE AN IMPROVEMENT AGREEMENT AND A DEFERRED IMPROVEMENT AGREEMENT WITH TSC MOTORS INC. (MORGAN HILL CDR+J DEALERSHIP), AND AUTHORIZE THE CITY MANAGER TO EXECUTE AN ASSOCIATED RIGHT-OF-WAY ACQUISITION AGREEMENT WITH THE OWNER OF THE PROPERTY WITH ASSESSOR'S PARCEL NUMBER (APN) 728-17-032

Recommendation:

1. Approve an Improvement Agreement with TSC Motors Inc.;
2. Approve a Deferred Improvement Agreement with TSC Motors Inc.;
3. Authorize the City Manager to execute the Improvement Agreement and Deferred Improvement Agreement;
4. Authorize the recordation of the Improvement Agreement and Deferred Improvement Agreement; and
5. Authorize the City Manager to negotiate and execute a Right-of-Way Acquisition Agreement with the Owner of the property with Assessor's Parcel Number (APN) 728-17-032.

2. APPROVE SECOND AMENDMENT TO MAINTENANCE SERVICE AGREEMENT WITH ANIMAL DAMAGE MANAGEMENT, INC.

Recommendation:

1. Determine that competitive bids upon notice would not likely result in a lower price to the City from a responsible bidder or would cause unnecessary expense or delay under the circumstances per Section 3.04.150 (1) of the Morgan Hill Municipal Code; and
2. Authorize the City Manager to execute and administer the Second Amendment to the Maintenance Service Agreement with Animal Damage Management, Inc., extending the agreement for one additional year of service at annual amount of \$35,160 for a new total contract amount of \$140,640 over 4 years.

3. APPROVE THIRD AMENDMENT TO AGREEMENT WITH INNOVATIVE CLAIMS SOLUTIONS, INC.

Recommendation:

Authorize the City Manager to execute and administer a Third Amendment to Agreement with Innovative Claims Solutions, Inc. to provide third party claims administration for workers' compensation extending the agreement for one additional year of service at annual amount of \$34,380, for a new total contract amount of \$206,600 over 6 years.

4. APPROVE THE JUNE 16, 2021 MEETING MINUTES

Recommendation:

Approve Minutes.

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

Recommendation:

1. Award Vehicle Service Agreement to Frank's Auto Service for a total not-to-exceed amount of \$368,308 over three years; and
2. Authorize City Manager to Execute the Agreement.

6. AWARD COMMUNITY AND CULTURAL CENTER BOILER REPLACEMENT PROJECT TO STEPHEN CIARI PLUMBING AND HEATING, INC.

Recommendation:

1. Adopt resolution amending the Fiscal Year 2020-21 Adopted Budget to appropriate an additional \$28,101 from the Building Replacement Fund (741) for the Community and Cultural Center Boiler Replacement Project;
2. Award contract to Stephen Ciari Plumbing and Heating, Inc. in the amount of \$98,274 and authorize the expenditure of (10%) contingency funds not to exceed \$9,827 for a total authorization of \$108,101; and
3. Authorize the City Manager to execute and administer that certain contract with Stephen Ciari Plumbing and Heating, Inc.

7. AWARD OF EAST FIFTH STREET SEWER MAIN PROJECT TO PACIFIC UNDERGROUND CONSTRUCTION, INC.

Recommendation:

1. Approve East 5th Street Sewer Main Project plans and specifications;
2. Award contract to Pacific Underground Construction, Inc. for the East 5th Street Sewer Main Project in the amount of \$1,226,730;
3. Authorize expenditure of construction contingency not to exceed \$122,673; and
4. Authorize the City Manager to execute and administer the construction contract with Pacific Underground Construction, Inc.

PUBLIC HEARING

8. ADOPT RESOLUTION ESTABLISHING CREDIT CARD PAYMENT SERVICE FEE

Recommendation:

1. Open/Close public hearing; and
2. Adopt resolution establishing new credit card service fee for development fees and transient occupancy tax payments by credit card.

Estimated Time: 15 Minutes

9. CONSIDER APPEAL OF PLANNING COMMISSION'S APPROVAL OF SD2020-0011/SR2020-0029 THROUGH SR2020-0033 DE PAUL - TRAMMELL CROW MORGAN HILL VENTURE: REQUEST FOR A TENTATIVE PARCEL MAP AND DESIGN PERMITS FOR THE REDWOOD TECH AT 101, A FIVE BUILDING INDUSTRIAL PARK, ON A 29± ACRE SITE (APNS 728-30-006 AND 728-30-009). (AAE2021-0004 AND AAE2021-0005)

Recommendation:

1. Grant a hearing de novo;
2. Open/close public hearing; and
3. Adopt Resolution denying the appeals and reaffirming the decision of the Planning Commission to approve the project subject to Conditions of Approval.

Estimated Time: 120 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.

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CITY COUNCIL STAFF REPORT

MEETING DATE: June 23, 2021

PREPARED BY: Maria Angeles, Senior Civil Engineer
APPROVED BY: City Manager

APPROVE AN IMPROVEMENT AGREEMENT AND A DEFERRED IMPROVEMENT AGREEMENT WITH TSC MOTORS INC. (MORGAN HILL CDR+J DEALERSHIP), AND AUTHORIZE THE CITY MANAGER TO EXECUTE AN ASSOCIATED RIGHT-OF-WAY ACQUISITION AGREEMENT WITH THE OWNER OF THE PROPERTY WITH ASSESSOR'S PARCEL NUMBER (APN) 728-17-032

RECOMMENDATION(S)

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2. Approve a Deferred Improvement Agreement with TSC Motors Inc.;
3. Authorize the City Manager to execute the Improvement Agreement and Deferred Improvement Agreement;
4. Authorize the recordation of the Improvement Agreement and Deferred Improvement Agreement; and
5. Authorize the City Manager to negotiate and execute a Right-of-Way Acquisition Agreement with the Owner of the property with Assessor's Parcel Number (APN) 728-17-032.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Protecting the Environment and Preserving
Open Space and Agricultural Land

2020-2021 Strategic Priorities

Economic Development

GUIDING DOCUMENTS

Morgan Hill 2035 General Plan

REPORT NARRATIVE:

The Morgan Hill CDR+J Dealership project is a proposed 31,397 sq. ft. Chrysler, Dodge, Ram, and Jeep car dealership located on a 6-acre portion of a 9.24-acre site at the West side of Condit Road, approximately 600 feet south of Diana Avenue (APN: 728-17-035) (Attachment 1).

As required by the project's conditions of approval for Design Review (SR2017-0007), the developer is required to enter into an Improvement Agreement (Attachment 2) with the City of Morgan Hill and provide a financial guarantee covering the project's public improvements. The project has a Design Review Amendment application currently under separate review by the Planning Division to obtain approval on the modifications to the dealership buildings and other site plan changes.

The public improvements to be constructed as part of this project include the following:

1. **Condit Road - West Side:** Improvements on the west side of Condit Road, along the project frontage, on only the 6-acre portion of the 9.24-acre site. The improvements include, but are not limited to, curb and gutter, attached sidewalk, street trees, street paving, storm drainage facilities, sewer and water, fire protection, and street lighting.
2. **Condit Road - East Side:** Improvements on the east side of Condit Road, along the frontage of the property directly across from the project site. The improvements include curb and gutter, attached sidewalk, street paving, storm drainage facilities, and street lighting.

Although not directly attributable to the project, the project's Design Review included the condition for the developer to construct the frontage improvements along the east side of Condit Road with the actual improvement cost to be reimbursed by the City. The public improvements on the east side of the road will fully improve this segment of Condit Road to its ultimate width and will be consistent with the Vision Zero and Complete Streets policies.

Improvement Agreement

The Improvement Agreement includes a reimbursement provision (Section 14 of the agreement) that outlines the terms and conditions for reimbursing the developer for the actual construction and design costs associated with the completion of the public improvements along the East side of Condit Road. The reimbursement will be in the form of credits against the Traffic Impact Fees and Storm Impact Fees due from project.

The developer has furnished the City with the necessary documents to complete the processing of the Improvement Agreement by providing surety bonds and insurance for the project's proposed public improvements.

Right-of-Way Acquisition

The construction of the improvements along the East side of Condit Road includes work outside the City's right-of-way on an adjacent parcel located within the unincorporated County area. Staff is currently in communication with the owner of the property with Assessor's Parcel Number (APN) 728-17-032 on the proposed acquisition of the necessary street right-of-way, without compensation, and a 10' Public Service Easement dedication behind the new sidewalk. A Right-of-Way and Public Service Easement (PSE) dedication exhibit is included (Attachment 3) showing the proposed right-of-way and PSE to be obtained.

A Right-of-Way Acquisition Agreement will be executed with the property owner to allow the City to acquire the necessary street right-of-way and to obtain the 10' Public Service Easement dedication

Deferred Improvement Agreement

The developer requested a deferral of the construction of improvements along approximately 180' of frontage of the 3.24-acre northerly portion of the project's 9.24-acre site, in the location of the project's approved temporary automotive sales facility that is currently in operation, as shown in the attached map exhibit (Attachment 4).

Staff is recommending the deferral of the improvements as the developer has not finalized the development plans for the site's northerly area. As part of the deferral, the developer is required to enter into a Deferred Improvement Agreement (Attachment 5) with the City.

Staff recommends that the City Council approve the Improvement Agreement and Deferred Improvement Agreement, authorize the City Manager to negotiate a Right-of-Way Acquisition Agreement, authorize the City Manager to sign the Agreements; and record the Improvement Agreement and Deferred Improvement Agreement on behalf of the City.

COMMUNITY ENGAGEMENT: Inform

On September 1, 2018, the Community Development Director considered a Design Review application for a new car dealership with a 10-day public comment period.

ALTERNATIVE ACTIONS:

There are no feasible alternative actions on the approval of the Improvement Agreement as the developer has furnished the necessary documents to complete the processing of the Improvement Agreement.

The City Council could decide not to approve the Deferred Improvement Agreement. However, the developer may not be able to fully fund the additional frontage improvements along the 3-acre portion of the site and may choose not to continue with the project.

The City Council could also decide not to authorize the execution of a Right-of-Way Acquisition Agreement. This decision will defer the widening of a segment of Condit Road which is a needed improvement consistent with the Vision Zero and Complete Streets policies. Future widening of Condit Road will be performed by the City.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On December 2, 2020, the City Council approved an Incentive Agreement, consistent with the Auto Dealer Economic Development Strategy, with TSC Motors, Inc. for a new car dealership at the Auto Mall Planned Development Site on Condit Road.

On the same date, the City Council also approved and directed the City Manager to execute an Impact Fee Freeze Agreement with TSC Motors, Inc.

FISCAL AND RESOURCE IMPACT:

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

Additional development review costs will be due from the future development of the 3.24-acre portion of the project site.

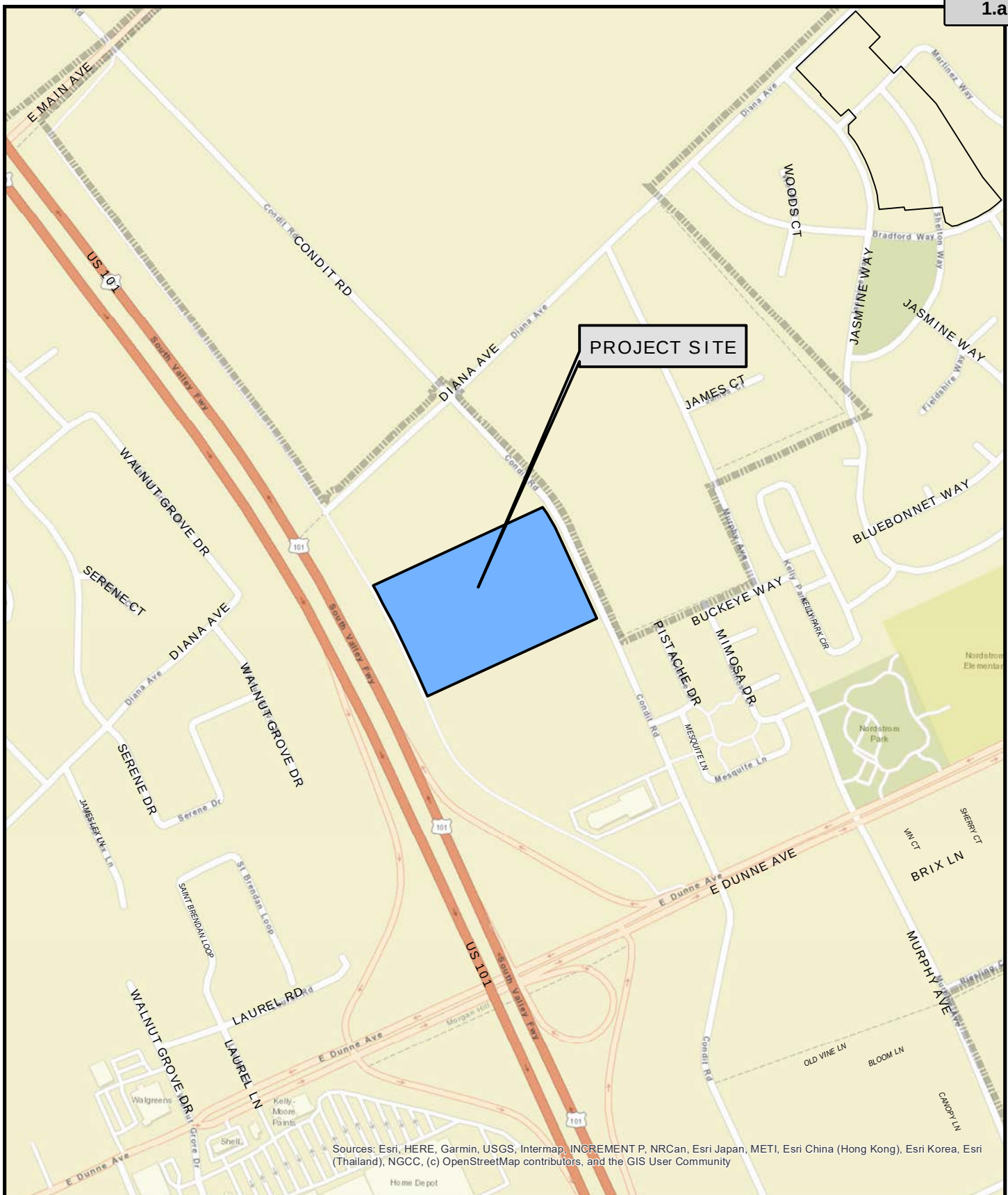
The total estimated construction and design costs for the improvements along the East side of Condit Road is \$391,526 (Reimbursable Amount). As part of the project's Improvement Agreement, the Reimbursable Amount will be applied as a credit against the Traffic Impact Fees and Storm Impact Fees due from the project. A budget amendment is not proposed for Council approval as the project's Traffic Impact Fees and Storm Impact Fees due are enough to cover the Reimbursable Amount.

CEQA (California Environmental Quality Act):

Project – A Mitigated Negative Declaration was adopted.

LINKS/ATTACHMENTS:

1. Site Map
2. Improvement Agreement
3. Right-of-Way and Public Service Easement Dedication Exhibit
4. Location Map of Deferred Improvement Area at Condit Road
5. Deferred Improvement Agreement



Land Development Engineering
Engineering and Utilities Department

G:\R-14\Proj\GIS\John\Maria_CDRJ Dealership.mxd

SITE MAP MORGAN HILL CDR+J DEALERSHIP



0 250 500 1,000 1,500 2,000 Feet

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

CITY OF MORGAN HILL
17575 PEAK AVENUE
MORGAN HILL, CA 95037

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

THE AREA ABOVE IS RESERVED FOR RECORDER'S USE

IMPROVEMENT AGREEMENT

TSC Motors Inc.
17085 Condit Road
APN: 728-17-035
Morgan Hill CDR+J Dealership

THIS AGREEMENT is made on this _____ day of _____, 2021, by the CITY OF MORGAN HILL, a municipal corporation ("CITY"), and TSC Motors Inc., a corporation ("PROPERTY OWNER").

RECITALS

The following Recitals are a substantive part of this Agreement:

1. This Agreement is entered into pursuant to Morgan Hill Municipal Code Chapter 12.02.
2. PROPERTY OWNER has filed a Development Application and supporting documents on the property with the address of **17085 Condit Road**, and the **APN: 728-17-035** having the development name of **Morgan Hill CDR+J Dealership** ("Development").
3. CITY requires as a condition of approval of the Development Permit, as described on said permit, that certain improvements be installed by PROPERTY OWNER as shown on the fully executed Development Improvement Plans entitled **Public Improvement Plans for Morgan Hill CDR+J – Morgan Hill, CA** ("Improvements"), on file with CITY and incorporated herein by this reference.
4. PROPERTY OWNER has been unable to complete, prior to the issuance of the Development Permit, all of the Improvements required by CITY to the satisfaction of the City Engineer.
5. PROPERTY OWNER is required by the terms of the Morgan Hill Municipal Code to improve all streets, highways, or public areas which are part of the Development, including but not limited to necessary paving, curbs, sidewalks, catch basins, water mains, culverts, storm drains, and sanitary sewers, in accordance with the plans and specifications on file with the City Engineer.

6. To assure CITY that PROPERTY OWNER will complete all the work and Improvements required for the Development, the parties have entered into this Agreement.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **Term of Agreement.** The term of this Agreement shall be six (6) months from the date of issuance of the Development Permit ("Term") unless extended by written agreement.
2. **Improvements.** PROPERTY OWNER agrees to construct the Improvements in a good and workmanlike manner in accordance with the plans and documents filed with and approved by CITY in conjunction with the Development, all of which are incorporated herein by reference. These items of the Improvements shall be completed, constructed and installed at PROPERTY OWNER's sole expense unless agreed to otherwise by CITY.
3. **Rights-of-Way.** Except as otherwise provided by this Agreement, CITY can hold without acceptance or recordation all lands, rights-of-way, and easements offered for dedication. All such offers shall, however, remain open, and shall constitute irrevocable offers of dedication in accordance with the Government Code. All such offers may be accepted and recorded by CITY in its sole discretion at any later date without further notice to PROPERTY OWNER as provided by law. By way of explanation only, it is the current intention of CITY to accept all or part of the irrevocable offers to dedicate upon acceptance of the Improvements called for in this Agreement.
4. **Improvements: Time Limits.** PROPERTY OWNER agrees to cause all Improvements to be made and constructed to comply with all requirements of Morgan Hill Municipal Code Chapter 12.02, according to the improvement plans for the Development approved by the City Engineer and including any changes or alteration in the Improvements required by the City Engineer. The Improvements shall be completed utilizing CITY standards and specifications. PROPERTY OWNER agrees to complete the Improvements prior to the expiration of this Agreement, or the issuance of the certificate of occupancy, whichever is earlier; provided however, the City Manager may extend the deadline for completion by not more than six (6) months at his or her reasonable discretion and determination that granting the extension will not be detrimental to the public welfare. No extension of this deadline for completion shall be made except upon the basis of a written application made by PROPERTY OWNER stating fully the ground for the application and the facts relied upon for an extension.

It is further agreed by and between PROPERTY OWNER and CITY that any extension granted shall in no way affect the validity of this Agreement or release the surety(ies) on any bond attached hereto or the financial institution guaranteeing the same. PROPERTY OWNER further agrees to maintain the securities described in Section 6 in full force and effect during the terms of this Agreement, including any extensions of time as may be granted, and until such time as the Improvements have been accepted for maintenance by CITY.

In the event that PROPERTY OWNER shall fail to complete the Improvements within the time provided by this Agreement, CITY may in its sole discretion and in addition to any other remedy provided in this Agreement or by law, enter upon the Development and complete the Improvements and recover the full

cost and expense of construction from PROPERTY OWNER, PROPERTY OWNER's successors and assigns, PROPERTY OWNER's Performance/Labor & Material Bonds associated with this Development, or from the then owner of the Development, and/or place a lien upon the Development property for the cost and expense. Any and all CITY costs shall include but not be limited to administrative and attorney costs.

5. **Acquisition and Dedication of Easements or Rights-of-Way.** If any of the Improvements is to be constructed or installed on land not within the Development or already existing public right-of-way, no construction or installation shall be commenced before the irrevocable offer of dedication or conveyance to CITY of appropriate rights-of-way, easements or other interest in real property, and appropriate authorization from PROPERTY OWNER to allow construction or installation of the Improvements or work has been obtained and paid for by PROPERTY OWNER.

6. **Bond Requirements.** To secure the performance of each Improvement required under this Agreement and to ensure full payment to all persons furnishing or supplying labor or materials for each Improvement required, PROPERTY OWNER shall provide to CITY concurrently with the execution of this Agreement, payment and performance bonds each in the amount of 100% of the total estimated cost of the Improvements as determined by the City Engineer. A performance bond to secure faithful performance of this Agreement as required by Section 12.02.160 of the Morgan Hill Municipal Code for performance shall be provided in substantially the form set forth in Exhibit B. A payment bond to secure full payment to all persons furnishing or supplying labor or materials as required by Section 12.02.160 of the Morgan Hill Municipal Code for labor and materials shall be provided in substantially the form set forth in Exhibit C. PROPERTY OWNER shall provide an additional guarantee and warranty security (in substantially the form set forth in Exhibit D) of fifty (50%) percent of the cost of construction of the Improvements to guarantee and warranty the Improvements for a period of one year following its completion and acceptance against any defective work or labor done, or defective materials furnished, as required by Section 12.02.170 of the Morgan Hill Municipal Code.

Improvements and the City Engineer's Estimated Costs of Improvements as of **June 10, 2021** are attached hereto as Exhibit "A".

Any bonds submitted under this Agreement shall be executed by a surety company authorized to write the same in the State of California, and subject to the review and approval of the City's risk manager. All required securities shall be in a form approved by the City Attorney. The bonds shall be executed on CITY forms by a surety authorized to do business in the State of California and shall be approved by the City Attorney and the City Engineer. Submittal of the Performance/Labor & Material Bonds is a requirement prior to CITY's issuance of an encroachment permit to do work in CITY's right-of-way. Submittal of the Warranty Bond is a requirement prior to the City Engineer's consideration of acceptance of the public improvements.

Note: If Cash Deposit Agreement Guaranteeing Improvements is utilized for security purposes, the Cash Deposit Agreement amount shall be two hundred (200%) percent of the aforementioned City Engineer's Estimated Costs of Improvements. In lieu of the above, CITY will accept a certificate of deposit in CITY's name with escrow instructions acceptable to the City Engineer, subject to the approval of the City Attorney.

The release of any securities shall be governed by the provisions of Section 12.02.170 of the Morgan Hill Municipal Code.

7. **Irrevocability of Security.** The securities provided under this Agreement shall be irrevocable, shall not be limited as to time, and may be released only upon the written approval of the City Engineer and City Council.
8. **Duty to Warn.** PROPERTY OWNER shall give adequate warning to the public of each and every dangerous condition which may exist in the Improvements, and will take all reasonable actions to protect the public from any dangerous condition.
9. **Warranty.** PROPERTY OWNER guarantees and warrants the Improvements required by this Agreement and agrees to remedy any defects in the Improvements arising from faulty or defective materials or construction occurring within twelve (12) months after acceptance by CITY of said Improvements. Following notice, PROPERTY OWNER shall, without delay or cost to CITY, repair, replace, or reconstruct any defective or unsatisfactory portion of Improvements. CITY may, at its sole option, perform the repair or replacement itself if PROPERTY OWNER has failed to commence repair within twenty (20) days after CITY has mailed written notice to PROPERTY OWNER. In such event, PROPERTY OWNER agrees to pay the cost of repair and replacement, plus 15%, by CITY; and CITY may recover such costs as a lien against the Development. CITY may proceed immediately to make repairs should an emergency arise without waiving its rights of recovery against PROPERTY OWNER.
10. **Failure of Performance.** In addition to the other remedies provided by this Agreement, CITY shall have recourse to the security given. In the event that CITY seeks recourse against any security, CITY shall have recourse against PROPERTY OWNER for any and all amounts necessary to complete the obligation. All administrative costs, including attorneys' fees shall be a proper charge against the security and PROPERTY OWNER pursuant to Government Code. The right of CITY to draw upon or utilize the security is additional and not in lieu of any other remedy available to CITY at law or in equity. The parties agree that the estimated costs and security amounts may not reflect the actual cost of construction or installation of Improvements, and therefore, CITY damages for PROPERTY OWNER's default shall be measured by the cost of completing the required Improvements.
11. **Certificate of Occupancy.** PROPERTY OWNER understands that CITY will expect completion, to the satisfaction of CITY, of specific public improvements as well as private utility improvements prior to CITY Approval of a Certificate of Occupancy for any building on the Development property. The specific improvements shall include activation of all public utilities (water, sewer, storm drain); activation of all private utilities (electric, gas, phone) except for cable; street lights turn-on request filed with P G & E; and full street improvements (curb-gutter and paving with/without final lift) from existing public street to building under consideration for Certificate of Occupancy. PROPERTY OWNER, furthermore, agrees to so inform successor in lot interest should lot be transferred to another party prior to CITY acceptance of public improvements.
12. **Final Toxic Report.** Where applicable, PROPERTY OWNER hereby agrees to furnish the City Attorney with a copy of the Final Toxic Report issued by the appropriate licensed consultant on the proposed Development. This report must be received prior to final acceptance of on-site improvements and issuance of certificate of occupancy.
13. **Public Improvements Fee Schedule.** PROPERTY OWNER shall pay the following sums in cash to CITY pursuant to the provisions of Resolution 1383 and any amendments thereto. These sums shall be

paid to CITY at the time of issuance of the Development Permit, and shall be in accordance with the Department of Public Works Fee Schedule attached hereto demonstrating a current Total Fee Obligation of **\$358,298**. All Fees are estimated and may be increased by CITY subject to current resolutions and ordinances. These fees are subject to a minimum annual revision. PROPERTY OWNER consents to increases in these fees. This Agreement shall not be construed to fix or freeze fees as of any point prior to issuance of Development Permits.

All development fees shall be those in effect at the time of the issuance of the Development Permit for this Development. This Agreement does not entitle the developer to any permit including a grading permit. A separate application for a grading permit should be made to the Building Department.

14. **Reimbursements**

a) PROPERTY OWNER acknowledges and agrees that the CITY will reimburse the PROPERTY OWNER for the actual costs associated with the completion of the public improvements along the East side of Condit Road, across the property frontage ("Reimbursable Improvements"). The PROPERTY OWNER shall also be reimbursed the design/engineering consultant costs for constructing the improvements.

b) The CITY shall reimburse the PROPERTY OWNER subject to the following terms and conditions:

(1) The City shall credit/reimburse the PROPERTY OWNER in an amount not to exceed the agreed upon reimbursable amount of **\$391,526**. The reimbursement shall be issued in the form of a credit against the PROPERTY OWNER'S project fee obligation which consists of Traffic and Storm Drain Impact Fees.

(2) The PROPERTY OWNER shall keep records with complete and correct entries of all construction costs related to the improvements, including cancelled checks or other proof of payment. These records shall be made available to the CITY.

15. **Other Agreements Associated with This Improvement Agreement:** The following "checked off" Agreements are understood to be associated with this Agreement and have been fully executed prior to or concurrent with this Agreement:

☐ CITY "Streets" Reimbursement Agreement (CITY Ordinance 982)

PROPERTY OWNER acknowledges and agrees that the property is subject to a Reimbursement Agreement whereby PROPERTY OWNER must reimburse CITY for all costs associated with off-site improvements completed by the CITY and/or others or to be completed by CITY and/or others. PROPERTY OWNER agrees to pay CITY for all sums already incurred under the reimbursement agreement prior to issuance of any building permits. If the improvement has not been completed by CITY and/or others, then PROPERTY OWNER or successor-in-interest agrees to fully reimburse CITY for all costs incurred by CITY and/or others in constructing the improvements.

☐ CITY Public/Private Utility Reimbursement Agreement

☐ Landscape & Lighting Maintenance Assessment District Annexation

☒ Deferred Improvement Agreement

- [X] Incentive Agreement
[X] Impact Fee Freeze Agreement

16. **Insurance Requirements.**

Commencement of Improvements. Before beginning construction of the improvements, PROPERTY OWNER is required to procure and provide proof of the insurance coverage required by this section in the form of certificates and endorsements. The required insurance must cover the activities of PROPERTY OWNER and its subcontractors relating to or arising from the performance of work associated with the Improvements, and must remain in full force and effect at all times during the period covered by the Agreement, including any extensions of time as may be granted, and until such time as the Improvements have been accepted for maintenance by CITY. The coverages may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by excess or "umbrella" policies, provided each such policy complies with the requirements set forth herein. Any deductibles or self-insured retentions must be declared to and approved by City. Coverages may be provided by PROPERTY OWNER's General Contractor if PROPERTY OWNER is not directly insuring such exposures under an "Owners and Contractors Protective Liability Policy (OCP)" on which CITY would be an additional insured. If PROPERTY OWNER will utilize the services of a General Contractor to perform all of the work associated with the Improvements, then PROPERTY OWNER may opt to have all coverages provided by PROPERTY OWNER's General Contractor, provided that a written contract is executed between PROPERTY OWNER and the General Contractor whereby the written contract specifically required General Contractor to fulfill all of the City insurance requirements as outlined in this Agreement, including all endorsements in favor of the City. Verification of the written contract must be provided to City upon request. If PROPERTY OWNER fails to provide any of the required coverage in full compliance with the requirements outlined in this Agreement, CITY may, at its sole discretion, purchase such coverage at PROPERTY OWNER's expense and deduct the cost from payments due to PROPERTY OWNER, assess payment against Development, or terminate the Agreement for default. Any deductibles or self-insured retentions must be declared to and approved by City. PROPERTY OWNER further understands that CITY reserves the right to modify the insurance requirements set forth herein, with thirty (30) days' notice provided to PROPERTY OWNER, at any time as deemed necessary to protect the interests of CITY.

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

- (1) Commercial General Liability Insurance ("CGL"): PROPERTY OWNER shall maintain CGL and shall include coverage for liability arising from PROPERTY OWNER's or its subcontractor's acts or omissions in the performance of work associated with the Improvements against claims and liabilities for personal injury, death, or property damage providing protection in the minimum amount of: (i) five million dollars (\$5,000,000.00) combined single limit each occurrence and either a general aggregate limit of ten million dollars (\$10,000,000.00) or a general aggregate limit of five million dollars (\$5,000,000) as applied on a "per project" or "per location" basis, or (ii) the maximum amount of such insurance available to PROPERTY OWNER under PROPERTY OWNER's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

- a. CGL policy may not exclude explosion, collapse, underground excavation hazard, or removal of lateral support.
- b. CGL policy must include blanket contractual and completed operations.
- c. CGL policy will apply as though separate policies have been issued to each insured ("separation of insureds").

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

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

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

(b) **Required Endorsements.** PROPERTY OWNER shall provide proof of the following endorsements, listed for each policy for which endorsements are required, as outlined below:

(1) **ALL Policies:**

"Waiver of Subrogation" - Each required policy must include an endorsement providing

that the carrier agrees to waive any right of subrogation it may have against CITY and CITY's elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers.

(2) ALL policies except Workers Compensation:

- a. "Additionally Insured" - The City of Morgan Hill, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers are named as additional insureds.
- b. "Primary and Non-Contributing" - Insurance shall be primary non-contributing.

(c) Subcontractors. PROPERTY OWNER must ensure that each subcontractor is required to maintain the same insurance coverage required under this Section 15, with respect to its performance of work associated with the Improvements, including those requirements related to the additional insureds and waiver of subrogation.

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

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

Certificate Holder address:

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

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

18. **Non-Discrimination.** PROPERTY OWNER covenants there shall be no discrimination based upon race, color, creed, religion, gender, marital status, age, disability, national origin, or ancestry, in any activity pursuant to this Agreement.

19. **Independent Contractor.** It is agreed to that PROPERTY OWNER shall act and be an independent

contractor, and not an agent or employee of CITY.

20. **Compliance with Law.** PROPERTY OWNER shall comply with all applicable laws, ordinances, codes, and regulations of the federal, state, and local government.

21. **Right to Inspect and Inspection Fees.** PROPERTY OWNER shall at all times maintain proper facilities and provide safe access for inspection for CITY and its employees to all parts of the Improvements. PROPERTY OWNER shall pay and reimburse CITY for all expenses incurred by CITY for inspecting and checking all work to be performed under the provisions of the Municipal Code or this Agreement. CITY Engineering plan checking and field improvement inspection costs are included in the Department of Public Works Fee Schedule which may be revised from time to time.

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

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

a. Address of PROPERTY OWNER is as follows:

TSC Motors Inc.
3239 Imjin Rd
Marina CA 93933

b. Address of CITY is as follows:

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

With a copy to:

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

24. **PROPERTY OWNER'S Representations.** This Agreement shall include application or items submitted by PROPERTY OWNER to CITY'S Planning Department, Building Department, Planning Commission, and City Council. In the event of any inconsistency between their representations and this Agreement, this Agreement shall govern.

25. **Licenses, Permits and Fees.** PROPERTY OWNER shall obtain a CITY Business License, all permits, and licenses as may be required by this Agreement.

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

from CITY.

27. **Time of Essence.** Time is of the essence in the performance of this Agreement.
28. **Limitations Upon Subcontracting and Assignment.** Neither this Agreement nor any portion shall be assigned by PROPERTY OWNER without prior written consent of CITY.
29. **Authority to Execute.** The persons executing this Agreement on behalf of the parties warrant that they are duly authorized to execute this Agreement.
30. **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all such counterparts shall together constitute one and the same instrument.
31. **Indemnification.** PROPERTY OWNER agrees to protect, and hold harmless CITY and its elective or appointive boards, officers, agents, and employees from any and all claims, liabilities, expenses, or damages of any nature, including attorneys' fees, for injury or death of any person, or damage to property, or interference with use of property, arising out of, or in any way connected with performance of the Agreement by PROPERTY OWNER, PROPERTY OWNER'S agents, officers, employees, subcontractors, or independent contractors hired by PROPERTY OWNER. The only exception to PROPERTY OWNER'S responsibility to protect, defend, and hold harmless CITY, is due to the sole negligence of CITY. This hold harmless agreement shall apply to all liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by PROPERTY OWNER.
32. **Modification.** This Agreement constitutes the entire agreement between the parties and supersedes any previous agreements, oral or written. This Agreement may be modified on provisions waived only by subsequent mutual written agreement executed by CITY and PROPERTY OWNER.
33. **California Law.** This Agreement shall be construed in accordance with the laws of the State of California. Any action commenced about this Agreement shall be filed in the central branch of the Santa Clara County Superior Court.
34. **Interpretation.** This Agreement shall be interpreted as though prepared by both parties.
35. **Preservation of Agreement.** Should any provision of this Agreement be found invalid or unenforceable, the decision shall affect only the provision interpreted, and all remaining provisions shall remain enforceable.
36. **Agreement Runs With the Land.** This Agreement shall inure to the benefit of, and be binding upon, the successors and assigns of the parties. It shall be recorded in the Office of the Recorder of Santa Clara County concurrently with the issuance of the Development Permit and shall constitute a covenant running with the land and an equitable servitude upon the Development real property.

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37. **Recording.** It shall be the responsibility of CITY to cause the executed Agreement to be recorded.

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

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

ATTEST:

THE CITY OF MORGAN HILL

Michelle Bigelow, City Clerk

Christina J. Turner, City Manager

Date: _____

Date: _____

APPROVED AS TO FORM:

“PROPERTY OWNER”

Donald A. Larkin, City Attorney

By: *Christian D. Pullara*

Date: _____

Title: *VP/Tres*

Date: *6/11/21*

By:

Title: _____

Date: _____

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

State of **California**

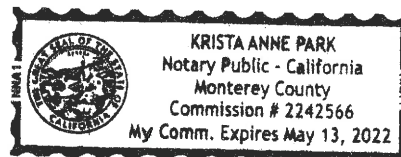
County of ~~Santa Clara~~ Monterey

On June 11 2021, before me, Krista Anne Park a Notary Public in and for said County and State, personally appeared Christian D. Pullara proved to me on the basis of satisfactory evidence to be the person whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.


SIGNATURE OF NOTARY PUBLIC



(ABOVE AREA FOR NOTARY SEAL)

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

State of **California**

County of **Santa Clara**

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

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

WITNESS my hand and official seal.

SIGNATURE OF NOTARY PUBLIC

(ABOVE AREA FOR NOTARY SEAL)

EXHIBIT A
IMPROVEMENTS AND
ESTIMATED COSTS OF IMPROVEMENTS
AS OF JUNE 10, 2021



Project: Condit Active Proj

1.0 Engineering Cost Estimate

a	Sewer System	\$ 10,825.00
b	Basins	\$ -
c	Channel System	\$ -
d	Storm Drain System	\$ 25,600.00
e	Street System / Onsite Improvements	\$ 114,592.75
f	Underground Existing Facilities (Undergrounds)	\$ -
g	Street Trees	\$ 7,200.00
h	Maintenance Districts	\$ -
i	Water System	\$ 73,750.00
j	Recycled Water System	\$ -
k	Traffic Signal System	\$ -
l	Street Light System	\$ 12,050.00
m	Misc Utilities	\$ -
n	Others	\$ -
o	Subtotal (a through n)	\$ 244,017.75
p	Mobilization (5% Subtotal)	\$ 12,200.89
q	Subtotal (o plus p)	\$ 256,218.64
r	Contingency (20%)	\$ 51,243.73
s	Subtotal (r plus s)	\$ 307,462.37

Total Construction

\$ 307,462.37

- DO NOT EXECUTE - USE SEPARATE BOND FORM -

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

Bond No.: _____
 Premium: _____

Whereas, the City Council of the City of Morgan Hill, State of California, and TSC Motors Inc. (hereinafter designated as "principal") have entered into an Improvement Agreement:

TSC Motors Inc.
APN: 728-17-035
17085 Condit Road

whereby principal agrees to install and complete certain designated public improvements, which said agreement, dated _____, 20_____, and identified as project **Morgan Hill CDR+J Dealership**, is hereby referred to and made a part hereof; and

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

Now, therefore, we, the principal and [ENTER SURETY NAME], as surety, are held and firmly bound unto the City of Morgan Hill, hereinafter called ("City"), in the penal sum of Three Hundred Seven Thousand Four Hundred Sixty Two dollars (\$307,462) lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, successors, executors and administrators, jointly and severally, firmly by these presents.

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

License No.: _____
 Address: _____
 Telephone No.: _____

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

Name of non-resident agent: _____
 Non-resident agent's office address: _____
 Telephone No.: _____

The condition of this obligation is such that if the above bounded principal, his or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and provisions in the said agreement and any alteration thereof made as therein provided, on his or their part, to be kept and

Performance Bond
 Page 1 of 3
 Version: December 2017

Attachment: Improvement Agreement [Revision 3] (3128 : APPROVAL OF IMPROV AGREEMENT, DEFERRED IMPROV & R-O-W ACQUISITION

- DO NOT EXECUTE - USE SEPARATE BOND FORM -

performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify and save harmless City, its officers, agents and employees, as therein stipulated, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

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

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

Executed this _____ day of _____ 20 ____ .

Principal

Principal

By: _____
Surety

By: _____
Attorney-in Fact

By: _____
California Resident Agent

By: _____
Non-resident Agent - Attorney-in-Fact

APPROVED:

Scott Creer, City Engineer

Date: _____

APPROVED AS TO FORM:

By: _____
Donald A. Larkin, City Attorney

Date: _____

(Acknowledgment on following page.)

Performance Bond
Page 2 of 3
Version: December 2017

Attachment: Improvement Agreement [Revision 3] (3128 : APPROVAL OF IMPROV AGREEMENT, DEFERRED IMPROV & R-O-W ACQUISITION

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

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

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

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

WITNESS my hand and official seal.

SIGNATURE OF NOTARY PUBLIC

(ABOVE AREA FOR NOTARY SEAL)

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

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

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

WITNESS my hand and official seal.

SIGNATURE OF NOTARY PUBLIC

(ABOVE AREA FOR NOTARY SEAL)

Performance Bond
Page 3 of 3
Version: December 2017

- DO NOT EXECUTE - USE SEPARATE BOND FORM -

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

Bond No.: _____
 Premium: _____

Whereas, the City Council of the City of Morgan Hill, State of California, and TSC Motors Inc. (hereinafter designated as "the principal") have entered into an Improvement Agreement:

TSC Motors Inc.
APN: 728-17-035
17085 Condit Road

whereby the principal agrees to install and complete certain designated public improvements, which agreement, dated _____, 20_____, and identified as project **Morgan Hill CDR+J Dealership**, is hereby referred to and made a part hereof; and

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

Now, therefore, the principal and the undersigned as corporate surety, and their successors and assigns are held firmly bound unto City and all contractors, subcontractors, laborers, materialmen, and other persons employed in the performance of the agreement and referred to in Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code in the sum of Three Hundred Seven Thousand Four Hundred Sixty Two dollars (\$307,462), for materials furnished or labor thereon of any kind, or for amounts due under the Unemployment Insurance Act with respect to this work or labor, that the surety will pay the same in an amount not exceeding the amount hereinabove set forth, and also in case suit is brought upon this bond, will pay, in addition to the face amount thereof, costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by City in successfully enforcing this obligation, to be awarded and fixed by the court, and to be taxed as costs and to be included in the judgment therein rendered.

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

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

The Surety's office is located at _____,
 Telephone No. _____; the Surety is licensed to do business in the State of California; and

Labor and Material Bond
 Page 1 of 3
 Version: December 2017

Attachment: Improvement Agreement [Revision 3] (3128 : APPROVAL OF IMPROV AGREEMENT, DEFERRED IMPROV & R-O-W ACQUISITION

- DO NOT EXECUTE - USE SEPARATE BOND FORM -

the California Insurance Agent's License No., address, and telephone number as follows:

License No.: _____
 Address: _____
 Telephone No.: _____

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

Name of non-resident agent: _____
 Non-resident agent's office address: _____
 Telephone No.: _____

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

Executed this _____ day of _____ 20 ____ .

 Principal

 Principal

By: _____
 Surety

By: _____
 Attorney-in Fact

By: _____
 California Resident Agent

By: _____
 Non-resident Agent - Attorney-in-Fact

APPROVED:

 Scott Creer, City Engineer

Date: _____

APPROVED AS TO FORM:

By: _____
 Donald A. Larkin, City Attorney

Date: _____

(Acknowledgment on following page.)

Labor and Material Bond
 Page 2 of 3
 Version: December 2017

Attachment: Improvement Agreement [Revision 3] (3128 : APPROVAL OF IMPROV AGREEMENT, DEFERRED IMPROV & R-O-W ACQUISITION

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

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

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

WITNESS my hand and official seal.

SIGNATURE OF NOTARY PUBLIC

(ABOVE AREA FOR NOTARY SEAL)

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

WITNESS my hand and official seal.

SIGNATURE OF NOTARY PUBLIC

(ABOVE AREA FOR NOTARY SEAL)

Labor and Material Bond

Page 3 of 3

Version: December 2017

- DO NOT EXECUTE - USE SEPARATE BOND FORM -

EXHIBIT "D"
FORM OF WARRANTY BOND
(50% of Cost of Construction)

Bond No.: _____

Premium: _____

Whereas, the City Council of the City of Morgan Hill, State of California (hereinafter designated as "City"), and TSC Motors Inc. (hereinafter designated as "Principal") have entered into an Improvement Agreement (hereinafter "Agreement"):

TSC Motors Inc.
APN: 728-17-035
17085 Condit Road

whereby the Principal agrees to install and complete certain designated public improvements (hereinafter "Improvements"), which said Agreement, dated _____, 20____, and identified as project **Morgan Hill CDR+J Dealership**, is hereby referred to and made a part hereof; and

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

Now, therefore, we, the Principal and _____ as Surety, are held and firmly bound unto the City of Morgan Hill in the penal sum of One Hundred Fifty Three Thousand Seven Hundred Thirty One dollars (\$153,731) for the payment of which sum well and truly to be made, we bind ourselves, our heirs, successors, executors and administrators, jointly and severally, firmly by these presents.

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

Surety waives the provisions of Civil Code Sections 2819 and 2845. Surety hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the agreement or the specifications accompanying the same shall in any manner affect its obligations on this bond, and it does hereby waive notice of any such change, extension, alteration, or addition.

Warranty Bond
Page 1 of 3
Version: April 2019

Attachment: Improvement Agreement [Revision 3] (3128 : APPROVAL OF IMPROV AGREEMENT, DEFERRED IMPROV & R-O-W ACQUISITION

- DO NOT EXECUTE - USE SEPARATE BOND FORM -

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

Attn: _____

Address: _____

City/State/Zip: _____

Phone: _____

Fax: _____

Email: _____

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

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

SURETY:

Principal:

Date: _____

Date: _____

s/ _____

s/ _____

Name: _____

Name: _____

Title: _____

Title: _____

(Attach Acknowledgment with Notary
Seal and Power of Attorney)

APPROVED AS TO FORM:

By: _____
Donald A. Larkin, City Attorney

Date: _____

Warranty Bond
Page 2 of 3
Version: April 2019

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

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

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

WITNESS my hand and official seal.

SIGNATURE OF NOTARY PUBLIC

(ABOVE AREA FOR NOTARY SEAL)

Warranty Bond
Page 3 of 3
Version: April 2019



CITY OF MORGAN HILL PUBLIC WORKS DEPARTMENT

17575 Peak Avenue Morgan Hill CA 95037 - Office (408)778-6480 Fax (408)779-7236

6/11/2021 DATE APN: 728-17-035 TRACT / APN 17085 Condit Road ADDRESS / LOT Morgan Hill CDR+J <i>(New automobile sales & service facility accessory carwash)</i> PROJECT DESCRIPTION	FEE SCHEDULE: 07.01.2016 PER RESOLUTION 5902, EFFECTIVE JULY 1, 2006 AND PER RESOLUTION 5592, INCREASED JANUARY 15, 2009 AND PER RESOLUTION 6082, EFFECTIVE FEBRUARY 5, 2007 **SEE BACK PAGE FOR ADDITIONAL FEE RESOLUTIONS 8/9/2021 FEE SCHEDULE EXPIRATION DATE	Cardinale Automotive Group NAME 3239 Imjin Road MAILING ADDRESS Marina, CA 93933 CITY, STATE, ZIP CODE (831) 277-3801 PHONE NUMBER
---	---	---

NOTES:

1. PRESSURE REGULATORS ARE REQUIRED ON ALL WATER SERVICES.
2. BACKFLOW PREVENTORS ARE REQUIRED ON ALL NON-RESIDENTIAL WATER SERVICES & FIRE SPRINKLER SERVICES. BACKFLOW INSPECTION FEE SHALL BE PAID PRIOR TO INSPECTION.
3. **MULTI-FAMILY** IS DEFINED AS ANY UNIT WITH TWO BEDROOMS OR LESS.
SINGLE FAMILY IS DEFINED AS ANY UNIT WITH 3 BEDROOMS OR MORE.

☐ **THIS FEE SCHEDULE IS ESTIMATE ONLY**

MBA

CALCULATED BY

CHECKED BY

BCOM2021-0016

BUILDING PERMIT #

DATE BLD PERMIT ISSUED

SEWER IMPACT FEES WITHIN RDA BOUNDARY

CHECK APPLICABLE SCENARIO BELOW

☒ **COMMERCIAL OR INDUSTRIAL WITHIN RDA BOUNDARY**

SEWER IMPACT FOR COMMERCIAL & INDUSTRIAL PROJECTS
TEMPORARILY ADJUSTED TO \$0 EFFECTIVE 02/05/07 PER RES# 6082.

☐ **RESIDENTIAL PROJECTS WITHIN RDCS DOWNTOWN AREA**

SEWER IMPACT FOR SINGLE-FAMILY AND MULTI-FAMILY RESIDENTIAL
TEMPORARILY ADJUSTED TO \$0 EFFECTIVE 02/05/07.

☒ **NOT IN RDA AREA BOUNDARY**

** BOTH NORMAL FEES AND ADJUSTED FEES ARE SUBJECT
TO ANNUAL CPI INCREASES.

☐ **COMMERCIAL OR INDUSTRIAL SHELL**

**RDA SEWER ALLOCATION
COMPLETED BY:**
(write Initials below)

version 07.01.16 std

WATER FEES:**1. METER DEPOSIT: 650-37672**

(Authority: Res. #5658 approved 03.19.03, Updated 07.01.16)

1"	\$468	x	1	=	\$468
1 1/2"	\$1,434	x	1	=	\$1,434
2"	\$1,619	x	0	=	\$0
3" or larger-Time & Material + Meter Cost				=	\$0

METER CREDITS

\$0 x 0 = \$0

SUBTOTAL = \$1,902**2. BACKFLOW CONST. INSPECTION: 650-37859**

(Authority: Res. #5658 approved 03.19.03, Updated 07.01.16)

\$62 x 3 Each = \$186

3. WATER FRONTAGE CHARGE: 650-37663

(Authority: Res. #5658 approved 03.19.03, Updated 07.01.16)

1 Side	\$66	x	0	LF	=	\$0
2 Sides	\$37	x	515.71	LF	=	\$19,081

4. WATER IMPACT FEE: 651-37648

(Auth: Res. #5592 approved 08.21.02, Increased 01.15.16)

a) Residential						
\$3,624 /DU	x	0	DU	=	\$0	
(Single Family)						
\$3,269 /DU	x	0	DU	=	\$0	
(Multi Family)						

b) Commercial & Industrial						
(Includes Landscape Service)						
\$10,288 /AC	x	6	AC	=	\$61,728	

WATER CREDITS

\$0 x 0 = \$0

SUBTOTAL = \$61,728**WATER FEE TOTALS = \$82,897****5. ENGINEERING & INSPECTION FEE: 206-38734**

(Minimum \$500.00):

(Authority: Res. #5902 approved 05.04.05, Updated 07.01.09)

ENGINEERING ESTIMATE: \$307,462

DATE ENGINEERING EST. SUBMITTED: 6/10/2021

% APPLIES TO ENGINEER'S ESTIMATE

13.3% \$1 to \$100,000 = \$13,300

11.8% \$100,001 to \$200,000 = \$11,800

10.3% \$200,001 to \$500,000 = \$11,068

8.8% OVER \$500,000 = \$0

ENGINEERING FEE = \$36,168

DEPOSIT PAID (Paid on 3/10/2021) = \$10,000

ENGINEERING FEE TOTAL = \$26,168**5A. LONG RANGE PLANNING FEE: 207-37912**

LONG RANGE PLANNING FEE (15% of E&I) = \$5,425

SEWER FEES:**6. SEWER FRONTAGE CHARGE: 640-37663**

(Authority: Res. #5658 approved 03.19.03, Updated 07.01.16)

1 Side	\$66	/LF	x	0	LF	=	\$0
2 Sides	\$37	/LF	x	515.71	LF	=	\$19,081

7. SEWER IMPACT FEE: 641-37648

(Auth: Res. #6082 approved 02.05.07 &

Res. #5592 approved 08.21.02, Increased 01.15.16).

a) Residential						
\$14,183 /DU	x	0	DU	=	\$0	
(Single Family)						
\$12,004 /DU	x	0	DU	=	\$0	
(Multi Family)						

b) Commercial & Industrial						
\$48.56 /GPD	x	3,513	GPD	=	\$170,591	
\$48.56 /GPD	x	0	GPD	=	\$0	

SEWER CREDITS

\$0 x 0 = \$0

MDA ASSUMED SEWER OBLIGATION

\$14,183 /DU	x	0	DU	=	\$0	
(Single Family)						
\$12,004 /DU	x	0	DU	=	\$0	
(Multi Family)						
\$48.56 /GPD	x	0	GPD	=	\$0	
(Commercial & Industrial)						

SUBTOTAL = \$170,591**SEWER FEE TOTALS = \$189,673****STORM DRAIN FEES:****8. STORM DRAIN FRONTAGE CHARGE: 304-37663**

(Authority: Res. #5658 approved 03.19.03, Updated 07.01.16)

1 Side	\$108	/LF	x	0	LF	=	\$0
2 Sides	\$53	/LF	x	0	LF	=	\$0

9. STORM DRAIN IMPACT FEE: 303-37648

(Auth: Res. #5592 approved 8.21.02, Amdd by Res. 6326 4.28.10, Increased 01.15.16)

\$3,847 /DU	x	0	DU	=	\$0	
(Single Family)						
\$2,001 /DU	x	0	DU	=	\$0	
(Multi Family)						
\$41,897 /ACRE	x	6	AC	=	\$251,382	
(Commercial & Office)						
\$30,505 /ACRE	x	0	AC	=	\$0	
(Industrial)						

STORM CREDITS

\$246,212 x 1 = -\$246,212

(See Notes & Comments on page 4)

SUBTOTAL = \$5,170**STORM DRAIN FEE TOTALS = \$5,170**

10. UNDERGROUNDING UTILITIES:		350-37649	
(Authority: Res. #5658 approved 03.19.03, Updated 07.01.16)			
1 Side	\$681	x	0 LF = \$0
2 Sides	\$343	x	0 LF = \$0
11a. PARK IMPACT FEE:		301-37648	
(Auth: Res. #5592 appr'd 8.21.02, Amdd by Res. 6326 4.28.10, Increased 01.15.16)			
\$5,378 /DU		x	0 DU = \$0
(Single Family - Sub)			
\$3,910 /DU		x	0 DU = \$0
(Single Family - No Sub)			
\$5,181 /DU		x	0 DU = \$0
(Multi Family - Sub)			
\$3,771 /DU		x	0 DU = \$0
(Multi Family - No Sub)			
11b. PARK MAINTENANCE DEV. FEE:		302-37649	
\$0		x	0 EACH = \$0
PARK CREDITS			
\$0		x	0 = \$0
PARK FEE TOTAL =		\$0	
12. TRAFFIC IMPACT FEE:		309-37648	
(Auth: Res. #15-152 approved 06.17.15 & Res. #5592 approved 08.21.02, Increased 01.15.16)			
\$1,863 /DU		x	0 DU = \$0
(Single Family)			
\$1,155 /DU		x	0 DU = \$0
(Multi Family)			
\$1,863 /PHT		x	78 PHT = \$145,314
(Commercial)			
\$1,863 /PHT		x	0 PHT = \$0
(Industrial)			
TRAFFIC CREDITS			
\$145,314		x	1 = -\$145,314
(See Notes & Comments on page 4)			
TRAFFIC FEE TOTAL =		\$0	
13. LIBRARY IMPACT FEE:		348-37648	
(Auth: Res. #5837 appr'd 09.01.04, Amdd by Res. 6326 4.28.10, Increased 01.15.16)			
\$1,974 /DU		x	0 DU = \$0
(Single Family)			
\$1,902 /DU		x	0 DU = \$0
(Multi Family)			
LIBRARY CREDITS			
\$0		x	0 = \$0
LIBRARY FEE TOTAL =		\$0	
14. BURROWING OWL MITIGATION:		232-38145	
(Authority: Res. #5765 approved 01.21.04, Increased 07.01.16)			
\$200 /DU			0 DU = \$0
(Residential)			
\$1,395 /AC			6 AC = \$8,370
(Commercial/Industrial)			

15a. MAP CHECK FEE:		206-38716	
(Authority: Res. #5658 approved 03.19.03, Updated 07.01.16)			
PARCEL MAP:	\$3,805	=	\$0
TRACT MAP:	\$5,667	=	\$0
16. POLICE IMPACT FEE:		311-37648	
(Auth: Res. #5686 appr'd 06.18.03, Amdd by Res. 6326 4.28.10, Increased 01.15.16)			
\$767 /DU		x	0 DU = \$0
(Single Family)			
\$741 /DU		x	0 DU = \$0
(Multi Family)			
\$1,666 /ACRE		x	6 AC = \$9,996
(Commercial)			
\$2,333 /ACRE		x	0 AC = \$0
(Industrial)			
POLICE CREDITS			
\$0		x	0 = \$0
POLICE FEE TOTAL =		\$9,996	
17. FIRE IMPACT FEE:		313-37648	
(Auth: Res. #6671 approved 07.17.13, Increased 01.15.16)			
\$118 /DU		x	0 DU = \$0
(Single Family)			
\$112 /DU		x	0 DU = \$0
(Multi Family)			
\$1,550 /ACRE		x	6 AC = \$9,300
(Commercial)			
\$1,550 /ACRE		x	0 AC = \$0
(Industrial)			
FIRE CREDITS			
\$0		x	0 = \$0
FIRE FEE TOTAL =		\$9,300	
18. PUBLIC FACILITIES IMPACT FEE:		347-37648	
(Auth: Res. #5592 appr'd 8.21.02, Amdd by Res. 6326 4.28.10, Increased 01.15.16)			
\$512 /DU		x	0 DU = \$0
(Single Family)			
\$493 /DU		x	0 DU = \$0
(Multi Family)			
\$1,128 /ACRE		x	6 AC = \$6,768
(Commercial)			
\$1,579 /ACRE		x	0 AC = \$0
(Industrial)			
PUBLIC FACILITIES CREDITS			
\$0		x	0 = \$0
PUBLIC FACILITIES FEE TOTAL =		\$6,768	
20. COMMNTY/REC CTRS IMPACT FEE:		360-37648	
(Auth: Res. #15-152 appr'd 8.17.15, increased 01.15.16)			
\$3,663 /DU		x	0 DU = \$0
(Single Family)			
\$3,213 /DU		x	0 DU = \$0
(Multi Family)			
PUBLIC FACILITIES CREDITS			
\$0		x	0 = \$0
PUBLIC FACILITIES FEE TOTAL =		\$0	

19. RDGS MEASURE C FEES:		
School Pedestrian Safety	(355-37655)	= \$0
Public Facilities	(346-37649)	= \$0
Park Development	(302-37649)	= \$0
Public Fac. - Circulation	(346-37649)	= \$0
TOTAL RDGS MEASURE C FEES		= \$0

OTHER:		
Storm Water Runoff		
Management Plan Review	206-38734	= \$2,846
SWPPP Document Review - 1st	232-37687	= \$1,219
SWPPP Offsite Inspection - 6 month	232-37688	= \$6,097
Post Construction BMP Initial/Base Setup	206-38734	= \$596
Post Construction Each Additional BMP	206-38734	= \$119
Deferred Improvement Agreement	206-38719	= \$3,654
TOTAL FEES DUE		= \$358,298

Notes & Comments:

THE DEVELOPMENT IMPACT FEES FOR THIS PROJECT ARE LOCKED TO THE FISCAL YEAR 2016-2017 FEE SCHEDULE
PER THE IMPACT FEE FREEZE AGREEMENT EXECUTED ON 2/8/2021 BETWEEN THE CITY AND DEVELOPER.

THESE FEES INCLUDE A CREDIT/REIMBURSEMENT AGAINST THE PROJECT'S TRAFFIC & STORM IMPACT FEES
(TOTAL CREDIT OF \$391,526) FOR THE COST OF THE WORK TO BE PERFORMED BY THE DEVELOPER ON THE
EAST SIDE OF CONDUIT ROAD (SEE SECTION 14 OF THE PROJECT'S IMPROVEMENT AGREEMENT).

THESE FEES ONLY APPLY TO THE PROPOSED DEALERSHIP ON THE 6-ACRE SITE. THE FUTURE DEVELOPMENT
APPLICATION AT THE LOCATION OF THE TEMPORARY DEALERSHIP AREA (ADJACENT TO THE SITE'S NORTHERLY
PROPERTY LINE) WILL BE SUBJECT TO ADDITIONAL FEES.

New Car Dealership: Ground Floor = 29,040 sf; Second Floor = 2,897 sf

Total = 31,937 sf (Building areas taken from Building Plans - Sheet A004)

New Accessory Carwash: 3,203 sf

Site APN: 728-17-035 Total Site Area = 9.24 ac Portion to be developed = 6 ac

Frontage along Conduit Rd = 515.71 ft (Water & Sewer only)

Sewer:

New Car Sales Sewer Coefficient = 0.110 gpd/sf

New Car Dealership = (31,937 sf) (0.110 gpd/sf) = **3,513 gpd**

Traffic:

New Car Sales Traffic Coefficient = 2.43 PHT/1,000sf

(From ITE 10th Edition - Average Vehicle Trip Ends vs 1,000 sf GFA PM peak hour of adjacent street traffic)

New Car Dealership = (31,937 sf) (2.43 PHT/1,000 sf) = **78 PHT**

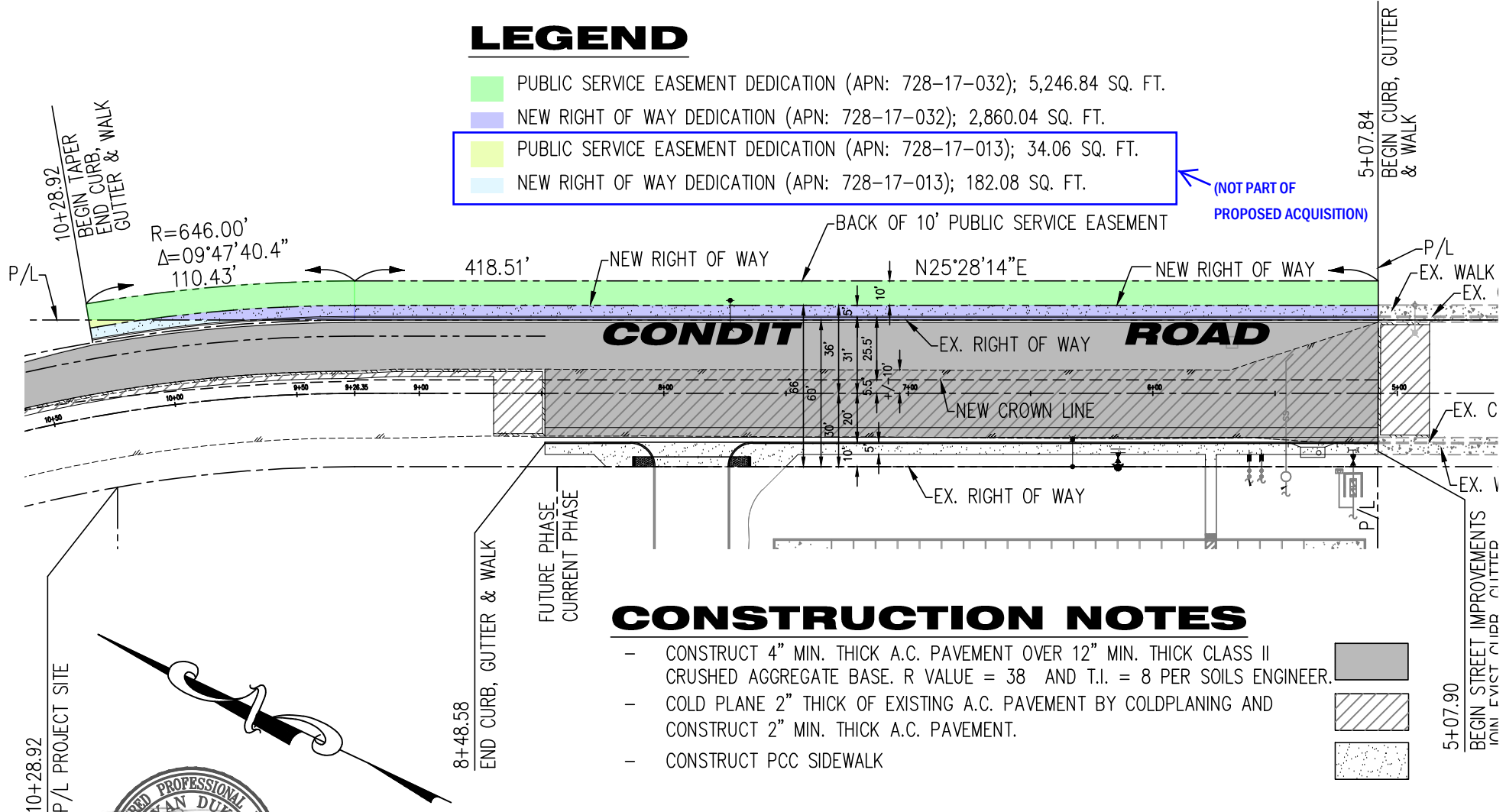
****OTHER FEE RESOLUTIONS:**

RESOLUTION 5006, EFFECTIVE 07.03.1996
RESOLUTION 5128, EFFECTIVE 01.05.1998
RESOLUTION 5658, EFFECTIVE 03.19.2003
RESOLUTION 5686, EFFECTIVE 08.18.2003
RESOLUTION 5765, EFFECTIVE 01.21.2004
RESOLUTION 5837, EFFECTIVE 10.18.2004
RESOLUTION 6080, EFFECTIVE 01.17.2007
RESOLUTION 6133, EFFECTIVE 12.05.2007
RESOLUTION 6326, EFFECTIVE 04.28.2010
RESOLUTION 6671, EFFECTIVE 09.16.2013

RIGHT OF WAY AND PUBLIC SERVICE EASEMENT DEDICATION EXHIBIT

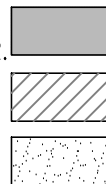
LEGEND

- PUBLIC SERVICE EASEMENT DEDICATION (APN: 728-17-032); 5,246.84 SQ. FT.
- NEW RIGHT OF WAY DEDICATION (APN: 728-17-032); 2,860.04 SQ. FT.
- PUBLIC SERVICE EASEMENT DEDICATION (APN: 728-17-013); 34.06 SQ. FT.
- NEW RIGHT OF WAY DEDICATION (APN: 728-17-013); 182.08 SQ. FT.



CONSTRUCTION NOTES

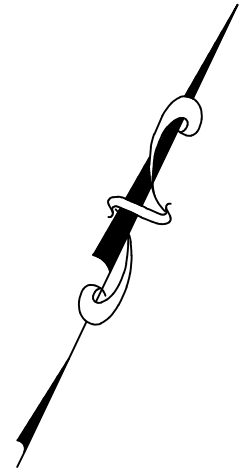
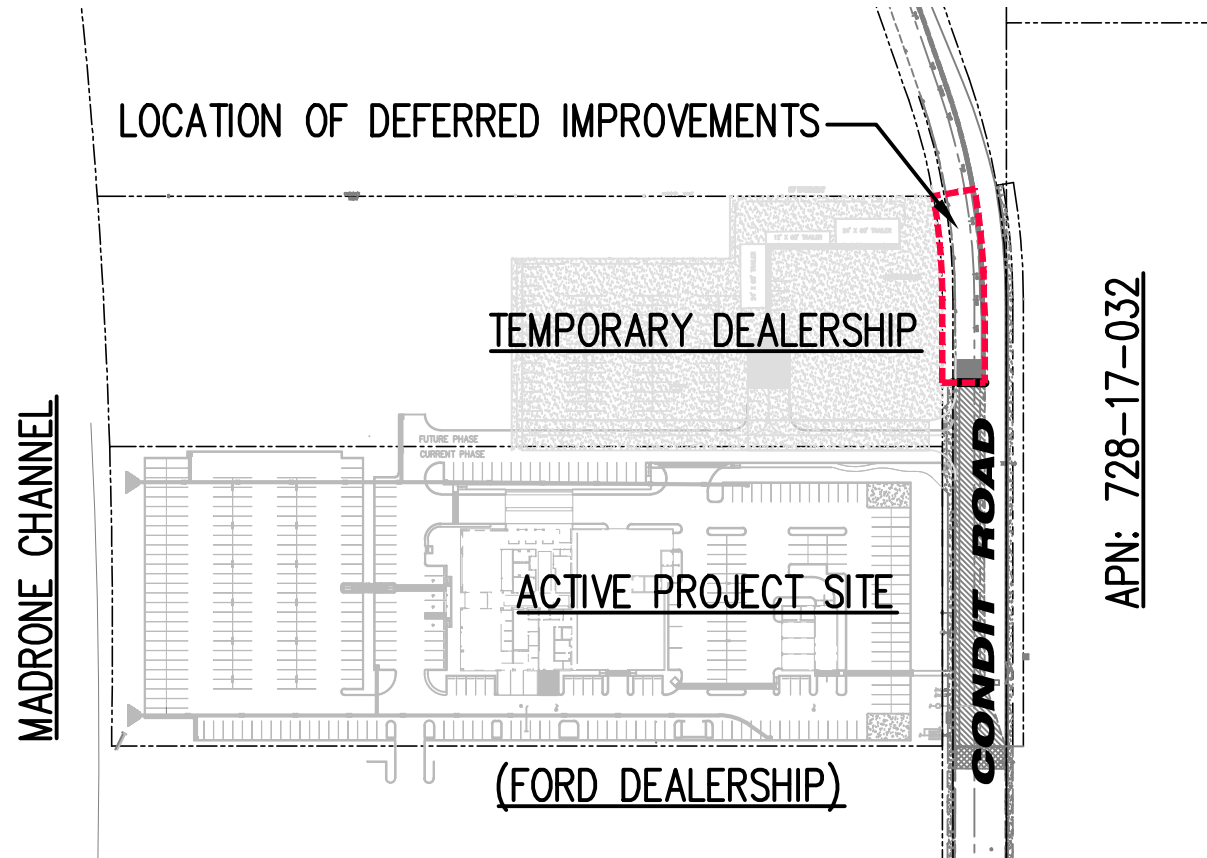
- CONSTRUCT 4" MIN. THICK A.C. PAVEMENT OVER 12" MIN. THICK CLASS II CRUSHED AGGREGATE BASE. R VALUE = 38 AND T.I. = 8 PER SOILS ENGINEER.
- COLD PLANE 2" THICK OF EXISTING A.C. PAVEMENT BY COLDPLANING AND CONSTRUCT 2" MIN. THICK A.C. PAVEMENT.
- CONSTRUCT PCC SIDEWALK



SCALE: 1" = 60'

NOTE: PARCEL MAP BASIS OF BEARINGS AND SURVEY BASIS OF BEARINGS DIFFER BY 00°00'34". SURVEY BASIS OF BEARINGS USED HERE.

LOCATION OF DEFERRED IMPROVEMENTS AT CONDIT ROAD



SCALE: 1" = 20'



RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

CITY OF MORGAN HILL
17575 PEAK AVENUE
MORGAN HILL, CA 95037

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

THE AREA ABOVE IS RESERVED FOR RECORDER'S USE

DEFERRED IMPROVEMENT AGREEMENT

TSC Motors Inc.
17085 Condit Road
APN: 728-17-035
Morgan Hill CDR+J Dealership

THIS AGREEMENT is made on this _____ day of _____, 2021, by the CITY OF MORGAN HILL, a municipal corporation ("CITY"), and TSC Motors Inc., a corporation ("PROPERTY OWNER"). CITY and PROPERTY OWNER may be collectively referred to as "Parties."

RECITALS

The following Recitals are a substantive part of this Agreement:

1. This Agreement is entered into pursuant to Morgan Hill Municipal Code Chapter 12.02.
2. PROPERTY OWNER has filed a Development Application and supporting documents on the property with the address of **17085 Condit Road**, and the **APN: 728-17-035** ("Property") having the development name of **Morgan Hill CDR+J Dealership** ("Development").
3. PROPERTY OWNER anticipates receiving a development permit from the CITY to allow development of the approximately 6-acre portion of the total 9.24 acres of the Property ("Development Permit"). CITY requires as a condition of approval of the Development Permit, as described on the permit, that certain improvements be installed by PROPERTY OWNER along the entire property frontage of the total 9.24-acre site (west side of Condit Road), and along the frontage of a property located in the unincorporated County area, directly across the project site on the east side of Condit Road, as shown on the fully executed Development Improvement Plans entitled **Public Improvement Plans for Morgan Hill CDR+J – Morgan Hill, CA** ("Improvements"), on file with CITY and incorporated herein by this reference.
4. PROPERTY OWNER has been unable to complete, prior to the issuance of the Development Permit, all of the Improvements required by CITY to the satisfaction of the City Engineer. PROPERTY OWNER has or will execute a separate Improvement Agreement with City in conjunction with the required construction of improvements on the 6-acre portion of the Property.

5. PROPERTY OWNER is required by the terms of the Morgan Hill Municipal Code to improve all streets, highways, or public areas which are part of the entire Development, including but not limited to necessary paving, curbs, sidewalks, catch basins, water mains, culverts, storm drains, and sanitary sewers, in accordance with the plans and specifications on file with the City Engineer.
6. PROPERTY OWNER is developing about 6 acres of the 9.24-acre site. PROPERTY OWNER wishes to defer the construction of Improvements required for the remaining 3.24 acres located on the northern portion of the Property ("Future Improvements") by and through this Agreement.
7. CITY is willing to defer the improvements for the remaining 3.24-acre northern portion of the Property in exchange for PROPERTY OWNER entering into this Agreement.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **Term of Agreement.** The term of this Agreement shall be five (5) years from the date of issuance of the Development Permit ("Term"). This Agreement shall automatically be extended for five (5) terms of five (5) years each for a total of thirty (30) years unless it is earlier terminated by construction of the improvements or by mutual written agreement by the Parties. The Future Improvements must be constructed by the end of the thirty-year Term of the Agreement.
2. **Future Improvements.** Attached hereto and incorporated herein by reference as Exhibit A are the list of Future Improvements and a cost estimate for the Future Improvements to be required for the 3.24-acre northern portion of the Property ("Northern Portion"). PROPERTY OWNER agrees to construct the Future Improvements in a good and workmanlike manner in accordance with the plans and documents to be filed with and approved by CITY in conjunction with the future development of the Northern Portion of the Property, all of which are incorporated herein by reference. The Future Improvements shall be completed, constructed and installed at PROPERTY OWNER's sole expense unless agreed to otherwise in writing by CITY.
3. **Rights-of-Way.** Except as otherwise provided by this Agreement, CITY can hold without acceptance or recordation all lands, rights-of-way, and easements offered for dedication. All such offers shall, however, remain open, and shall constitute irrevocable offers of dedication in accordance with the Government Code. All such offers may be accepted and recorded by CITY in its sole discretion at any later date without further notice to PROPERTY OWNER as provided by law. By way of explanation only, it is the current intention of CITY to accept all or part of the irrevocable offers to dedicate upon acceptance of the Future Improvements called for in this Agreement.
4. **Future Improvements: Time Limits.** PROPERTY OWNER agrees to cause all Future Improvements to be made and constructed to comply with all requirements of Morgan Hill Municipal Code Chapter 12.02, according to the improvement plans for the Northern Portion to be approved by the City Engineer and including any changes or alteration in the Future Improvements required by the City Engineer. The Future Improvements shall be completed utilizing CITY standards and specifications. PROPERTY OWNER agrees to complete the Future Improvements prior to the expiration of this Agreement, or prior to the issuance of the certificate of occupancy for the future building(s) in the Northern Portion of the Property, whichever is earlier; provided however, the City Manager may extend the deadline for completion by not

more than six (6) months at his or her reasonable discretion and determination that granting the extension will not be detrimental to the public welfare. No extension of this deadline for completion shall be made except upon the basis of a written application made by PROPERTY OWNER stating fully the grounds for the application and the facts relied upon for an extension.

It is further agreed by and between PROPERTY OWNER and CITY that any extension granted shall in no way affect the validity of this Agreement.

In the event that PROPERTY OWNER shall fail to complete the Future Improvements after developing the Northern Portion, within the time for construction provided by this Agreement, CITY may in its sole discretion and in addition to any other remedy provided in this Agreement or by law, enter upon the Northern Portion and complete the Future Improvements and recover the full cost and expense of construction from PROPERTY OWNER, PROPERTY OWNER's successors and assigns, and PROPERTY OWNER's Performance/Labor & Material Bonds associated with this Development, or from the then owner of the Development, and/or record a lien upon the Property for the cost and expense. Any CITY costs shall include but not be limited to administrative costs and attorneys' fees.

5. **Acquisition and Dedication of Easements or Rights-of-Way.** If any of the Future Improvements are to be constructed or installed on land not within the Northern Portion or already existing public right-of-way, no construction or installation shall be commenced before the irrevocable offer of dedication or conveyance to CITY of appropriate rights-of-way, easements or other interest in real property, and appropriate authorization from PROPERTY OWNER to allow construction or installation of the Future Improvements or work has been obtained and paid for by PROPERTY OWNER.

6. **Bond Requirements.** To secure the performance of each Future Improvement required under this Agreement and to ensure full payment to all persons furnishing or supplying labor or materials for each Future Improvement required, PROPERTY OWNER shall provide to CITY prior to commencing construction of the Future Improvements, payment and performance bonds each in the amount of 100% of the total estimated cost of the Future Improvements as determined by the City Engineer at the time of construction of the Future Improvements. A performance bond to secure faithful performance of this Agreement as required by Section 12.02.160 of the Morgan Hill Municipal Code for performance shall be provided in substantially the form set forth in Exhibit B, or as subsequently amended by the City Attorney. A payment bond to secure full payment to all persons furnishing or supplying labor or materials as required by Section 12.02.160 of the Morgan Hill Municipal Code for labor and materials shall be provided in substantially the form set forth in Exhibit C, or as subsequently amended by the City Attorney. PROPERTY OWNER shall provide an additional guarantee and warranty security (in substantially the form set forth in Exhibit D, or as subsequently amended by the City Attorney) of fifty (50%) percent of the cost of construction of the Future Improvements to guarantee and warranty the Future Improvements for a period of one year following its completion and acceptance against any defective work or labor done, or defective materials furnished, as required by Section 12.02.170 of the Morgan Hill Municipal Code.

Future Improvements and the City Engineer's Estimated Costs of Future Improvements as of **June 10, 2021** are attached hereto as Exhibit "A".

Any bonds submitted under this Agreement shall be executed by a surety company authorized to write the same in the State of California, and subject to the review and approval of the City's risk manager. All required securities shall be in a form approved by the City Attorney. The bonds shall be executed on CITY

forms by a surety authorized to do business in the State of California and shall be approved by the City Attorney and the City Engineer. Submittal of the Performance/Labor & Material Bonds is a requirement prior to CITY's issuance of an encroachment permit to do work in CITY's right-of-way. Submittal of the Warranty Bond is a requirement prior to the City Engineer's consideration of acceptance of the public improvements.

Note: If Cash Deposit Agreement Guaranteeing Improvements is utilized for security purposes, the Cash Deposit Agreement amount shall be two hundred (200%) percent of the aforementioned City Engineer's Estimated Costs of Future Improvements. In lieu of the above, CITY will accept a certificate of deposit in CITY's name with escrow instructions acceptable to the City Engineer, subject to the approval of the City Attorney. The release of any securities shall be governed by the provisions of Section 12.02.170 of the Morgan Hill Municipal Code.

7. **Irrevocability of Security.** The securities to be provided under this Agreement shall be irrevocable, shall not be limited as to time, and may be released only upon the written approval of the City Engineer and City Council.

8. **Duty to Warn.** PROPERTY OWNER shall give adequate warning to the public of each and every dangerous condition which may exist in the Future Improvements, and will take all reasonable actions to protect the public from any dangerous condition.

9. **Warranty.** Following construction of Future Improvements, PROPERTY OWNER guarantees and warrants the Future Improvements required by this Agreement and agrees to remedy any defects in the Future Improvements arising from faulty or defective materials or construction occurring within twelve (12) months after acceptance by CITY of the Future Improvements. Following notice, PROPERTY OWNER shall, without delay or cost to CITY, repair, replace, or reconstruct any defective or unsatisfactory portion of Future Improvements. CITY may, at its sole option, perform the repair or replacement itself if PROPERTY OWNER has failed to commence repair within twenty (20) days after CITY has mailed written notice to PROPERTY OWNER. In such event, PROPERTY OWNER agrees to pay the cost of repair and replacement, plus 15%, by CITY; and CITY may recover such costs as a lien against the Development. CITY may proceed immediately to make repairs should an emergency arise without waiving its rights of recovery against PROPERTY OWNER.

10. **Failure of Performance.** In addition to the other remedies provided by this Agreement, CITY shall have recourse to the security given. In the event that CITY seeks recourse against any security, CITY shall have recourse against PROPERTY OWNER for any and all amounts necessary to complete the obligation. All administrative costs, including attorneys' fees shall be a proper charge against the security and PROPERTY OWNER pursuant to the Government Code. The right of CITY to draw upon or utilize the security is additional and not in lieu of any other remedy available to CITY at law or in equity. The parties agree that the estimated costs and security amounts may not reflect the actual cost of construction or installation of Future Improvements, and therefore, CITY damages for PROPERTY OWNER's default shall be measured by the cost of completing the required Improvements.

11. **Certificate of Occupancy.** PROPERTY OWNER understands that CITY will expect completion, to the satisfaction of CITY, of specific public improvements as well as private utility improvements prior to CITY Approval of a Certificate of Occupancy for any building on the Northern Portion of the Property. The specific improvements shall include activation of all public utilities (water, sewer, storm drain);

activation of all private utilities (electric, gas, phone) except for cable; street lights turn-on request filed with P G & E; and full street improvements (curb-gutter and paving with/without final lift) from existing public street to building under consideration for Certificate of Occupancy. PROPERTY OWNER, furthermore, agrees to inform any successor in interest to the Property should the Property be transferred to another party prior to CITY acceptance of public improvements.

12. **Final Toxic Report.** Where applicable, PROPERTY OWNER hereby agrees to furnish the City Attorney with a copy of the Final Toxic Report issued by the appropriate licensed consultant on the proposed Development. This report must be received prior to final acceptance of on-site improvements and issuance of certificate of occupancy.

13. **Public Improvements Fee Schedule.** PROPERTY OWNER shall pay the fees due at the time of construction of the Future Improvements pursuant to the provisions of Resolution 1383 and any amendments thereto. These sums shall be paid to CITY at the time of issuance of the future Development Permit, and shall be in accordance with the Department of Public Works Fee Schedule in effect at the time of construction of the Future Improvements. These fees are subject to a minimum annual revision. PROPERTY OWNER consents to increases in these fees. This Agreement shall not be construed to fix or freeze fees as of any point prior to issuance of Development Permits for the Northern Portion. All development fees shall be those in effect at the time of the issuance of the Development Permit for the Future Development. This Agreement does not entitle the developer to any permit including a grading permit. A separate application for a grading permit should be made to the Building Department.

14. **Repair and Replacement of Damaged Public Facilities.** PROPERTY OWNER shall, at its own expense, repair or replace all public improvements, public utility facilities, surveying monuments and other public facilities that are destroyed or damaged as a result of any work under this agreement. Property Owner shall promptly notify the City Engineer of such damage and shall obtain the City Engineer's approval of all repair and replacement of damaged facilities.

15. **Property Owner's Responsibility until CITY's Acceptance.** Until City accepts the Future Improvements, Property Owner shall be responsible for the care and maintenance of Future Improvements and shall bear all risks of loss or damage to the Future. CITY shall not have any liability for any accident, loss or damage to Future Improvements prior to their completion and acceptance by CITY.

16. **No Vesting of Rights.** Performance by PROPERTY OWNER under this Agreement shall not be construed to vest PROPERTY OWNER's rights with respect to any change in any zoning or building law or ordinance.

17. **Insurance Requirements.**

Commencement of Improvements. Before beginning construction of the Future Improvements, PROPERTY OWNER is required to procure and provide proof of the insurance coverage required by this section in the form of certificates and endorsements. The required insurance must cover the activities of PROPERTY OWNER and its subcontractors relating to or arising from the performance of work associated with the Future Improvements, and must remain in full force and effect at all times during the period covered by the Agreement, including any extensions of time as may be granted, and until such time as the Future Improvements have been accepted for maintenance by CITY. The coverages may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance

provided by excess or “umbrella” policies, provided each such policy complies with the requirements set forth herein. Any deductibles or self-insured retentions must be declared to and approved by City. Coverages may be provided by PROPERTY OWNER's General Contractor if PROPERTY OWNER is not directly insuring such exposures under an “Owners and Contractors Protective Liability Policy (OCP)” on which CITY would be an additional insured. If PROPERTY OWNER will utilize the services of a General Contractor to perform all of the work associated with the Improvements, then PROPERTY OWNER may opt to have all coverages provided by PROPERTY OWNER's General Contractor, provided that a written contract is executed between PROPERTY OWNER and the General Contractor whereby the written contract specifically required General Contractor to fulfill all of the City insurance requirements as outlined in this Agreement, including all endorsements in favor of the City. Verification of the written contract must be provided to City upon request. If PROPERTY OWNER fails to provide any of the required coverage in full compliance with the requirements outlined in this Agreement, CITY may, at its sole discretion, purchase such coverage at PROPERTY OWNER's expense and deduct the cost from payments due to PROPERTY OWNER, assess payment against Development, or terminate the Agreement for default. Any deductibles or self-insured retentions must be declared to and approved by City. PROPERTY OWNER further understands that CITY reserves the right to modify the insurance requirements set forth herein, with thirty (30) days' notice provided to PROPERTY OWNER, at any time as deemed necessary to protect the interests of CITY.

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

(1) Commercial General Liability Insurance (“CGL”): PROPERTY OWNER shall maintain CGL and shall include coverage for liability arising from PROPERTY OWNER's or its subcontractor's acts or omissions in the performance of work associated with the Future Improvements against claims and liabilities for personal injury, death, or property damage providing protection in the minimum amount of: (i) five million dollars (\$5,000,000.00) combined single limit each occurrence and either a general aggregate limit of ten million dollars (\$10,000,000.00) or a general aggregate limit of five million dollars (\$5,000,000) as applied on a “per project” or “per location” basis, or (ii) the maximum amount of such insurance available to PROPERTY OWNER under PROPERTY OWNER's combined insurance policies (including any excess or “umbrella” policies), whichever is greater.

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

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

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

(2) Workers' Compensation Insurance and Employer's Liability: PROPERTY OWNER shall maintain Workers Compensation coverage, as required by law. The policy must comply with the requirements of the California Workers' Compensation Insurance and Safety Act and provide protection in the minimum amount of: (i) one million dollars (\$1,000,000.00) for any one accident or occurrence, or (ii) the maximum amount of such

insurance available to PROPERTY OWNER under PROPERTY OWNER's combined insurance policies (including any excess or "umbrella" policies), whichever is greater. If PROPERTY OWNER is self-insured, PROPERTY OWNER must provide its Certificate of Permission to Self-Insure, duly authorized by the Department of Industrial Relations.

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

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

(b) **Required Endorsements.** PROPERTY OWNER shall provide proof of the following endorsements, listed for each policy for which endorsements are required, as outlined below:

(1) **ALL Policies:**

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

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

a. "Additionally Insured" - The City of Morgan Hill, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers are named as additional insureds.

b. "Primary and Non-Contributing" - Insurance shall be primary non-contributing.

(c) **Subcontractors.** PROPERTY OWNER must ensure that each subcontractor is required to maintain the same insurance coverage required under this Section 18, with respect to its performance of work associated with the Future Improvements, including those requirements related to the additional

insureds and waiver of subrogation.

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

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

Certificate Holder address:

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

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

19. **Non-Discrimination.** PROPERTY OWNER covenants there shall be no discrimination based upon race, color, creed, religion, gender, marital status, age, disability, national origin, or ancestry, in any activity pursuant to this Agreement.

20. **Independent Contractor.** It is agreed to that PROPERTY OWNER shall act and be an independent contractor, and not an agent or employee of CITY.

21. **Compliance with Law.** PROPERTY OWNER shall comply with all applicable laws, ordinances, codes, and regulations of the federal, state, and local government.

22. **Right to Inspect and Inspection Fees.** PROPERTY OWNER shall at all times maintain proper facilities and provide safe access for inspection for CITY and its employees to all parts of the Future Improvements. PROPERTY OWNER shall pay and reimburse CITY for all expenses incurred by CITY for inspecting and checking all work to be performed under the provisions of the Municipal Code or this Agreement. CITY Engineering plan checking and field improvement inspection costs are included in the Department of Public Works Fee Schedule which may be revised from time to time.

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

24. **Notices.** All notices shall be personally delivered or mailed, via first class mail to the below listed

addresses. These addresses shall be used for delivery of service of process. Notices shall be effective five (5) days after date of mailing, or upon date of personal delivery.

- a. Address of PROPERTY OWNER is as follows:

TSC Motors Inc.
3239 Imjin Rd
Marina CA 93933

- b. Address of CITY is as follows:

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

With a copy to:

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

25. **PROPERTY OWNER'S Representations.** This Agreement shall include application or items submitted by PROPERTY OWNER to CITY'S Planning Department, Building Department, Planning Commission, and City Council. In the event of any inconsistency between their representations and this Agreement, this Agreement shall govern.

26. **Licenses, Permits and Fees.** PROPERTY OWNER shall obtain a CITY Business License, all permits, and licenses as may be required by this Agreement.

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

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

29. **Limitations Upon Subcontracting and Assignment.** Neither this Agreement nor any portion shall be assigned by PROPERTY OWNER without prior written consent of CITY.

30. **Authority to Execute.** The persons executing this Agreement on behalf of the parties warrant that they are duly authorized to execute this Agreement.

31. **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all such counterparts shall together constitute one and the same instrument.

32. **Indemnification.** PROPERTY OWNER agrees to protect, and hold harmless CITY and its elective or appointive boards, officers, agents, and employees from any and all claims, liabilities, expenses, or damages of any nature, including attorneys' fees, for injury or death of any person, or damage to property, or interference with use of property, arising out of, or in any way connected with performance of the

Agreement by PROPERTY OWNER, PROPERTY OWNER'S agents, officers, employees, subcontractors, or independent contractors hired by PROPERTY OWNER. The only exception to PROPERTY OWNER'S responsibility to protect, defend, and hold harmless CITY, is due to the sole negligence of CITY. This hold harmless agreement shall apply to all liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by PROPERTY OWNER.

33. **Modification.** This Agreement constitutes the entire agreement between the parties and supersedes any previous agreements, oral or written. This Agreement may be modified on provisions waived only by subsequent mutual written agreement executed by CITY and PROPERTY OWNER.

34. **California Law.** This Agreement shall be construed in accordance with the laws of the State of California. Any action commenced about this Agreement shall be filed in the central branch of the Santa Clara County Superior Court.

35. **Interpretation.** This Agreement shall be interpreted as though prepared by both parties.

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

37. **Covenant Running with the Land.** This Agreement shall inure to the benefit of, and be binding upon the heirs, administrators, successors, assigns and transferees of the Parties, and shall be recorded in the Office of the County Recorder of Santa Clara County concurrently with the execution of this Agreement and constitute a covenant running with the land and equitable servitude upon the Property. Upon any sale or division of the Property, the terms, covenants, conditions and restrictions of this agreement shall apply to each parcel, and the owner or owners of each parcel shall succeed to the obligations imposed upon Property Owner by this Agreement.

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38. **Recording.** It shall be the responsibility of CITY to cause the executed Agreement to be recorded.

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

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

ATTEST:

THE CITY OF MORGAN HILL

Michelle Bigelow, City Clerk

Christina J. Turner, City Manager

Date: _____

Date: _____

APPROVED AS TO FORM:

"PROPERTY OWNER"

Donald A. Larkin, City Attorney

By: *Christian D. Pullara*
Title: *Corp. Dir. VP/Tres*
Date: *6/14/21*

Date: _____

By:

Title: _____

Date: _____

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

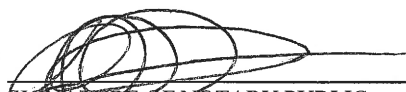
State of **California**

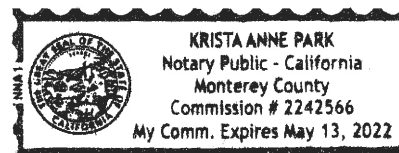
County of ~~Santa Clara~~ Monterey

On June 14 2021, before me, Krista Anne Park a Notary Public in and for said County and State, personally appeared Christian D. Pullara proved to me on the basis of satisfactory evidence to be the person whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.


SIGNATURE OF NOTARY PUBLIC



(ABOVE AREA FOR NOTARY SEAL)

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

State of **California**

County of **Santa Clara**

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

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

WITNESS my hand and official seal.

SIGNATURE OF NOTARY PUBLIC

(ABOVE AREA FOR NOTARY SEAL)

EXHIBIT "A"
LIST OF FUTURE IMPROVEMENTS AND
ESTIMATED COSTS OF IMPROVEMENTS
AS OF JUNE 10, 2021



Project: Condit Deferred Proj

1.0 Engineering Cost Estimate

a	Sewer System	\$ 10,825.00
b	Basins	\$ -
c	Channel System	\$ -
d	Storm Drain System	\$ 56,200.00
e	Street System / Onsite Improvements	\$ 76,674.70
f	Underground Existing Facilities (Undergrounds)	\$ -
g	Street Trees	\$ 4,800.00
h	Maintenance Districts	\$ -
i	Water System	\$ 64,490.00
j	Recycled Water System	\$ -
k	Traffic Signal System	\$ -
l	Street Light System	\$ 12,050.00
m	Misc Utilities	\$ -
n	Others	\$ -
o	Subtotal (a through n)	\$ 225,039.70
p	Mobilization (5% Subtotal	\$ 11,251.99
q	Subtotal (o plus p)	\$ 236,291.69
r	Contingency (20%)	\$ 47,258.34
s	Subtotal (r plus s)	\$ 283,550.02

Total Construction

\$ 283,550.02

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

Bond No.: _____
 Premium: _____

Whereas, the City Council of the City of Morgan Hill, State of California, and TSC Motors Inc. (hereinafter designated as "principal") have entered into an Improvement Agreement:

TSC Motors Inc.
APN: 728-17-035
17085 Condit Road

whereby principal agrees to install and complete certain designated public improvements, which said agreement, dated _____, 20_____, and identified as project **Morgan Hill CDR+J Dealership**, is hereby referred to and made a part hereof; and

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

Now, therefore, we, the principal and [ENTER SURETY NAME], as surety, are held and firmly bound unto the City of Morgan Hill, hereinafter called ("City"), in the penal sum of Two Hundred Eighty Three Thousand Five Hundred Fifty dollars (\$283,550) lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, successors, executors and administrators, jointly and severally, firmly by these presents.

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

License No.: _____
 Address: _____
 Telephone No.: _____

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

Name of non-resident agent: _____
 Non-resident agent's office address: _____
 Telephone No.: _____

The condition of this obligation is such that if the above bounded principal, his or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and provisions in the said agreement and any alteration thereof made as therein provided, on his or their part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their

true intent and meaning, and shall indemnify and save harmless City, its officers, agents and employees, as therein stipulated, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

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

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

Executed this _____ day of _____ 20 ____ .

Principal

Principal

By: _____
Surety

By: _____
Attorney-in Fact

By: _____
California Resident Agent

By: _____
Non-resident Agent - Attorney-in-Fact

APPROVED:

Scott Creer, City Engineer

Date: _____

APPROVED AS TO FORM:

By: _____
Donald A. Larkin, City Attorney

Date: _____

(Acknowledgment on following page.)

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

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

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

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

WITNESS my hand and official seal.

SIGNATURE OF NOTARY PUBLIC

(ABOVE AREA FOR NOTARY SEAL)

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

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

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

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

WITNESS my hand and official seal.

SIGNATURE OF NOTARY PUBLIC

(ABOVE AREA FOR NOTARY SEAL)

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

Bond No.: _____
 Premium: _____

Whereas, the City Council of the City of Morgan Hill, State of California, and TSC Motors Inc. (hereinafter designated as "the principal") have entered into an Improvement Agreement:

TSC Motors Inc.
APN: 728-17-035
17085 Condit Road

whereby the principal agrees to install and complete certain designated public improvements, which agreement, dated _____, 20_____, and identified as project **Morgan Hill CDR+J Dealership**, is hereby referred to and made a part hereof; and

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

Now, therefore, the principal and the undersigned as corporate surety, and their successors and assigns are held firmly bound unto City and all contractors, subcontractors, laborers, materialmen, and other persons employed in the performance of the agreement and referred to in Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code in the sum of Two Hundred Eighty Three Thousand Five Hundred Fifty dollars (\$283,550), for materials furnished or labor thereon of any kind, or for amounts due under the Unemployment Insurance Act with respect to this work or labor, that the surety will pay the same in an amount not exceeding the amount hereinabove set forth, and also in case suit is brought upon this bond, will pay, in addition to the face amount thereof, costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by City in successfully enforcing this obligation, to be awarded and fixed by the court, and to be taxed as costs and to be included in the judgment therein rendered.

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

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

The Surety's office is located at _____,
 Telephone No. _____; the Surety is licensed to do business in the State of California; and

Labor and Material Bond
 Page 1 of 3
 Version: December 2017

Attachment: Deferred Improvement Agreement [Revision 2] (3128 : APPROVAL OF IMPROV AGREEMENT, DEFERRED IMPROV & R-O-W

the California Insurance Agent's License No., address, and telephone number as follows:

License No.: _____
 Address: _____
 Telephone No.: _____

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

Name of non-resident agent: _____
 Non-resident agent's office address: _____

Telephone No.: _____

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

Executed this _____ day of _____ 20 ____ .

 Principal

 Principal

By: _____
 Surety

By: _____
 Attorney-in Fact

By: _____
 California Resident Agent

By: _____
 Non-resident Agent - Attorney-in-Fact

APPROVED:

 Scott Creer, City Engineer

Date: _____

APPROVED AS TO FORM:

By: _____
 Donald A. Larkin, City Attorney

Date: _____

(Acknowledgment on following page.)

Labor and Material Bond
 Page 1 of 3
 Version: December 2017

Attachment: Deferred Improvement Agreement [Revision 2] (3128 : APPROVAL OF IMPROV AGREEMENT, DEFERRED IMPROV & R-O-W

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

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

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

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

WITNESS my hand and official seal.

SIGNATURE OF NOTARY PUBLIC

(ABOVE AREA FOR NOTARY SEAL)

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

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

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

WITNESS my hand and official seal.

SIGNATURE OF NOTARY PUBLIC

(ABOVE AREA FOR NOTARY SEAL)

Labor and Material Bond

Page 1 of 3

Version: December 2017

EXHIBIT "D"
FORM OF WARRANTY BOND
(50% of Cost of Construction)

Bond No.: _____

Premium: _____

Whereas, the City Council of the City of Morgan Hill, State of California (hereinafter designated as "City"), and TSC Motors Inc. (hereinafter designated as "Principal") have entered into an Improvement Agreement (hereinafter "Agreement"):

TSC Motors Inc.
APN: 728-17-035
17085 Condit Road

whereby the Principal agrees to install and complete certain designated public improvements (hereinafter "Improvements"), which said Agreement, dated _____, 20____, and identified as project **Morgan Hill CDR+J Dealership**, is hereby referred to and made a part hereof; and

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

Now, therefore, we, the Principal and _____ as Surety, are held and firmly bound unto the City of Morgan Hill in the penal sum of One Hundred Forty One Thousand Seven Hundred Seventy Five dollars (\$141,775) for the payment of which sum well and truly to be made, we bind ourselves, our heirs, successors, executors and administrators, jointly and severally, firmly by these presents.

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

Surety waives the provisions of Civil Code Sections 2819 and 2845. Surety hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the agreement or the specifications accompanying the same shall in any manner affect its obligations on this bond, and it does hereby waive notice of any such change, extension, alteration, or addition.

Warranty Bond
Page 3 of 3
Version: April 2019

Attachment: Deferred Improvement Agreement [Revision 2] (3128 : APPROVAL OF IMPROV AGREEMENT, DEFERRED IMPROV & R-O-W

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

Attn: _____

Address: _____

City/State/Zip: _____

Phone: _____

Fax: _____

Email: _____

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

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

SURETY:

Principal:

Date: _____

Date: _____

s/ _____

s/ _____

Name: _____

Name: _____

Title: _____

Title: _____

(Attach Acknowledgment with Notary
Seal and Power of Attorney)

APPROVED AS TO FORM:

By: _____
Donald A. Larkin, City Attorney

Date: _____

Warranty Bond
Page 3 of 3
Version: April 2019

Attachment: Deferred Improvement Agreement [Revision 2] (3128 : APPROVAL OF IMPROV AGREEMENT, DEFERRED IMPROV & R-O-W

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

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

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

WITNESS my hand and official seal.

SIGNATURE OF NOTARY PUBLIC

(ABOVE AREA FOR NOTARY SEAL)

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

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

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

WITNESS my hand and official seal.

SIGNATURE OF NOTARY PUBLIC

(ABOVE AREA FOR NOTARY SEAL)

Warranty Bond
Page 3 of 3
Version: April 2019

Attachment: Deferred Improvement Agreement [Revision 2] (3128 : APPROVAL OF IMPROV AGREEMENT, DEFERRED IMPROV & R-O-W



CITY COUNCIL STAFF REPORT

MEETING DATE: June 23, 2021

PREPARED BY: Cynthia Iwanaga, Management Analyst
APPROVED BY: City Manager

APPROVE SECOND AMENDMENT TO MAINTENANCE SERVICE AGREEMENT WITH ANIMAL DAMAGE MANAGEMENT, INC.

RECOMMENDATION(S)

1. Determine that competitive bids upon notice would not likely result in a lower price to the City from a responsible bidder or would cause unnecessary expense or delay under the circumstances per Section 3.04.150 (1) of the Morgan Hill Municipal Code; and
2. Authorize the City Manager to execute and administer the Second Amendment to the Maintenance Service Agreement with Animal Damage Management, Inc., extending the agreement for one additional year of service at annual amount of \$35,160 for a new total contract amount of \$140,640 over 4 years.

COUNCIL PRIORITIES, GOALS & STRATEGIES

2020-2021 Strategic Priorities

Fiscal Sustainability

REPORT NARRATIVE:

The purpose of this report is to provide the City Council with an opportunity to consider a second amendment to the City's contract with Animal Damage Management, Inc. for pest control services at various City recreational facilities, parks, booster stations, and the Morgan Hill Police Department facility. The City's current agreement with Animal Damage Management, Inc. expires on June 30, 2021.

Animal Damage Management, Inc. was selected through a competitive RFP process in 2018. The initial two-year agreement for \$70,320 began July 1, 2018. In June 2020, a First Amendment to the agreement extended the term one additional year to June 30, 2021 and increased the amount to \$105,480 per City Manager authority. This proposed Second Amendment would extend the terms an additional year at a rate of \$35,160, increasing the maximum compensation to \$140,640. Per the Second Amendment, Animal Damage Management, Inc. has agreed not to increase their rates. The annual amount is based on monthly maintenance costs of \$1,680 for 12 months of scheduled preventative maintenance service totaling \$20,160 plus \$15,000 for estimated additional pest control services as needed.

Section 3.04.150 (1) of the Morgan Hill Municipal Code authorizes the City Council to extend an agreement if the Council determines that competitive bids upon notice would not be likely to result in a lower price to the City from a responsible bidder or would

cause unnecessary expense or delay under the circumstances. Staff is satisfied with the services provided by Animal Damage Management, Inc. In addition, since this vendor has agreed not to increase their rates, extending the terms with the current pricing is advantageous to the City. Staff therefore recommends this Second Amendment as soliciting competitive bids would not likely result in a lower price to the City from a responsible bidder or would cause unnecessary expense or delay under the circumstances.

It should be noted that pest control services provided by Animal Damage Management, Inc. are performed in alignment with City Policies, including the City's policy not allowing the use of rodenticides.

COMMUNITY ENGAGEMENT: Not Applicable

As pest control services are regular and expected City services, no community engagement occurred for this proposed contract amendment.

ALTERNATIVE ACTIONS:

The City Council could decline to approve the amendment and instead direct staff to proceed with a new request for proposals (RFP) for pest control services. Should the Council wish to rebid this service, staff estimates that a new agreement could be in place by September 2021. Pest control services would be paid on a monthly time and material basis to Animal Damage Management, Inc. until a new agreement could be executed.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The City Council previously awarded the existing agreement to Animal Damage Management, Inc. on July 18, 2018.

FISCAL AND RESOURCE IMPACT:

If approved, the total funding authorization for this agreement would be \$140,640. Funding for pest control services is included in the FY 2020-2022 Adopted Budget within the contractual services line items in the Parks Maintenance Fund (302), Water Operations Fund (650), and Building Maintenance Fund (740).

CEQA (California Environmental Quality Act): Categorical Exemption

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

LINKS/ATTACHMENTS:

1. Second Amendment to Animal Damage Management Agmt_signed

**SECOND AMENDMENT TO AGREEMENT
ANIMAL DAMAGE MANAGEMENT, INC.**

This SECOND AMENDMENT TO AGREEMENT is entered into and becomes effective on _____ (Effective Date), by THE CITY OF MORGAN HILL, a municipal corporation, ("CITY") and ANIMAL DAMAGE MANAGEMENT, INC., a California Corporation ("SERVICE PROVIDER").

RECITALS

The following recitals are a substantive part of this Agreement:

1. This Second Amendment to Agreement is entered into pursuant to the action of the Morgan Hill City Council taken on _____, ____, 20__.
2. The CITY and SERVICE PROVIDER entered into that "Maintenance Service Agreement" made as of July 18, 2018, for services for a maximum compensation of Seventy Thousand Three Hundred Twenty and no/100 dollars (\$70,320.00) ("MAINTENANCE SERVICE AGREEMENT").
3. The CITY and SERVICE PROVIDER entered into a "First Amendment to Agreement" made as of June 10, 2020, under which the maximum compensation under the MAINTENANCE SERVICE AGREEMENT, as amended, was increased to One Hundred Five Thousand Four Hundred Eighty and no/100 dollars (\$105,480.00). The MAINTENANCE SERVICE AGREEMENT and the First Amendment thereto are attached as Exhibit "1" to this Agreement.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

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

A. Paragraph 2 shall be amended and replaced in its entirety by the following:

"2. **Term of Agreement.** This Agreement shall be effective and cover services rendered from July 18, 2018, until June 30, 2022."

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

"4.1. **Amount.** Compensation under this Agreement shall not exceed ONE HUNDRED FORTY THOUSAND SIX HUNDRED FORTY AND NO/100 DOLLARS (\$140,640.00) and shall be billed based on the rate and basis set forth in **Exhibit B.**"

C. Paragraph 5.1 shall be amended by adding the following:

"5.1 **Non-appropriations.** Notwithstanding anything contained in this Agreement to the contrary, if insufficient funds are appropriated, or funds are otherwise unavailable in the budget for CITY for any reason whatsoever in any fiscal year, for payments due under this Agreement, CITY will immediately notify SERVICE PROVIDER of such occurrence,

and this Agreement shall terminate after the last day during the fiscal year for which appropriations shall have been budgeted for CITY or are otherwise available for payments."

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

TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS:

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

ATTEST:

CITY OF MORGAN HILL

Michelle Bigelow, City Clerk

Date: _____

Christina J. Turner, City Manager

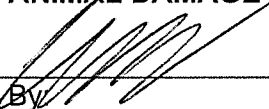
Date: _____

APPROVED AS TO FORM:

ANIMAL DAMAGE MANAGEMENT, INC.

Donald A. Larkin, City Attorney

Date: _____

By: 

Title: _____

C. J. W.

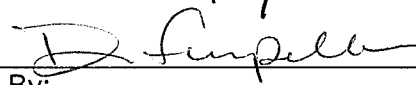
Vice President

Print Name and Title of Signer.

If Corporate: Chairman, President or Vice President

Date: _____

6/2/21

By: 

Title: _____

Diane Farfella - Secretary

Print Name and Title of Signer.

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

Date: _____

6/2/21

EXHIBIT 1

**FIRST AMENDMENT TO AGREEMENT
ANIMAL DAMAGE MANAGEMENT, INC.**

This FIRST AMENDMENT TO AGREEMENT is entered into and becomes effective on 6/10/2020 (Effective Date), by THE CITY OF MORGAN HILL, a municipal corporation, ("CITY") and ANIMAL DAMAGE MANAGEMENT, INC., a California Corporation ("SERVICE PROVIDER"), hereinafter referred to collectively as "Parties."

RECITALS

The following recitals are a substantive part of this Agreement:

1. This FIRST Amendment to Agreement is entered into pursuant to the action of the Morgan Hill City Council taken on July 18, 2018.
2. The CITY and SERVICE PROVIDER entered into that "Maintenance Service Agreement" made as of July 26, 2018, for services for a maximum compensation of Seventy Thousand Three Hundred Twenty and no/100 dollars (\$70,320.00) ("MAINTENANCE SERVICE AGREEMENT"). The MAINTENANCE SERVICE AGREEMENT is attached as Exhibit "1" to this Agreement.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

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

A. Paragraph 2 shall be amended and replaced in its entirety by the following:

"2. **Term of Agreement.** This Agreement shall be effective and cover services rendered from July 26, 2018, until July 31, 2021."

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

"4.1. **Amount.** Compensation under this Agreement shall not exceed ONE HUNDRED FIVE THOUSAND FOUR HUNDRED EIGHTY AND NO/100 DOLLARS (\$105,480.00) and shall be billed based on the rate and basis set forth in **Exhibit B.**"

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Signatures on Next Page

2. **Conflicts.** In the event of a conflict between the terms and provisions of this First Amendment to Agreement and the terms and provisions of the MAINTENANCE SERVICE AGREEMENT, the terms of this First Amendment to Agreement shall govern and control.

TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS:

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

ATTEST:

DocuSigned by:

Michelle Bigelow
 Michelle Bigelow, Deputy City Clerk
 Date: 6/10/2020

APPROVED AS TO FORM:

DocuSigned by:

Don Larkin
 Donald A. Larkin, City Attorney
 Date: 6/9/2020

CITY OF MORGAN HILL

DocuSigned by:

Christina Turner
 Christina L. Turner, City Manager
 Date: 6/10/2020

ANIMAL DAMAGE MANAGEMENT, INC.

[Signature]

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

Date: 5/28/20

[Signature]

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

Date: 5/28/20

128-04-08-024

EXHIBIT 1

MAINTENANCE SERVICE AGREEMENT
Animal Damage Management, Inc.

THIS AGREEMENT is entered into and becomes effective on 7/26/18 (Effective Date), by and between the CITY OF MORGAN HILL, a municipal corporation, ("CITY"), and Animal Damage Management, Inc. a California corporation ("SERVICE PROVIDER") hereinafter referred to collectively as "Parties." In consideration of the promises and the mutual covenants contained in this Agreement, the Parties agree as follows:

1. **City Authority.** This Agreement is entered into pursuant to action of the Morgan Hill City Council taken on July 18, 2018.
2. **Term of Agreement.** This Agreement shall cover services rendered from the Effective Date of this Agreement until July 31, 2020 at which time SERVICE PROVIDER'S services shall be completed. The City Manager is authorized to extend the term of this Agreement for a maximum period of one year. Any such extension shall be in writing and signed by both Parties to this Agreement.
3. **Scope of Service.** The services to be performed by SERVICE PROVIDER shall be pest control services as further described in Exhibit A.
4. **Compensation.** SERVICE PROVIDER shall be compensated as follows:
 - 4.1. **Amount.** \$70,320.00. Total compensation to CONSULTANT under this Agreement during its initial term set forth in Section 2 above shall not exceed Seventy thousand three hundred twenty dollars and shall be billed based on the rate and basis set forth in Exhibit B. If the City Manager extends the term of this Agreement for up to one year pursuant to the provisions of Section 2 above, the City Manager shall have the authority to increase the maximum compensation allowed to be paid to CONSULTANT during that extended term period, so long as City Council has appropriated sufficient funds therefor, the Parties mutually agree to such amount in a writing signed by both Parties to this Agreement and provided further that in no event shall such maximum compensation allowed for the extended term exceed 105% of the maximum compensation allowed to be paid to CONSULTANT for one year of service during the initial term of this Agreement.
 - 4.2. **Billing.** SERVICE PROVIDER shall provide CITY with an invoice containing the dated, detailed, and itemized descriptions of all services performed and expenses incurred (if such expenses are reimbursable pursuant to Exhibit B) by SERVICE PROVIDER on a monthly basis unless otherwise specified in Exhibit B. All invoices shall be sent to the CITY addressed to the department head or project manager identified below in Section 14 Notices. Payment will be made to SERVICE PROVIDER within thirty (30) days of receipt of invoice by CITY. Any rate charged shall be prorated where services are interrupted or not provided for any rate period (for example, any monthly rate charge should be prorated when services were interrupted or provided for only part of the month). For services billed on an hourly rate, the minimum unit of billed time shall not exceed one tenth of one hour. CITY shall pay for services and expenses (if so provided in Exhibit B) up to the limit of compensation set forth above, that in the CITY's judgment were necessary and reasonable. Services for work performed and expenses incurred in excess of the total compensation set forth in paragraph 4.1 above shall be at no cost to CITY.
5. **Termination.** CITY or SERVICE PROVIDER shall have the right to terminate this Agreement, without cause, by giving thirty (30) days' written notice or less under urgent circumstances. Upon such termination,

SERVICE PROVIDER shall submit to CITY an itemized statement of services performed for which compensation has not been paid. CITY may require SERVICE PROVIDER to complete certain work product or documents and SERVICE PROVIDER shall deliver to CITY all documents in its possession without additional compensation to SERVICE PROVIDER. The City Manager is authorized to terminate this AGREEMENT on behalf of CITY.

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

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

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

8.1. **Insurance Types and Amounts.**

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

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

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

8.1.5.3. If the performance of SERVICE PROVIDER's work or service under this Agreement involves contact with minors, SERVICE PROVIDER shall procure and maintain Sexual Abuse and Molestation insurance in the minimum amount of: (i) one million dollars (\$1,000,000.00) each claim, or (ii) the maximum amount of such insurance available to SERVICE PROVIDER under SERVICE PROVIDER's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

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

8.2.1. **General Liability.**

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

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

8.2.1.3. Insurance shall be primary non-contributing.

8.2.2. **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.

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

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

Certificate Holder address:

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

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

10. **Compliance with Law.**

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

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

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

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

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

Prior Judgments against SERVICE PROVIDER and/or Its Subcontractors: BY SIGNING THIS AGREEMENT, SERVICE PROVIDER AFFIRMS THAT IT HAS DISCLOSED ANY FINAL JUDGMENTS, DECISIONS OR ORDERS FROM A COURT OR INVESTIGATORY GOVERNMENT AGENCY FINDING – IN THE FIVE (5) YEARS PRIOR TO EXECUTING THIS

AGREEMENT – THAT SERVICE PROVIDER OR ITS SUBCONTRACTOR(S) HAS VIOLATED ANY APPLICABLE WAGE AND HOUR LAWS. SERVICE PROVIDER FURTHER AFFIRMS THAT IT OR ITS SUBCONTRACTOR(S) HAS SATISFIED AND COMPLIED WITH – OR HAS REACHED AGREEMENT WITH THE CITY REGARDING THE MANNER IN WHICH IT WILL SATISFY – ANY SUCH JUDGMENTS, DECISIONS OR ORDERS.

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

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

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

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

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

Address of SERVICE PROVIDER is as follows:

Animal Damage Management, Inc.
16170 Vineyard Blvd., Ste. 150
Morgan Hill, CA 95037

Address of CITY is as follows:

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

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

16. **Maintenance of Records.**

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

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

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

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

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

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

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

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

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

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

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

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

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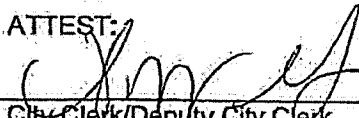
27. **Authority to Execute.** Those individuals who are signing this Agreement on behalf of entities represent and warrant that they are, respectively, duly authorized to sign on behalf of the entities and to bind the entities fully to each and all of the obligations set forth in this Agreement.

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 Clerk/Deputy City Clerk

fw Michelle Wilson
Print Name

Date: 8/11/18

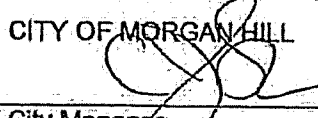
APPROVED AS TO FORM:


City Attorney

Donald A. Larkin
Print Name

Date: 7/20/2018

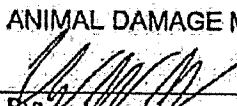
CITY OF MORGAN HILL


City Manager

Christina J. Turner
Print Name

Date: 7/26/18

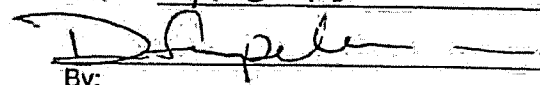
ANIMAL DAMAGE MANAGEMENT, INC.

By: 

Cody UW - Vice President
Print Name and Title of Signer.

If Corporate: Chairman, President or
Vice President

Date: 7-6-18

By: 

Dane Furpalla - Secretary
Print Name and Title of Signer.

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

Date: 7-6-18.

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

1000010890
Contractor's DIR Registration Number(s) (if applicable)

Expiration Date(s)

Expiration Date(s) 6-2019

Seal:

U:\Legal Forms\Consultant Agreements\City Maintenance Service Agreement.Docx

10
Updated: May 2018

EXHIBIT A SCOPE OF SERVICES

Contractor to provide ongoing scope of services for city facilities described below:

- 1. Butterfield Detention Basin located at Railroad, Fisher and Seymour Avenues: Inspect and treat as needed using traps and or carbon monoxide gas. Monitor and report. To be serviced four (4) times per month.**
- 2. Aquatics Center located at 16200 Condit Road. Inspect, set traps as needed in turf and landscaped areas to control gophers. Monitor and report. To be serviced four (4) times per month.**
- 3. Morgan Hill Police Department located at 16200 Vineyard Boulevard: Inspect bait stations, service each as needed. Monitor and report. Services include cleaning out debris, replenishing bait, marking record card and replacing any damaged bait stations. To be serviced twice per month.**
- 4. Boys Ranch 1, 2 & 3 Wells located at 1000 to 1004 Burnett Avenue. Inspect bait stations, service each as needed. Monitor and report. Services include cleaning out debris, replenishing bait, marking record card, and replacing any damaged bait stations. To be serviced twice per month.**
- 5. Jackson Oaks Booster located at 3842 White Oak Court/E Dunne Avenue after Hilltop Court. Inspect bait stations, service each as needed. Monitor and report. Service includes cleaning out debris, replenishing bait, marking record card and replacing any damaged bait stations. To be serviced twice per month**
- 6. Encino Booster located at 18835 Glen Ayre Drive. Inspect bait stations, service each as needed. Monitor and report. Service includes cleaning out debris, replenishing bait, marking record card and replacing any damaged bait stations. To be serviced twice per month**
- 7. Woodland Acres Booster located at 17910 Woodland Avenue. Inspect bait stations, service each as needed. Monitor and report. Service includes cleaning out debris, replenishing bait, marking record card and replacing any damaged bait stations. To be serviced twice per month**
- 8. Dunne Well located at East Dunne and Condit Road: Inspect bait stations, service each as needed. Monitor and report. Service includes cleaning out debris, replenishing bait, marking record card and replacing any damaged bait stations. To be serviced twice per month**
- 9. Community Park located at 171 W. Edmundson Ave.: Inspect turf and landscape areas for gophers and ground squirrels. Treat as needed using traps and or carbon monoxide gas. Monitor and report. Trappings twice per month. Carbon monoxide gas twice per month.**
- 10. Paradise Park located at La Crosse Drive and Calle Enrique. Inspect turf and landscape areas for gophers and ground squirrels. Set traps as needed. Monitor and report. Serviced twice per month.**
- 11. Extra Services for gophers and ground squirrels, raccoons, birds, wasps, mice, insects, skunks and opossums as requested by City Maintenance Staff.**

**EXHIBIT B
SCHEDULE OF COMPENSATION RATES**

1. Butterfield Detention Basin: \$275.00 per month
2. Aquatics Center \$375.00 per month
3. Morgan Hill Police Department \$100.00 per month
4. Boys Ranch 1, 2 & 3: \$50.00 per month
5. Jackson Oaks Booster: \$50.00 per month
6. Encino Booster: \$50.00 per month
7. Woodland Acres Booster: \$50.00 per month
8. Dunne Well: \$50.00 per month
9. Community Park: \$505.00 per month
10. Paradise Park: \$175.00 per month
11. Extra Services:

Gophers and Ground Squirrels	\$195.00
Raccoons:	\$175.00
Birds:	\$225.00
Wasps:	\$175.00
Mice:	\$185.00
Insects:	\$165.00
Skunks:	\$195.00
Opossums:	\$175.00

**EXHIBIT C
SCHEDULE OF PERFORMANCE**

1. Butterfield Detention Basin: To be serviced four (4) times per month.
2. Aquatics Center To be serviced four (4) times per month.
3. Morgan Hill Police Department To be serviced twice per month.
4. Boys Ranch 1, 2 & 3: To be serviced twice per month.
5. Jackson Oaks Booster: To be serviced twice per month
6. Encino Booster: To be serviced twice per month
7. Woodland Acres Booster: To be serviced twice per month
8. Dunne Well: To be serviced twice per month
9. Community Park: Trappings twice per month. Carbon monoxide gas twice per month.
10. Paradise Park: Serviced twice per month
11. Extra Services: As requested by City Maintenance Staff



CITY COUNCIL STAFF REPORT

MEETING DATE: June 23, 2021

PREPARED BY: Michael Horta, Human Resources Director
APPROVED BY: City Manager

APPROVE THIRD AMENDMENT TO AGREEMENT WITH INNOVATIVE CLAIMS SOLUTIONS, INC.

RECOMMENDATION(S)

Authorize the City Manager to execute and administer a Third Amendment to Agreement with Innovative Claims Solutions, Inc. to provide third party claims administration for workers' compensation extending the agreement for one additional year of service at annual amount of \$34,380, for a new total contract amount of \$206,600 over 6 years.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Maintaining Infrastructure
Preserving and Cultivating Public Trust

2020-2021 Strategic Priorities

Fiscal Sustainability

REPORT NARRATIVE:

The current agreement with Innovative Claim Solutions (ICS) has been in effect since June 2016. During this time, ICS has administered several lengthy and complex workers' compensation case settlements that resulted in City Council review and approval. ICS has expended significant resources and continues to educate and inform Human Resources, departmental workers' compensation liaisons, and the City Attorney on the particular workers' compensation cases, as well as the general aspects of workers' compensation and case law. In early 2016, staff conducted a joint Request For Proposal (RFP) with the City of Gilroy for such services, through which ICS was selected as the most qualified firm to provide the services. ICS was also the lowest overall cost as a result of the RFP. ICS has offered to provide its services for an additional year without an increase to their current fees. The City will be conducting another RFP within the fiscal year. Therefore, staff recommends that Council approve the Third Amendment to Agreement, increasing the contract amount by \$34,380 to a revised not to exceed amount of \$206,600.

COMMUNITY ENGAGEMENT: Inform

This report serves to inform the community of the recommended third amendment to the agreement.

ALTERNATIVE ACTIONS:

The Council could choose not to approve the third amendment to the agreement with ICS and direct staff to conduct an RFP or consider a different third-party administrator for workers' compensation in the interim.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The Council approved the City's current agreement with ICS on May 18, 2016, which was subsequently amended for an additional one-year and two-year term, pursuant to the City Manager's authority.

FISCAL AND RESOURCE IMPACT:

The third amendment to the agreement would increase the compensation by \$34,380 over one year. Costs for these services are budgeted and paid from the Workers' Compensation Fund (770). (GL#:770.8220.42231).

CEQA (California Environmental Quality Act): Not a Project.

This is an administrative action that will not result in physical changes in the environment.

LINKS/ATTACHMENTS:

1. Innovative Claims Solutions - Third Amendment

THIRD AMENDMENT TO AGREEMENT INNOVATIVE CLAIMS SOLUTIONS, INC.

This THIRD AMENDMENT TO AGREEMENT is entered into and becomes effective on _____ (Effective Date), by THE CITY OF MORGAN HILL, a municipal corporation, ("CITY") and INNOVATIVE CLAIMS SOLUTIONS, INC., a California Corporation ("CONSULTANT").

RECITALS

The following recitals are a substantive part of this Agreement:

1. This Third Amendment to Agreement is entered into pursuant to the action of the Morgan Hill City Council taken on _____, _____, 20____.
2. The CITY and CONSULTANT entered into that "Consultant Agreement" made as of June 14, 2016, for consultant services for a maximum compensation of Sixty-Nine Thousand Eighty and no/100 dollars (\$69,080.00) ("CONSULTANT AGREEMENT").
3. The CITY and CONSULTANT entered into a "First Amendment to Agreement" made as of June 7, 2018, under which the maximum compensation under the CONSULTANT AGREEMENT, as amended, was increased to One Hundred Three Thousand Four Hundred Sixty and no/100 dollars (\$103,460.00).
4. The CITY and CONSULTANT entered into a "Second Amendment to Agreement" made as of November 14, 2019, under which the maximum compensation under the CONSULTANT AGREEMENT, as amended, was increased to One Hundred Seventy-Two Thousand Two Hundred Twenty and no/100 dollars (\$172,220.00). The CONSULTANT AGREEMENT, and the First, Second and Third Amendments thereto are attached as Exhibit "1" to this Agreement.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **Amendments:** All terms and conditions of the CONSULTANT AGREEMENT, as amended, as attached as Exhibit "1," shall remain in full force and effect; except that the following amendments shall be made as set forth below:
 - A. Paragraph 2 shall be amended and replaced in its entirety by the following:

"2. **Term of Agreement.** This Agreement shall be effective and cover services rendered from June 14, 2016, until June 30, 2022."
 - B. Rates as described in Exhibit B dated May 22, 2019, are continued in place through June 30, 2022.
 - C. Paragraph 5 shall be amended by adding the following:

"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.”

D. Paragraph 9 shall be amended and replaced in its entirety by the following to correct reference from SERVICE PROVIDER to CONSULTANT:

"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."

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Signatures on the Next Page

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

TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS:

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

ATTEST:

CITY OF MORGAN HILL

Michelle Bigelow, City Clerk

Date: _____

APPROVED AS TO FORM:

Donald A. Larkin, City Attorney

By: _____

Date: _____

Christina J. Turner, City Manager

Date: _____

INNOVATIVE CLAIMS SOLUTIONS, INC.

Cheryl Westeren

By: Cheryl Westeren

Title: President & COO

Print Name and Title of Signer.

If Corporate: Chairman, President or Vice President

Date: _____

6/2/2021

Gary Archibald

By: Gary Archibald

Title: President & COO

Print Name and Title of Signer.

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

Date: _____

6/3/2021

12604-16-053

EXHIBIT 1

**SECOND AMENDMENT TO AGREEMENT
INNOVATIVE CLAIMS SOLUTIONS, INC.**

This SECOND AMENDMENT TO AGREEMENT is entered into and becomes effective on 11/4/19 (Effective Date), by THE CITY OF MORGAN HILL, a municipal corporation, ("CITY") and INNOVATIVE CLAIMS SOLUTIONS, INC., a California Corporation ("CONSULTANT").

RECITALS

The following recitals are a substantive part of this Agreement:

1. This Second Amendment to Agreement is entered into pursuant to the action of the Morgan Hill City Council taken on JUNE 20, 2019
2. The CITY and CONSULTANT entered into that "Consultant Agreement" made as of June 14, 2016, for consultant services for a maximum compensation of SIXTY-NINE THOUSAND EIGHTY AND NO/100 DOLLARS (\$69,080.00) ("CONSULTANT AGREEMENT").
3. The CITY and CONSULTANT entered into a "First Amendment to Agreement" made as of June 7, 2018, under which the maximum compensation under the CONSULTANT AGREEMENT, as amended, was increased to ONE HUNDRED THREE THOUSAND FOUR HUNDRED SIXTY AND NO/100 DOLLARS (\$103,460.00). The CONSULTANT AGREEMENT and the First Amendment thereto are attached as Exhibit "1" to this Agreement.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

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

A. Paragraph 2 shall be amended and replaced in its entirety by the following:

"2. **Term of Agreement.** This Agreement shall be effective and cover services rendered from June 14, 2016, until June 30, 2021."

B. Effective July 1, 2019, CONSULTANT'S billing rates are set forth in the revised Exhibit "B" dated May 22, 2019, approved by CITY and attached hereto and incorporated herein by this reference. Paragraph 4.1 shall be amended and replaced in its entirety by the following:

"4.1. **Amount.** Compensation under this Agreement shall not exceed ONE HUNDRED SEVENTY-TWO THOUSAND TWO HUNDRED TWENTY AND NO/100 DOLLARS (\$172,220.00) and shall be billed based on the rate and basis set forth in Exhibit B.

C. Paragraph 5 shall be amended and replaced in its entirety by the following:

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.

D. Paragraph 7.2.2 shall be amended and replaced in its entirety by the following:

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.

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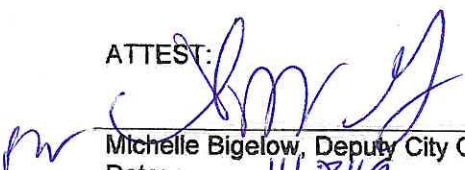
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2. **Conflicts.** In the event of a conflict between the terms and provisions of this Second Amendment to Agreement and the terms and provisions of the CONSULTANT AGREEMENT or any earlier amendment, the terms of this Second Amendment to Agreement shall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

TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS:

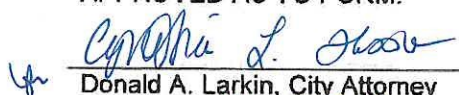
- (1) CHAIRPERSON OF THE BOARD, PRESIDENT, OR VICE PRESIDENT; **AND**
 (2) SECRETARY, ASSISTANT SECRETARY, CHIEF FINANCIAL OFFICER OR ASSISTANT TREASURER.

ATTEST:


 Michelle Bigelow, Deputy City Clerk

Date: 11/8/19

APPROVED AS TO FORM:


 Donald A. Larkin, City Attorney

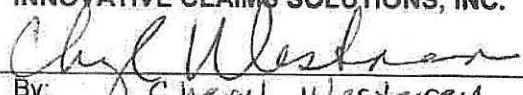
Date: 10-28-19

CITY OF MORGAN HILL


 Christina J. Turner, City Manager

Date: 11/4/19

INNOVATIVE CLAIMS SOLUTIONS, INC.


 By: Cheryl Westover
 Title: President & COO

Print Name and Title of Signer.

If Corporate: Chairman, President or Vice President

Date: 6/12/19

By: 

Title: President & CIO

Print Name and Title of Signer.

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

Date: 6-12-19

REVISED EXHIBIT B

INNOVATIVE CLAIMS SOLUTIONS, INC. – SECOND AMENDMENT TO AGREEMENT
MAY 22, 2019

City shall pay CONSULTANT:

1. An annualized fee of \$34,380 for the period of July 1, 2019 – June 30, 2020; and
2. an annualized fee of \$34,380 for the period of July 1, 2020 – June 30, 2021.

The payments will be made in equal monthly installments of \$2,865.00.

126-04-16-053

EXHIBIT "1"

FIRST AMENDMENT TO AGREEMENT
INNOVATIVE CLAIMS SOLUTIONS, INC.

This FIRST AMENDMENT TO AGREEMENT is entered into and becomes effective on June 7, 2018 (Effective Date), by THE CITY OF MORGAN HILL, a municipal corporation, ("CITY") and, INNOVATIVE CLAIMS SOLUTIONS, INC., a California corporation ("CONSULTANT").

RECITALS

The following recitals are a substantive part of this Agreement:

1. This First Amendment to Agreement is entered into pursuant to the action of the Morgan Hill City Council taken on May 18, 2016.
2. The CITY and CONSULTANT entered into that "Consultant Agreement" made as of June 14, 2016, for consultant services for a maximum compensation of SIXTY-NINE THOUSAND EIGHTY AND NO/100 DOLLARS (\$69,080.00) ("CONSULTANT AGREEMENT"). The CONSULTANT AGREEMENT is attached as Exhibit "1" to this Agreement.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

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

A. Paragraph 2 shall be amended and replaced in its entirety by the following:

"2. Term of Agreement. This Agreement shall be effective and cover services rendered from June 14, 2016, until June 30, 2019."

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

"4.1. Amount. Compensation under this Agreement shall not exceed ONE HUNDRED THREE THOUSAND FOUR HUNDRED SIXTY AND NO/100 DOLLARS (\$103,460.00) and shall be billed based on the rate and basis set forth in the revised Exhibit B dated May 17, 2018, attached hereto and incorporated herein by this reference."

C. Paragraph 9 shall be amended and replaced in its entirety by the following:

"9. Compliance with Law.

9.1 SERVICE PROVIDER and its officers, employees, agents, and subcontractors shall comply with all applicable laws, ordinances, administrative regulations, and permitting requirements in carrying out their obligations under this Agreement. SERVICE PROVIDER and its officers, employees, agents, and

subcontractors covenant there shall be no discrimination based upon race, color, creed, religion, gender, marital status, age, sexual orientation, national origin, mental disability, physical disability, medical condition, or ancestry, in any activity pursuant to this Agreement.

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

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

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

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

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

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

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

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

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

[Signatures on Next Page]

2. **Conflicts.** In the event of a conflict between the terms and provisions of this First Amendment to Agreement and the terms and provisions of the CONSULTANT, the terms of this First Amendment to Agreement shall govern and control.

TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS:

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

ATTEST:

Procity
 City Clerk
 Date: 06/13/18

APPROVED AS TO FORM:

for
 City Attorney
 Date: 5-21-18

CITY OF MORGAN HILL

City Manager
 Date: 6-7-18

INNOVATIVE CLAIMS SOLUTIONS, INC.

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

Date: 5-21-2018
 By: Gary Archbold
 Title: President + CIO
 Print Name and Title of Signer.
 If Corporate: Secretary, Assistant Secretary, Chief Financial Officer or Assistant Treasurer

Date: 5-21-2018

REVISED EXHIBIT B
INNOVATIVE CLAIMS SOLUTIONS, INC. - FIRST AMENDMENT TO AGREEMENT
MAY 17, 2018

City shall pay CONSULTANT an annualized fee of \$34,380 for the period of July 1, 2018 – June 30, 2019, and payments will be made in equal monthly installments of \$2,865.00.

126-04-16-053

EXHIBIT "1"**CONSULTANT AGREEMENT
Innovative Claims Solutions, Inc.**

THIS AGREEMENT is entered into and becomes effective on 6/14/16 (Effective Date), by and between the CITY OF MORGAN HILL, a municipal corporation, ("CITY"), and Innovative Claims Solutions, 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 action of the Morgan Hill City Council taken on MAY 18, 2016.
2. Term of Agreement. This Agreement shall cover services rendered from the Effective Date of this Agreement until June 30, 2018 at which time CONSULTANT'S services shall be completed. The City Manager is authorized to extend the term of this Agreement for a maximum period of one year. Any such extension shall be in writing and signed by both Parties to this Agreement.
3. Scope of Service. The services to be performed by CONSULTANT shall be workers compensation claims administration as further described in Exhibit A.
4. Compensation. CONSULTANT shall be compensated as follows:
 - 4.1. Amount. \$69,080.00. Total compensation to CONSULTANT under this Agreement during its initial term set forth in Section 2 above shall not exceed sixty nine thousand eighty dollars and shall be billed based on the rate and basis set forth in Exhibit B. If the City Manager extends the term of this Agreement for up to one year pursuant to the provisions of Section 2 above, the City Manager shall have the authority to increase the maximum compensation allowed to be paid to CONSULTANT 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 during the extended term period exceed an additional five percent (5%) above the compensation allowed to be paid to CONSULTANT during the initial term of this Agreement.
 - 4.2. Billing. CONSULTANT shall provide CITY with a monthly 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. 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 on behalf of CITY.

6. Performance of Work. CONSULTANT represents that it is qualified by virtue of experience, training, education, and expertise to accomplish these services. Services shall be performed by CONSULTANT in accordance with professional practices in a manner consistent with a level of care, competence and skill exercised by qualified members of the CONSULTANT'S profession. By delivery of completed work, CONSULTANT certifies that the work conforms to the requirements of this Agreement and all applicable federal, state and local laws. If CONSULTANT desires to leave or store any of CONSULTANT's equipment at a CITY site while CONSULTANT is performing work or service pursuant to this Agreement, CONSULTANT will first obtain the consent of CITY's City Manager, or his 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, 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) for bodily injury or death to any one person for any one accident or occurrence and at least one million dollars (\$1,000,000.00) for property damage, 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) for bodily injury or death to any one person for any one accident or occurrence and at least one million dollars (\$1,000,000.00) for property damage, 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 contractor's liability for bodily injury, property damage and environmental damage resulting from pollution and related cleanup costs arising out of the work or services to be performed under this Agreement. Coverage shall be provided for both work performed on site, as well as during the transport of hazardous materials. Such coverage shall be in the minimum amount of: (i) one million dollars (\$1,000,000.00) for any one accident or occurrence, or (ii) the maximum amount of such insurance available to 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, 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.

7.1.5.3. 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) 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.

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

7.2.1. General Liability.

7.2.1.1. 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.

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.

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

7.4. Certificates. CONSULTANT shall furnish CITY of Morgan Hill with copies of all policies or 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. 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.

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:

Innovative Claims Solutions, Inc.
P.O. Box 5128
San Ramon, CA 94583

Address of CITY is as follows:

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

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

15. Maintenance of Records.

15.1. 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.

15.2. 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.

15.3. 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.

16. 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.

17. Time of Essence. Time is of the essence in the performance of this Agreement.

18. 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.

19. 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.

20. Defense and Indemnification.

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

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

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

20.4. Right to Offset. CITY shall have the right to offset against any compensation due CONSULTANT under this Agreement any amount due CITY from CONSULTANT as a result of CONSULTANT's failure to pay CITY promptly any indemnification arising under this Section (20) 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.

20.5. Interpretation. This Section shall constitute an agreement or contract of indemnity, incorporating the interpretations under California Civil Code Section 2778. It is expressly understood and agreed that the obligation of the CONSULTANT to indemnify the INDEMNITEE shall

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

21. 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.

22. 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.

23. 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.

24. 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.

25. Binding Agreement. Notwithstanding the provisions of Section 18 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.

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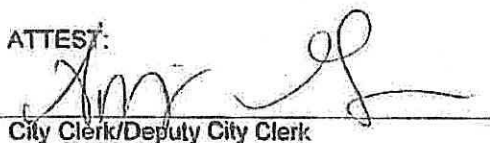
26. Authority to Execute. Those individuals who are signing this Agreement on behalf of entities represent and warrant that they are, respectively, duly authorized to sign on behalf of the entities and to bind the entities fully to each and all of the obligations set forth in this Agreement.

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.

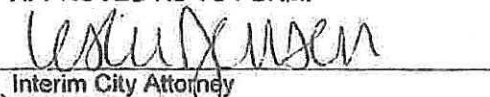
ATTEST:


 City Clerk/Deputy City Clerk

Michelle Wilson
 Print Name

Date: 6/14/16

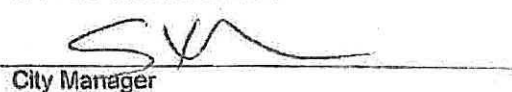
APPROVED AS TO FORM:


 Interim City Attorney

Gary Baum
 Print Name

Date: 06/14/16

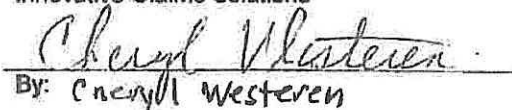
CITY OF MORGAN HILL


 City Manager

Steve Rymer
 Print Name

Date: 6/14/16

Innovative Claims Solutions


 By: Cheryl Western

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

Date: 5/9/16


 By: Gary Archibald

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

Date: 5/9/16

EXHIBIT A SCOPE OF SERVICES

Claims Administration. ICS shall adhere to the following claims administration standards and procedures:

1. ICS shall review and process reported claims for workers' compensation benefits that have not been closed as of the Effective Date of this Agreement and closed claims that reopen on or after the Effective Date. ICS shall have no responsibility other than custody of files and statistical reporting for claims closed prior to the Effective Date.
2. Determine liability for claimed injuries and illnesses in accordance with California Workers' Compensation Laws.
3. Review and process all claims in accordance with rules and regulations established by the Division of Industrial Relations, Department of Self-Insurance Plans.
4. Establish files containing medical and factual information on each reported claim together with complete accounting records and maintain same in accordance with statutory time requirements.
5. ICS shall make all workers compensation disability payments and send all notices in a timely and accurate manner and in conformance in all material respects with all applicable provisions of the California Labor Code and the California workers' compensation laws, rules and regulations.
6. Determine nature and extent of permanent disability and arrange for informal disability rating whenever possible to avoid Workers' Compensation Appeals Board litigation.
7. Explain to and assist employee in completing necessary forms for permanent disability ratings.
8. Review compute and pay all informal rating, findings and awards, life pensions or compromise and release settlements.
9. Maintain and establish reserve estimates for each reported claim.
10. Arrange for and supervise all necessary investigations to determine eligibility for compensation benefits and/or liability of negligent, third parties.
11. Identify, recommend and obtain special fraud investigations after obtaining advance authority from the CLIENT.
12. As a service to the CLIENT, ICS will report all excess claims to excess reinsurance carrier, although the final responsibility for reporting such claims is that of the CLIENT's.
13. Arrange and supervise rehabilitation services where indicated.
14. Arrange for and set up system for payment of benefits and allocated expenses in accordance with CLIENT's needs.
15. ICS shall prepared with the assistance of the CLIENT all reports, which are now, or will be required by the State of California or other government agencies with respect to self-funded programs.

16. ICS shall subscribe to and pay for enrollment in the Index Bureau System and will report to the Index Bureau on each and every indemnity claim. The per claim cost of this service shall be posted as an allocated expense to the CLIENT.

17. On behalf of the Client, ICS will perform all workers compensation claim reporting services required by the Medicare, Medicaid and SCHIP Extension Act (MMSEA) Section 111 Mandatory Reporting to the Centers for Medicare & Medicaid Services (CMS) for the periods identified in this contract.

18. ICS will comply with the performance standards as required by the City's excess carrier. ICS will advise if there are any exceptions, or when compliance with new standards may impact our annual fee.

B. Medical Administration. ICS shall adhere to the following medical administration standards:

1. Authorize, review and monitor all medical treatment required on injury or illness claims.
2. Audit and pay all medical expenses in a timely manner, and within statutory guidelines.
3. Maintain close contact with treating physicians to ensure employees receive proper medical treatment and are returned to full employment at earliest date.
4. Arrange for medical-legal opinions in disputed cases, conferring with medical examiners, CLIENT, and legal counsel where indicated.
5. Consult as required with CLIENT on those cases where injury residual might involve restriction and/or retirement potential.

C. Legal Administration. ICS shall adhere to the following legal administration standards:

1. Refer litigated cases, when needed, to attorneys recommended by ICS and approved by CLIENT for purposes of defending CLIENT's interests before Workers' Compensation Appeals Board and the court.
2. Work closely with counsel in preparing defense of litigated cases.
3. Obtain CLIENT's authorization on all settlements or stipulations when required.
4. Work closely with applicant's attorney and legal counsel in informal dispositions of litigated cases.
5. Attend, when required, Workers' Compensation Appeals Board hearings.
6. Discharge on behalf of CLIENT, all legal obligations to its injured employees imposed by Workers' Compensation Appeals Board and higher courts.
7. Protect and preserve CLIENT's interests in all potential subrogation cases.

D. Medical Cost Containment Services. ICS shall adhere to the following medical cost containment services standards:

1. ICS shall use and cooperate fully with the designated medical cost containment vendor (bill review and utilization review service provider) to review the medical bills for the CLIENT and other medical charges and provide necessary utilization review services relating to treatment requests on all claims of industrial injury or illness.

2. Unless otherwise directed, ICS will select the service provider to be utilized and CLIENT will pay for such services. The City of Morgan Hill shall be responsible for all Managed Care Services and Loss Adjustment Expenses. Managed Care Services shall include medical bill review, utilization review, and medical case management. Costs for such services are documented in Exhibit B; however, bill review services shall be billed at a rate not to exceed \$30.00 per bill. Loss Adjustment Expenses shall include all reasonable expenses necessary to the adjustment of a claim in accordance with the Service Agreement, including, but not limited to, fees for engaging defense counsel, court reporters, expert witnesses and field investigators, incurred on behalf of the City of Morgan Hill.

E. Information Systems. ICS will provide a computer system with appropriate data base management capabilities to maintain records related to the administration of the Client's workers' compensation program. ICS shall coordinate data entry for employees in the program and for services supplied by ICS. The CLIENT shall have access to the computer system during normal working hours and access to the database through its own computers at its own expense. ICS shall provide computer-generated reports that are reasonably requested on a regular basis as detailed in section F below.

F. Statistical. ICS will adhere to the following statistical report production obligations and provide all required reports to the client at agreed to intervals:

1. Report to CLIENT, monthly status of claim payments and reserves on an individual claim basis and in the aggregate.
2. Report to CLIENT, quarterly loss analysis of claims filed by frequency and severity.
3. Assist in the preparation of all reports required by the State of California or other Governmental agencies relating to Workers' Compensation claims.
4. ICS will prepare the federal information return (Form 1099) by the statutory deadline for all payments subject to 1099 reporting made by ICS on behalf of the CLIENT during the term of this Agreement.
5. Additional ad-hoc reports will be provided to CLIENT at their request at no additional cost. Special report requests that require programming time will be charged to CLIENT at \$150 per hour, which is our direct cost. Our system is capable of generating standardized reports as follows:

- Claim Logs
- Claim Activity
- Claim Cost Detail
- Claim Cost Summary
- Claim Cost Summary by Year
- Examiner Activity
- Examiner Case Log
- Frequency Reports
- Location Summary
- Management Summary
- Multiple Claims Listing
- Occurrence Cost
- OSHA
- Payment Type Totals
- Vendor Payments Summary
- State Annual Report

B. Ad-hoc reports queries, which require no specific programming will be provided at no cost to CLIENT.

G. Banking Services. ICS will adhere to the following services standards, as directed by the clients:

1. The CLIENT agrees to establish, fund and replenish an account at a financial institution agreed upon by the CLIENT and ICS for the purpose of paying benefits to workers or care providers and to pay Allocated Loss Adjustment Expenses.

2. All funds in the CLIENT Account belong to the CLIENT. ICS shall have authority to write checks on the CLIENT Account, however, two signatures may be required at client's requested level.

3. ICS shall have authority to pay Allocated Loss Adjustment Expenses from the CLIENT Account to vendors. ICS shall provide the CLIENT with detailed accountings of the expenditures from the CLIENT Account.

4. ICS agrees to make records pertinent to the CLIENT's account available to CLIENT for audit purposes at all reasonable times with at least 24 hours' notice.

5. ICS agrees to maintain CLIENT's trust fund account, if CLIENT elects such arrangement. Otherwise, CLIENT is responsible for all reconciliation and banking processes involved with CLIENT account.

6. Additional services, including but not limited to, field and investigative services, legal expenses, managed care services, index bureau inquiries, bill review and all services which are provided by outside vendors on behalf of the CLIENT shall be paid out of the CLIENT's account, or trust account.

H. Assignments. ICS shall not assign this Agreement, nor any part thereof.

I. **File Storage.** Pursuant to RR 15400.2 Of the California Code of Regulations all files closed for more than 5 (five) years shall be identified. UPON CLIENT direction ICS shall return the file(s) to CLIENT, destroy file(s) or maintain file(s) at CLIENT expense with an off-site storage facility.

J. **Cooperation.** In the event of early termination or non-renewal, both parties will cooperate in good faith to implement a transition to a new service provider with minimum disruption to the provision of benefits to workers. ICS will make available to client, and to a new service provider, all files, summary data, records and information developed with respect to this Agreement, including all loss records and a record layout describing the format of the data tapes. Such information shall be made available electronically whenever possible. The CLIENT shall assume all responsibility for open claims as of the effective date of termination.

K. **Files** All claims files, records, reports and other documents pertaining to employee claims are the property of the CLIENT and CLIENT may audit or inspect the files at any time during normal business hours. ICS shall turn over possession of all files and other documents to the CLIENT or its designee promptly upon the effective date of termination or non-renewal of this Agreement. The CLIENT shall allow ICS to review all files and other documents with information relating to its performance pursuant to this agreement.

L. **Penalties and Fines.** ICS and client agree to the following standards, protocols and principals relating to the fines and penalties:

1. ICS and CLIENT hereto acknowledge the various penalties and administrative fines that contained in The California Workers' Compensation Reform Act of 1989 (effective January 1, 1990 and January 1, 1991) that may be imposed on both employers and claim administrators.
2. ICS will be responsible for any fines or penalties associated with questionable or converted claims that ICS denies without first consulting and obtaining approval by the CLIENT for denial of the claim(s). ICS will not be responsible for any fines or penalties levied by the Division of Workers' Compensation or any other judicial or quasi-judicial organization for improper denial of a claim(s) if, over the objections of ICS, ICS has denied said claim(s) at the direction of the CLIENT.
3. The CLIENT shall be responsible for all penalties where ICS has not been given sufficient notice such that ICS has had at least seven (7) working days in which to investigate the claim and to pay temporary disability or send the required wage continuation notice before the penalties were assessed. ICS shall be responsible for all penalties in which it has had seven (7) or more working days in which to investigate and pay temporary disability or send a wage continuation notice. For the purposes of this section "working day" means all days except Saturdays, Sundays, and commonly observed holidays.
4. The services as described in this Agreement shall be performed in all material respects in accordance with applicable laws, rules, regulations and standards of governmental authorities including, in particular, applicable Workers' Compensation Laws of the State of California.
5. This Agreement shall be construed in accordance with, and governed by, the internal laws of the State of California and the venue for any disputes is the county of Santa Clara as requested by the CLIENT.

**EXHIBIT B
SCHEDULE OF COMPENSATION RATES**

City shall pay CONSULTANT an annualized fee of \$34,380 for the period of July 1, 2016 - June 30, 2017 and an annualized fee of \$34,700 for the period of July 1, 2017 - June 30, 2018.

For FY 16/17, payments will be made in equal monthly installments \$2,865.00 and for FY 17/18, payments will be made in equal monthly installments of \$2,891.66.

DRAFT



Meeting Minutes City Council

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

Wednesday, June 16, 2021 5:30 pm

Virtual Meeting

SPECIAL/REGULAR MEETING

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

5:30 p.m. Housing Affordability Workshop

7:00 p.m. Regular Meeting

SPECIAL MEETING

5:30 p.m. Housing Affordability Workshop

CALL TO ORDER

Mayor Constantine called the meeting to order at 5:30 p.m.

ROLL CALL ATTENDANCE

City Clerk Michelle Bigelow called the roll.

Attendee Name	Title	Status	Arrived
Rich Constantine	Mayor	Remote	
John McKay	Mayor Pro Tem	Remote	
Gino Borgioli	Council Member	Remote	

Yvonne Martinez Beltran	Council Member	Remote	
Rene Spring	Council Member	Remote	

DECLARATION OF POSTING AGENDA

City Clerk Michelle Bigelow declared the posting of the agenda.

WORKSHOP

This workshop is the third in a series of Housing Workshops that will look at the current and future state of housing in Morgan Hill. This workshop is called "Housing Affordability." Staff will present and discuss the following:

- What is considered affordable housing?
- What are the different ways these units are built and by who?
- Who is the housing for?
- What agencies work on affordable housing?
- City's history of affordable housing production.
- Current City efforts.

Assistant City Manager Edith Ramirez introduced the workshop and the housing team. She then turned the presentation over to Housing Manager Rebecca Garcia who provided a presentation.

Public comment opened at 6:44 p.m.

Rocke Garcia was called to speak.

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

The workshop adjourned at 6:58 p.m.

WORKSHOP PRESENTATION

REGULAR MEETING

7:00 p.m.

The regular meeting was called to order at 7:06 p.m.

PRESENTATIONS

YAC PRESENTATION- ASSET #33- INTERPERSONAL COMPETENCE

PROCLAMATIONS

Proclaiming June 19, 2021 as Juneteenth

RECOGNITIONS

Recognizing the many volunteers who staffed the Morgan Hill Safeway/Albertsons Companies COVID-19 vaccination clinics

CITY COUNCIL REPORTS

Council Member Yvonne Martinez Beltran reported that Sister Cities has been meeting less frequently because of COVID but they hope to start their programs again once everything starts to open up again. She stated that Cal Cities had their Housing, Economic Development, and Transportation Committee

meetings where they reviewed various pieces of legislations before going through committees at the state level. Senate Bill 9 (SB 9) did advance at the State Assembly even though Cal Cities opposed it. Cal Cities sent a letter urging the legislature to take action on the Governor's proposed \$7 billion dollar, over three years, plan as it's in line with Cal Cities current budget which asks for \$3 billion next fiscal year to modernize broadband infrastructure and expand broadband to underserved and communities in need to close the digital divide. Silicon Valley Clean Energy (SVCE) they approved a 15-year renewable energy contract and will start delivering power in 2023 for a total of 239 megawatts of new energy and 40 megawatts of battery storage. They are implementing efforts to inform customers about possible summer flex alerts and energy emergencies. In response to the ASIO and PG&E notifications, SVCE will activate notices and messaging to call customers to conserve or let them know how they can prepare. They have also extended the timeline for customers to sign up for the Community Resiliency funding. Morgan Hill is eligible for a total of \$243,000. She provided an update on VTA, sharing that at their June meeting the Board approved an employment contract for the new General Manager/CEO and approved the 2022/2023 biannual budget. There is a special meeting being held on June 18th, to adopt resolutions of necessity for properties that are needed to complete the Bart Phase 2 and to consider approval of the implementation plan including 9.7 million for improvements along Cochrane Rd, Madrone Channel Trail, and Tennant Ave. and some improvements and feasibility studies along Monterey Rd.

CITY MANAGER'S REPORT

City Manager Christina Turner spoke to the evening's supplements and presentations. Due to the intense heat that we have been experiencing that will be intensifying over the next two days, there are two cooling centers set up in Morgan Hill. The Centennial Recreation Center (CRC) lobby is available as a cooling center Wednesday through Friday, June 18th from 8:00 a.m. to 9:00 p.m. The Morgan Hill Library is also set up as a cooling center today through Thursday, June 17th from 1:00 p.m. to 6:00 p.m.

A Flex Alert has been issued. The California Independent System Operator (ISO) put out an extreme heat forecast for much of California and the Southwest. What the statewide flex alert does is it encourages electricity conservation during a specific timeframe. For now they are asking for conservation between 5:00 p.m. and 10:00 p.m. This reduces stress on the grid and avoids power outages. In the past, when flex alerts happened, consumers have answered the call and cut back on electricity usage. It has helped California avoid power outages. It can, if conditions persist or worsen, become necessary when demand for electricity outstrips capacity.

She spoke regarding the dangers of fireworks. Fireworks are illegal in certain areas of California because of serious injury and millions of dollars of property loss that occur every year from wildfires sparked by fireworks. Large grass crops and dry vegetation increase the threat for devastating wildfires throughout our state. California has zero tolerance for the sale and use of illegal fireworks. Illegal fireworks include skyrockets, bottle rockets, roman candles, arial shells, firecrackers, and other fireworks that explode, go into the air, or move on the ground in an uncontrollable manner. It is illegal to sell, transport, or use fireworks that do not carry the safe and sane seal as well as possess or use fireworks in Morgan Hill. Safe and Sane fireworks can be purchased in Gilroy, but they are not to be used in Morgan Hill. If convicted, a violator can be fined up to \$50,000 as well as be sent to jail for up to one year. Parents are liable for any damage or injuries caused by their children using fireworks. Fireworks started an estimated 19,500 fires in 2018. This was 1,900 structure fires, 500 vehicle fires, and 17,100 other fires. They caused five deaths, 46 civilian injuries, and 105 million in direct property damage.

She concluded by recognizing individuals from the Police Department who participated in the Special Olympics Torch Run today. Individuals walked, ran, or rode their bikes. They started at our Cal Fire Headquarter station and ended at Monterey and Cochrane near the Arco station.

CITY ATTORNEY'S REPORT

No report.

OTHER REPORTS

Council Member Borgioli shared that the route 568 Express Bus will resume services in August of 2021 .

Mayor Pro Tem John McKay recognized School Superintendent Steve Betando for his work with the vaccination clinics and thanked him for his dedication, hard work, and for setting the tone. He thanked former City Council Member Larry Carr for bringing the resources to our community and making sure those resources were used effectively. He also recognized Emergency Services Coordinator Jennifer Ponce for the great work that she did. It was an incredible team effort, 141 volunteers manned 49 clinics and gave out 18,000 vaccines over the period of two and a half months.

PUBLIC COMMENT

Public comment opened at 7:46 p.m. The following people were called to speak:

Roseryn Bhudsabourg spoke on behalf of Valley Water

Joe Baranowski (Susie and Miguel Jimenez ceded their time)

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

PUBLIC COMMENT SUPPLEMENT 1

PUBLIC COMMENT SUPPLEMENT 2

PUBLIC COMMENT SUPPLEMENT 3

ADOPTION OF AGENDA

MOTION:

Adopting the agenda as posted.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Rene Spring, Council Member
SECONDER:	John McKay, Mayor Pro Tem
AYES:	Constantine, McKay, Borgioli, Martinez Beltran, Spring

CONSENT CALENDAR

MOTION:

Approving consent calendar items 2 through 10.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	John McKay, Mayor Pro Tem
SECONDER:	Rene Spring, Council Member
AYES:	Constantine, McKay, Borgioli, Martinez Beltran, Spring

1. **ITEM PULLED FOR DISCUSSION**
2. **ADOPT THE 2021 SANTA CLARA COUNTY MULTI-JURISDICTIONAL PROGRAM FOR PUBLIC INFORMATION (PPI), A PROGRAM UNDER THE COMMUNITY RATING SYSTEM OF THE FEDERAL EMERGENCY MANAGEMENT AGENCY'S NATIONAL FLOOD INSURANCE PROGRAM**

Recommendation:

1. Adopt the 2021 Santa Clara County Multi-Jurisdictional Program for Public Information (PPI), a program under the Community Rating System of the Federal Emergency Management Agency's National Flood Insurance Program; and
2. Approve the implementation of the 5-Year PPI Plan for the Community Rating System Program.

3. ADOPT RESOLUTION AMENDING FY 2021-2022 BUDGET TO SUPPORT A PILOT PRIVATE SEWER LATERAL GRANT PROGRAM

Recommendation:

1. Direct staff to implement a Pilot Private Sewer Lateral Grant Program; and
2. Adopt resolution amending the FY 2021-2022 Adopted Budget by \$100,000 to support the Program.

4. APPROVE THIRD AMENDMENT TO SUBDIVISION IMPROVEMENTS AGREEMENT FOR DUNNE MURPHY - TRACT NO. 10387

Recommendation:

1. Approve Third Amendment to Subdivision Improvements Agreement;
2. Authorize the City Manager to execute the Third Amendment to the Subdivision Improvements Agreement with Nordstrom Cal Homes, LLC; and
3. Authorize the recordation of the Third Amendment to the Subdivision Improvements Agreement.

5. APPROVE PURCHASE OF THREE POLICE VEHICLES AND TWO POLICE MOTORCYCLES

Recommendation:

1. Approve the purchase and build out of three vehicles from Priority 1 Public Safety Equipment and two motorcycles from BMW of Long Beach for a total amount not to exceed \$395,502;
2. Authorize the City Manager to approve the purchases with Priority 1 Public Safety Equipment Installation, Inc. and Long Beach BMW; and
3. Authorize the auction of 2006 Ford Van F350-Transport Van #122 and 2003 Ford F250 Truck ASO truck #147 as necessary following their temporary use assignments.

6. APPROVE SEVENTH AMENDMENT TO CENTENNIAL RECREATION CENTER PARTNERSHIP AGREEMENT WITH THE YMCA OF SILICON VALLEY

Recommendation:

Authorize the City Manager to execute a seventh amendment to the Centennial Recreation Center Operating Agreement with the YMCA of Silicon Valley.

7. APPROVE THE MAY 5, 2021 MEETING MINUTES

Recommendation:

Approve Minutes.

8. APPROVE THE MAY 19, 2021 MEETING MINUTES

Recommendation:

Approve Minutes.

9. APPROVE THE MAY 26, 2021 MEETING MINUTES

Recommendation:

Approve Minutes.

10. APPROVE THE JUNE 2, 2021 MEETING MINUTES

Recommendation:

Approve Minutes.

Item pulled for Discussion

1. RECEIVE REPORT REGARDING USE OF PROPOSITION 68 PARK GRANT FUNDING

Recommendation:

Receive report on potential use of Proposition 68 Per Capita Grant Funding and anticipated use for Community Park improvements.

Public comment opened at 7:55 p.m.

Armando Benavides was called to speak.

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

Public Services Director Chris Ghione provided a report.

MOTION:

Receiving the report and directing staff to bring an item back to appropriate funding for the restrooms at Galvan Park.

The meeting recessed at 8:16 p.m. and reconvened at 8:25 p.m.

PUBLIC HEARING

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

Recommendation:

1. Open and close the Public Hearing; and
2. Adopt resolution confirming Fiscal Year (FY) 2021-22 annual assessments and ordering the levy of assessments for the District.

Maintenance Services Coordinator Keri Russell provided the report.

The public hearing opened at 8:26 p.m.
There being no requests to speak, the public hearing closed.

MOTION:

Approving the recommended action.

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

OTHER BUSINESS

12. RECEIVE MONTHLY BUDGET UPDATE AND APRIL 2021 FINANCIAL AND INVESTMENT REPORTS

Recommendation:

Accept and file report.

Finance Director Dat Nguyen provided a presentation and report.

Public comment opened at 8:31 p.m.
There being no requests to speak, public comment closed.

RESULT:	ACCEPT REPORT
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13. ADOPT RESOLUTION DECLARING LEVEL 2 WATER SUPPLY SHORTAGE

Recommendation:

Adopt resolution declaring a Level 2 Water Supply Shortage and amending adopted budget.

Program Administrator Anthony Eulo provided a presentation and report.

Public comment opened at 9:40 p.m.
Armando Benavides was called to speak.
There being no further requests to speak, public comment closed.

MOTION:

Approving the recommended action.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Rene Spring, Council Member
SECONDER:	Yvonne Martinez Beltran, Council Member
AYES:	Constantine, McKay, Borgioli, Martinez Beltran, Spring

FUTURE COUNCIL INITIATED AGENDA ITEMS

Council Member Spring requested that the Council send letters of opposition to Senate Bills (SB) 8, 9, 10, and SB478. He requested that the City Attorney ask the court for permission to file a brief amicus curiae (friend of the court) to oppose the YIMBY lawsuit and to protect the City from having its RHNA increased.

Council Member Martinez Beltran requested a community workshop on where they would like to see the additional American Rescue Plan Act funds to be spent.

Mayor Pro Tem McKay requested a Council discussion about what can be done to have a greater impact in Sacramento. He also requested periodic updates on water conservation.

ADJOURNMENT

There being no further business, the meeting adjourned at 9:53 p.m.

MINUTES PREPARED BY:

Michelle Bigelow, City Clerk



CITY COUNCIL STAFF REPORT

MEETING DATE: June 23, 2021

PREPARED BY: Ray Ramos, Administrative Sergeant
APPROVED BY: City Manager

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

RECOMMENDATION(S)

1. Award Vehicle Service Agreement to Frank's Auto Service for a total not-to-exceed amount of \$368,308 over three years; and
2. Authorize City Manager to Execute the Agreement.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety
Maintaining Infrastructure

2020-2021 Strategic Priorities

Fiscal Sustainability

GUIDING DOCUMENTS

Public Safety Master Plan

REPORT NARRATIVE:

The Police and Public Services Departments collectively maintain a fleet of vehicles. As such, vehicle maintenance and repair are essential for City operations and the safety of our staff and community.

In February 2021, the City of Morgan Hill issued a Request for Proposal (RFP) for vehicle fleet repair and maintenance for the Police and Public Services Departments. The City of Morgan Hill received two proposals: 1) Frank's Auto Service and 2) AMMCO, both of which met the RFP requirements.

In response to the RFP, the Police and Public Services Departments recommend entering into a new Service Agreement with Frank's Auto Service for a 3-year term. Frank's Auto Service has provided fleet services to the Police Department for over six (6) years. The Police Department remains extremely satisfied with the services and workmanship provided. Staff is confident Frank's Auto Service will continue to provide a superior level of service under the new Agreement.

The Fleet Maintenance Agreement will begin on July 1, 2021, and run through June 30, 2024. To maintain operational efficiencies and consistency, at the end of the Agreement term, the City shall have the option to renew the Agreement for an additional two-year period.

COMMUNITY ENGAGEMENT: Inform

The RFP was posted on the City's website and with the mechanics' trade association for publication. This staff report serves to inform the community of the proposed agreement between the City of Morgan Hill and Frank's Auto Service for the repair and maintenance of vehicles operated by the Police and Public Services Departments.

ALTERNATIVE ACTIONS:

The City Council could choose not to approve this Fleet Maintenance Agreement and direct staff to issue a new RFP.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The City Council approved a maintenance agreement with Frank's Auto on June 13, 2017. The Agreement was extended for an additional year and expires June 30, 2021.

FISCAL AND RESOURCE IMPACT: There are sufficient funds in the Police and Public Services Departments' FY2021-2022 operating budgets for the costs associated with fleet repair and maintenance. Funds for FY2022-2024 (years two and three of the Agreement) will be included in the next two-year budget development process. Below is a matrix outlining the costs for each year of the 3-year Agreement.

The costs reflected in the proposal submitted by Frank's Auto Service are as follows:

Year 1: Labor Cost per Hour - \$140.00 | Material Costs 20% Above Wholesale

Year 2: Labor Cost per Hour - \$145.00 | Material Costs 20% Above Wholesale

Year 3: Labor Cost per Hour - \$150.00 | Material Costs 20% Above Wholesale

The Repair and Maintenance Agreement shall not exceed \$368,308 based on the annual breakdown reflected below (based on July 2021 contract effective date):

3 Year Vehicle Maintenance & Repair Projected Costs

Dept/Division	Cost Center	Year 1	Year 2	Year 3	TOTAL
Police	010.3210	\$68,000	\$70,720	\$73,088	\$211,808
Wastewater Operations	640.5900	\$20,800	\$21,666	\$22,534	\$65,000
Water Operations	650.5710	\$22,800	\$23,876	\$24,824	\$71,500
Streets	010.5800	\$5,000	\$5,000	\$5,000	\$15,000
Parks	010.8030	\$1,664	\$1,667	\$1,669	\$5,000
GRAND TOTAL					\$368,308

CEQA (California Environmental Quality Act): Not a Project

Continuing administrative or maintenance activities, such as purchases for supplies, personnel-related actions, general policy, and procedure making.

LINKS/ATTACHMENTS:

1. Frank's Auto and City Fleet Maintenance Agreement

**SERVICE AGREEMENT
FRANK O. GAMEZ**

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

1. **City Authority.** This Agreement is entered into pursuant to the action of the Morgan Hill City Council taken on _____, _____, 20____.
2. **Term of Agreement.** This Agreement shall cover services rendered from the Effective Date of this Agreement until June 30, 2024 at which time SERVICE PROVIDER'S services shall be completed. The City Manager is authorized to extend the term of this Agreement for a maximum period of 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 SERVICE PROVIDER shall be repair, service and routine maintenance of the Police Department, Engineering, Utilities and Community Services fleet as further described in **Exhibit A**.
4. **Compensation.** SERVICE PROVIDER shall be compensated as follows:
 - 4.1. **Amount.** \$368,308. Total compensation to SERVICE PROVIDER under this Agreement during its initial term set forth in Section 2 above shall not exceed Three Hundred and Sixty Eight Thousand and Three Hundred and Eight dollars and shall be billed based on the rate and basis set forth in **Exhibit C**. If the City Manager extends the term of this Agreement pursuant to the provisions of Section 2 above, the City Manager shall have the authority to increase the maximum compensation allowed to be paid to SERVICE PROVIDER during that extended term period, so long as City Council has appropriated sufficient funds therefor, the Parties mutually agree to such amount in a writing signed by both Parties to this Agreement and provided further that in no event shall such maximum compensation allowed for the extended term exceed 105% of the maximum compensation allowed to be paid to SERVICE PROVIDER for one year of service during the initial term of this Agreement.
 - 4.2. **Billing.** SERVICE PROVIDER shall provide CITY with an invoice containing the dated, detailed, and itemized descriptions of all services performed and expenses incurred (if such expenses are reimbursable pursuant to Exhibit C) by SERVICE PROVIDER on a monthly basis unless otherwise specified in Exhibit C. All invoices shall be sent to the CITY addressed to the department head or project manager identified below in Section 14 Notices. Payment will be made to SERVICE PROVIDER within thirty (30) days of receipt of invoice by CITY. Any rate charged shall be prorated where services are interrupted or not provided for any rate period (for example, any monthly rate charge should be prorated when services were interrupted or provided for only part of the month). For services billed on an hourly rate, the minimum unit of billed time shall not exceed one tenth of one hour. CITY shall pay for services and expenses (if so provided in Exhibit C) up to the limit of compensation set forth above, that in the CITY's judgment were necessary and reasonable. Services for work performed and expenses incurred in excess of the total compensation set forth in paragraph 4.1 above shall be at no cost to CITY.

5. **Termination.** CITY or SERVICE PROVIDER shall have the right to terminate this Agreement, without cause, by giving thirty (30) days' written notice or less under urgent circumstances. Upon such termination, SERVICE PROVIDER shall submit to CITY an itemized statement of services performed for which compensation has not been paid. CITY may require SERVICE PROVIDER to complete certain work product or documents and SERVICE PROVIDER shall deliver to CITY all documents in its possession without additional compensation to SERVICE PROVIDER. The City Manager 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 SERVICE PROVIDER of such occurrence, and this Agreement shall terminate after the last day during the fiscal year for which appropriations shall have been budgeted for CITY or are otherwise available for payments.

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

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

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

8.1. **Insurance Types and Amounts.**

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

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

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

8.1.4. **Pollution (Environmental) Liability.** Intentionally Omitted.

8.1.5. **Garagekeepers:** SERVICE PROVIDER shall maintain Garagekeepers insurance covering all owned and non-owned automobiles, including automobile parts and equipment, in SERVICE PROVIDER's care, custody or control against claims and liabilities for damage, theft, or other loss in the minimum amount of: (i) one hundred and fifty thousand dollars (\$150,000.00) or (ii) the maximum amount of such insurance available to SERVICE PROVIDER under SERVICE PROVIDER's combined insurance policies (including any excess or "umbrella" policies), whichever is greater. Such insurance shall be primary over any other insurance.

8.1.6. **Professional Liability.** Intentionally Omitted.

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

8.2.1. **General Liability.**

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

8.2.1.2. 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,

8.2.1.3. Insurance shall be primary non-contributing.

8.2.2. Workers Compensation.

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

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

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

Certificate Holder address:

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

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

10. Compliance with Law.

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

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

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

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

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

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

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

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

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

Address of SERVICE PROVIDER is as follows:

Frank O. Gamez, Inc dba Frank's Auto Service
16250 Railroad Avenue
Morgan Hill, CA 95037

Address of CITY is as follows:

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

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

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

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

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

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

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

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

22. **Defense and Indemnification.**

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

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

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

22.4. **Right to Offset.** CITY shall have the right to offset against any compensation due SERVICE PROVIDER under this Agreement any amount due CITY from SERVICE PROVIDER as a result of SERVICE PROVIDER's failure to pay CITY promptly any indemnification arising under this Section (22) and any amount due CITY from SERVICE PROVIDER arising from SERVICE PROVIDER'S

failure either to (i) pay taxes on amounts received pursuant to this Agreement or (ii) comply with applicable workers' compensation laws.

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

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

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

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

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

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

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[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
 Print Name

 Christina J. Turner
 Print Name

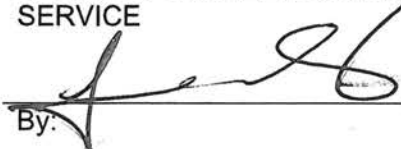
Date: _____

Date: _____

APPROVED AS TO FORM:

FRANK O. GAMEZ, INC, dba FRANK'S AUTO SERVICE

 City Attorney

By: 

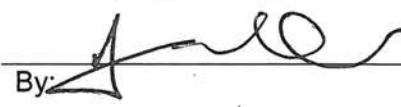
 Donald A. Larkin
 Print Name

FRANK GAMEZ PRESIDENT
 Print Name and Title of Signer.

If Corporate: Chairman, President or Vice President

Date: _____

Date: 6-10-21

By: 

FRANK GAMEZ VICE PRESIDENT
 Print Name and Title of Signer.

If Corporate: Secretary, Assistant Secretary, Chief Financial Officer or Assistant Treasurer

Date: 6-10-21

EXHIBIT A SCOPE OF SERVICES

GENERAL PROVISIONS

Service Provider will perform general and preventive maintenance and routine repair services on vehicles and equipment including, but not limited to, brakes, tires, suspension, heat/air conditioning systems, electrical systems, engine, etc. as outlined below.

A. Preventive Maintenance

The Police Department has (41) vehicles in its fleet, and they are routinely driven in short distances, frequent start/stop, and long idle periods. The Police Department requests the SERVICE PROVIDER to provide a recommended schedule for fleet vehicle maintenance requirements due to the use conditions. The average annual usage is 13,000 miles for Police patrol vehicles.

Engineering, Utilities, and Community Services have (54) vehicles in its fleet, and they are routinely driven in short distances, frequently start/stop, and for long periods of time. The average annual usage is approximately 7,000 miles for utility vehicles.

B. Repairs and Maintenance

Provide service/repairs to all common mechanical and electrical systems as needed.

C. Transport of Vehicles for Services

- a. Provide pick-up and delivery vehicle to and from Police Department.
 - i. Police Department - 16200 Vineyard Boulevard
- b. Provide pick-up and delivery vehicle to and from the City of Morgan Hill's Corporation Yard
 - i. City of Morgan Hill Corporation Yard – 100 Edes Court
- c. For vehicles not drivable, an additional towing charge may be billed upon approval of authorized city staff.
- d. Contractor shall store vehicles in a secured yard for overnight storage.
- e. 24/7 on-call phone and shop open to all city vehicles.
- f. Locked and gated facility that includes alarm and security cameras.

D. Conditions on Required Services

- a. When a prior appointment has been made for routine maintenance, the turn-around time should be between 4 to 6 hours.
- b. Provide adequate inventory on special parts to ensure minimum turn-around on non-routine repairs.
- c. All Police Department fleet vehicles that have been involved in a pursuit will undergo inspection and repair as required. Vehicles to be inspected after pursuit will be the discretion of officer-involved and authorized Police Department staff.
- d. The inspection will be completed immediately after a pursuit.

E. Repair Order Content and Procedure

- a. The SERVICE PROVIDER shall provide Repair Orders for all services provided containing the following information:
- b. Repair estimates with anticipated work to be performed, estimated completion time, and estimated cost signed by the City staff upon pick-up/drop-off. A confirming copy with the final cost shall be emailed to City upon completion, and a billing copy shall be sent to the City with the invoice.
- c. Actual work/cost above written estimate requires City approval prior to work start.
- d. Authorization of work by a designated City employee or designee is required for all repair orders.
- e. Individual vehicle charges shall be submitted on separate repair orders for each service visit. *The repair order must include:*
 - i. Date work performed
 - ii. Vehicle Number and/or license #, make/model
 - iii. Vehicle mileage at the time of service/repair
 - iv. Date in / date out / time completed
 - v. Detail type of service, hours, material used, and cost associated with each.
 - vi. Subcontracted repair orders containing the same information shall be attached to the repair order.
- f. The SERVICE PROVIDER guarantees and warrants that all material furnished, and all services performed will be free from defects in material and workmanship and will be warranted by SERVICE PROVIDER for a minimum of 12 months, 12,000 miles, or the length of time of any warranty given by the manufacturer or rebuilder/remanufacturer, whichever is greater, after acceptance. The SERVICE

PROVIDER shall remedy all such defects at his/her own expense within one (1) working day after notification by the City.

- g. Warranty repair orders need to be provided by the SERVICE PROVIDER. The SERVICE PROVIDER shall be the prime Contractor.

F. Fleet Maintenance Software

City has purchased a cloud-based fleet management software program called RTA. SERVICE PROVIDER is required to utilize the software to maintain service and repair records and track inventory of parts purchased. SERVICE PROVIDER will be required to install the RTA software on its business/commercial hardware and identify appropriate staff to be trained in its use and utilize the software as required for the Police Department and Engineering, Utilities, and Community Services.

G. Hours of Operation

The Police Department is active on a 24/7 basis and desires the most comprehensive hour coverage possible. Normal business hours for Frank's Auto Service are Monday to Friday from 8:00 am to 5:00 pm. Frank's Auto Service has provided an emergency contact number to the Police Department representative to arrange for delivery of vehicles, if required, outside of regularly scheduled hours of operation

H. Employees

SERVICE PROVIDER'S employees who work on all City vehicles shall undergo a criminal background check. Any arrest recorded will be reviewed by the police department's designee.

EXHIBIT B OPERATING PROCEDURES FOR VEHICLE MAINTENANCE SERVICES

This sets forth the operating policy and procedures for servicing City vehicles and equipment. It discusses maintenance scheduling procedures and invoicing requirements.

Contracted maintenance facilities are expected to provide prompt, courteous and competent service to drivers. Garage staff must be knowledgeable about service procedures and initiate the service transaction within 30 minutes of their arrival and/or service call is placed. It is important that the service desk is staffed adequately to provide efficient customer service in a timely manner.

To assist the SERVICE PROVIDER with the maintenance program, the City will provide:

1. Listing of covered vehicles (Exhibit F) updated, as necessary.
2. Repair orders and billing invoices must refer to the vehicles by their VIN number.
3. City preventive maintenance schedule (Schedule A).
4. Designated City staff contacts.

A. **Safety Check**

SERVICE PROVIDER shall perform a safety check in conjunction with all maintenance requirements listed within this Agreement. These safety checks shall be performed every time a vehicle is brought in for service:

- ✓ Tires – Visually check condition/Alignments.
- ✓ Lights – Check directional signaling devices and emergency light systems for proper operation.
- ✓ Seat belt – Check operation of seat belts.

Windshield Wipers and Washers – Check condition of wiper arms and blades. Check aim and flow of washer spray. Fill washer reservoir with washer solvent.

- ✓ Fluid Levels – Check and replenish fluid levels in transmission, differential, steering sector or power steering pump, and master cylinder. Inspect all units for leakage and clogging.
- ✓ Battery – Check condition of heatshield, hold-down clamps and cable ends, top off electrolyte level, and clean top and terminals as necessary.
- ✓ Heater-Defroster-Air Conditioner System and Wiper Controls – Check switches,

valves, and ducting doors for proper operation.

- ✓ Exhaust System – Visually inspect complete exhaust system including catalytic converter and heat-shielding. Check for broken, damaged, missing, or poorly positioned parts. Inspect for open seams, holes, or any condition which could allow exhaust fumes to enter the vehicle.
- ✓ Steering and Suspension Components – Conduct a “look and “shake” inspection.
- ✓ Frame/Sub-Frame and Cross Member – Visually check for “drive-over” and/or vehicular damage and fatiguing.
- ✓ Drive Shaft U-Joints / CV Joints – Conduct a “look” and “shake” inspection for seal leakage and joint failure.
- ✓ Critical Components – Check condition of all under-hood heatshields, and the routing of all hoses and wiring to ensure maximum protection from radiated exhaust heat. Inspect all coolant hoses, fuel line hoses, power steering hoses, engine accessory drive belts, and other under-hood plastic or rubber components.
- ✓ Brakes – Inspect all brake line hoses and master cylinder for signs of leaks or damage. Inspect front brake pads, rear brake linings, wheels cylinders, and parking brake cables and linkage. Report estimate of remaining life of pads and shoes.
- ✓ Starter/Charging System – Electronically check starter motor cranking speed and current draw. Check alternator charging rate.
- ✓ Cooling System – Visually inspect entire system for leaks, damage or others signs of needed repair.
- ✓ Tire Repair/Headlamps/Brakes – these shall be repaired and receive priority while officer waits in order to minimize time vehicle is out of service.

B. Scheduling of Maintenance and Service Procedures

1. The Police Department and Engineering, Utilities, and Community Services will designate an authorized Fleet Representative (FR); the FR is the SERVICE PROVIDER'S primary contact with the City.
2. SERVICE PROVIDER shall identify a single individual by name to serve as the responsible contact for daily communication with the Police Department and Engineering, Utilities, and Community Services regarding vehicle scheduling and vehicle status update(s).

3. The FR will contact the designated SERVICE PROVIDER'S representative between 8:00 a.m. and 5:00 p.m., weekdays to determine the status of vehicles and/or equipment being serviced. The SERVICE PROVIDER'S representative shall provide accurate and timely information to the FR on vehicle status including but not limited to:
 - What vehicle(s)/equipment are ready by vehicle VIN number.
 - What vehicle(s)/equipment are being serviced/require repair.
 - Estimated completion of vehicle(s)/equipment under repair.
 - Description of repairs and costs.
4. After the service is completed, the SERVICE PROVIDER shall:
 - a. Complete Vehicle Service Order ready for FR or designee to sign.
 - b. Place service reminder label on the driver's side windshield stating the next maintenance Mileage and Date for routine preventive maintenance.
 - c. Contact FR or designee to provide time that vehicle is ready for transporting back to the original location. If the FR is not available, leave a voicemail message.
 - d. After the FR or designee has checked the work performed, signed off on the Repair Order, the Service Provider's representative shall provide the vehicle keys to the FR or designee.
5. When repairs cannot be accomplished at the SERVICE PROVIDER'S facility, the Service Provider must contact the FR for instructions. No repairs shall be made by non-authorized facilities without notification of the FR.
6. SERVICE PROVIDER shall report to the FR any vehicle brought in for service or repair and the Service Provider has determined that the service or repair was due to driver misuse.
7. SERVICE PROVIDER will be responsible for loss and damage to all City vehicles under its custody and/or control.
8. All repair parts are to be original equipment manufacturer (OEM) or equivalent. Exceptions will be individually considered by the FR on a case-by-case basis.

C. Preventive Maintenance

Based on the Maintenance Schedule attached as Schedule A, the Police Department and Engineering, Utilities, and Community Services will provide a listing of vehicles due for preventive maintenance service at the beginning of each month. Vehicles will be listed by VIN number, the type of preventive maintenance the vehicle is to receive, and the week the vehicle is due for service. The FR or designee will notify the SERVICE PROVIDER for specific dates vehicle will be ready for service.

The preventive maintenance services will be in accordance with the preventive maintenance schedule. Additionally:

1. If projected brake pad/shoe life is less than 1500 miles, replace brake pads/shoes.
2. Tires will be checked, and depth of tread will be indicated on Repair Order.
3. Turn-around time of 6 to 8 hours for routine preventive maintenance is expected.
4. When a prior appointment has been made for routing maintenance, the turnaround time should be four (3 to 5) hours.

CI. Non-Preventive Maintenance Service and Emergencies

1. Non-routine maintenance, other than emergencies, will be handled by appointment through the FR or designee. If a City employee delivers a vehicle to the SERVICE PROVIDER'S facility Monday through Friday between 8:00 a.m. and 5:00 p.m. requesting service without prior notification to you from the City, call the FR or designee for instructions.
2. After hour's delivery, if a City vehicle has a breakdown or is involved in an accident and must be towed, then it will be towed to the SERVICE PROVIDER'S locked facility. In such a situation, the Service Provider shall contact the FR for instructions and be present to accept vehicle.
3. There may be times when the FR calls early in the day with a specific set of instructions, and later in the day changes them; or, another staff member will call to change them if the FR is not available. The last set of instructions will prevail.
4. Turn-around time of 6 to 8 hours for non-preventive maintenance service is required, unless otherwise approved by the FR.

**EXHIBIT C
PAYMENT PROVISIONS**

Payment for services shall be as described in Exhibit D and E

SCHEDULE A VEHICLE MAINTENANCE SCHEDULE

		Service A				Service B				Service C				Service D			
		At 15,000 Miles	At 30,000 Miles	At 45,000 Miles	At 60,000 Miles	At 15,000 Miles	At 30,000 Miles	At 45,000 Miles	At 60,000 Miles	At 15,000 Miles	At 30,000 Miles	At 45,000 Miles	At 60,000 Miles	At 15,000 Miles	At 30,000 Miles	At 45,000 Miles	At 60,000 Miles
1	Change Engine Oil	X				X				X				X			
2	Change Engine Oil Filter	X				X				X				X			
3	Check Air Filter Condition	X				X				X				X			
4	Check and Adjust Drive Belts	X				X				X				X			
5	Check Battery Electrolyte Level, Add Water As Needed; Clean And Tighten Terminals	X				X				X				X			
6	Check Brake Fluid Level	X				X				X				X			
7	Check Brake Pads, Shoes, Hoses	X				X				X				X			
8	Check Breather Condition	X				X				X				X			
9	Check Drive Tran Fluid Levels (Transmission, Transfer case, Differential)	X				X				X				X			
10	Check Engine Compartment Fluid Levels, Add As Needed	X				X				X				X			
11	Check Engine Cooling System, Hoses And Clamps	X				X				X				X			
12	Check Exhaust System	X				X				X				X			
13	Check Front And Rear Shocks For Wear and/or Leakage	X				X				X				X			
14	Check Exterior & Interior Lights And Other Electrical Items For Correct Operation	X				X				X				X			
15	Check Power Steering Fluid Level	X				X				X				X			
16	Check Tire Pressure And Condition	X				X				X				X			
17	Check Windshield Wiper operation, Blades condition, Washer Solvent level, Fill as needed.	X				X				X				X			
18	Lubricate Chassis/CV boots	X				X				X				X			
19	Lubricate Steering Linkage	X				X				X				X			
20	Check Front Brake Pads, Rotors And Calipers	X				X				X				X			
21	Check Rear Brake Shoes, Drums And Wheel Cylinders	X				X				X				X			
22	Rotate Tires (4 Way - Front To Rear)	X				X				X				X			
23	Air Filter - Replace	As Needed				As Needed				As Needed				As Needed			
24	Check Headlight Alignment	X				X				X				X			
25	Check Parking Brake Operation	X				X				X				X			
26	Lubricate Door Latches, Locks And Hinges	X				X				X				X			
27	Fuel Filter - Replace	As Needed				As Needed				As Needed				As Needed			
28	Transmission - Change Fluid, Filter, Gasket	X				X				X				X			
29	Check Air Condition System, Freon Level And Compressor Operation Where Applicable	X				X				X				X			
30		X				X				X				X			

EXHIBIT D

RECOMMENDED VEHICLE MAINTENANCE SCHEDULE		Service A		Service B		Service C		Service D	
		At	5000 Miles	At	5000 Miles	At	5000 Miles	At	5000 Miles
1	Change Engine Oil								
2	Change Engine Oil Filter								
3	Check Air Filter Condition								
4	Check and Adjust Drive Belts								
5	Check Battery Electrolyte Level, Add Water As Needed; Clean And Tighten Terminals								
6	Check Brake Fluid Level								
7	Check Brake Pads, Shoes, Hoses								
8	Check Breather Condition								
9	Check Drive Tran Fluid Levels (Transmission, Transfer case, Differential)								
10	Check Engine Compartment Fluid Levels, Add As Needed								
11	Check Engine Cooling System, Hoses And Clamps								
12	Check Exhaust System								
13	Check Front And Rear Shocks For Wear and/or Leakage								
14	Check Exterior & Interior Lights And Other Electrical Items For Correct Operation								
15	Check Power Steering Fluid Level								
16	Check Tire Pressure And Condition								
17	Check Windshield Wiper operation, Blades condition, Washer Solvent level, Fill as needed.								
18	Lubricate Chassis/CV boots								
19	Lubricate Steering Linkage								
20	Check Front Brake Pads, Rotors And Calipers								
21	Check Rear Brake Shoes, Drums And Wheel Cylinders								
22	Rotate Tires (4 Way - Front To Rear)								
23	Air Filter - Replace								
24	Check Headlight Alignment								
25	Check Parking Brake Operation								
26	Lubricate Door Latches, Locks And Hinges								
27	Fuel Filter - Replace								
28	Transmission - Change Fluid, Filter, Gasket								
29	Check Air Condition System, Freon Level And Compressor Operation Where Applicable								
30									

EXHIBIT E
COST AND CONDITIONS

Services/Costs	Police, Engineering and Utilities, and Community Services 4x4 Trucks, Utility Vehicles & Sedans							
	Labor Per Hour	Year 1	Year 2	Year 3	Material Cost	Year 1	Year 2	Year 3
Service A: Vehicle Maintenance Services provided at mileage level as reflected in Exhibit D		\$140	\$145	\$150		20%	20%	20%
Service B: Vehicle Maintenance Services provided at mileage level as reflected in Exhibit D		\$140	\$145	\$150		20%	20%	20%
Service C: Vehicle Maintenance Services provided at mileage level as reflected in Exhibit D		\$140	\$145	\$150		20%	20%	20%
Service D: Vehicle Maintenance Services provided at mileage level as reflected in Exhibit D		\$140	\$145	\$150		20%	20%	20%
Cost of Hourly Labor Rate (not included in Service A,B,C,D)		\$140	\$145	\$150		20%	20%	20%
Replacement Dealer Parts (not included in Service A,B,C,D)		\$140	\$145	\$150		20%	20%	20%
Replacement Non-Dealer Parts (not included in Service)		\$140	\$145	\$150		20%	20%	20%

5.a

Conditions:

1. Prices for the services listed above must include all labor and material needed to complete the services specified.
2. Prices proposed in this section are fixed prices for the initial period of the contract (three years). Should City elect to renew the contract for an additional 2 years, the unit price of the Contract will be subject to negotiation and be mutually agreed upon by both parties for the 24-month term.
3. All repair parts are to be OEM or equivalent. Exceptions will be individually considered on a case- by-case basis. Price for each service shall include parts, labor and all necessary fluids and free fluid top off between service intervals.
4. Provide break down of labor hours for each periodic repair item and indicate any exceptions, if applicable. Labor hours shall be repair time, not factory time.
5. Unless otherwise specified and/or agreed to, all services performed will be free from defects in material and workmanship and will be warranted for a minimum of 120 days or 4000 miles, or the length of time of any warranty given by the manufacturer or rebuilder/remanufacturer, whichever is greater, after acceptance.

EXHIBIT F
Morgan Hill Police Department and Engineering, Utilities, and Community Services
Fleet List

DESCRIPTION	REPLACEMENT DATE
2005 Ford Expedition (115)	N/A
2006 Ford E350 Prisoner Transport Van (122)	2021
2010 Ford Police Interceptor (139)	N/A
2012 Chevy Tahoe (141)	2020
2015 Ford Police Interceptor SUV (144)	2021
2003 Ford F250 Utility-Animal Control (147)	2021
2017 Ford Police Interceptor SUV (152)	2023
2017 Ford Police Interceptor SUV (153)	2023
2007 Chevy Silverado- Graffiti (154)	N/A
2017 Ford Police Interceptor SUV (155)	2023
2017 Ford Police Interceptor SUV (156)	2023
2017 Ford Police Interceptor SUV (157)	2023
2017 Ford Police Interceptor SUV (158)	2023
2019 Ford Police Interceptor SUV (159)	2025
2019 Ford Police Interceptor SUV (160)	2025
2019 Ford Police Interceptor SUV (161)	2025
2018 Ford F150- MSO (162)	2025
2019 Chevy Tahoe (163)	2025
2016 Honda Motorcycle (148)	2022
2016 Honda Motorcycle (149)	2022
2020 BMW Motorcycle (150)	2026
2006 Ford F150 Extended Cab- Tan (300)	N/A
2011 Chevy Malibu- Blue (304)	N/A
2011 Ford Taurus- Silver (305)	N/A
2012 Ford Taurus- White (306)	N/A
2013 Ford Taurus – Silver (308)	2021
2014 Ford Fusion – Silver (309)	2022
2001 Ford F450- SWAT (307)	NA
2014 Honda Accord (310)	2022

2015 Honda Accord (311)	2023
2015 Honda Accord (312)	2023
2016 Chevy Tahoe (313)	2024
2000 Chevy Express G1500- EOC (314)	N/A
2020 Ford Explore (315)	2028
2020 Ford Explore (316)	2028
2020 Ford Explore (317)	2028
1955 Oldsmobile	NA
Radar Trailer	2015
DUI Trailer	NA
2004 Pace Am Trl MEDC03A	NA
2005 Zieman Dual Motorcycle Trailer	NA
2004 Pace Am Trl HOMSEC	NA

Engineering, Utilities, and Community Services

Vehicle Description	Replacement Year
2007 Ford F250 4x4 (S07158)	2020
2008 Ford F450 Dump Truck (S08123)	2023
2011 Ford F350 Flat Bed 4x4 (S11159)	2023
2015 Ford F350 flatbed 4X4 (S15116)	2023
2018 CCTV Truck (S18160)	2033
2019 Ford F-150 (S19103)	2026
2019 Ford F450 Supercab w/ Scelzi Utility Body (S19152)	2026
2019 Ford F-150 (S19169)	2026
2007 Ford 4WD Expedition SUV (U07114)	2020
2007 Ford Escape (U07137)	2021
2010 Ford F150 Super Cab (U10167)	2020
2006 Ford F150 4x4 (W06165)	2020
2007 Ford F150 Super Cab (W07115)	2021
2007 Ford F150 Super Cab (W07129)	2020
2008 Ford F350 (W08155)	2021

2009 Ford Ranger Super Cab (W09154)	2021
2011 Ford F450 Utility Truck w/Crane (W11124)	2022
2014 Ford F150 Super Cab (W14161)	2024
2015 Ford F450 Supercab (W15117)	2022
2015 Ford F450 Supercab w/ Scelzi Utility Body (W15144)	2022
2018 Ford Transit Cargo Van (W18163)	2025
2019 Ford F350 Supercab w/ Scelzi Utility Body (W19104)	2027
2019 Ford F450 Supercab w/ Scelzi Utility Body (W19168)	2026
2019 Ford F450 Supercab w/ Scelzi Utility Body (W19170)	2026
2019 Ford F450 Supercab w/ Scelzi Utility Body (W19171)	2026
2020 Ford F150 (U20167)	2027
2020 Ford F150 (U20165)	2027
2020 Ford F150 (U2019)	2027
2020 Ford F250 4x4 (S20158)	2027
2008 Ford Ranger Extended Cab (E08153)	2020
2008 Ford Ranger Extended Cab (E08156)	2020
2007 Ford Escape SLS 4WD (E07141)	2020
2020 Ford F150 (R20120)	2027
2007 Ford F250 4x2 supercab utility (R07150)	N/A
2020 Ford F250 4x2 supercab (R20102)	2027
1999 Dodge 1500 Club Cab (R99117)	N/A
2008 Ford F250 4x2 supercab (R08118)	N/A
2001 Jeep Cherokee (D01116)	N/A
2014 Chevy PU 2WD (D14182)	N/A
2008 Ford F450 4x2 reg cab utility w/crane	N/A
2020 Ford F250 4x4 supercab	2027
2011 Ford F250 4X4 - abatement spray truck (D11151)	N/A
2008 Ford F450 4x2 crew cab (D08127)	N/A
2014 Ford Focus Electric (D14116)	N/A
2014 Ford 150 (B14152)	N/A

2014 Ford 150 (B14153)	N/A
2018 Ford Escape SE 4WD (B18151)	N/A
2018 Chevy Colorado (B18150)	N/A
2019 Ford F150 crew cab	N/A
2020 Ford Ranger	N/A
2002 Chevy pick up 2WD (D02182)	N/A
2010 Ford Ranger pick up (A10120)	N/A
2014 Ford Flex (A14121)	N/A
2014 Ford F150 (A14122)	N/A



CITY COUNCIL STAFF REPORT

MEETING DATE: June 23, 2021

PREPARED BY: Cynthia Iwanaga, Management Analyst
APPROVED BY: City Manager

AWARD COMMUNITY AND CULTURAL CENTER BOILER REPLACEMENT PROJECT TO STEPHEN CIARI PLUMBING AND HEATING, INC.

RECOMMENDATION(S)

1. Adopt resolution amending the Fiscal Year 2020-21 Adopted Budget to appropriate an additional \$28,101 from the Building Replacement Fund (741) for the Community and Cultural Center Boiler Replacement Project;
2. Award contract to Stephen Ciari Plumbing and Heating, Inc. in the amount of \$98,274 and authorize the expenditure of (10%) contingency funds not to exceed \$9,827 for a total authorization of \$108,101; and
3. Authorize the City Manager to execute and administer that certain contract with Stephen Ciari Plumbing and Heating, Inc.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety
Maintaining Infrastructure

REPORT NARRATIVE:

The purpose of this item is to provide the City Council with an opportunity to consider the award of a contract to Stephen Ciari Plumbing and Heating, Inc. ("Ciari") in the amount of \$98,274 with a 10% contingency amount of \$9,827 for a total authorization of \$108,101. The scope of work for this Community and Cultural Center (CCC) Boiler Replacement Project ("Project") includes all labor and material necessary to remove and replace the water boiler at the CCC. The water boiler supplies the HVAC heating water to the building. It is original equipment from the CCC opening in 2002 and is near end of life and requires replacement.

The Invitation to Bid was released on May 17, 2021 and four bids were received on June 3, 2021. In soliciting bids for this project, the City advertised in the Morgan Hill Times on May 14, 2021. The bids were also posted on the City website and on two online bid services, Public Purchase and the Online Plan Service, whose subscribers include multiple Northern California Builders' Exchanges. Bid documents were also sent directly to the County of Santa Clara Builders' Exchange and the Central Coast Builders' Association.

On June 3, 2021, four (4) bids were received from the following contractors:

Bidder's Name	Bid Amount
A&B Mechanical, Inc.	\$153,980
ACCO Engineered Systems	<u>\$189,975</u>
Bay City Boiler and Engineering Co.	\$116,000
Stephen Ciari Plumbing and Heating, Inc.	\$ 98,274

Staff recommends that the City Council award the contract to Stephen Ciari Plumbing and Heating, Inc. and authorize the City Manager to execute and administer the agreement (Attachment B).

COMMUNITY ENGAGEMENT: Inform

Before and during the boiler replacement project, signs will be posted at the Community and Cultural Center informing customers of the upcoming project and days or times that the facility will be closed. Scheduling will occur to minimize any impacts on CCC users. Welcome Desk staff will be kept informed of the schedule to respond to any customer inquiries. The project status will also be included in the City's The Scoop weekly newsletter.

ALTERNATIVE ACTIONS:

The City Council could decide not to approve this project and direct staff to pursue an alternative approach to replacing the hot water boiler at the CCC. Postponing this work is not recommended due to the age and condition of the original boiler.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The Council has not previously taken action on this item.

FISCAL AND RESOURCE IMPACT:

If approved, the total funding authorization for this agreement will be \$108,101, which includes the contract amount of \$98,274 and a 10% contingency (\$9,827). The contingency will support completing the project within the anticipated schedule ensuring the best customer service. The FY 2020-21 Adopted Budget includes \$80,000 in the Building Replacement Fund (741) for this project. Because the cost is higher than anticipated, staff recommends adopting the attached resolution and budget scorecard (Attachment A) which appropriates an additional \$28,101 in the Building Replacement Fund (741) to this project.

CEQA (California Environmental Quality Act): Categorical Exemption.

The activities described in this staff report are categorically exempt under CEQA, specifically pursuant to Section 15301 (c) of the CEQA Guidelines (Existing Facilities), as the subject work involves the repair, maintenance or minor alteration of existing City facilities involving negligible or no expansion of use of those facilities.

LINKS/ATTACHMENTS:

1. Attachment A- Resolution_CCC Boiler_Amend_Budget_FY_2021_v2
2. Attachment B- Ciari Plumbing Contract_CCC Boiler Replacement

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO THE CITY'S FISCAL YEAR 2020/2021 BUDGET IN THE BUILDING REPLACEMENT FUND (FUND NO. 741) TO APPROPRIATE \$28,101 THEREFOR

WHEREAS, the City of Morgan Hill, a municipal corporation and general law city duly organized and existing under and pursuant to the Constitution and laws of the State of California ("City"), is authorized to enter into contracts and agreements for the benefit of the City and, has adopted a two-year budget for Fiscal Years 2020/2021 and 2021/2022; and

WHEREAS, recommended amendments are needed and proposed to the City's previously adopted Two Year Budget for Fiscal Years 20/21 and 21/22, as set forth on Exhibit A to this Resolution, to appropriate the requisite funds to implement the actions authorized by this Resolution; and

WHEREAS, the activities allowed under this Resolution do not constitute a project under the provisions of California Environmental Quality Act of 1970; and

WHEREAS, the consideration by City Council of the adoption of this Resolution has been duly noticed pursuant to applicable laws and has been placed upon the City Council Meeting Agenda on the date set forth in the Staff Report, or to such date that the City Council may have continued or deferred consideration of this Resolution, and on such date the City Council conducted a duly noticed public meeting at which the City Council provided members of the public an opportunity to comment and be heard and considered any and all testimony and other evidence provided in connection with the adoption of this Resolution; and

WHEREAS, the City Council determines that adoption of this Resolution is in the public interest.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY FIND, DETERMINE, RESOLVE AND ORDER AS FOLLOWS:

Section 1. Recitals. The City Council does hereby find, determine and resolve that all of the foregoing recitals are true and correct.

Section 2. Approval and Authorization. The City Council does further resolve, order and/or direct as follows:

- a. That the City's previously adopted Two Year Budget for Fiscal Years 20/21 and 21/22, as the same has been amended to date, is hereby further amended in accordance with and as reflected on Exhibit A attached hereto and incorporated herein by this reference; and

- b. That the City Clerk is hereby authorized and directed to forward a copy of this Resolution to the City's Finance Director, who is hereby authorized and directed to take all actions necessary to implement the terms of this **Resolution pertaining to the Two-Year Budget for Fiscal Years 20/21 and 21/22; and**

Section 3. This Resolution shall take effect immediately upon adoption.

PASSED, APPROVED AND ADOPTED by the City Council of Morgan Hill at a regular meeting held on the 23rd day of June 2021.

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:

APPROVED:

ATTEST:

RICH CONSTANTINE, Mayor

MICHELLE BIGELOW, City Clerk

∞ CERTIFICATION ∞

I, Michelle Bigelow, City Clerk of the City of Morgan Hill, California, do hereby certify that the foregoing is a true and correct copy of Resolution No. 21-XXX, adopted by the City Council at the meeting held on June 23, 2021.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

Michelle Bigelow, CITY CLERK

AGENDA BUDGET SCORECARD

FISCAL YEAR 2020-2021

ADJUSTMENT #

017

FUND:

741

Building Replacement Fund

DEPARTMENT:

8500

Building Replacement-Equipment Replacement

OBJECT:

43820

OTHER IMPROVEMENTS

AGENDA DATE:

06/23/21

AGENDA ITEM TITLE:

CCC Boiler Replacement Project

	07/01/20 PROJECTED BEGINNING FUND BALANCE	ESTIMATED REVENUES	AMENDED APPROPRI- ATIONS	06/30/21 PROJECTED ENDING FUND BALANCE
ORIGINAL BUDGET	2,515,067	726,251	457,000	2,784,318
CUMULATIVE REVISIONS PRIOR TO RECOMMENDED ACTION	-	-	-	-
RECOMMENDED ACTION		-	28,101	(28,101)
RESULT OF RECOMMENDED ACTION	<u>2,515,067</u>	<u>726,251</u>	<u>485,101</u>	<u>2,756,217</u>

CONTRACT

This public works contract ("Contract") is entered into by and between the City of Morgan Hill ("City") and Stephen Ciari Plumbing and Heating, Inc. ("Contractor") for work on the CCC Boiler Replacement Project ("Project").

The parties agree as follows:

1. **Award of Contract.** In response to the Notice Inviting Informal Bids, Contractor has submitted a Bid Proposal to perform work on the Project, and on [REDACTED], 20 [REDACTED], (Contract Date) City authorized award of this Contract to Contractor for the amount of Contractor's bid.
2. **Contract Documents.** The Contract Documents incorporated into this Contract include and are comprised of all of the following:

- 2.1 Notice Inviting Informal Bids;
- 2.2 Instructions to Bidders;
- 2.3 Addenda, if any;
- 2.4 Bid Proposal and attachments thereto;
- 2.5 Contract;
- 2.6 Payment and Performance Bonds;
- 2.7 General Conditions;
- 2.8 Special Conditions;
- 2.9 Project Drawings and Specifications;
- 2.10 Change Orders, if any;
- 2.11 Notice of Award;
- 2.12 Notice to Proceed;
- 2.13 And the following:

"No other documents"

3. **Contractor's Obligations.** Contractor agrees to perform all of the Work required for the Project, as specified in the Contract Documents. Contractor must provide, furnish, and supply all things necessary and incidental for the timely performance and completion of the Work, including all necessary labor, materials, equipment, transportation, and utilities, unless otherwise specified in the Contract Documents. Contractor must use its best efforts to complete the Work in a professional and expeditious manner and to meet or exceed the performance standards required by the Contract Documents.

4. **Payment.** As full and complete compensation for Contractor's timely performance and completion of the Work in strict accordance with the terms and conditions of the Contract Documents, City will pay Contractor Ninety-Eight Thousand Two Hundred Seventy-Four Dollars (\$98,274.00) (the "Contract Price"), in accordance with the payment provisions in the General Conditions. The Contract Price includes all applicable federal, state, and local taxes.
5. **Time for Completion.** Contractor will fully complete the Work for the Project within **30 calendar days** from the commencement date given in the Notice to Proceed ("Contract Time"). By signing below, Contractor expressly waives any claim for delayed early completion.
6. **Liquidated Damages.** If Contractor fails to complete the Work within the Contract Time, City will assess liquidated damages in the amount of Five Hundred Dollars (\$500.00) for each day of unexcused delay in completion, and the Contract Price will be reduced accordingly.
7. **Labor Code Compliance.**
 - 7.1 **General.** This Contract is subject to all applicable requirements of Chapter 1 of Part 7 of Division 2 of the Labor Code, including requirements pertaining to wages, working hours and workers' compensation insurance.
 - 7.2 **Prevailing Wages.** This Project is subject to the prevailing wage requirements applicable to the locality in which the Work is to be performed for each craft, classification or type of worker needed to perform the Work, including employer payments for health and welfare, pension, vacation, apprenticeship and similar purposes. Copies of these prevailing rates are available online at <http://www.dir.ca.gov/DLSR>.
 - 7.3 **DIR Registration.** City will not accept a Bid Proposal from or enter into the Contract with a bidder, without proof that the bidder and its Subcontractors are registered with the California Department of Industrial Relations ("DIR") to perform public work under Labor Code Section 1725.5, subject to limited legal exceptions.
8. **Workers' Compensation Certification.** Under Labor Code Section 1861, by signing this Contract, Contractor certifies as follows: "I am aware of the provisions of Labor Code Section 3700 which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the Work on this Contract."

9. **Notice.** Any notice required by the Contract Documents must be made in writing, and sent to the other party by personal delivery, U.S. Mail, a reliable overnight delivery service, facsimile, or by email as a PDF (or comparable) file. Notice is deemed effective upon delivery unless otherwise specified. Notice for each party must be given as follows:

City:

City of Morgan Hill
17575 Peak Avenue
Morgan Hill, CA 95037
Phone: (409) 779-7259
Attn: City Clerk
Email: michelle.bigelow@morganhill.ca.gov
Copy to: cynthia.iwanaga@morganhill.ca.gov

Contractor:

Name: Stephen Ciari Plumbing and Heating, Inc.
Address: 1054 Elm Street
City/State/Zip: San Jose, CA 95126
Phone: (408) 296-6010
Attn: Stephen Ciari, President
Email: steve@ciariplumbing.com
Copy to: marc@ciariplumbing.com

10. General Provisions.

- 10.1 Assignment and Successors.** Contractor may not assign its rights or obligations under this Contract, in part or in whole, without City's written consent. This Contract is binding on Contractor's successors and permitted assigns.
- 10.2 Third Party Beneficiaries.** There are no intended third party beneficiaries to this Contract except as expressly provided in the General Conditions or Special Conditions.
- 10.3 Governing Law and Venue.** This Contract will be governed by California law and venue will be in the Superior Court of Santa Clara County, and no other place.
- 10.4 Amendment.** No amendment or modification of this Contract will be binding unless it is in a writing duly authorized and signed by the parties to this Contract.

- 10.5 Integration; Severability.** This Contract and the Contract Documents incorporated herein, including authorized amendments or Change Orders thereto, constitute the final, complete, and exclusive terms of the agreement between City and Contractor. If any provision of the Contract Documents, or portion of a provision, is determined to be illegal, invalid, or unenforceable, the remaining provisions of the Contract Documents will remain in full force and effect.
- 10.6 Authorization.** Each individual signing below warrants that he or she is authorized to do so by the party that he or she represents, and that this Contract is legally binding on that party. If Contractor is a corporation, signatures from two (2) officers of the corporation are required pursuant to California Corporation Code Section 313.

[Signatures are on the following page.]

AS SET FORTH IN CA. CORP. CODE § 313, TWO SIGNATURES ARE REQUIRED FOR CALIFORNIA CORPORATIONS:

- (1) CHAIRPERSON OF THE BOARD, PRESIDENT, OR VICE PRESIDENT; AND
 2) SECRETARY, ASSISTANT SECRETARY, CHIEF FINANCIAL OFFICER OR ASSISTANT TREASURER.

The parties agree to this Contract as witnessed by the signatures below:

CITY OF MORGAN HILL:

 Christina J. Turner
 City Manager

Date: _____

Attest:

 Michelle Bigelow
 City Clerk

Date: _____

Approved as to Form:

 Donald A. Larkin
 City Attorney

Date: _____

CONTRACTOR:

STEPHEN CIARI PLUMBING AND
 HEATING, INC.

 Signature

STEPHEN CIARI / PRESIDENT
 Name/Title [print]

Date: 6-7-2021

*Corporate entities must provide a
 second signature:*

 Signature

Theresa Ciari
 Corp. Secretary

Theresa Ciari/officer
 Name/Title [print]

Date: 6/7/2021

828351

Contractor's License Number(s)

12/31/2021

Expiration Date(s)

Seal:

1000003021

Contractor's DIR Registration Number(s)

06/30/2022

Expiration Date

END OF CONTRACT



CITY COUNCIL STAFF REPORT

MEETING DATE: June 23, 2021

PREPARED BY: Yat Cho, Senior Project Manager
APPROVED BY: City Manager

AWARD OF EAST FIFTH STREET SEWER MAIN PROJECT TO PACIFIC UNDERGROUND CONSTRUCTION, INC.

RECOMMENDATION(S)

1. Approve East 5th Street Sewer Main Project plans and specifications;
2. Award contract to Pacific Underground Construction, Inc. for the East 5th Street Sewer Main Project in the amount of \$1,226,730;
3. Authorize expenditure of construction contingency not to exceed \$122,673; and
4. Authorize the City Manager to execute and administer the construction contract with Pacific Underground Construction, Inc.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Maintaining Infrastructure

2020-2021 Strategic Priorities

Economic Development

GUIDING DOCUMENTS

Wastewater System Master Plan

REPORT NARRATIVE:

The City's 2017 Sewer System Master Plan calls for the construction of a new 12" sewer main in East Dunne Avenue between Monterey Road and the east side of the UPRR right-of-way. The construction of the new sewer main is intended to reduce the potential for sewer spills on Monterey Road south of Dunne Avenue by diverting the sewer flow coming through the Downtown to the 15" sewer trunk line on the east side of the UPRR right-of-way. To reduce project costs and minimize construction impacts to the community, the decision was made to relocate the new 12" inch sewer main from East Dunne Avenue to East 5th Street. The new 12" sewer main will replace the old sewer main in East 5th which will have the benefit of improving the sewer system for the residents in this neighborhood as well.

The scope of work for the East 5th Street Sewer Main Project includes replacing the existing sewer main in East 5th Street between Monterey Road and Depot Street and extending a new 12" sewer main east of Depot Street through the Hale Lumber site and under the UPRR right-of-way (via bore and jack method). Additional work as part of the project will include sewer lateral connections, trench restoration, new sewer manholes, a 2" asphalt concrete overlay on East Fifth Street (between Monterey Road and Depot Street), and all other incidental work to complete the project. The plans and specifications were completed in April 2021.

The bid opening for this project was held on June 7, 2021 and five bids were received:

Pacific Underground Construction, Inc.	\$1,226,730
Ranger Pipelines, Inc.	\$1,285,775
Monterey Peninsula Engineering, Inc.	\$1,366,290
A. Teichert & Son, Inc. DBA Teichert Construction	\$1,443,403
KJ Woods Construction	\$1,448,000

Pacific Underground Construction, Inc.'s bid of \$1,226,730 is approximately 28% less than the engineer's estimate of \$1,700,000. Pacific Underground Construction, Inc. is an experienced contractor for this type of work and has performed work for the City on previous undergrounding utility projects. Staff recommends award of the contract to Pacific Underground Construction, Inc. in the amount of \$1,226,730 with a 10% contingency to this project. The project is scheduled to start in July 2021 and be completed by December 2021.

The plans and specifications are available for review on the City's web page under the Government tab and Community Projects site: <https://www.morgan-hill.ca.gov/1436/Project-Plans-Specifications-and-Bid-Res>

COMMUNITY ENGAGEMENT: Inform

The East 5th Street Sewer Main Project is located within residential neighborhoods and a few businesses in the area. While there may be inconveniences to residents and business owners, staff will work with the contractor to minimize these inconveniences and provide email and door notifications prior to any construction activities. Staff will also provide regular updated construction information weekly through Nextdoor and on the City's website.

ALTERNATIVE ACTIONS:

City Council may elect to reject the bids for this construction contract and request the project be re-bid. Staff does not recommend this alternative as competitive bids were received. Rebidding the project is not likely to result in significant savings and it will delay the project approximately three to four months.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

October 18, 2017 - City Council adopted the 2017 Sewer System Master Plan.

November 1, 2017 – City Council approved design agreement with Mott Macdonald for the Tennant Avenue and Dunne Avenue Sewer Project.

June 17, 2020 - City Council adopted the FY 2020-21 through FY 2025-26 Capital Improvement Budget which identifies funding for the proposed sewer projects through bond proceeds.

November 20, 2020 - City Council adopted a resolution authorizing the execution of an installment purchase agreement to provide financing of the City's anticipated projects through the sale of \$20 million in sewer revenue bonds.

FISCAL AND RESOURCE IMPACT:

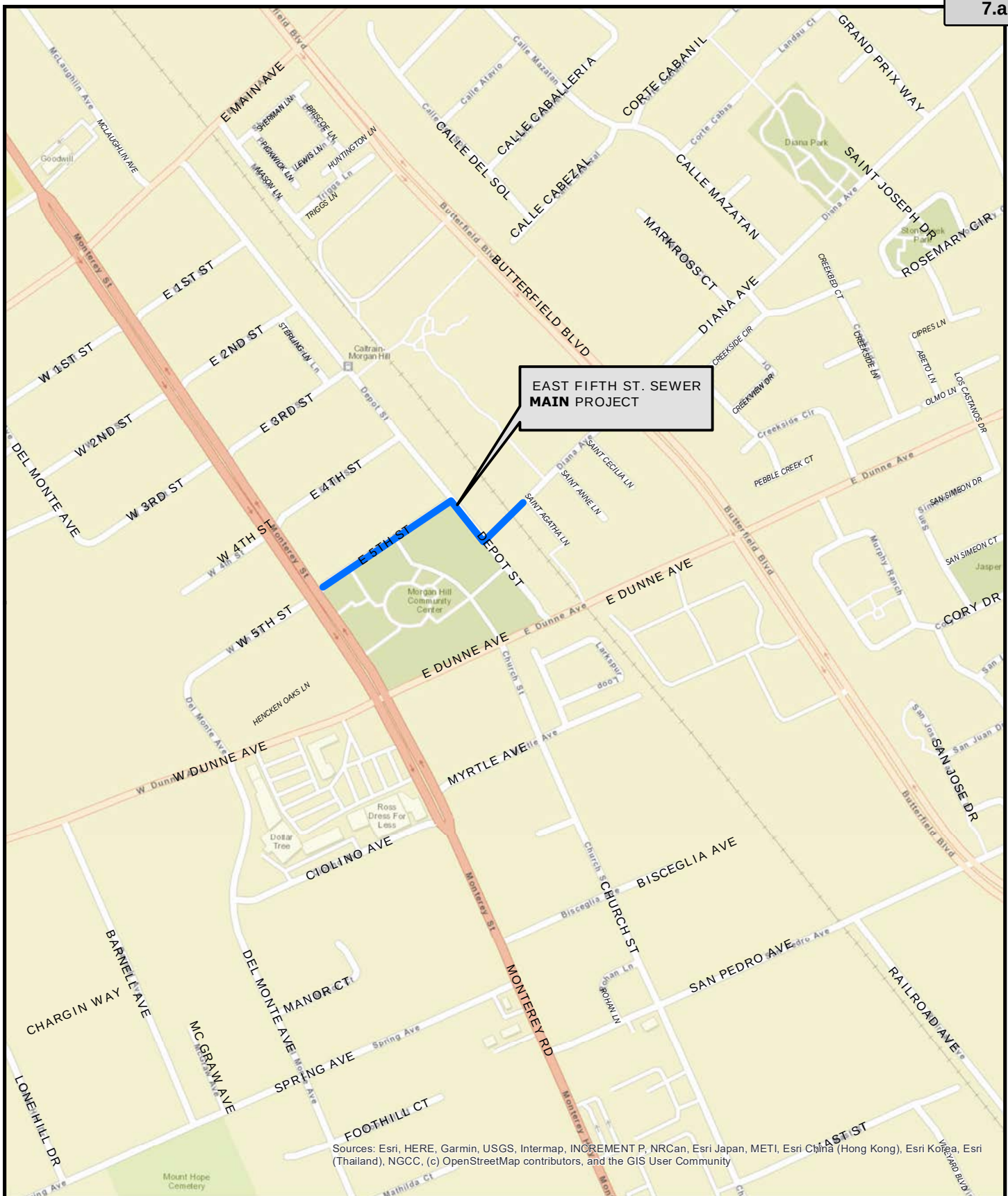
If approved, the total authorization of this project shall be \$1,349,403, which includes a 10% contingency of \$122,673. There are sufficient funds within the FY 2020-21 Budget for this project (302T17). Funding for the 2" asphalt concrete overlay on East Fifth Street between Monterey Road and Depot Street will come from Fund 308.

CEQA (California Environmental Quality Act): Categorical Exemption

The activities described in this Staff Report are categorically exempt under CEQA, specifically pursuant to Section 15301 of the CEQA Guidelines (Existing Facilities), as the subject work involves the repair, maintenance, or minor alteration of existing City facilities involving negligible or no expansion of use of those facilities.

LINKS/ATTACHMENTS:

1. East Fifth Street Sewer Main Project Vicinity Map 6-23-21
2. Plans and Specifications (weblink)



Engineering and Utilities Department
CIP Engineering Division

G:\R-14\Proj\GIS\John\Yat_5th St Sewer Proj.mxd

EAST FIFTH STREET SEWER MAIN PROJECT



0 250 500 1,000 1,500 2,000 Feet



CITY COUNCIL STAFF REPORT

MEETING DATE: June 23, 2021

PREPARED BY: Dat Nguyen, Finance Director
APPROVED BY: City Manager

ADOPT RESOLUTION ESTABLISHING CREDIT CARD PAYMENT SERVICE FEE

RECOMMENDATION(S)

1. Open/Close public hearing; and
2. Adopt resolution establishing new credit card service fee for development fees and transient occupancy tax payments by credit card.

COUNCIL PRIORITIES, GOALS & STRATEGIES

2020-2021 Strategic Priorities

Fiscal Sustainability

REPORT NARRATIVE:

The City accepts credit cards for a wide array of fees and through various mediums. Historically, the City has viewed credit card acceptance as a method of encouraging prompt and a more guaranteed form of payment. However, in recent years, credit and debit cards have become so widely used that customers expect the ability to pay with a card.

Excluding utilities, payments made by debit and prepaid cards, the City processed credit card transactions totaling over \$5.2 million from May 2019 to May 2021 and paid \$111,423, or 2.13% in bank fees to process the transactions.

Visa and MasterCard bank fees are quite complex. The amount charged for a given transaction depends on various factors; whether the payment card is a credit or debit, what the industry code is for the merchant account (e.g., retail, utilities), and the card type (e.g., business card, rewards card). Debit cards are the least expensive cards to process, costing an average of \$0.25-\$0.35 per transaction. Conversely, certain business cards and rewards cards are the most expensive to process, costing approximately 2.75% of the transaction amount.

The City does not currently pass along any bank fees to customers as transaction fees or convenience fees. However, it has been the City's practice to cap the maximum payment that customers or residents can make with a credit card at \$25,000 per customer/resident/project. This cap would continue to encourage residents and customers to utilize City's auto and online payment method and prompt payment while limiting City's expenses.

However, it has been brought to staff's attention that putting a maximum limit on a card transaction is against Visa and Mastercard rules. In speaking with our merchant bank, staff discussed several options to determine what might be allowable. The below table provides the options discussed:

Processing Option	Permitted
Place a dollar limit on credit card transactions	No
Charge a fee on transactions over a certain dollar amount	No
Charge fees for all over the counter transactions	Yes
Not accept credit cards for certain fees	Yes
Add service fee for certain fees	Yes

To continue encouraging residents and customers to sign up for autopay, online, and prompt payment for utilities, business licenses, recreation services, and other certain small fees while limiting City's expenses, staff recommends a new fee for development fees and TOT payments made by credit card. Development fees could run as high as hundreds of thousands of dollars, while monthly TOT due for a hotel could range from tens of thousands of dollars. The fee of 2.0% of the transactions allows the City to offset some of the bank fees when residents and customers are paying by credit card for development fees and TOT.

COMMUNITY ENGAGEMENT: Inform

This public hearing has been properly noticed in the Morgan Hill Times on June 11, 2021.

ALTERNATIVE ACTIONS:

The Council has the discretion not to adopt the proposed fee or lower it.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

None.

FISCAL AND RESOURCE IMPACT:

Adopting the proposed fee would marginally increase the net revenue for the general fund and development services fund.

CEQA (California Environmental Quality Act):

Not a Project

Organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment.

LINKS/ATTACHMENTS:

1. Resolution Adopting Credit Card Fee
2. Proposed credit card service fee

RESOLUTION NO.

**A RESOLUTION OF THE CITY COUNCIL OF THE
CITY OF MORGAN HILL ESTABLISHING CREDIT
CARD SERVICE FEE FOR DEVELOPMENT FEES
AND TRANSIENT OCCUPANCY TAX PAYMENTS BY
CREDIT CARD**

WHEREAS, the City Council, pursuant to Section 3.50.010 of the Morgan Hill Municipal Code ("Code"), requires the recovery of costs reasonably born from fees and charges levied in providing the regulation, products or services enumerated in Code Chapter 3.50 – Fee and Service Charge Revenue/Cost Comparison System; and

WHEREAS, the City of Morgan Hill has conducted a fee study to calculate the costs reasonably borne to provide the specified payment by credit card, which study has been available to the public for at least ten (10) days prior to the adoption of this Resolution; and

WHEREAS, the proposed establishment of the fees that are the subject of this Resolution was agendized for consideration by the City Council of the City of Morgan Hill at a duly noticed public hearing of the Council held on June 23, 2021, at which hearing all interested persons were afforded an opportunity to be heard on said proposed fees; and

WHEREAS, the Council heard all relevant testimony and reviewed all written materials submitted in connection with its hearing on this Resolution.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY FIND, DETERMINE, RESOLVE, AND ORDER AS FOLLOWS:

1. The City Council has conducted an extensive analysis of its credit card service fee, including the cost to the City for payments made by credit card; and
2. Based upon the analysis and the provided information, the City (i) identifies the purpose of the proposed fees, (ii) identifies the use to which the fees will be put, (iii) demonstrates a reasonable relationship between the fees' use and the types of services on which the fees are imposed, and (iv) demonstrates a reasonable relationship between the amount of the fees and the cost of the City's services attributable to the applications on which the fees are imposed; and
3. The City Council finds and determines the fees calculations utilized to establish credit card service fee for development fees and transient occupancy tax payments by credit card will not cause fee revenues to exceed the estimated cost reasonably borne of providing the services which the fees are levied; and
4. The City Council hereby adopts and approves the establishment of a new fee to be titled Credit Card Service Fee to be set at 2 percent of the development fees and transient occupancy tax payments by credit card as set forth in attached **Exhibit A** and incorporated by this reference; and

5. The City Manager or his/her designee is hereby authorized and directed to amend the City Fee Schedule to reflect the fees as set forth in **Exhibit A**.

PASSED, APPROVED, AND ADOPTED by the City Council of the City of Morgan Hill at a regular meeting held on the 23rd day of June 2021.

AYES: **COUNCIL MEMBERS:**
NOES: **COUNCIL MEMBERS:**
ABSTAIN: **COUNCIL MEMBERS:**
ABSENT: **COUNCIL MEMBERS:**

APPROVED:

ATTEST:

RICH CONSTANTINE, Mayor

MICHELLE BIGELOW, 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. _____, adopted by the City Council at a regular meeting held on June 23, 2021.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

Michelle Bigelow, City Clerk

Attachment: Resolution Adopting Credit Card Fee [Revision 1] (3135 : CREDIT CARD PAYMENT SERVICE FEE)

EXHIBIT A

Credit Card Service Fee for Development Fees and Transient
Occupancy Tax Payments by Credit Card

<u>Fee Description</u>	<u>Amount</u>
Credit Card Service Fee	2%

**PROPOSED SERVICE FEE FOR DEVELOPMENT FEES AND TRANSIENT OCCUPANCY
TAX (TOT) PAYMENTS BY CREDIT CARD**

Total amount processed less utilities, debit, and prepaid cards from May 2019 to May 2021	\$ 5,229,650.28
Total credit card fees less utilities, debit, and prepaid cards fees paid by City from May 2019 to May 2021	\$ 111,422.60
Percentage	2.13%
PROPOSED FEE	2.00%

Attachment: Proposed credit card service fee [Revision 1] (3135 : CREDIT CARD PAYMENT SERVICE FEE)



CITY COUNCIL STAFF REPORT

MEETING DATE: June 23, 2021

PREPARED BY: Adam Paszkowski, Principal Planner
APPROVED BY: City Manager

CONSIDER APPEAL OF PLANNING COMMISSION'S APPROVAL OF SD2020-0011/SR2020-0029 THROUGH SR2020-0033 DE PAUL - TRAMMELL CROW MORGAN HILL VENTURE: REQUEST FOR A TENTATIVE PARCEL MAP AND DESIGN PERMITS FOR THE REDWOOD TECH AT 101, A FIVE BUILDING INDUSTRIAL PARK, ON A 29± ACRE SITE (APNS 728-30-006 AND 728-30-009). (AAE2021-0004 AND AAE2021-0005)

RECOMMENDATION(S)

1. Grant a hearing de novo;
2. Open/close public hearing; and
3. Adopt Resolution denying the appeals and reaffirming the decision of the Planning Commission to approve the project subject to Conditions of Approval.

COUNCIL PRIORITIES, GOALS & STRATEGIES

GUIDING DOCUMENTS

Economic Blueprint
Morgan Hill 2035 General Plan

REPORT NARRATIVE:

The City has received two appeals and a request from Council Member Spring to elevate the Planning Commission decision to the City Council. The appellants, Adams Broadwell Joseph & Cardozo Attorneys at Law (on behalf of the Morgan Hill Residents for Responsible Development) and Joe Baranowski (on behalf of the Morgan Hill Responsible Growth Coalition (MHRGC)), have each filed an appeal of the decision of the Planning Commission to approve a Vesting Tentative Parcel Map and Design Permits (SR2020-0029 through SR2020-0033 De Paul – TC Morgan Hill Venture) for the Redwood Tech at 101 project to allow five buildings ranging in size from 73,828± square feet to 138,714± square feet and to subdivide the 29± acre project site into four parcels ranging in size from 4.18± acres to 9.16± acres.

In accordance with Chapter 18.112 (Appeals) of the Morgan Hill Municipal Code, all Planning Commission decisions may be appealed to the City Council. Section 18.112.040 of the Municipal Code governs the Call for Review process. Any City Council Member may make the Call for Review, and a Council Member calling for review is not required to provide a statement of reasons for the review.

Planning Commission Actions

The Planning Commission discussed the project and received public testimony at their May 25, 2021 meeting. After hearing public testimony, the Planning Commission approved Resolutions No. 21-04 and 21-05 (Exhibit A to Attachment 1) at the May 25, 2021, meeting, approving the proposed Design Permits and Vesting Tentative Parcel Map. The May 25, 2021, Planning Commission Staff Report has been attached (Attachment 2).

The Appeal and Call for Review

The appeals and call for review were filed on or before June 4, 2021, within 10 (ten) calendar days following the date the decision was rendered by the Planning Commission, consistent with Chapter 18.112. Both appellants' letters (Attachments 3 and 4) provide the basis for their appeals. No supplemental materials are required for a Call for Review.

Morgan Hill Residents for Responsible Development

The appellant, Adams Broadwell Joseph & Cardozo Attorneys at Law, on behalf of the Morgan Hill Residents for Responsible Development, states that the specific grounds of appeal are:

1. The City's failure to comply with the requirements of CEQA to prepare a legally adequate Environmental Impact Report (EIR) for the project;
2. That the Morgan Hill 2035 General Plan EIR was not intended to be used to evaluate individual future development and did not provide adequate analysis of any impacts specific to the project;
3. That the project is a component of a reasonably foreseeable larger project; and
4. The project may result in potentially significant, unmitigated impacts on air quality, public health, greenhouse gas (GHG) emissions, noise, and transportation that must be disclosed and mitigated in an EIR.

The following responds to the three comments from the appellant regarding the need to prepare an EIR for the Redwood Tech at 101 project and not utilize the Morgan Hill 2035 General Plan EIR. Pursuant to Section 15168(c) of the *State CEQA Guidelines*, a later activity or project must be examined in the light of the Program EIR to determine whether an additional environmental document must be prepared. If the City finds that no subsequent EIR would be required, the City can approve the activity as being within the project's scope covered by the program EIR, and no new environmental document would be required. Whether a later activity is within the scope of a program, EIR is a factual question that the lead agency determines based on substantial evidence in the record. Factors that an agency may consider in making that determination include, but are not limited to, consistency of the later activity with the type of allowable land use, overall planned density and building intensity, geographic area analyzed for environmental impacts and covered infrastructure as described in the program EIR. As outlined below, the proposed Redwood Tech at 101 project meets these factors.

The project evaluated in the Morgan Hill 2035 Genal Plan EIR is the adoption and

implementation of the 2035 General Plan, which includes land use, urban design, circulation, public services, natural resources, and safety goals, policies, and actions to guide investment and development in the city. The Morgan Hill 2035 General Plan EIR provides a programmatic analysis of the environmental impacts associated with the projected buildout of the 2035 General Plan.

The Redwood Tech at 101 project proposes land uses allowed by right consistent with the Morgan Hill 2035 General Plan EIR and 2035 General Plan. Specifically, the Morgan Hill 2035 General Plan EIR states the Commercial/Industrial designation allows office, research and development, light industrial uses, and similar uses, and would also allow amenities, such as retail services, restaurants, and lodging, to support the primary job-generating uses within business park settings.

The Redwood Tech at 101 project does not propose any conditional uses. However, should a future use on the site require a conditional use permit, that user will be responsible for conducting the environmental review for the proposed use as required under CEQA.

As listed in the Morgan Hill 2035 General Plan EIR and 2035 General Plan, the Commercial/Industrial designation allows for a maximum floor area ratio of 0.6 and a maximum building height of 50 feet for industrial uses, which the proposed Redwood Tech at 101 project is consistent with. In addition, the Morgan Hill 2035 General Plan EIR was a program EIR that analyzed environmental impacts throughout the City regarding implementation of the 2035 General Plan.

On July 27, 2016, the City Council certified the Morgan Hill 2035 General Plan EIR. As mentioned previously, the EIR for the General Plan was prepared as a program EIR under the provisions of Section 15168 of the *State CEQA Guidelines*. As a program EIR, the document adopted by the City Council adequately addressed the potential environmental impacts associated with the comprehensive update of the City's constitution for growth, including certain implementation activities, and provided for streamlining of the environmental review process for projects proposed subsequent to the certification of the EIR. The proposed Redwood Tech at 101 project entails dividing the subject property and constructing buildings consistent with the General Plan. The division and development of parcels consistent with the General Plan were addressed in the program EIR for the 2035 General Plan. Therefore, pursuant to Section 15162 and Section 15183 of the *State CEQA Guidelines*, no additional review under the California Environmental Quality Act is required for the proposed project.

In addition, the proposed Vesting Tentative Parcel Map is categorically exempt pursuant to Section 15315 of the *State CEQA Guidelines* because it consists of the division of property in urbanized areas zoned for industrial use into four parcels and conforms with the General Plan and zoning, no variances or exceptions are required, all services and access to the proposed parcels to local standards are available, the parcel was not involved in a division of a larger parcel within the previous two years, and the parcel does not have an average slope greater than 20 percent.

It should also be noted as part of the Planning Commission's May 25th meeting packet, the City of Morgan Hill received a letter dated April 29, 2021, from Allen Matkins Attorneys at Law on behalf of Trammell Crow regarding the Planning Commission's scope of design review and its relation to CEQA. The letter points to two cases, *Protecting Our Water & Environmental Resources v. County of Stanislaus* and *McCorkle Eastside Neighborhood Group v. City of St. Helena*. The letter stated the Planning Commission lacks the discretion to address potential environmental effects, making the Project ministerial for CEQA purposes, and therefore, should the Planning Commission exempt the proposed project from CEQA, the Commission should also make the findings that the exemption is not required due to the ministerial nature of the City's design review procedures.

The appellant alleges [or further alleges] that the project is a component of a reasonably foreseeable larger project. They claim that the City is piecemealing the Redwood Tech at 101 project and a residential application filed by Dividend Homes, titled "Crosswinds," for a 269 residential unit development on 28-acres located on the east side of De Paul Drive.

The appellant states that the previous application submitted by Trammell Crow, the "Morgan Hill Technology Center," (which included the Redwood Tech at 101 project site) also included a 319 residential unit component, which required an EIR. The appellant mistakenly states that the City is improperly piecemealing the two projects, the industrial project (Redwood Tech at 101) and the residential project (Crosswinds).

CEQA requires that EIRs be evaluated on a comprehensive and cumulative analysis which includes reasonably foreseeable development. The City of Morgan Hill received a Conceptual Plan Review application from Dividend Homes in 2019. Therefore, the Draft EIR for the Morgan Hill Technology Center stated that although only preliminary plans and no formal land use entitlement applications were currently on file for the 28-acre residential site to the east of De Paul Drive, the Morgan Hill Technology Center EIR was being evaluated at a programmatic level to include a maximum of 319 single-family detached and attached units. The Draft EIR continued to state, the future development of this land is reasonably foreseeable given the existing land use designation and zoning and the proposed roadway and other infrastructure, and therefore the EIR analyzes and discloses the effects of the whole project.

Since then, Dividend Homes have applied for a 269 residential unit development on 28-acres, titled "Crosswinds," which will be evaluated by an EIR which will evaluate cumulative impacts of reasonably foreseeable development since the build out of the area the Crosswinds project occupies was not evaluated in the Morgan Hill 2035 General Plan EIR.

Morgan Hill Responsible Growth Coalition (MHRGC)

The appellant, MHRGC, states that the specific grounds for the appeal are:

1. Neither resolution by the Planning Commission is consistent with General Plan Policies CNF-18.3 and CNF-18.4; and

2. The Planning Commission could not make the necessary findings to approve a design permit or tentative map for the project based on information in the record.

Policies CNF-18.3 and CNF-18.4 of the Morgan Hill 2035 General Plan read as follows:

*Policy CNF-18.3 **Compatible Industrial Uses.** Require Planned Development overlay zones (PD) for the industrial and/or commercial development along the side of Highway 101 (south of Cochrane Road and north of Diana Avenue) and the area west of Highway 101 and south of Tennant Avenue to ensure that issues such as circulation, allowable uses, neighborhood compatibility, high visibility, and development standards are properly addressed.*

*Policy CNF-18.4 **Commercial/Industrial Area East of Highway 101.** Require the commercial/industrial area east of Highway 101 to develop in no more than three PDs. The boundary between the PDs, should two or three be proposed, would be Half Road and Main Avenue. The PDs will need to address such issues as traffic circulation, design, allowable uses, and impacts on surrounding areas. Mitigation of impacts on nearby residential areas shall be a high priority in planning for and development of the PDs. Allowable uses within these PDs shall include, in addition to industrial uses, retail services, lodging, medical facilities, hospitals, and educational facilities.*

In July 2020, the Development Services Department and City Attorney's Office provided an interpretation of Morgan Hill Municipal Code Section 18.14.00.C relating to Legacy Zoning Districts; specifically, an interpretation regarding land uses and development standards that apply to Planned Unit Development (PUD) legacy districts that do not have an approved Master Plan (Attachment 5). The interpretation concluded that absent an approved Master Plan, properties in an existing PUD combining district may develop only to the base zoning. A Master Plan would be needed to allow any deviation from the standards and regulations under the base zoning district. The proposed Redwood Tech at 101 project does not seek any deviation from the standards and regulations under the base zoning district; therefore, the project may develop pursuant to the base Light Industrial (IL) zoning district. Hence, Policies CNF-18.3 and CNF-18.4 of the 2035 General Plan do not apply to the Redwood Tech at 101 project.

In response to the appellant's comment that the Planning Commission could not make the necessary findings to approve the project at the May 25, 2021, Planning Commission meeting, the Planning Commission made the necessary findings to approve the Redwood Tech at 101 project on a 6-1 vote with the following amendment: "Buildings should have a consistent design on all elevations viewable from public streets. The Director shall work with the applicant to ensure colors and materials are included on all elevations that limit the amount of blank wall space."

In approval of the Design Permit, the Planning Commission made the following findings as outlined in the May 25, 2021, Planning Commission Staff Report pursuant to Section 18.108.040.J of the Zoning Ordinance:

1. The proposed project is consistent with the General Plan and any applicable specific plan, area plan, or other design policies and regulations adopted by the City Council.
2. The proposed project will comply with all applicable provisions of the Zoning Code and Municipal Code.
3. The proposed project substantially complies with all applicable design standards and guidelines contained in the Design Review Handbook.
4. The proposed project has been reviewed in compliance with the California Environmental Quality Act (CEQA).
5. The proposed project development will not be detrimental to the public health, safety, or welfare or materially injurious to the properties or improvements in the vicinity.
6. The proposed project complies with all Design Review criteria in subsection H. of Section 18.108.040 of the municipal code.
7. For new residential development, the project complies with commitments made through the Residential Development Control System (RDCS).

In approval of the Vesting Tentative Parcel Map, the Planning Commission made the following finding pursuant to Section 17.24.070 of the Municipal Code:

1. The Tentative Parcel Map, together with its provisions for its design and improvements, is consistent with the General Plan.

Conclusion

As discussed, the proposed project meets the requirements of the General Plan and Zoning Ordinance. The facts do not adequately support the allegations made in the appeals. For the reasons set forth in this report, it is recommended that the City Council adopt a resolution denying the appeals.

COMMUNITY ENGAGEMENT: Involve

The Planning Commission approved the project at its meeting on May 25, 2021. A notice of the appeal hearing was mailed to all property owners on the east side of 101 from Eagle View drive to the north, Cochrane to the east, and Half Road to the south encompassing all the residential neighborhoods in this area.

ALTERNATIVE ACTIONS:

If the City Council is able to make adequate findings, it could decide to grant the appeal to SD2020-0011/SR2020-0029 through SR2020-0033 De Paul – TC Morgan Hill Venture and deny the Vesting Tentative Parcel Map and Design Permits.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The Planning Commission approved the project at the May 25, 2021, meeting (6-1), with Commissioner Mueller casting the dissenting vote. Commissioner Mueller's primary concern was not being able to determine that the project is consistent with the development projections analyzed in the Morgan Hill 2035 General Plan program EIR for the project site.

FISCAL AND RESOURCE IMPACT:

The City Development Review functions are cost-recovery, with fees collected from applicants to cover the cost of services. These fees have been collected from the applicant. Appeal fees for the appellants are not cost recovery fees and were reduced by the City Council to not create an impediment to public participation.

CEQA (California Environmental Quality Act):

Categorical Exemption

On July 27, 2016, the City Council certified an environmental impact report (EIR) for the Morgan Hill 2035 General Plan. The EIR for the General Plan was prepared as a program EIR under the provisions of Section 15168 of the *State CEQA Guidelines*. As a program EIR, the document adopted by the City Council adequately addressed the potential environmental impacts associated with the comprehensive update of the City's constitution for growth, including certain implementation activities, and provided for streamlining of the environmental review process for projects proposed subsequent to the certification of the EIR. The proposed project entails dividing the subject property and constructing buildings consistent with the General Plan. The division and development of parcels consistent with the General Plan were addressed in the program EIR for the 2035 General Plan and, therefore, pursuant to Section 15162 and Section 15183 of the *State CEQA Guidelines*, no additional review under the California Environmental Quality Act is required for the proposed project.

This project is also exempt pursuant to Section 15315 of the *State CEQA Guidelines* because it consists of the division of property in urbanized areas zoned for industrial use into four parcels and conforms with the General Plan and zoning, no variances or exceptions are required, all services and access to the proposed parcels to local standards are available, the parcel was not involved in a division of a larger parcel within the previous two years, and the parcel does not have an average slope greater than 20 percent. Further, the map involves no unusual circumstances that would warrant additional CEQA review.

LINKS/ATTACHMENTS:

1. City Council Resolution
2. May 25, 2021 - PC Staff Report (Weblink)
3. Appeal by Adams Broadwell Joseph & Cardozo
4. Appeal by Morgan Hill Responsible Growth Coalition
5. PUD Zoning Interpretation Letter

RESOLUTION NO. XX-XX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL DENYING THE APPEALS SUBMITTED BY MORGAN HILL RESIDENTS FOR RESPONSIBLE DEVELOPMENT AND MORGAN HILL RESPONSIBLE GROWTH COALITION FOR SD2020-0011 AND SR2020-0029 THROUGH SR2020-0033: DE PAUL-TC MORGAN HILL VENTURE AND REAFFIRMING THE APPROVAL OF THE VESTING TENTATIVE PARCEL MAP AND DESIGN PERMITS FOR THE REDWOOD TECH AT 101 PROJECT ON PROPERTY LOCATED ON THE NORTHERN INTERSECTION OF CONDIT ROAD AND HALF ROAD (APNS 728-30-006 AND 728-30-0009)

WHEREAS, such request was considered by the Planning Commission at its regular meeting of May 25, 2021, at which time the Planning Commission approved Vesting Tentative Parcel SD2020-0011 and Design Permits SR2020-0029 through SR2020-0033: De Paul-TC Morgan Hill Venture (Redwood Tech at 101); and

WHEREAS, testimony received at a duly noticed public hearing, along with exhibits and drawings and other materials have been considered in the review process; and

WHEREAS, Morgan Hill Residents for Responsible Development and Morgan Hill Responsible Growth Coalition, both filed an appeal of the Planning Commission's decision on the Application to the City Council pursuant to the applicable provisions of the Morgan Hill Municipal Code; and

WHEREAS, at the time and place noticed for a hearing on the appeal, the City Council of the City of Morgan Hill conducted a *de novo* appeal hearing on the Application, provided all interested persons an opportunity to be heard, and received, reviewed, and considered all testimony and other evidence provided regarding the subject of this appeal.

NOW, THEREFORE, BASED UPON ALL OF THE INFORMATION SUBMITTED TO THE CITY COUNCIL FOR THE APPEAL AT THE PUBLIC HEARING CONDUCTED FOR THE APPEAL, THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY RESOLVE AS FOLLOWS:

SECTION 1. Following are the relevant facts in connection with Application:

- A. The approved Vesting Tentative Parcel Map and Design Permits are consistent with the Zoning Ordinance and the General Plan.

- B.** At their meeting of May 25, 2021, the Planning Commission found that the approved Vesting Tentative Parcel Map and Design Permits would be consistent with the criteria for Vesting Tentative Parcel Map and Design Permits approval contained within the Zoning Code. The basis and findings were set forth in the staff report for May 25, 2021.

SECTION 2. Based upon the above facts, the City Council finds as follows:

- A.** The project is consistent with the Zoning Ordinance, and General Plan.
B. The Design Review has been found consistent with the criteria for Design Review permit approval contained in Section 18.108.040 of the Morgan Hill Municipal Code. The proposed project is in compliance with all applicable design standards and guidelines contained in the Design Review Handbook.

SECTION 3. Based upon the above facts and findings the City Council determines as follows:

- A.** The approval of the Vesting Tentative Parcel Map and Design Permits granted by the Planning Commission on May 25, 2021, were made consistent with the Morgan Hill Municipal Code. Therefore, the appeal submitted regarding the Vesting Tentative Parcel Map and Design Permits approval should not be approved.
B. The Planning Commission approval as set forth in Planning Commission Resolution No. 21-04 and Resolution No. 21-05, attached hereto as Exhibit A and incorporated herein by this reference, is hereby reaffirmed, and approved.

SECTION 4. For the reasons set forth above, the appeal is **DENIED**.

PASSED AND ADOPTED THIS 23rd DAY OF JUNE 2021, AT A MEETING OF THE CITY COUNCIL BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

City of Morgan Hill
Resolution No.
Page 3 of 5

ATTEST:

APPROVED:

MICHELE BIGELOW, City Clerk

RICHARD CONSTANTINE, Mayor

Attachment: City Council Resolution [Revision 2] (3130 : Trammell Crow Redwood Tech at 101 Appeal)

CERTIFICATE OF THE CITY CLERK

I, MICHELLE BIGELOW, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Resolution No. _____, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the ____ day of _____, 2021.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

MICHELE BIGELOW, City Clerk

EXHIBIT A

Planning Commission Resolution No. 21-04 and Resolution No. 21-05

RESOLUTION NO. 21-04

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MORGAN HILL APPROVING A DESIGN PERMIT TO ALLOW FOR THE CONSTRUCTION OF THE REDWOOD TECH AT 101 PROJECT - A FIVE BUILDING INDUSTRIAL PARK LOCATED ON THE NORTHERN INTERSECTION OF CONDIT ROAD AND HALF ROAD (DE PAUL – TC MORGAN HILL VENTURE (REDWOOD TECH AT 101)) (APNS 728-30-006 AND 728-30-009)

WHEREAS, the developer Trammell Crow applied for a Design Permit to construct an industrial park containing five (5) industrial buildings ranging in size from 73,668 to 138,698 square feet. (SR2020-0029 through -033: De Paul – TC Morgan Hill Venture (Redwood Tech at 101)); and

WHEREAS, such request was considered by the Planning Commission at its meeting of May 25, 2021; and

WHEREAS, this project is consistent with the development projections analyzed in the Morgan Hill 2035 General Plan program EIR for the project site. The project also is designed to be consistent with the development standards in the General Plan and Zoning Code. No further environmental assessment is required; and

WHEREAS, testimony received at a duly-noticed public hearing, along with exhibits and drawings and other materials have been considered in the review process.

NOW, THEREFORE, THE MORGAN HILL PLANNING COMMISSION DOES RESOLVE AS FOLLOWS:

SECTION 1. The project is consistent with the Zoning Ordinance, and General Plan.

SECTION 2. The Design Review has been found consistent with the criteria for Design Review permit approval contained in Section 18.108.040 of the Morgan Hill Municipal Code. The proposed project is in compliance with all applicable design standards and guidelines contained in the Design Review Handbook.

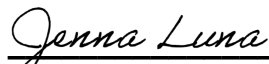
SECTION 3. The Planning Commission approves SR2020-0029 through -0033: De Paul – TC Morgan Hill Venture (Redwood Tech at 101). The design shall be expressly conditioned in conformance with conditions incorporated herein and as attached as Exhibit “A”. Minor deviations to the site review permit may be approved by the Community Development Director when consistent with the overall intent of the project.

SECTION 4. Notice is hereby given that, pursuant to the Mitigation Fee Act, the City of Morgan Hill charges certain fees (as such term is defined in Government Code Section 66000) in connection with approval of your use for the purpose of defraying all or a portion of the cost of public facilities related to your development project (Mitigation Fee Act Fees). These fees do not include fees for processing applications for governmental regulatory actions or approvals, or fees collected (a) under development agreements, (b) pursuant to agreements with the Morgan Hill Redevelopment Agency or (c) as a part of your application for development allocations under the City's Residential Development Control System. The Mitigation Fee Act Fees applying to your project are listed in the schedule of fees provide. Notice is also hereby given that you have the opportunity to protest the imposition of the Mitigation Fee Act Fees within 90 days of the approval of the approval or conditional approval of your development project and that the 90-day approval period in which you may protest has begun. This right to protest does not apply to voluntary Residential Development Control System fees.

PASSED AND ADOPTED THIS 25th DAY OF MAY 2021, AT A REGULAR MEETING OF THE PLANNING COMMISSION BY THE FOLLOWING VOTE:

AYES:	COMMISSIONERS:	HABIB, KUMAR, TANDA, GONZALEZ-ESCOTO, DOWNEY, MUNOZ- MORRIS
NOES:	COMMISSIONERS:	MUELLER
ABSTAIN:	COMMISSIONERS:	NONE
ABSENT:	COMMISSIONERS:	NONE

ATTEST:


JENNA LUNA, Deputy City Clerk

APPROVED:


MOHAMMAD HABIB, Chair

EXHIBIT "A" STANDARD CONDITIONS

APPLICATION NO: SR2020-0029 through -0033

THE FOLLOWING APPROVAL REQUIREMENTS AND ANY SPECIAL CONDITIONS SHALL BE APPLIED THROUGH THE DEVELOPMENT APPROVAL PROCESS.

Legend

MHMC= Morgan Hill Municipal Code
 MHARH= Morgan Hill Architectural Review Handbook
 CMH= City of Morgan Hill
 CFC= California Fire Code

I. PROJECT DESCRIPTION

This project proposes approximately 501,000 square feet of flexible industrial space spread across 5 separate concrete tilt-up buildings on four separate lots. As with all other development, this project requires a Design Permit. The Community Development Director has elevated this project to the Planning Commission for consideration. All five buildings are designed to be divisible into two or three tenant spaces with a maximum exterior height of 43 feet.

The project shall comply with all requirements of related project approvals granted by the City, including all of the following:

II. PROJECT CONDITIONS OF APPROVAL

This Design Permit approval is limited to the plan set dated December 11, 2020 on file (File Number SR2020-0029 through -0033: De Paul – TC Morgan Hill Venture (Redwood Tech at 101)) with the Development Services Department. The approved building plans and landscape plans must be in substantial conformance with the Design Review plans as determined by the Development Services Director. These documents show the location and dimensions of all buildings and elevations with colors and materials, amenities and square footage for all common areas, and vehicle and pedestrian circulation ways (ingress/egress), common areas, and other easement areas.

It shall be the responsibility of the Owner to ensure that any changes or modifications to the Project or any Unit are in compliance with the original City Conditions of Approval of the Project, which are incorporated herein.

PLANNING COMMISSION

Buildings shall have a consistent design on all elevations viewable from public streets. The Development Services Director shall work with the applicant to ensure colors and materials are included on all elevations that limit the amount of blank wall space.

PLANNING DIVISION

DEFENSE AND INDEMNITY

- A. As part of, and in connection, with this application to the City of Morgan Hill, Applicant agrees to defend, indemnify, and hold harmless the City of Morgan Hill, its officers, agents, employees, officials and representatives (Indemnitees) from and against any and all claims, actions, or proceedings arising from any suit for damages or for equitable or injunctive relief which is filed against City to attack, set aside, void or annul its approval of this application or any related decision, or the adoption of any environmental documents which relates to said approval. The City shall promptly notify the Applicant of any such claim, action or proceeding and the City shall cooperate fully in the defense thereof. In the event that Applicant is required to defend Indemnitees in connection with the proceeding, Indemnitees shall retain the right to approve (a) the counsel to so defend Indemnitees; (b) all significant decisions concerning the manner in which the defense is conducted; and (c) any and all settlements, which approval shall not be unreasonably withheld. This indemnification shall include, but is not limited to, (a) all pre-tender litigation costs incurred on behalf of the City, including City's attorney's fees and all other litigation costs and expenses, including expert witnesses, required to defend against any lawsuit brought as a result of City's approval or approvals; (b) reasonable internal City administrative costs, including but not limited to staff time and expense spent on the litigation, after tender is accepted; and (c) all damages, costs, expenses, attorney fees or expert witness fees that may be awarded to the prevailing party arising out of or in connection with the approval of the application or related decision. City may, in its sole discretion, participate in the defense of such action; but such participation shall not relieve Applicant of its obligations under this condition. The undersigned hereby represents that they are the Applicant or are fully empowered by the Applicant as their agent to agree to provide the indemnification, defense and hold harmless obligations, and the signature below represents the unconditional agreement by Applicant to be bound by such conditions.

TIME LIMITS

- A. **Term:** The Design Review approval granted pursuant to this Resolution shall remain in effect for two years to May 25, 2023. Failure to obtain building permits within this term shall result in termination of approval unless an extension of time is granted with a showing of just cause prior to expiration date. **(MHMC 18.108.040)**

SITE DEVELOPMENT

- A. **Final Site Development Plans:** Final site development plans shall be reviewed for conformance with Design Permit SR2020-0029 through -0033: De Paul – TC Morgan Hill Venture (Redwood Tech at 101) and in accordance with Morgan Hill Municipal Code Section 18.108.040 (Design Permit) and approved by the Development Services Department prior to issuance of a building permit. All such plans shall include:
1. Detail depicting all concrete curbs as full formed.
 2. Exterior lighting of the building and site shall be designed so that lighting is not directed onto adjacent properties and light source is shielded from direct off-site viewing.
 3. Ramps, special parking spaces, signing and other physical features for the disabled, shall be provided throughout the site for all publicly used facilities.
 4. All mechanical equipment, including electrical and gas meters, post indicator valve, backflow prevention devices, etc., shall be architecturally screened from view or located interior to the building. All ground mounted utility appurtenances such as transformers shall not be visible from any public right-of-way and shall be adequately screened through the use or combination of concrete or masonry walls, berming, and landscaping. **(MHARH p.20, 45, 79)** For additional screening, backflow preventers shall be painted dark green, except the fire connection which shall be painted yellow.
 5. All existing on-site overhead utilities shall be placed underground in an approved conduit from the service connection at the street or at the property line to the service connection at the building as detailed in engineering conditions within this document.
 6. Adequate bicycle trails and amenities (e.g. bike racks, bike fix-it station) and pedestrian connections throughout the site, including connections to De Paul Drive, and a sidewalk along the De Paul Drive frontage.

7. To the extent acceptable to end users, implement good faith Transportation Demand Management Plan measures to promote alternate means of transportation and reduce single occupancy vehicle trips to and from the Project.
- B. **Building Coverage:** In accordance with Morgan Hill Municipal Code Section 18.26.030 (Development Standards) and approved by the Development Services Director prior to issuance of a building permit, Building B shall be reduced in size to have a maximum building coverage of 50%.
 - C. **Trash Enclosures:** All trash enclosures shall include a solid noncombustible roof structure consistent in design, materials and colors as the primary buildings and shall be reviewed and approved by the Development Services Director prior to issuance of a building permit.
 - D. **Pedestrian Access:** The Project shall provide pedestrian walkways in compliance with ADA requirements and with Section 18.72.060.H of the Morgan Hill Municipal Code, which states the following:
 1. Parking lots with more than thirty parking spaces shall include a pedestrian walkway in compliance with ADA requirements.
 2. The design of the pedestrian walkway shall be clearly visible and distinguished from parking and circulation areas through striping, contrasting paving material, or other similar method as approved by the Development Services Director.
 - E. **Bicycle parking.** The project shall provide short-term and long-term bicycle parking spaces in conformance with Section 18.72.080 of the Morgan Hill Municipal Code:
 1. **Short-Term/Class II Bicycle Parking Standards.** Short-term bicycle parking shall be located within one hundred feet of the primary entrance of the structure or use it is intended to serve.
 2. **Long-Term Bicycle Parking Standards.** The following standards apply to long-term bicycle parking:
 - a. Location. Long-term bicycle parking shall be located on or within seven hundred fifty feet of the use that it is intended to serve.
 - b. Security. Long-term bicycle parking spaces shall be secured. Spaces are considered secured if they are:

- i. In a locked room or area enclosed by a fence with a locked gate;
 - ii. Within view or within one hundred feet of an attendant or security guard;
 - iii. In an area that is monitored by a security camera; or
 - iv. Visible from employee work areas.
- 3. **Parking Space Dimensions.**
 - a. Minimum dimensions of two feet by six feet shall be provided for each bicycle parking space.
 - b. An aisle of at least five feet shall be provided behind all bicycle parking to allow room for maneuvering.
 - c. 2 feet of clearance shall be provided between bicycle parking spaces and adjacent walls, polls, landscaping, pedestrian paths, and other similar features.
 - d. Four feet of clearance shall be provided between bicycle parking spaces and adjacent automobile parking spaces and drive aisles.
- 4. **Rack Design.** Bicycle racks must be capable of locking both the wheels and the frame of the bicycle and of supporting bicycles in an upright position.
- 5. **Cover.** Required cover for bicycle parking spaces shall be permanent, designed to protect the bicycle from rainfall, and at least seven feet above the floor or ground.

The location of all bicycle parking spaces shall be identified prior to issuance of a building permit.

- D. **Electric Vehicle Charging Stations:** The Project shall provide electric vehicle charging stations in compliance with Section 18.72.040.C of the Morgan Hill Municipal Code. The project is required to provide two charging stations, plus one for each additional fifty parking spaces. The developer shall provide location of each charging station prior to issuance of building permit.
- E. **Prohibition of Natural Gas Infrastructure in New Buildings.** In accordance with Chapter 15.63 of the Municipal Code, future tenants will be required to demonstrate the need for gas service for manufacturing and other business uses. Natural gas shall not be used for heating and cooling of the building.

BUILDING DESIGN

- A. **Roof Mounted Mechanical Equipment:** All roof mounted mechanical equipment shall be placed within a screened roof top enclosure depicted on the elevation drawings or located below the parapet level and shall not be visible from the ground at any distance from the building. Cross section roof drawings shall be provided at the building permit stage indicating the relative height of the screen wall or parapet. Minimum screen height or parapet depth shall be 5 feet or greater to match the height of any proposed equipment. **(MHARH p.48, 65, 87, 106)**
- B. **Building Mounted Lighting:** Lighting fixtures shall not project above the fascia or roofline of the building. Any ground mounted lighting projecting onto the building or site shall be subject to the review and approval of the Development Services Director. Adjustment to the lighting intensity may be required after the commencement of the use. **(MHARH p. 67, 109)**

PARKING, VEHICULAR ACCESS AND LANDSCAPING

- A. **Parking Lot Landscaping:** All landscaping within parking lots shall comply with the requirements of Chapter 18.72 (Landscaping) in addition to the standards within this section.
 - 1. **Interior Landscaping.** All areas within a parking lot not utilized for parking spaces or access/circulation shall be landscaped. For parking lots with more than fifteen spaces, the minimum amount of interior landscaping is specified in Table 18.72-6. Interior landscaping is defined as any landscaped area surrounded on at least two sides by parking spaces or drive aisles, and excluding areas around the perimeter of the parcel or development site.
 - 2. **Shade Trees.**
 - a. One shade tree shall be provided for every five parking spaces in a parking lot.
 - b. Shade trees shall be a minimum twenty-four-inch box in size and shall provide a minimum thirty-foot canopy at maturity.
 - c. Shade trees shall be of a type that can reach maturity within fifteen years of planting and shall be selected from a city-recommended list of canopy tree species.
 - d. Shade trees shall be arranged in a parking lot to provide maximum shade coverage (based on a thirty-foot canopy) on August 21. The arrangement should approximate nearly fifty percent shade coverage.

3. **Concrete Curbs.**
 - a. All landscape areas shall be separated from parking spaces, drive aisles and driveways by a continuous, raised concrete curb. Raised concrete curbs shall be a minimum of six inches high by four inches deep.
 - b. The city may approve alternatives to raised concrete curbs as needed to comply with any mandatory stormwater drainage standards.
 4. **Parking Space Landscaping.** A maximum of two feet at the front end of a parking space may be landscaped with low shrubs or ground cover in which a vehicle could extend over in lieu of paving surface. This landscaping may not count toward minimum required parking lot landscaped area.
 5. **Timing.** Adjacent parking lot landscaping shall be installed prior to the city's authorization to occupy any buildings served by the parking area, or prior to the final inspection for the parking lot.
 6. **Green Parking Exemptions.** Parking lots that incorporate solar panels, bioswales, and other similar green features not otherwise required by post construction stormwater requirements are eligible for reduced parking lot landscaping requirements with the approval of a conditional use permit.
 7. **Exterior Parking Lot Lighting:** For projects with more than six parking spaces, detailed lighting information is provided in compliance with Section 18.72.060.G of the Morgan Hill Municipal Code. Lights shall use cut-off shields and be downward directed and shall not overlap with landscaping which will block and reduce the effectiveness and purpose of the lighting.
- B. **Planting and Irrigation Working Drawings:** Detailed landscape planting and irrigation working drawings shall be submitted to the Development Services Director for approval prior to issuance of building permits. Landscape plans for streets and landscape easements shall be part of the improvement plan submittal.
- C. **Lighting:** Walkways and pedestrian pathways in landscaped areas or common areas not considered building entrances or a part of parking lot areas shall be illuminated with a minimum of one (1) foot-candle to ensure safe nighttime conditions. **(MHARH p.30, 67, 108)**

- D. **Trash Enclosures:** Trash enclosures shall be separated from adjacent parking stalls with a minimum three (3) foot wide planter and a 12-inch-wide paved surface behind the curb (consistent with planter island standards). Trash enclosures shall be screened with landscape materials subject to the review and approval of the Development Services Director.
- E. **Maintenance of Landscaping:** The landscaping installed and accepted with this project shall be maintained on the site as stated within the approved plans. Any alteration or modification to the landscaping shall not be permitted unless otherwise approved by the Development Services Director.
- F. **Water Conserving Landscaping Ordinance:** The landscape plans shall be in conformance with the City's Water Conserving Landscape Ordinance that was developed in accordance with California law. This Ordinance restricts landscaping turf to certain areas, specifies plant selection, requires certain types of irrigation equipment, and calls for the development of comprehensive water use calculations as an aspect of the submitted landscape plans. **(MHMC 18.64)**

SIGNS

- A. **Separate Application Required for Sign Approval:** Signs proposed for this development shall be designed in conformance with the Sign Ordinance and shall require separate application and approval by the Planning Division prior to installation of any signs.

HABITAT PLAN

- A. **Fees:** The approved project is covered pursuant to the Santa Clara Valley Habitat Plan (Habitat Plan) and subject to fees and conditions contained in the Habitat Plan.
- B. **Application Package:** Prior to issuance of a grading permit, the project shall complete and submit a Habitat Plan Application Package. All fees shall be paid prior to issuance of a grading permit. **(MHMC 18.132)**
- C. **Conditions:** Any additional conditions or mitigations required by the Habitat Plan shall be clearly stated on all plans that involve any ground disturbing activity (i.e. grading plans, improvement plans, paving plans, demolition plans or other plans for site clearing or temporary stockpile of dirt). **(MHMC 18.132)**

AIR QUALITY

- A. **Dust, Noise, Vibration and Materials Management Plan:** A management plan detailing strategies for control of noise, dust and vibration, and storage of hazardous materials during construction of the project shall be submitted for review prior issuance of a grading permit and requirements shall be included on all site development and grading plans. The intent of this condition is to minimize construction related disturbance of residents of the nearby or adjacent properties. **(MHMC 18.76)**
1. All exposed surfaces shall be watered at a frequency adequate to maintain minimum soil moisture of 12 percent. Moisture content can be verified by lab samples or moisture probe.
 2. All excavation, grading, and/or demolition activities shall be suspended when average wind speeds exceed 20 mph.
 3. Wind breaks (e.g., trees, fences) shall be installed on the windward side(s) of actively disturbed areas of construction. Wind breaks should have at maximum 50 percent air porosity.
 4. Vegetative ground cover (e.g., fast-germinating native grass seed) shall be planted in disturbed areas as soon as possible and watered appropriately until vegetation is established.
 5. The simultaneous occurrence of excavation, grading, and ground disturbing construction activities on the same area at any one time shall be limited. Activities shall be phased to reduce the amount of disturbed surfaces at any one time.
 6. All trucks and equipment, including their tires, shall be washed off prior to leaving the site.
 7. Site accesses to a distance of 100 feet from the paved road shall be treated with a 6 to 12-inch compacted layer of wood chips, mulch, or gravel.
 8. Sandbags or other erosion control measures shall be installed to prevent silt runoff to public roadways from sites with a slope greater than one percent.
 9. Minimizing the idling time of diesel-powered construction equipment to two minutes.

10. The project shall develop a plan demonstrating that the off-road equipment (more than 50 horsepower) to be used in the construction project (i.e., owned, leased, and subcontractor vehicles) would achieve a project wide fleet-average 20 percent NOX reduction and 45 percent PM reduction compared to the most recent ARB fleet average. Acceptable options for reducing emissions include the use of late model engines, low emission diesel products, alternative fuels, engine retrofit technology, after-treatment products, add-on devices such as particulate filters, and/or other options as such become available.
11. Use low VOC (i.e., ROG) coatings beyond the local requirements (i.e., Regulation 8, Rule 3: Architectural Coatings).
12. Requiring that all construction equipment, diesel trucks, and generators be equipped with Best Available Control Technology for emission reductions of NOx and PM.
13. Requiring all contractors use equipment that meets CARB's most recent certification standard for off-road heavy-duty diesel engines.

CULTURAL RESOURCES

Significant Historic or Archaeological Materials: This project has been determined not to be in a site identified as archaeologically sensitive by the City's adopted archaeological sensitivity map, but nonetheless could adversely impact undocumented human remains or unintentionally discover significant historic or archaeological materials. The following policies and procedures for treatment and disposition of inadvertently discovered human remains or archaeological materials shall apply and should be provided as standard conditions on the building permit, grading permit, or improvement plans. If human remains are discovered, it is probable they are the remains of Native Americans.

1. If human remains are encountered they shall be treated with dignity and respect as due to them. Discovery of Native American remains is a very sensitive issue and serious concern. Information about such a discovery shall be held in confidence by all project personnel on a need to know basis. The rights of Native Americans to practice ceremonial observances on sites, in labs and around artifacts shall be upheld. Remains should not be held by human hands. Surgical gloves should be worn if remains need to be handled. Surgical mask should also be worn to prevent exposure to pathogens that may be associated with the remains.

2. In the event that known or suspected Native American remains are encountered or significant historic or archaeological materials are discovered, ground-disturbing activities shall be immediately stopped. Examples of significant historic or archaeological materials include, but are not limited to, concentrations of historic artifacts (e.g., bottles, ceramics) or prehistoric artifacts (chipped chert or obsidian, arrow points, groundstone mortars and pestles), culturally altered ash-stained midden soils associated with pre-contact Native American habitation sites, concentrations of fire-altered rock and/or burned or charred organic materials, and historic structure remains such as stone-lined building foundations, wells or privy pits. Ground-disturbing project activities may continue in other areas that are outside the discovery locale.
3. An “exclusion zone” where unauthorized equipment and personnel are not permitted shall be established (e.g., taped off) around the discovery area plus a reasonable buffer zone by the Contractor Foreman or authorized representative, or party who made the discovery and initiated these protocols, or if on-site at the time of discovery, by the Monitoring Archaeologist (typically 25-50ft for single burial or archaeological find).
4. The discovery locale shall be secured (e.g., 24-hour surveillance) as directed by the City or County if considered prudent to avoid further disturbances.
5. The Contractor Foreman or authorized representative, or party who made the discovery and initiated these protocols shall be responsible for immediately contacting by telephone the parties listed below to report the find and initiate the consultation process for treatment and disposition:
 - The City of Morgan Hill Development Services Director (408) 779-7247
 - The Contractor’s Point(s) of Contact
 - The Coroner of the County of Santa Clara (if human remains found) (408) 793-1900
 - The Native American Heritage Commission (NAHC) in Sacramento (916) 653-4082
 - The Amah Mutsun Tribal Band (916) 481-5785 (H) or (916) 743-5833 (C)
6. The Coroner has two working days to examine the remains after being notified of the discovery. If the remains are Native American the Coroner has 24 hours to notify the NAHC.

7. The NAHC is responsible for identifying and immediately notifying the Most Likely Descendant (MLD) from the Amah Mutsun Tribal Band. (Note: NAHC policy holds that the Native American Monitor will not be designated the MLD.)
8. Within 24 hours of their notification by the NAHC, the MLD will be granted permission to inspect the discovery site if they so choose.
9. Within 24 hours of their notification by the NAHC, the MLD may recommend to the City's Development Services Director the recommended means for treating or disposing, with appropriate dignity, the human remains and any associated grave goods. The recommendation may include the scientific removal and non-destructive or destructive analysis of human remains and items associated with Native American burials. Only those osteological analyses or DNA analyses recommended by the Amah Mutsun Tribal Band may be considered and carried out.
10. If the MLD recommendation is rejected by the City of Morgan Hill the parties will attempt to mediate the disagreement with the NAHC. If mediation fails then the remains and all associated grave offerings shall be reburied with appropriate dignity on the property in a location not subject to further subsurface disturbance.

GENERAL

- A. **Mitigation Fee Act:** Notice is hereby given that, pursuant to the Mitigation Fee Act, the City of Morgan Hill charges certain fees (as such term is defined in Government Code Section 66000) in connection with approval of this development project for the purpose of defraying all or a portion of the cost of public facilities related to this development project (Mitigation Fee Act Fees). These fees do not include fees for processing applications for governmental regulatory actions or approvals, fees collected as part of development agreements, or as a part of the application for the City's Residential Development Control System. The Mitigation Fee Act Fees applying to this project are listed in the schedule of fees to be provided at building permit stage. Notice is also hereby given that the Developer has an opportunity to protest the imposition of the Mitigation Fee Act Fees within 90 days of the approval or conditional approval of this development project and that the 90-day protest period has begun.

- B. **Signed Copies of Resolution with Conditions:** Submit two (2) signed copies of the resolution with conditions to the Planning Division prior to issuance of a building permit.
- C. **Traffic Analysis:** A traffic analysis shall be performed prior to each tenant occupying a building. Recommendations made in the traffic analysis to improve on-site or off-site conditions shall be incorporated as reviewed and approved by the Development Services Director and City Engineer prior to the tenant occupying the building.

ENGINEERING DIVISION

I. PROJECT SPECIFIC

- A. Street and Utility Improvements:
 - 1. Coordination with Adjacent Residential Project: The developer shall coordinate the De Paul Drive improvements and sanitary sewer improvements with the project known as "The Crosswinds Project" located on the east side of De Paul Drive (APNs: 728-30-001, -002, -003, & -004) and owned by Dividend Homes.
 - i. Prior to parcel map approval, the developer shall obtain the necessary right-of-way on De Paul Drive (and construction easement, if required) from Dividend Homes' Crosswinds Project.
 - 2. De Paul Drive: Construct De Paul Drive to comply with the City's half street (2/3 street) standards along the west side of De Paul Drive from Cochrane Road to the proposed cul-de-sac next to Half Road (includes the frontage along the Lands of Lee with APN: 728-30-008) to the satisfaction of the City Engineer.
 - i. Install and dedicate the required street improvements at De Paul Drive to have a straight road alignment with a minimum 46' right-of-way width and a minimum 36' pavement width from face of curb along the unimproved section of De Paul Drive to the new cul-de-sac next to Half Road.
 - ii. The City will quitclaim approximately 19' of right-of-way along the De Paul Drive frontage of APN: 728-30-009.
 - iii. The developer shall dedicate 36' right-of-way width in fee to the City for public street purposes along the De Paul Drive frontage of APN: 728-31-014 and dedicate a 10' wide Public Service Easement (PSE) behind the proposed property line.
 - iv. The project's right-of-way dedication and quitclaim shall be shown on the parcel map.

- v. The street improvements shall include, but are not limited to, curb and gutter, sidewalk, landscaping, full cul-de-sac at the southerly end of De Paul Drive next to Half Road, street paving, utilities, undergrounding, stormwater post-construction facilities, and street lighting.
 - vi. The project shall construct City standard sidewalk along the west side of De Paul Drive from Cochrane Road to the proposed cul-de-sac next to Half Road to provide a continuous pedestrian connection from the project site to Cochrane Road.
 - 1) The project has an option to construct a temporary asphalt sidewalk along the frontages of the future Phase 2 Project and the Lands of Lee (APN: 728-30-008)
 - vii. The project's two northerly driveways at De Paul Drive are proposed to have widths that exceed the City standard maximum industrial driveway width of 36' to allow truck access/maneuvering.
 - 1) At improvement plan/building permit stage, submit an additional truck turning template using the ultimate street width of De Paul Drive for City Engineer review.
 - viii. At improvement plan/building permit stage, revise the De Paul Drive street cross-sections to match the 2/3 street width.
- 3. Half Road: The developer shall construct Half Road to comply with City standards along the north side of the project's Half Road frontage to the satisfaction of the City Engineer.
 - i. Install and dedicate the required street improvements at Half Road. The street improvements shall include, but are not limited to, curb and gutter, sidewalk, landscaping, street paving, utilities, stormwater post-construction facilities, and street lighting.
 - ii. The developer shall dedicate right-of-way in fee to the City for public street purposes at a width of 36' from centerline along the Half Road frontage of APN: 728-30-009 and dedicate a 10' wide PSE behind the proposed property line.
 - iii. Extend the new sidewalk along the project's Half Road frontage westerly up to the Madrone Channel/Trail entrance. The design of the sidewalk and compliance with Valley Water's access requirements to Madrone Channel will be reviewed at improvement plan/building permit stage.
- 4. Cochrane Road: Construct the ultimate width of Cochrane Road along the project's frontage to comply with the City's arterial street standards to the satisfaction of the City Engineer.
 - i. Install and dedicate the required street improvements at Cochrane Road. The street improvements shall include, but are not limited to, curb and gutter, sidewalk, dedicated right-turn pocket along eastbound Cochrane Road, landscaping, street paving, utilities, stormwater post-construction facilities, and street lighting.

- ii. The developer shall dedicate a minimum of 60' of right-of-way from the centerline of Cochrane Road for public street purposes along the Cochrane Road frontage of APN: 728-31-014 and dedicate a 10' wide PSE behind the proposed property line.
 - iii. At improvement plan//building permit stage, revise plans to show the number of streetlights and spacing along Cochrane Road to comply with City standards. Per City standards, streetlight spacing for arterials is 160' to 180' and streetlight location shall be directly opposite the existing streetlight on the north side of Cochrane Road.
 - iv. At improvement plan//building permit stage, submit a traffic signal modification plan for the Cochrane Road/De Paul Drive intersection. The plan shall include the relocation or replacement of the two existing traffic signal poles on the southwest corner of the intersection, signal phasing, and the proposed striping plans.
- 5. Utilities: The City's Water System Master Plan, Storm Drainage System Master Plan, and Sewer System Master Plan identified proposed improvements along De Paul Drive and Half Road.
 - i. Storm Improvements:
 - 1) The project shall construct a 48" to 54" storm main along the project's Half Road frontage per the City's Storm Master Plan.
 - 2) Provide a minimum 20' wide additional PSE centered over the portion of the proposed storm drain main located west of Condit Road. The PSE shall be reviewed at parcel map stage.
 - 3) The developer shall continue to work with the City and Valley Water to review the design conditions of the PL-566 project and shall revise the on-site drainage plans at improvement plan stage, as needed, to the satisfaction of the City Engineer.
 - 4) Per the notes on the project's Vesting Tentative Parcel Map, the site is in Flood Zone "X- Shaded" and Flood Zone "AE" as shown on the FEMA Flood Insurance Rate Maps. Depending on the results of Valley Water's updated hydrology model, the project may be required to submit a Letter of Map Revision (LOMR) to FEMA or other appropriate documentation to update the flood zone for the site and designate the entire site to be entirely within Flood Zone "X- Shaded", an area defined as outside the 100-year floodplain.
 - 5) A segment of the proposed 24" storm main along De Paul Drive shows a manhole spacing that exceeds the City standard maximum spacing of 400' for 15" to 30" storm pipe diameters. At improvement plan/building permit stage, revise storm manhole spacing to comply with City standards.
 - 6) At improvement plan/building permit stage, revise the pipe size of the following to the minimum size of 15-inch diameter per City standard:

- a) Proposed 12" storm main segment at De Paul Drive, between Sta. 16+00 and Sta. 18+00.
 - b) Proposed 12" storm lateral at Half Road, near Sta. 5+40.
 - c) Proposed 12" storm laterals at De Paul Drive.
- ii. Water Improvements: At improvement plan/building permit stage, revise the plans to comply with the following:
 - 1) Extend the existing 12" public water main from the southerly terminus of De Paul Drive to Half Road per the City's Water System Master Plan. The water main extension shall be public.
 - 2) At improvement plan/building permit stage, show each of the five buildings with a dedicated domestic, irrigation and fire services connected to a public water main.
 - 3) The Utility Plans show the domestic water service for two parcels (Parcels C & D) crossing other parcels. Service for Parcel D crosses Parcel A and service for Parcel C crosses Parcel B. At parcel map review stage, add private utility easements for the water services on Parcels A and B.
 - 4) Detailed review of the water service configurations, water lateral, meter and backflow preventer locations will be performed at improvement plan/building permit stage and will be subject to City Engineer approval.
- iii. Sanitary Sewer Improvements: Based on the proposed amendment to the City's Sewer Master Plan, a sewer flow re-route into the Condit Road Sewer Trunk will be a required sewer master plan improvement for the project.
 - 1) Install a 10" sanitary sewer gravity main beginning at De Paul Drive, approximately 540' south of Cochrane Road; then continue in a southbound direction to Half Road; then west along Half Road up to Condit Road; then follow Condit Road and end at a connection to the existing 10" sewer main at Main Avenue.
 - 2) At improvement plan/building permit stage, revise the plans to comply with the following:
 - a) On Sheet 6.5 (Preliminary Street Improvement Sections - Sections G & H), show the new 10" sanitary sewer main at Half Road to be constructed by the project.
 - b) Show a minimum horizontal clearance of 10' from the existing Valley Water groundwater recharge line.
 - 3) Prior to parcel map approval/building permit issuance, the project shall enter into a Private Sanitary Sewer Maintenance Agreement with the City for maintenance of all private sanitary sewer facilities

which includes the private sewer mains, sewer laterals, force main and lift station.

- 4) A sanitary sewer test manhole shall be provided for each of the five buildings and shall be accessible to the Pretreatment Inspector. The sanitary sewer test manholes shall be located within private property but adjacent to the street right-of-way or as approved by the City Engineer in conjunction with Pretreatment Inspector review.

6. Reimbursement Agreement: Prior to parcel map approval, the developer shall enter into a Reimbursement Agreement with the City for the reimbursement of the applicable portions of the cost to construct the following improvements that are beyond the developer's responsibility as determined by the City Engineer:
 - i. De Paul Drive and Half Road street improvements
 - ii. Traffic signal improvements at the intersection of Cochrane Road & De Paul Drive
 - iii. Storm improvements at Half Road per City's Storm Master Plan including the proposed outfall to Madrone Channel. The developer will be reimbursed for the cost to upsize the storm main above 24" per the City's Storm Master Plan.
 - iv. Sanitary sewer improvements per the City's Sewer Master Plan with the cost based on a sewer cost allocation to be agreed upon by the City, project developer and by Dividend Homes for the Crosswinds Project. The developer will be reimbursed for the cost to upsize the sewer main from 8" (developer's responsibility) to 10" per the proposed amendment to City's Sewer Master Plan.
7. Permits/Approvals from Other Agencies:
 - i. At improvement plan/building permit stage, the developer shall submit the improvement plans to Valley Water for review and approval of the following work:
 - 1) Proposed improvements along Half Road due to the proximity of the work to the existing Valley Water groundwater recharge pipeline
 - 2) Proposed storm outfall to Madrone Channel
 - 3) Any required or proposed modifications to an existing storm outfall
 - 4) Proposed Madrone Channel access
 - ii. Prior to start of sanitary sewer construction at Half Road/Condit Road, the developer shall obtain an encroachment permit from County Roads & Airports for the installation of the sanitary sewer main extension along Condit Road.

- B. Stormwater Management: The project's Preliminary Stormwater and Hydrology Report dated January 29, 2021 was submitted for City review. At improvement

plan/building permit stage, submit the Final Stormwater and Hydrology Report that addresses all of the stormwater comments included in Land Development Engineering's supplemental comment letter dated February 26, 2021.

1. The developer/owner(s) of each of the five parcels will be required to enter into a formal written Stormwater BMP Operation and Maintenance Agreement with the City prior to building permit issuance. The draft agreement will be provided at improvement plan/building permit stage.
2. At improvement plan/building permit stage, the project shall revise the plans to meet the following design criteria for all loading/unloading dock areas:
 - i. Cover loading dock areas or design drainage to minimize run-on and runoff of stormwater.
 - ii. Direct connections to storm drains from depressed loading docks (truck wells) are prohibited.

C. Grading:

1. At improvement plan/building permit stage, address the following grading comments:
 - i. The Section Details on Sheets C3.1, 3.2, & 3.3 include high points, such as the location of the proposed landscape screening in Section Detail A. Provide spot grades on the grading and drainage plans at these locations and label as high points.
 - ii. Revise the callouts or the section details to match.
 - iii. Sheet C2.2 calls out a 6' clearance between curb and building E while the clearance shown in Section N on Sheet C3.4 is 8'. Revise to match.

D. Landscaping:

1. At improvement plan/building permit stage, revise the proposed street tree species to comply with the list of Zone 1 street tree species in the City's Master Street Tree Plan.
2. The project shall comply with the City's adopted Santa Clara Valley Water Resource Protection Collaborative's "Guidelines and Standards for Land Use Near Streams. A copy of the guidelines and standards can be found at <https://www.valleywater.org/contractors/doing-businesses-with-the-district/permits-for-working-on-district-land-or-easement/guidelines-and-standards-for-land-use-near-streams>."
 - i. Verify that the proposed landscaping along the project's westerly property line, adjacent to Madrone Channel, complies with the Guidelines and Standards (See Chapters 3 & 4).
3. There is a small, unimproved area behind the new cul-de-sac, next to Half Road, with no improvement proposed. At improvement plan/building permit

stage, add a note stating the temporary or permanent landscaping or hardscape proposed for this area.

ENGINEERING STANDARD CONDITIONS

I. GENERAL

- A. The applicant shall cause the construction of all public and private improvements in accordance with the latest City Standard Drawings and Specifications. **(MHMC 12.02.090 A; 17.32.010 A)**
- B. The applicant shall submit as part of the improvement drawings for the project, profiles of all improvements in the project and typical cross-sections of all streets and details of curbs, gutters, and sidewalks, to be accomplished to the satisfaction of the City Engineer prior to submittal of Parcel Map. **(MHMC Sec 17.32.060 B; 17.32.070; 17.32.080 A)**
- C. Obtain necessary encroachment permits from:
 - ☒ City of Morgan Hill
 - ☒ County of Santa Clara Roads & Airports
 - ☒ Santa Clara Valley Water District (Valley Water)
 and provide guarantee covering off-site improvements. **(MHMC 12.08.040 A; 12.08.090)**
- D. Improvement plans are to show water lines, sanitary sewer, storm drain system, pavement widths, curve radius, and existing utilities.
- E. Enter into a Subdivision Improvement Agreement (SIA) with the City of Morgan Hill to cover required improvements. **(MHMC 12.02.150; 17.32.010 B; 17.32.160)**
- F. Reciprocal access easements and maintenance agreements ensuring access to all parcels and joint maintenance of all common roads, drives or parking areas shall be provided by CC&R's and by deed and shall be recorded concurrent with the map, or prior to issuance of building permit where no map is involved. **(MHMC 17.20.350 H)**
- G. **Impact Fees:** The City of Morgan Hill, pursuant to City Code Chapter 3.56 has established impact fees to finance the cost of improvements required by new development. City Code Chapter 3.56.050 provides for automatic annual (July 1st) adjustment of those fees in existence utilizing the Engineering News Record Index for the preceding twelve months. The City maintains historical records on the Engineering News Record Index. These records are available

for inspection during normal business hours. **(MHMC 3.56.010; 3.56.030; 3.56.050)**

II. STREET IMPROVEMENTS

- A. **Public and Private Streets:** The applicant shall cause the design and construction of all new public and private streets serving the project. The design of all new public and private streets shall be consistent with the General Plan Land Use and Circulation Element as well as the Street Standard Details as contained within the Public Works Standards Details. The construction of the streets shall be undertaken to the lines and grades and in a manner satisfactory to the City Engineer. All street improvements shall be constructed to the satisfaction of the City Engineer. The timing of the improvements will be determined by the City. **(MHMC 12.02.010; 12.02.090; 17.32.060 B; CMH General Plan; CMH Design Standards and Standard Details for Construction)**
- B. **Installation and Dedication of Streets:** The project shall install and dedicate street improvement including, but not limited to, curb and gutter, sidewalk, compaction, street paving, oiling, storm drainage facilities, sewer and water, fire protection, undergrounding of utilities and street lighting in conformance with City of Morgan Hill requirements. **(MHMC 12.02.010; 12.02.50; 12.02.080; 12.02.100; 17.28.010; 17.32.060)**
- C. **Underground existing utilities:** All existing overhead utilities adjacent to any site boundary or along any street frontage of site shall be placed underground in accordance with City standards and affected utility company guidelines. **(MHMC 12.02.090 B; 17.32.020 E.1)**

III. SANITARY SEWER SYSTEM

- A. **Design of Sewer Improvements:** The applicant shall cause to be undertaken the design and construction of sanitary sewer improvements including, but not limited to installation of sewer line extension on the proposed public street(s) or private street(s)/drive aisle(s). The sanitary collection system shall include, but not be limited to manholes with manhole frames and covers, cleanouts, wye-branches and laterals, and separate sewer taps to each parcel. These are to be installed by the developer. **(MHMC 13.20.355; 17.32.020 C; CMH Sewer System Master Plan; CMH Design Standards and Standard Details for Construction)**
- B. All existing and future sewer lines shall be tied into the City's system and existing septic systems shall be abandoned in accordance with City requirements. **(MHMC 13.24.060; 17.32.20 C)**

IV. STORM DRAIN SYSTEM

- A. **Storm Drainage Study:** A complete storm drainage study of the proposed development must be submitted showing amount of run-off, and existing and proposed drainage structure capacities. This study shall be subject to review and approval by the City Engineer. All needed improvements will be made by the applicant. No overloading of the existing system will be permitted. **(MHMC 17.32.020 B; 17.32.090; CMH Design Standards and Standard Details for Construction)**
- B. **Storm Drainage Design:** The applicant shall cause the design and construction to be undertaken for a storm drainage collection system shown on the Tentative Map/Design Review plans. All storm drain improvements shall be constructed to the satisfaction of the City Engineer. **(MHMC 17.32.020 A & B)**
- C. **Storm Drainage Capacity:** Collection system shall be designed to be capable of handling a 10-year storm without local flooding. On-site detention facilities shall be designed to a 25-year storm capacity. Streets shall be designed to carry 100-year storm. Items of construction shall include, but not be limited to installation of storm line extension on proposed public street(s), surface and subsurface storm drain facilities, manholes with manhole frames and covers, catch basins and laterals. Note: the project may be required to **retain** stormwater runoff as part of resolution R3-2013-0032 prior to releasing discharge rates at pre-development flows. **(MHMC 17.32.020 B; 18.74.440; CMH Design Standards and Standard Details for Construction; CMH Storm Drainage System Master Plan)**
- D. **Storm Drainage General Requirements:** Prior to issuance of a grading permit, the applicant shall complete the following to the satisfaction of the City Engineer.
 - 1. Storm drain calculations to determine detention/retention pond sizing and operations.
 - 2. Plan describing how material excavated during construction will be controlled to prevent this material from entering the storm drain system.
 - 3. Water Pollution Control Drawings (WPCD) for Sediment and Erosion Control.**(CMH Design Standards and Standard Details for Construction)**
- E. **Valley Water Dedications:** Where the project adjoins existing Valley Water storm drain facilities, applicant shall obtain dedication(s) of all necessary easement or right-of-way to accommodate established ultimate facilities master plan.
- F. **Tree Protection:** BMP Tree protection shall be part of the SWPPP inspections.

G. NPDES Construction Activity General Permit/SWPPP Requirements: As required by the State Water Resources Control Board (SWRCB) Order No. 2009-0009-DWQ, construction activity resulting in a land disturbance of one (1) acre or more of soil, or whose projects are part of a larger common plan of development that in total disturbs more than one (1) acre, are required to obtain coverage under the National Pollutant Discharge Elimination System (NPDES) General Permit No. CAS000002 for Discharges of Storm Water Associated with Construction Activity (General Permit). To be permitted with the SWRCB under the General Permit, owners must file a complete Notice of Intent (NOI) ONLINE at: <http://smarts.waterboards.ca.gov/smarts/faces/SwSmartsLogin.jsp> and develop a Storm Water Pollution Prevention Plan (SWPPP) Manual in accordance with the General Permit. The SWPPP Manual shall follow the CASQA SWPPP template/format at <https://www.casqa.org/store/products/tabid/154/p-167-construction-handbookportal-initial-subscription.aspx> and shall be approved by Public Works Engineering. A Waste Discharger Identification (WDID) number to be issued to the construction site after the SWRCB receives and verifies the submitted ONLINE NOI information. The WDID number and approved SWPPP Manual shall be provided to Public Works and the Building Department prior to any approval of grading activities (**SWRCB NPDES General Permit CA000002**).

H. NPDES GENERAL PERMIT SITE SWPPP INSPECTIONS AND COMPLIANCE:

1. ALL project onsite and offsite construction activity shall have the site inspected by a **qualified third party SWPPP Inspector (QSD or QSP or RCE)**.
2. SWPPP Inspections shall occur weekly during the rainy season (September 15th thru May 1st).
3. SWPPP Inspections shall occur bi-weekly during the non-rainy season.
4. 48 hours prior to and following a forecasted rain event, SWPPP Inspections shall occur in addition to those of items 2 or 3 above.
5. Per each of the inspection conditions 2, 3, or 4, the NPDES SWPPP Inspector shall certify in writing to the Building and Public Works Department if the site is in compliance or non-compliance with the NPDES General Permit for Stormwater, site SWPPP Manual, and Water Pollution Control Drawings (per the CMH-SWPPP Inspection Check List to be provided by Public Works). QSD/QSP SWPPP Inspectors shall forward onsite and offsite information/certification to the Building (on-site private property issues) and Public Works (public right-of-way issues) inspectors, respectively.
6. Prior to rain events, BMPs not in compliance will need to be corrected immediately.
7. Illicit discharges per the NPDES General Permit, non-compliance of tracking control, and inlet protection within the public right of way shall be address immediately.

8. Other non-compliance issues need to be addressed within a 24-hour period.
9. Non-compliance issues which have been corrected shall be verified by NPDES SWPPP Inspector by a follow up inspection.
10. BMPs maintenance/inspections shall include tree protection if applicable.

V. WATER SYSTEM

- A. **Domestic Water System:** The applicant shall cause the design and construction to be undertaken of a domestic water system to the satisfaction of the City Engineer. The water system improvements shall be constructed within public easements or street rights-of-way to the satisfaction of the City Engineer and dedicated to the City. **(MHMC 17.32.020 A & D; CMH Design Standards and Standard Details for Construction; CMH Water System Master Plan)**
- B. **Water well abandonment:** Abandonment of any existing water well shall be in conformance with Santa Clara Valley Water District (Valley Water) Ordinance 90-1. Location and disposition to be shown on the plan. Well(s) shall be properly registered with Valley Water and either be maintained or abandoned in accordance with Valley Water standards.
- C. **Water line extension:** Install water line extension on the proposed public streets and/or private streets. **(MHMC 17.32.020 A & D; CMH Water System Master Plan)**
- D. **Water Meters:** Provide separate water services and meters for each parcel. These are to be installed by developer. **(MHMC 17.32.020 D)**
- E. Provide separate fire service and double detector check with FDC per City standard detail W-8 for each parcel.

VI. OTHER CONDITIONS

- A. **Easement Dedications:** The owner shall dedicate all necessary utility easements. **(MHMC 12.02.080 D; 17.28.010 A)**
- B. **Undergrounding new utilities:** The applicant shall cause the design and construction required to underground all electric, gas, Cable TV and communication lines within the development. Such design and construction shall be to the satisfaction of the affected utilities and the City Engineer. **(MHMC 17.32.020 E.1)**
- C. **Parcel Map:** For minor subdivision (4 lots or less), the parcel map shall be signed by the City Engineer and the Planning Commission Secretary prior to issuance of a grading permit. **(MHMC 17.20.390; 17.24.210)**

- D. **Landscaping and Irrigation Systems:** Landscaping and irrigation systems serving common areas that are required to be installed in the public right-of-way on the perimeter of this project shall be continuously maintained by the property owner or designated maintenance entity.
- E. **Final Landscape Plans:** Final landscape plans shall be submitted with and included as part of the improvement plans for the project. **(MHMC 17.08.090)**
- F. **Pre-construction Meeting:** Prior to the approval of any building permit for grading activity, the developer shall schedule a pre-construction meeting with the Public Works Inspection Division with the following project team members:
 - 1. Civil Engineer of record
 - 2. Geotechnical Engineer of record
 - 3. Third Party QSD/QSP SWPPP Inspector
 - 4. General Contractor
 - 5. Sub-Contractors

VII. NPDES WATER QUALITY STORMWATER MANAGEMENT DEVELOPMENT STANDARDS

- A. **Stormwater Management Guidance Manual for Low Impact Development State Water Resources Control Board Post Construction Requirements (PCRs):** Project shall comply with the California Regional Water Quality Control Board Central Coast Region Resolution No. R3-2013-0032 as documented by the **Stormwater Management Guidance Manual for Low Impact Development and Post-Construction Requirements** (developed from Resolution No. R-2013-0032 Attachment 1 and 2 at: http://www.waterboards.ca.gov/centralcoast/water_issues/programs/stormwater/docs/lid/lid_hydromod_charette_index.shtml). A copy of the guidance manual can be obtained through the Land Development Engineering webpage. Project shall provide Stormwater Runoff Management Plan, Stormwater Control Plan Checklist and applicable calculations per the Stormwater Management Guidance Manual for Low Impact Development and Post-Construction Requirements. Project shall meet the applicable requirements of the Stormwater Management Guidance Manual for Low Impact Development and Post-Construction Requirements:
 - 1. Performance Requirement 1: Site Design and Runoff Reduction
 - 2. Performance Requirement 2: Water Quality Treatment
 - 3. Performance Requirement 3: Runoff Retention
 - 4. Performance Requirement 4: Peak Management
- B. **Peak Storm Water Runoff Discharge Rates:** Post-development peak storm water runoff discharge rates shall not exceed the estimated pre-development rate for developments where the increased peak storm water discharge rate will

result in increased potential for downstream erosion. Note: the project may be required to **retain** stormwater runoff as part of resolution R3-2013-0032 prior to releasing discharge rates at pre-development flows.

- C. **Provide Storm Drain System Stenciling and Signage:** Storm drain stencils are highly visible source controls that are typically placed directly adjacent to storm drain inlets. The stencil contains a brief statement that prohibits the dumping of improper materials into the storm water conveyance system. Graphical icons, either illustrating anti-dumping symbols or images of receiving water fauna, are effective supplements to the anti-dumping message. All storm drain inlets and catch basins within the project area must be stenciled with prohibitive language (such as: "NO DUMPING – DRAINS TO CREEK") and/or graphical icons to discourage illegal dumping. Signs and prohibitive language and/or graphical icons, which prohibit illegal dumping, must be posted at public access points along channels and creeks within the project area. Legibility of stencils and signs must be maintained.
- D. **Properly Design Trash Enclosure Areas:** All trash enclosure areas must meet the following Structural or Treatment Control BMP requirements:
1. Roof Required: Trash enclosure areas shall have an all-weather noncombustible solid roof to prevent rainwater from mixing with the enclosure's contents.
 2. Walls Required: Trash enclosure shall have structural walls to prevent unauthorized off-site transport of trash.
 3. Doors: Trash enclosure shall have door(s) which can be secured when closed.
 4. Grades: The pad for the enclosure shall be designed to not drain outward, and the grade surrounding the enclosure shall be designed to not drain into the enclosure.
 5. Drain Inlet: Within the enclosure, an area drain with an approved (Zurn) vandal proof drain shall be installed and shall be plumbed to the sanitary sewer system with grease trap. Grease trap shall be located within the trash enclosure footprint.
- E. **Design Standards for Structural or Treatment Control BMPs:** The post-construction treatment control BMPs shall incorporate, at a minimum, either a volumetric or flow- based treatment control design standard, or both, as identified below to mitigate (infiltrate, filter or treat) storm water runoff:
1. Volumetric Treatment Control BMP
 - a. The 85th percentile 24-hour runoff event determined as the maximized capture storm water volume for the area, from the formula recommended in Urban Runoff Quality Management, WEF Manual of Practice No. 23/ASCE Manual of Practice No. 87, (1998); or
 - b. The volume of annual runoff based on unit basin storage water quality volume, to achieve 80 percent or more volume treatment by the method

- recommended in California Stormwater Best Management Practices Handbook – Industrial/ Commercial, (2003); or
- c. The volume of runoff produced from a historical-record based reference 24-hour rainfall criterion for “treatment” that achieves approximately the same reduction in pollutant loads achieved by the 85th percentile 24-hour runoff event.
2. Flow Based Treatment Control BMP
 - a. The flow of runoff produced from a rain event equal to at least two times the 85th percentile hourly rainfall intensity for the area; or
 - b. The flow of runoff produced from a rain event that will result in treatment of the same portion of runoff as treated using volumetric standards above.
- F. **Stormwater Runoff Management Plan (SWRMP) required:** The stormwater runoff management plan shall include sufficient information to evaluate the environmental characteristics of affected areas, the potential impacts of the proposed development on water resources, and the effectiveness and acceptability of measures (post construction BMPs) proposed for managing stormwater runoff.
1. The stormwater runoff management plan shall be prepared under the direction of a professional civil engineer registered in the State of California. The responsible professional civil engineer shall stamp and sign the approved stormwater runoff management plan.
 2. The City Engineer or designee may require a developer to provide a signed certification from the civil engineer responsible for preparing the stormwater runoff management plan that all stormwater best management practices have been designed to meet the requirements of this chapter.
 3. Each certifying civil engineer shall establish to the City's satisfaction that such person has been trained on the design of stormwater quality best management practices not more than three years prior to the certification signature date.
 4. Qualifying training shall be conducted by an organization with stormwater quality management expertise, such as a university, the Bay Area Stormwater Management Agencies Association, the American Society of Civil Engineers, the American Public Works Association, or the California Water Environment Association.
- G. **Stormwater BMP operation, maintenance, and replacement responsibility**
1. All on-site stormwater management facilities shall be operated and maintained in good condition and promptly repaired/replaced by the property owner(s), an owners' association or other legal entity approved by the city.
 2. Any repairs or restoration/replacement and maintenance shall be in accordance with city-approved plans.
 3. The property owner(s) shall develop a maintenance schedule for the life of any stormwater management facility and shall describe the maintenance to

be completed, the time period for completion, and who shall perform the maintenance. This maintenance schedule shall be included with the approved stormwater runoff management plan.

H. Stormwater BMP operation and Maintenance Agreement (SWBOMA)

required: Prior to the issuance of any building permit requiring stormwater management BMPs, the owner(s) of the site shall enter into a formal written stormwater BMP operation and maintenance agreement with the city. The City shall record this agreement, against the property or properties involved, with the County of Santa Clara and it shall be binding on all subsequent owners of land served by the storm water management treatment BMPs (City standard Stormwater BMP Operation and Maintenance Agreement to be provided by Land Development Engineering at improvement plan/building permit stage).

I. Stormwater BMP inspection responsibility

1. The property owner(s) shall be responsible for having all stormwater management facilities inspected for condition and function by a **Registered Civil Engineer (RCE)**.
2. Unless otherwise required by the City Engineer or designee, stormwater facility inspections shall be done at least twice per year (April 15th and September 15th) by the RCE. Written records shall be kept of all inspections and shall include, at minimum, the following information:
 - a. Site address;
 - b. Date and time of inspection;
 - c. Name of the person conducting the inspection;
 - d. List of stormwater facilities inspected;
 - e. Condition of each stormwater facility inspected;
 - f. Description of any needed maintenance or repairs; and
 - g. As applicable, the need for site re-inspection.
3. Upon completion of each inspection, an inspection report shall be submitted to Land Development Engineering.

J. Records of maintenance and inspection activities: On or before April 15th and September 15th of each year, the party responsible for the operation and maintenance of on-site stormwater management facilities under the BMP operation and maintenance agreement shall provide the City Engineer or designee with records of all inspections, maintenance and repairs.

K. Annual Certification of SWRMP: On or before September 30th of each year, a Registered Civil Engineer (RCE) shall provide written certification that the developments stormwater quality design standards are properly maintained and functioning as required by the SWRMP.

BUILDING DIVISION

- A. Trash enclosures shall be connected to an accessible route.
- B. Trash enclosures shall have a solid noncombustible roof structure to prevent storm water from entering the sanitary sewer system. See Pretreatment requirements regarding the required connection to sanitary sewer.
- C. All building entrances shall be on an accessible route, CBC 11B-206.4. CBC 1028.5 requires the exit discharge shall provide a direct and unobstructed access to a public way.
- D. **California Code of Regulations:** Project shall be designed to comply with the most current California Code of Regulations as amended by Morgan Hill Municipal Code Title 15. Building Permit applications submitted after January 1, 2020 shall be designed to comply with the 2019 California Codes of Regulations.
- E. **Compliance with Morgan Hill Municipal Code:** Project shall comply with the Morgan Hill Municipal Code (MHMC) including but not limited to:
 - 1. MHMC 15.65 Sustainable Building Regulations.
 - 2. MHMC 18.72.040 C. Electric Vehicle Charging.
 - i When Required. Electric vehicle charging stations shall be provided:
 - (a) For new structures or uses required to provide at least twenty-five parking spaces; and
 - (b) Additions or remodels that increase an existing parking lot of fifty or more spaces by ten percent or more.
 - ii Number of Charging Stations. The number of required charging stations shall be as follows:
 - (a) Twenty-five to forty-nine parking spaces: One charging station.
 - (b) Fifty to one hundred parking spaces: Two charging stations, plus one for each additional fifty parking spaces.
 - 3. MHMC 15.40 Building Security
 - 4. MHMC 15.38 Wage Theft Preventions
 - 5. MHMC 18.148 Water Conservation
 - 6. MHMC 15.63 Prohibition of Natural Gas Infrastructure in New Buildings

FIRE DIVISION

- A. **Preliminary Review Only:** The requirements and conditions stated in this review are preliminary and are intended to be used for the purposes of project planning. An official Fire Department review of the project will be conducted upon receipt of a complete plan submittal application that clearly shows all intended grading, demolition, construction or building modifications.

- B. **Proposal limited to:** Review of this Development proposal is limited to acceptability of site access as they pertain to fire department operations, and shall not be construed as a substitute for formal plan review to determine compliance with adopted model codes. Prior to performing any work, the applicant shall make application to, and receive from, the Building Department all applicable construction permits.
- C. Underground fire service, fire sprinklers, and fire alarm shall all be deferred submittals under a separate permit.

SANTA CLARA VALLEY WATER DISTRICT

- A. Proposed outfalls to the Madrone Channel shall require permits from Valley Water, the Central Coast Regional Water Quality Control Board, US Army Corps of Engineers and the California Department of Fish and Wildlife.
- B. The proposed location of the outfall to the Madrone Channel shall be reviewed and approved by Valley Water.
- C. Grading adjacent to Madrone Channel shall be at a maximum 4:1 slope along the property line, for the minimum amount necessary, per the Guidelines and Standards for Land Use Near Streams. All site drainage should be directed to the City storm drain system, not overbank towards Madrone Channel. Bio-swales should be designed to overflow into the site drainage system, not overbank into Madrone Channel.
- D. Any road work, grading, paving and proposed utility (sewer or water, etc.) crossing over Valley Water's Main-Madrone Pipeline in Half Road shall require a Valley Water Permit.
- E. Landscaping shall be setback such that there are no overhanging branches in Valley Water right of way during and at full growth. Species selection should be in accordance with the Guidelines and Standards for Land Use Near Streams.
- F. The proposed storm drain outfall manhole shall be located outside Valley Water right-of-way.
- G. Improvement plans shall be submitted to Valley Water for review and approval of the proposed Madrone Channel access.

RESOLUTION NO. 21-05

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MORGAN HILL APPROVING OF A VESTING TENTATIVE PARCEL MAP FOR A 4-LOT PARCEL MAP ON A 29-ACRE SITE LOCATED ON THE NORTHERN INTERSECTION OF CONDIT ROAD AND HALF ROAD (DE PAUL – TC MORGAN HILL VENTURE (REDWOOD TECH AT 101)) (APNS 728-30-006 AND 728-30-009)

WHEREAS, on December 15, 2020, TC Morgan Hill Venture submitted an application for a vesting tentative parcel map (SD2020-0011: De Paul – TC Morgan Hill Venture) for the Redwood Tech at 101 project; and

WHEREAS, such request was considered by the Planning Commission at its meeting of May 25, 2021; and

WHEREAS, this project is consistent with the development projections analyzed in the Morgan Hill 2035 General Plan program EIR for the project site. The project also is designed to be consistent with the development standards in the General Plan and Zoning Code. No further environmental assessment is required; and

WHEREAS, testimony received at a duly-noticed public hearing, along with exhibits and drawings and other materials have been considered in the review process.

NOW, THEREFORE, THE MORGAN HILL PLANNING COMMISSION DOES RESOLVE AS FOLLOWS:

SECTION 1. The Vesting Tentative Parcel Map, together with its provisions for its design and improvements, is consistent with the General Plan and the zoning code.

SECTION 2. The Vesting Tentative Parcel Map as described herein is hereby approved. The proposed project shall be subject to the conditions as identified in the set of standard conditions attached hereto, as Exhibit A, and by this reference incorporated herein.

PASSED AND ADOPTED THIS 25th DAY OF MAY 2021, AT A SPECIAL MEETING OF THE PLANNING COMMISSION BY THE FOLLOWING VOTE:

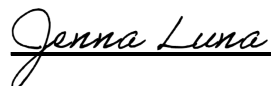
AYES:	COMMISSIONERS:	HABIB, KUMAR, TANDA, GONZALEZ- ESCOTO, DOWNEY, MUNOZ-MORRIS
NOES:	COMMISSIONERS:	MUELLER

City of Morgan Hill
Resolution No. 21-05
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ABSTAIN: **COMMISSIONERS:** **NONE**

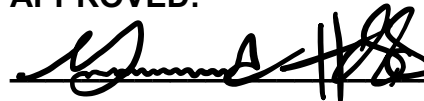
ABSENT: **COMMISSIONERS:** **NONE**

ATTEST:



JENNA LUNA, Deputy City Clerk

APPROVED:



MOHAMMAD HABIB, Chair

Date: 05/28/2021

EXHIBIT "A" STANDARD CONDITIONS

**APPLICATION NO: SD2020-0011: DE PAUL – TC MORGAN HILL VENTURE
 (REDWOOD TECH AT 101)**

**THE FOLLOWING APPROVAL REQUIREMENTS AND ANY SPECIAL CONDITIONS
 SHALL BE APPLIED THROUGH THE DEVELOPMENT APPROVAL PROCESS.**

Legend

MHMC= Morgan Hill Municipal Code
 MHARH= Morgan Hill Architectural Review Handbook
 CMH= City of Morgan Hill
 CFC= California Fire Code

I. PROJECT DESCRIPTION

The project includes a Vesting Tentative Parcel Map to subdivide the project site into four parcels.

The project shall comply with all requirements of related project approvals granted by the City, including all of the following:

II. PROJECT CONDITIONS OF APPROVAL

This Tentative Parcel Map approval is limited to the plan set dated January 2021 on file (File Number SD2020-0011) with the Development Services Department. These documents, as amended by Design Review approval, show the location and sizes of all lots in this development, the location and dimensions of all vehicle and pedestrian circulation ways (ingress/egress), common areas, and other easement areas.

The Parcel Map shall be in substantial compliance with the approved Tentative Map as determined by the City Engineer and Development Services Director.

PLANNING DIVISION

DEFENSE AND INDEMNITY

- A. As part of, and in connection, with this application to the City of Morgan Hill, Applicant agrees to defend, indemnify, and hold harmless the City of Morgan Hill, its officers, agents, employees, officials and representatives (Indemnitees) from and against any and all claims, actions, or proceedings arising from any suit for damages or for equitable or injunctive relief which is filed against City to attack, set aside, void or annul its approval of this application or any related decision, or the adoption of any environmental documents which relates to said approval. The

City shall promptly notify the Applicant of any such claim, action or proceeding and the City shall cooperate fully in the defense thereof. In the event that Applicant is required to defend Indemnitees in connection with the proceeding, Indemnitees shall retain the right to approve (a) the counsel to so defend Indemnitees; (b) all significant decisions concerning the manner in which the defense is conducted; and (c) any and all settlements, which approval shall not be unreasonably withheld. This indemnification shall include, but is not limited to, (a) all pre-tender litigation costs incurred on behalf of the City, including City's attorney's fees and all other litigation costs and expenses, including expert witnesses, required to defend against any lawsuit brought as a result of City's approval or approvals; (b) reasonable internal City administrative costs, including but not limited to staff time and expense spent on the litigation, after tender is accepted; and (c) all damages, costs, expenses, attorney fees or expert witness fees that may be awarded to the prevailing party arising out of or in connection with the approval of the application or related decision. City may, in its sole discretion, participate in the defense of such action; but such participation shall not relieve Applicant of its obligations under this condition. The undersigned hereby represents that they are the Applicant or are fully empowered by the Applicant as their agent to agree to provide the indemnification, defense and hold harmless obligations, and the signature below represents the unconditional agreement by Applicant to be bound by such conditions.

TIME LIMITS

- A. **Term:** The Tentative Parcel Map approval granted pursuant to this Resolution shall remain in effect for two years to May 25, 2023. Failure to apply for Parcel Map approval with the City Engineer within this term shall result in expiration of approval unless an extension of time is granted by the Development Services Department/Planning Commission prior to the expiration date. **(MHMC 17.20.170; 17.24.110)**

SITE DEVELOPMENT

- A. **Street Names:** Street names, private or otherwise, used to identify building locations shall be submitted to the Planning Division for approval. Proposed street names shall comply with the Street Naming Policy approved by City Council (Resolution No. 4601) and CP 94-13.

HABITAT PLAN

- A. **Fees:** The approved project is covered pursuant to the Santa Clara Valley Habitat Plan (Habitat Plan) and subject to fees and conditions contained in the Habitat Plan.
- B. **Application Package:** Prior to issuance of a grading permit, the project shall complete and submit a Habitat Plan Application Package. All fees shall be paid prior to issuance of a grading permit. **(MHMC 18.132)**

- C. **Conditions:** Any additional conditions or mitigations required by the Habitat Plan shall be clearly stated on all plans that involve any ground disturbing activity (i.e. grading plans, improvement plans, paving plans, demolition plans or other plans for site clearing or temporary stockpile of dirt). **(MHMC 18.132)**

CULTURAL RESOURCES

- A. **Significant historic or archaeological materials:** This project has been determined not to be in a site identified as archaeologically sensitive by the City's adopted archaeological sensitivity map, but nonetheless could adversely impact undocumented human remains or unintentionally discover significant historic or archaeological materials. The following policies and procedures for treatment and disposition of inadvertently discovered human remains or archaeological materials shall apply and should be provided as standard conditions on the building permit, grading permit, or improvement plans. If human remains are discovered, it is probable they are the remains of Native Americans.
1. If human remains are encountered, they shall be treated with dignity and respect as due to them. Discovery of Native American remains is a very sensitive issue and serious concern. Information about such a discovery shall be held in confidence by all project personnel on a need to know basis. The rights of Native Americans to practice ceremonial observances on sites, in labs and around artifacts shall be upheld. Remains should not be held by human hands. Surgical gloves should be worn if remains need to be handled. Surgical mask should also be worn to prevent exposure to pathogens that may be associated with the remains.
 2. In the event that known or suspected Native American remains are encountered, or significant historic or archaeological materials are discovered, ground-disturbing activities shall be immediately stopped. Examples of significant historic or archaeological materials include, but are not limited to, concentrations of historic artifacts (e.g., bottles, ceramics) or prehistoric artifacts (chipped chert or obsidian, arrow points, ground-stone mortars and pestles), culturally altered ash-stained midden soils associated with pre-contact Native American habitation sites, concentrations of fire-altered rock and/or burned or charred organic materials, and historic structure remains such as stone-lined building foundations, wells or privy pits. Ground-disturbing project activities may continue in other areas that are outside the discovery locale.
 3. An "exclusion zone" where unauthorized equipment and personnel are not permitted shall be established (e.g., taped off) around the discovery area plus a reasonable buffer zone by the Contractor Foreman or authorized representative, or party who made the discovery and initiated these

protocols, or if on-site at the time of discovery, by the Monitoring Archaeologist (typically 25-50ft for single burial or archaeological find).

4. The discovery locale shall be secured (e.g., 24-hour surveillance) as directed by the City or County if considered prudent to avoid further disturbances.
5. The Contractor Foreman or authorized representative, or party who made the discovery and initiated these protocols shall be responsible for immediately contacting by telephone the parties listed below to report the find and initiate the consultation process for treatment and disposition:
 - The City of Morgan Hill Development Services Director (408) 779-7247
 - The Contractor's Point(s) of Contact
 - The Coroner of the County of Santa Clara (if human remains found) (408) 793-1900
 - The Native American Heritage Commission (NAHC) in Sacramento (916) 653-4082
 - The Amah Mutsun Tribal Band (916) 481-5785 (H) or (916) 743-5833 (C)
6. The Coroner has two working days to examine the remains after being notified of the discovery. If the remains are Native American, the Coroner has 24 hours to notify the NAHC.
7. The NAHC is responsible for identifying and immediately notifying the Most Likely Descendant (MLD) from the Amah Mutsun Tribal Band. (Note: NAHC policy holds that the Native American Monitor will not be designated the MLD.)
8. Within 24 hours of their notification by the NAHC, the MLD will be granted permission to inspect the discovery site if they so choose.
9. Within 24 hours of their notification by the NAHC, the MLD may recommend to the City's Development Services Director the recommended means for treating or disposing, with appropriate dignity, the human remains and any associated grave goods. The recommendation may include the scientific removal and non-destructive or destructive analysis of human remains and items associated with Native American burials. Only those osteological analyses or DNA analyses recommended by the Amah Mutsun Tribal Band may be considered and carried out.
10. If the MLD recommendation is rejected by the City of Morgan Hill the parties will attempt to mediate the disagreement with the NAHC. If

mediation fails, then the remains and all associated grave offerings shall be reburied with appropriate dignity on the property in a location not subject to further subsurface disturbance.

GENERAL

- A. Recordation of Map: The recordation of the parcel map shall not be completed until approval of the Design Review Permit is completed.
- B. Signed copies of Resolution: Submit two (2) signed copies of this Resolution to the Planning Division prior to issuance of building permits.

ENGINEERING DIVISION

PROJECT SPECIFIC ENGINEERING CONDITIONS

- A. Street and Utility Improvements:
 - 1. Coordination with Adjacent Residential Project: The developer shall coordinate the De Paul Drive improvements and sanitary sewer improvements with the project known as "The Crosswinds Project" located on the east side of De Paul Drive (APNs: 728-30-001, -002, -003, & -004) and owned by Dividend Homes.
 - i. Prior to parcel map approval, the developer shall obtain the necessary right-of-way on De Paul Drive (and construction easement, if required) from Dividend Homes' Crosswinds Project.
 - 2. De Paul Drive: Construct De Paul Drive to comply with the City's half street (2/3 street) standards along the west side of De Paul Drive from Cochrane Road to the proposed cul-de-sac next to Half Road (includes the frontage along the Lands of Lee with APN: 728-30-008) to the satisfaction of the City Engineer.
 - i. Install and dedicate the required street improvements at De Paul Drive to have a straight road alignment with a minimum 46' right-of-way width and a minimum 36' pavement width from face of curb along the unimproved section of De Paul Drive to the new cul-de-sac next to Half Road.
 - ii. The City will quitclaim approximately 19' of right-of-way along the De Paul Drive frontage of APN: 728-30-009.
 - iii. The developer shall dedicate 36' right-of-way width in fee to the City for public street purposes along the De Paul Drive frontage of APN: 728-31-014 and dedicate a 10' wide Public Service Easement (PSE) behind the proposed property line.
 - iv. The project's right-of-way dedication and quitclaim shall be shown on the parcel map.
 - v. The street improvements shall include, but are not limited to, curb and gutter, sidewalk, landscaping, full cul-de-sac at the southerly end of De

- Paul Drive next to Half Road, street paving, utilities, undergrounding, stormwater post-construction facilities, and street lighting.
- vi. The project shall construct City standard sidewalk along the west side of De Paul Drive from Cochrane Road to the proposed cul-de-sac next to Half Road to provide a continuous pedestrian connection from the project site to Cochrane Road.
 - 1) The project has an option to construct a temporary asphalt sidewalk along the frontages of the future Phase 2 Project and the Lands of Lee (APN: 728-30-008)
 - vii. The project's two northerly driveways at De Paul Drive are proposed to have widths that exceed the City standard maximum industrial driveway width of 36' to allow truck access/maneuvering.
 - 1) At improvement plan/building permit stage, submit an additional truck turning template using the ultimate street width of De Paul Drive for City Engineer review.
 - viii. At improvement plan/building permit stage, revise the De Paul Drive street cross-sections to match the 2/3 street width.
3. Half Road: The developer shall construct Half Road to comply with City standards along the north side of the project's Half Road frontage to the satisfaction of the City Engineer.
- i. Install and dedicate the required street improvements at Half Road. The street improvements shall include, but are not limited to, curb and gutter, sidewalk, landscaping, street paving, utilities, stormwater post-construction facilities, and street lighting.
 - ii. The developer shall dedicate right-of-way in fee to the City for public street purposes at a width of 36' from centerline along the Half Road frontage of APN: 728-30-009 and dedicate a 10' wide PSE behind the proposed property line.
 - iii. Extend the new sidewalk along the project's Half Road frontage westerly up to the Madrone Channel/Trail entrance. The design of the sidewalk and compliance with Valley Water's access requirements to Madrone Channel will be reviewed at improvement plan/building permit stage.
4. Cochrane Road: Construct the ultimate width of Cochrane Road along the project's frontage to comply with the City's arterial street standards to the satisfaction of the City Engineer.
- i. Install and dedicate the required street improvements at Cochrane Road. The street improvements shall include, but are not limited to, curb and gutter, sidewalk, dedicated right-turn pocket along eastbound Cochrane Road, landscaping, street paving, utilities, stormwater post-construction facilities, and street lighting.
 - ii. The developer shall dedicate a minimum of 60' of right-of-way from the centerline of Cochrane Road for public street purposes along the

Cochrane Road frontage of APN: 728-31-014 and dedicate a 10' wide PSE behind the proposed property line.

- iii. At improvement plan//building permit stage, revise plans to show the number of streetlights and spacing along Cochrane Road to comply with City standards. Per City standards, streetlight spacing for arterials is 160' to 180' and streetlight location shall be directly opposite the existing streetlight on the north side of Cochrane Road.
 - iv. At improvement plan//building permit stage, submit a traffic signal modification plan for the Cochrane Road/De Paul Drive intersection. The plan shall include the relocation or replacement of the two existing traffic signal poles on the southwest corner of the intersection, signal phasing, and the proposed striping plans.
5. Utilities: The City's Water System Master Plan, Storm Drainage System Master Plan, and Sewer System Master Plan identified proposed improvements along De Paul Drive and Half Road.
- i. Storm Improvements:
 - 1) The project shall construct a 48" to 54" storm main along the project's Half Road frontage per the City's Storm Master Plan.
 - 2) Provide a minimum 20' wide additional PSE centered over the portion of the proposed storm drain main located west of Condit Road. The PSE shall be reviewed at parcel map stage.
 - 3) The developer shall continue to work with the City and Valley Water to review the design conditions of the PL-566 project and shall revise the on-site drainage plans at improvement plan stage, as needed, to the satisfaction of the City Engineer.
 - 4) Per the notes on the project's Vesting Tentative Parcel Map, the site is in Flood Zone "X- Shaded" and Flood Zone "AE" as shown on the FEMA Flood Insurance Rate Maps. Depending on the results of Valley Water's updated hydrology model, the project may be required to submit a Letter of Map Revision (LOMR) to FEMA or other appropriate documentation to update the flood zone for the site and designate the entire site to be entirely within Flood Zone "X-Shaded", an area defined as outside the 100-year floodplain.
 - 5) A segment of the proposed 24" storm main along De Paul Drive shows a manhole spacing that exceeds the City standard maximum spacing of 400' for 15" to 30" storm pipe diameters. At improvement plan/building permit stage, revise storm manhole spacing to comply with City standards.
 - 6) At improvement plan/building permit stage, revise the pipe size of the following to the minimum size of 15-inch diameter per City standard:
 - a) Proposed 12" storm main segment at De Paul Drive, between Sta. 16+00 and Sta. 18+00.
 - b) Proposed 12" storm lateral at Half Road, near Sta. 5+40.
 - c) Proposed 12" storm laterals at De Paul Drive.

- ii. Water Improvements: At improvement plan/building permit stage, revise the plans to comply with the following:
 - 1) Extend the existing 12" public water main from the southerly terminus of De Paul Drive to Half Road per the City's Water System Master Plan. The water main extension shall be public.
 - 2) At improvement plan/building permit stage, show each of the five buildings with a dedicated domestic, irrigation and fire services connected to a public water main.
 - 3) The Utility Plans show the domestic water service for two parcels (Parcels C & D) crossing other parcels. Service for Parcel D crosses Parcel A and service for Parcel C crosses Parcel B. At parcel map review stage, add private utility easements for the water services on Parcels A and B.
 - 4) Detailed review of the water service configurations, water lateral, meter and backflow preventer locations will be performed at improvement plan/building permit stage and will be subject to City Engineer approval.

- iii. Sanitary Sewer Improvements: Based on the proposed amendment to the City's Sewer Master Plan, a sewer flow re-route into the Condit Road Sewer Trunk will be a required sewer master plan improvement for the project.
 - 1) Install a 10" sanitary sewer gravity main beginning at De Paul Drive, approximately 540' south of Cochrane Road; then continue in a southbound direction to Half Road; then west along Half Road up to Condit Road; then follow Condit Road and end at a connection to the existing 10" sewer main at Main Avenue.
 - 2) At improvement plan/building permit stage, revise the plans to comply with the following:
 - a) On Sheet 6.5 (Preliminary Street Improvement Sections - Sections G & H), show the new 10" sanitary sewer main at Half Road to be constructed by the project.
 - b) Show a minimum horizontal clearance of 10' from the existing Valley Water groundwater recharge line.
 - 3) Prior to parcel map approval/building permit issuance, the project shall enter into a Private Sanitary Sewer Maintenance Agreement with the City for maintenance of all private sanitary sewer facilities which includes the private sewer mains, sewer laterals, force main and lift station.
 - 4) A sanitary sewer test manhole shall be provided for each of the five buildings and shall be accessible to the Pretreatment Inspector. The

sanitary sewer test manholes shall be located within private property but adjacent to the street right-of-way or as approved by the City Engineer in conjunction with Pretreatment Inspector review.

6. Reimbursement Agreement: Prior to parcel map approval, the developer shall enter into a Reimbursement Agreement with the City for the reimbursement of the applicable portions of the cost to construct the following improvements that are beyond the developer's responsibility as determined by the City Engineer:
- i. De Paul Drive and Half Road street improvements
 - ii. Traffic signal improvements at the intersection of Cochrane Road & De Paul Drive
 - iii. Storm improvements at Half Road per City's Storm Master Plan including the proposed outfall to Madrone Channel. The developer will be reimbursed for the cost to upsize the storm main above 24" per the City's Storm Master Plan.
 - iv. Sanitary sewer improvements per the City's Sewer Master Plan with the cost based on a sewer cost allocation to be agreed upon by the City, project developer and by Dividend Homes for the Crosswinds Project. The developer will be reimbursed for the cost to upsize the sewer main from 8" (developer's responsibility) to 10" per the proposed amendment to City's Sewer Master Plan.

STANDARD ENGINEERING CONDITIONS

I. GENERAL

- A. The applicant shall cause the construction of all public and private improvements in accordance with the latest City Standard Drawings and Specifications. **(MHMC 12.02.090 A; 17.32.010 A)**
- B. The applicant shall submit as part of the improvement drawings for the project, profiles of all improvements in the project and typical cross-sections of all streets and details of curbs, gutters, and sidewalks, to be accomplished to the satisfaction of the City Engineer prior to submittal of Parcel Map. **(MHMC Sec 17.32.060 B; 17.32.070; 17.32.080 A)**
- C. Obtain necessary encroachment permits from:
 - ☒ City of Morgan Hill
 - ☒ County of Santa Clara Roads & Airports
 - ☒ Santa Clara Valley Water District (Valley Water)
 and provide guarantee covering off-site improvements. **(MHMC 12.08.040 A; 12.08.090)**
- D. Improvement plans are to show water lines, sanitary sewer, storm drain system, pavement widths, curve radius, and existing utilities.

- E. Enter into a Subdivision Improvement Agreement (SIA) with the City of Morgan Hill to cover required improvements. **(MHMC 12.02.150; 17.32.010 B; 17.32.160)**
- F. Reciprocal access easements and maintenance agreements ensuring access to all parcels and joint maintenance of all common roads, drives or parking areas shall be provided by CC&R's and by deed and shall be recorded concurrent with the map, or prior to issuance of building permit where no map is involved. **(MHMC 17.20.350 H)**
- G. **Impact Fees:** The City of Morgan Hill, pursuant to City Code Chapter 3.56 has established impact fees to finance the cost of improvements required by new development. City Code Chapter 3.56.050 provides for automatic annual (July 1st) adjustment of those fees in existence utilizing the Engineering News Record Index for the preceding twelve months. The City maintains historical records on the Engineering News Record Index. These records are available for inspection during normal business hours. **(MHMC 3.56.010; 3.56.030; 3.56.050)**

II. STREET IMPROVEMENTS

- A. **Public and Private Streets:** The applicant shall cause the design and construction of all new public and private streets serving the project. The design of all new public and private streets shall be consistent with the General Plan Land Use and Circulation Element as well as the Street Standard Details as contained within the Public Works Standards Details. The construction of the streets shall be undertaken to the lines and grades and in a manner satisfactory to the City Engineer. All street improvements shall be constructed to the satisfaction of the City Engineer. The timing of the improvements will be determined by the City. **(MHMC 12.02.010; 12.02.090; 17.32.060 B; CMH General Plan; CMH Design Standards and Standard Details for Construction)**
- B. **Installation and Dedication of Streets:** The project shall install and dedicate street improvement including, but not limited to, curb and gutter, sidewalk, compaction, street paving, oiling, storm drainage facilities, sewer and water, fire protection, undergrounding of utilities and street lighting in conformance with City of Morgan Hill requirements. **(MHMC 12.02.010; 12.02.50; 12.02.080; 12.02.100; 17.28.010; 17.32.060)**
- C. **Underground existing utilities:** All existing overhead utilities adjacent to any site boundary or along any street frontage of site shall be placed underground in accordance with City standards and affected utility company guidelines. **(MHMC 12.02.090 B; 17.32.020 E.1)**

III. SANITARY SEWER SYSTEM

- A. **Design of Sewer Improvements:** The applicant shall cause to be undertaken the design and construction of sanitary sewer improvements including, but not limited to installation of sewer line extension on the proposed public street(s) or private street(s)/drive aisle(s). The sanitary collection system shall include, but not be limited to manholes with manhole frames and covers, cleanouts, wye-branches and laterals, and separate sewer taps to each parcel. These are to be installed by the developer. **(MHMC 13.20.355; 17.32.020 C; CMH Sewer System Master Plan; CMH Design Standards and Standard Details for Construction)**
- B. All existing and future sewer lines shall be tied into the City's system and existing septic systems shall be abandoned in accordance with City requirements. **(MHMC 13.24.060; 17.32.20 C)**

IV. STORM DRAIN SYSTEM

- A. **Storm Drainage Study:** A complete storm drainage study of the proposed development must be submitted showing amount of run-off, and existing and proposed drainage structure capacities. This study shall be subject to review and approval by the City Engineer. All needed improvements will be made by the applicant. No overloading of the existing system will be permitted. **(MHMC 17.32.020 B; 17.32.090; CMH Design Standards and Standard Details for Construction)**
- B. **Storm Drainage Design:** The applicant shall cause the design and construction to be undertaken for a storm drainage collection system shown on the Tentative Map/Design Review plans. All storm drain improvements shall be constructed to the satisfaction of the City Engineer. **(MHMC 17.32.020 A & B)**
- C. **Storm Drainage Capacity:** Collection system shall be designed to be capable of handling a 10-year storm without local flooding. On-site detention facilities shall be designed to a 25-year storm capacity. Streets shall be designed to carry 100-year storm. Items of construction shall include, but not be limited to installation of storm line extension on proposed public street(s), surface and subsurface storm drain facilities, manholes with manhole frames and covers, catch basins and laterals. Note: the project may be required to **retain** stormwater runoff as part of resolution R3-2013-0032 prior to releasing discharge rates at pre-development flows. **(MHMC 17.32.020 B; 18.74.440; CMH Design Standards and Standard Details for Construction; CMH Storm Drainage System Master Plan)**
- D. **Storm Drainage General Requirements:** Prior to issuance of a grading permit, the applicant shall complete the following to the satisfaction of the City Engineer.

1. Storm drain calculations to determine detention/retention pond sizing and operations.
2. Plan describing how material excavated during construction will be controlled to prevent this material from entering the storm drain system.
3. Water Pollution Control Drawings (WPCD) for Sediment and Erosion Control. **(CMH Design Standards and Standard Details for Construction)**

- E. **Valley Water Dedications:** Where the project adjoins existing Valley Water storm drain facilities, applicant shall obtain dedication(s) of all necessary easement or right-of-way to accommodate established ultimate facilities master plan.
- F. **Tree Protection:** BMP Tree protection shall be part of the SWPPP inspections.
- G. **NPDES Construction Activity General Permit/SWPPP Requirements:** As required by the State Water Resources Control Board (SWRCB) Order No. 2009-0009-DWQ, construction activity resulting in a land disturbance of one (1) acre or more of soil, or whose projects are part of a larger common plan of development that in total disturbs more than one (1) acre, are required to obtain coverage under the National Pollutant Discharge Elimination System (NPDES) General Permit No. CAS000002 for Discharges of Storm Water Associated with Construction Activity (General Permit). To be permitted with the SWRCB under the General Permit, owners must file a complete Notice of Intent (NOI) ONLINE at: <http://smarts.waterboards.ca.gov/smarts/faces/SwSmartsLogin.jsp> and develop a Storm Water Pollution Prevention Plan (SWPPP) Manual in accordance with the General Permit. The SWPPP Manual shall follow the CASQA SWPPP template/format at <https://www.casqa.org/store/products/tabid/154/p-167-construction-handbookportal-initial-subscription.aspx> and shall be approved by Public Works Engineering. A Waste Discharger Identification (WDID) number to be issued to the construction site after the SWRCB receives and verifies the submitted ONLINE NOI information. The WDID number and approved SWPPP Manual shall be provided to Public Works and the Building Department prior to any approval of grading activities **(SWRCB NPDES General Permit CA000002)**.
- H. **NPDES GENERAL PERMIT SITE SWPPP INSPECTIONS AND COMPLIANCE:**
1. ALL project onsite and offsite construction activity shall have the site inspected by a **qualified third party SWPPP Inspector (QSD or QSP or RCE)**.
 2. SWPPP Inspections shall occur weekly during the rainy season (September 15th thru May 1st).
 3. SWPPP Inspections shall occur bi-weekly during the non-rainy season.
 4. 48 hours prior to and following a forecasted rain event, SWPPP Inspections shall occur in addition to those of items 2 or 3 above.

5. Per each of the inspection conditions 2, 3, or 4, the NPDES SWPPP Inspector shall certify in writing to the Building and Public Works Department if the site is in compliance or non-compliance with the NPDES General Permit for Stormwater, site SWPPP Manual, and Water Pollution Control Drawings (per the CMH-SWPPP Inspection Check List to be provided by Public Works). QSD/QSP SWPPP Inspectors shall forward onsite and offsite information/certification to the Building (on-site private property issues) and Public Works (public right-of-way issues) inspectors, respectively.
6. Prior to rain events, BMPs not in compliance will need to be corrected immediately.
7. Illicit discharges per the NPDES General Permit, non-compliance of tracking control, and inlet protection within the public right of way shall be address immediately.
8. Other non-compliance issues need to be addressed within a 24-hour period.
9. Non-compliance issues which have been corrected shall be verified by NPDES SWPPP Inspector by a follow up inspection.
10. BMPs maintenance/inspections shall include tree protection if applicable.

V. WATER SYSTEM

- A. **Domestic Water System:** The applicant shall cause the design and construction to be undertaken of a domestic water system to the satisfaction of the City Engineer. The water system improvements shall be constructed within public easements or street rights-of-way to the satisfaction of the City Engineer and dedicated to the City. **(MHMC 17.32.020 A & D; CMH Design Standards and Standard Details for Construction; CMH Water System Master Plan)**
- B. **Water well abandonment:** Abandonment of any existing water well shall be in conformance with Santa Clara Valley Water District (Valley Water) Ordinance 90-1. Location and disposition to be shown on the plan. Well(s) shall be properly registered with Valley Water and either be maintained or abandoned in accordance with Valley Water standards.
- C. **Water line extension:** Install water line extension on the proposed public streets and/or private streets. **(MHMC 17.32.020 A & D; CMH Water System Master Plan)**
- D. **Water Meters:** Provide separate water services and meters for each parcel. These are to be installed by developer. **(MHMC 17.32.020 D)**
- E. Provide separate fire service and double detector check with FDC per City standard detail W-8 for each parcel.

VI. OTHER CONDITIONS

- A. **Easement Dedications:** The owner shall dedicate all necessary utility easements. **(MHMC 12.02.080 D; 17.28.010 A)**
- B. **Undergrounding new utilities:** The applicant shall cause the design and construction required to underground all electric, gas, Cable TV, and communication lines within the development. Such design and construction shall be to the satisfaction of the affected utilities and the City Engineer. **(MHMC 17.32.020 E.1)**
- C. **Parcel Map:** For minor subdivision (4 lots or less), the parcel map shall be signed by the City Engineer and the Planning Commission Secretary prior to issuance of a grading permit. **(MHMC 17.20.390; 17.24.210)**

VII.NPDES WATER QUALITY STORMWATER MANAGEMENT DEVELOPMENT STANDARDS

- A. **Stormwater Management Guidance Manual for Low Impact Development State Water Resources Control Board Post Construction Requirements (PCRs):** Project shall comply with the California Regional Water Quality Control Board Central Coast Region Resolution No. R3-2013-0032 as documented by the **Stormwater Management Guidance Manual for Low Impact Development and Post-Construction Requirements** (developed from Resolution No. R-2013-0032 Attachment 1 and 2 at: http://www.waterboards.ca.gov/centralcoast/water_issues/programs/stormwater/docs/lid/lid_hydromod_charette_index.shtml). A copy of the guidance manual can be obtained through the Land Development Engineering webpage. Project shall provide Stormwater Runoff Management Plan, Stormwater Control Plan Checklist and applicable calculations per the Stormwater Management Guidance Manual for Low Impact Development and Post-Construction Requirements. Project shall meet the applicable requirements of the Stormwater Management Guidance Manual for Low Impact Development and Post-Construction Requirements:
 - 1. Performance Requirement 1: Site Design and Runoff Reduction
 - 2. Performance Requirement 2: Water Quality Treatment
 - 3. Performance Requirement 3: Runoff Retention
 - 4. Performance Requirement 4: Peak Management
- B. **Peak Storm Water Runoff Discharge Rates:** Post-development peak storm water runoff discharge rates shall not exceed the estimated pre-development rate for developments where the increased peak storm water discharge rate will result in increased potential for downstream erosion. Note: the project may be required to **retain** stormwater runoff as part of resolution R3-2013-0032 prior to releasing discharge rates at pre-development flows.
- C. **Provide Storm Drain System Stenciling and Signage:** Storm drain stencils are highly visible source controls that are typically placed directly adjacent to

storm drain inlets. The stencil contains a brief statement that prohibits the dumping of improper materials into the storm water conveyance system. Graphical icons, either illustrating anti-dumping symbols or images of receiving water fauna, are effective supplements to the anti-dumping message. All storm drain inlets and catch basins within the project area must be stenciled with prohibitive language (such as: "NO DUMPING – DRAINS TO CREEK") and/or graphical icons to discourage illegal dumping. Signs and prohibitive language and/or graphical icons, which prohibit illegal dumping, must be posted at public access points along channels and creeks within the project area. Legibility of stencils and signs must be maintained.

- D. Design Standards for Structural or Treatment Control BMPs:** The post-construction treatment control BMPs shall incorporate, at a minimum, either a volumetric or flow- based treatment control design standard, or both, as identified below to mitigate (infiltrate, filter or treat) storm water runoff:

1. Volumetric Treatment Control BMP

- a. The 85th percentile 24-hour runoff event determined as the maximized capture storm water volume for the area, from the formula recommended in Urban Runoff Quality Management, WEF Manual of Practice No. 23/ASCE Manual of Practice No. 87, (1998); or
- b. The volume of annual runoff based on unit basin storage water quality volume, to achieve 80 percent or more volume treatment by the method recommended in California Stormwater Best Management Practices Handbook – Industrial/ Commercial, (2003); or
- c. The volume of runoff produced from a historical-record based reference 24-hour rainfall criterion for "treatment" that achieves approximately the same reduction in pollutant loads achieved by the 85th percentile 24-hour runoff event.

2. Flow Based Treatment Control BMP

- a. The flow of runoff produced from a rain event equal to at least two times the 85th percentile hourly rainfall intensity for the area; or
- b. The flow of runoff produced from a rain event that will result in treatment of the same portion of runoff as treated using volumetric standards above.

- E. Stormwater Runoff Management Plan (SWRMP) required:** The stormwater runoff management plan shall include sufficient information to evaluate the environmental characteristics of affected areas, the potential impacts of the proposed development on water resources, and the effectiveness and acceptability of measures (post construction BMPs) proposed for managing stormwater runoff.

1. The stormwater runoff management plan shall be prepared under the direction of a professional civil engineer registered in the State of California. The responsible professional civil engineer shall stamp and sign the approved stormwater runoff management plan.

2. The City Engineer or designee may require a developer to provide a signed certification from the civil engineer responsible for preparing the stormwater runoff management plan that all stormwater best management practices have been designed to meet the requirements of this chapter.
3. Each certifying civil engineer shall establish to the City's satisfaction that such person has been trained on the design of stormwater quality best management practices not more than three years prior to the certification signature date.
4. Qualifying training shall be conducted by an organization with stormwater quality management expertise, such as a university, the Bay Area Stormwater Management Agencies Association, the American Society of Civil Engineers, the American Public Works Association, or the California Water Environment Association.

F. Stormwater BMP operation, maintenance, and replacement responsibility

1. All on-site stormwater management facilities shall be operated and maintained in good condition and promptly repaired/replaced by the property owner(s), an owners' association or other legal entity approved by the city.
2. Any repairs or restoration/replacement and maintenance shall be in accordance with city-approved plans.
3. The property owner(s) shall develop a maintenance schedule for the life of any stormwater management facility and shall describe the maintenance to be completed, the time period for completion, and who shall perform the maintenance. This maintenance schedule shall be included with the approved stormwater runoff management plan.

G. Stormwater BMP operation and Maintenance Agreement (SWBOMA)

required: Prior to the issuance of any building permit requiring stormwater management BMPs, the owner(s) of the site shall enter into a formal written stormwater BMP operation and maintenance agreement with the city. The City shall record this agreement, against the property or properties involved, with the County of Santa Clara and it shall be binding on all subsequent owners of land served by the storm water management treatment BMPs (City standard Stormwater BMP Operation and Maintenance Agreement to be provided by Land Development Engineering at improvement plan/building permit stage).

H. Stormwater BMP inspection responsibility

1. The property owner(s) shall be responsible for having all stormwater management facilities inspected for condition and function by a **Registered Civil Engineer (RCE)**.
2. Unless otherwise required by the City Engineer or designee, stormwater facility inspections shall be done at least twice per year (April 15th and September 15th) by the RCE. Written records shall be kept of all inspections and shall include, at minimum, the following information:
 - a. Site address;

- b. Date and time of inspection;
 - c. Name of the person conducting the inspection;
 - d. List of stormwater facilities inspected;
 - e. Condition of each stormwater facility inspected;
 - f. Description of any needed maintenance or repairs; and
 - g. As applicable, the need for site re-inspection.
3. Upon completion of each inspection, an inspection report shall be submitted to Land Development Engineering.
- I. **Records of maintenance and inspection activities:** On or before April 15th and September 15th of each year, the party responsible for the operation and maintenance of on-site stormwater management facilities under the BMP operation and maintenance agreement shall provide the City Engineer or designee with records of all inspections, maintenance and repairs.
- J. **Annual Certification of SWRMP:** On or before September 30th of each year, a Registered Civil Engineer (RCE) shall provide written certification that the developments stormwater quality design standards are properly maintained and functioning as required by the SWRMP.

ADAMS BROADWELL JOSEPH & CARDOZO

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

601 GATEWAY BOULEVARD, SUITE 1000
SOUTH SAN FRANCISCO, CA 94080-7037TEL: (650) 589-1660
FAX: (650) 589-5062

khartmann@adamsbroadwell.com

SACRAMENTO OFFICE

520 CAPITOL MALL, SUITE 350
SACRAMENTO, CA 95814-4721TEL: (916) 444-6201
FAX: (916) 444-6209DANIEL L. CARDOZO
KEVIN T. CARMICHAEL
CHRISTINA M. CARO
JAVIER J. CASTRO
THOMAS A. ENSLOW
KELILAH D. FEDERMAN
ANDREW J. GRAF
TANYA A. GULESSERIAN
KENDRA D. HARTMANN*
KYLE C. JONES
DARIEN K. KEY
RACHAEL E. KOSS
AIDAN P. MARSHALLMARC D. JOSEPH
Of Counsel*Not admitted in California.
Licensed in Colorado.

June 4, 2021

Via Electronic Submission OnlyMayor Constantine and City Council Members
c/o City Clerk Michelle Bigelow, MMC, CPMC
Morgan Hill City Council
City Hall
City of Morgan Hill
17575 Peak Avenue
Morgan Hill, CA 95037
Email: Michelle.Bigelow@morganhill.ca.gov;
general@morganhill.ca.govAdam Paszkowski, Principal Planner
Email: Adam.Paszkowski@morganhill.ca.gov[Joey Dinh, City Staff](mailto:Joey.Dinh@morganhill.ca.gov)
Email: Joey.Dinh@morganhill.ca.gov**Re: Notice of Appeal of Planning Commission Approvals for
Redwood Tech at 101 Project (SR2020-0029 through SR2020-0033
and SD2020-0011)**

Dear Mayor Constantine, City Council Members, Ms. Bigelow, Mr. Paszkowski, Mr. Dinh:

We are writing on behalf of Morgan Hill Residents for Responsible Development ("Residents")¹ to appeal the May 25, 2021 decision of the Morgan Hill Planning Commission to approve a Design Permit and Vesting Tentative Parcel Map, and all other related approvals, for the Redwood Tech at 101 Project, SR2020-

¹ Residents is an unincorporated association of individuals and labor organizations that may be adversely affected by the potential public and worker health and safety standards associated with Project development, as well as its potential environmental impacts.
5175-004acp

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0029 through SR2020-0033 and SD2020-0011 (“Project”). City Staff previously determined that the Project was not required to undergo environmental review pursuant to the California Environmental Quality Act (“CEQA”) and that the only approvals required related to the Project’s design and proposed subdivision of the property’s existing 2 parcels into 4 legal lots.

This appeal is based on the City’s failure to comply with the requirements of CEQA to prepare a legally adequate Environmental Impact Report (“EIR”) for the Project, as well as violations of the Subdivision Map Act and State and local land use laws. The grounds for this appeal are set forth specifically in the attached comment letters that were submitted to the Planning Commission ahead of its hearing to consider the requested Project entitlements. Our comments were prepared with the assistance of environmental health, air quality, and GHG expert Paul E. Rosenfeld, Ph.D., and hazardous materials expert Matt Hagemann, P.G., C.Hg. of Soil Water Air Protection Enterprise (“SWAPE”), transportation expert Dan Smith, and noise expert Deborah Jue, INCE-USA (collectively, “Comment Letter”).

Residents’ Comment Letter demonstrated that the Morgan Hill 2035 General Plan EIR, which the City relied upon as a program EIR, was not intended to be used to evaluate individual future development and did not provide adequate analysis of any impacts specific to the Project. If a later project may cause significant effects on the environment that were not adequately addressed in the prior EIR, a project-level EIR must be prepared.²

Additionally, our Comment Letter established that discretionary actions such as approval of a Design Permit and Tentative Map require environmental review of Project impacts, without which the City could not make the necessary findings for those entitlements. We also established that the Project is a component of a reasonably foreseeable larger project, for which the City appears to be improperly seeking approval by breaking it up, piecemeal fashion, in order to take advantage of environmental exemptions or less rigorous CEQA review for smaller components, such as the proposed Project.

Finally, our Comment Letter provided substantial evidence that the Project may result in potentially significant, unmitigated impacts on air quality, public health, GHG emissions, noise, and transportation that must be disclosed and

² 14 C.C.R. § 15152(f).
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mitigated in an EIR. These unmitigated impacts also preclude the City from making the findings required to approve the Project under the Subdivision Map Act and the City land use codes.

Based on these legal deficiencies and potentially significant and unmitigated impacts, our comments concluded that the City, by failing to require preparation of an EIR, is in violation of CEQA's mandate to inform decision makers and the public about the potentially significant environmental impacts of a project before it is approved and implemented.

We request that the City Council review our Comment Letter in its entirety, vacate the Planning Commission's approvals, and require preparation of an EIR to adequately analyze and mitigate the Project's significant impacts.

We have included a credit card authorization form for \$627.60 for the appeal filing fee.³ Thank you for your attention to this important matter.

Sincerely,



Kendra Hartmann

Enclosures: Exhibit A: Comment Letters
Uniform Application
\$627.60 Credit Card Authorization for Appeal Filing Fee

KDH:acp

³ The City's appeal form, the "Uniform Application," includes an Indemnification Agreement which purports to obligate appellants to indemnify and defend the City by paying the City's costs, including City's attorney's fees and all other litigation costs and expenses, including expert witnesses, required to defend against any lawsuit brought as a result of City's approval or approvals of the Project. Residents presumes that the terms on the Indemnification Agreement are intended to apply to an applicant seeking entitlements from the City for a development project, and not to members of the public appealing a decision to approve the Project, as Residents do here. However, in the event that the City subsequently seeks to enforce the Indemnification Agreement against Residents, or to charge Residents or its representatives any of the costs described therein, Residents reserves its right to object as a violation of Residents' due process rights to petition the government, and/or to pay any subsequent fees under protest.

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EXHIBIT A

ADAMS BROADWELL JOSEPH & CARDOZO

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

601 GATEWAY BOULEVARD, SUITE 1000
SOUTH SAN FRANCISCO, CA 94080-7037TEL: (650) 589-1660
FAX: (650) 589-5062

khartmann@adamsbroadwell.com

SACRAMENTO OFFICE

520 CAPITOL MALL, SUITE 350
SACRAMENTO, CA 95814-4721TEL: (916) 444-6201
FAX: (916) 444-6209DANIEL L. CARDOZO
KEVIN T. CARMICHAEL
CHRISTINA M. CARO
JAVIER J. CASTRO
THOMAS A. ENSLOW
KELILAH D. FEDERMAN
ANDREW J. GRAF
TANYA A. GULESSERIAN
KENDRA D. HARTMANN*
KYLE C. JONES
DARIEN K. KEY
RACHAEL E. KOSS
AIDAN P. MARSHALLMARC D. JOSEPH
Of Counsel*Not admitted in California.
Licensed in Colorado.

May 25, 2021

Via Email OnlyMohammad Habib, Chair
Members of the Planning Commission
City of Morgan Hill
c/o Minutes Clerk
17575 Peak Avenue
Morgan Hill, CA 95037
pcpubliccomment@morganhill.ca.govJennifer Carman, Community Development Director
jennifer.carman@morganhill.ca.gov
Adam Paszkowski
Adam.Paszkowski@morganhill.ca.gov**Re: Agenda Item No. 1: Redwood Tech at 101 Project (SR2020-0029 through SR2020-0033 and SD2020-0011)**

Dear Chair Habib, Commissioners, Minutes Clerk, Ms. Carman, Mr. Paszkowski:

We are writing on behalf of Morgan Hill Residents for Responsible Development ("Residents") to provide comments to the Morgan Hill Planning Commission ("Commission") on Agenda Item No. 1, the Redwood Tech at 101 Project, SR2020-0029 through SR2020-0033 and SD2020-0011 ("Project"). Proposed by Trammel Crow Morgan Hill Ventures ("Applicant"), the Project proposes approximately 501,314 square feet of flexible industrial/commercial space spread across 5 separate buildings on four separate lots in the approximately 29-acre lot south of the former Tree Farm site on Hwy 101 south of Cochrane Road in the City of Morgan Hill ("City").

The Applicant seeks a Design Permit and a Vesting Tentative Parcel Map, both discretionary approvals, to divide the property's existing 2 parcels into 4 legal lots. In accordance with Section 18.108.040.D of the City's Municipal Code, the size

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of the Project is considered significant and, as such, the Development Services Director has elevated the Project to the Planning Commission for review and consideration of the two proposed Project entitlements. The Project proposes to construct 5 buildings on the site, all designated for flexible industrial and commercial uses, including advanced manufacturing, warehouse, supporting office, and similar industrial and commercial uses. The property has a Commercial/Industrial General Plan designation and is zoned Light Industrial (IL). Access to the property will be provided via four driveways from the extension of De Paul Drive to the south from Cochrane Road. All street frontages will be improved to City Standards with sidewalk and landscaping.

The Applicant previously submitted to the City a different project titled the Morgan Hill Technology Center (“Technology Center”), which was withdrawn by the Applicant on September 18, 2020.¹ That previous project encompassed the proposed Project site and the parcels to the north. The original Technology Center proposed a mix of industrial, commercial, and residential uses on an 89-acre site. The industrial and commercial portions of the Technology Center project proposed 1.04 million square feet of light industrial uses contained in six buildings, 45,000 square feet of industrial office in one building situated between the industrial buildings on a 2.31-acre parcel, and 50,000 square feet of retail/commercial on a 2.92-acre parcel fronting Cochrane Road.

We reviewed the Staff Report and related Project documents with the assistance of environmental health, air quality, and GHG expert Paul E. Rosenfeld, Ph.D., and hazardous materials expert Matt Hagemann, P.G., C.Hg. of Soil Water Air Protection Enterprise (“SWAPE”), transportation expert Dan Smith, and noise expert Deborah Jue, INCE-USA. Comments and curriculum vitae of SWAPE are attached to this letter as Attachment A.² Mr. Smith’s comments and curriculum vitae are included as Attachment B,³ and Ms. Jue’s comments and curriculum vitae are attached as Attachment C.⁴ All expert comments are fully incorporated herein and submitted to the City herewith. Therefore, the City must separately respond to the technical comments in Attachments A, B and C.

¹ Staff Report, p. 6; see <http://www.morgan-hill.ca.gov/1966/Morgan-Hill-Technology-Park> (last visited 5/25/21).

² **Attachment A:** Comments on Redwood Tech at 101 Project (May 21, 2021) (“SWAPE Comments”).

³ **Attachment B:** Transportation Comments re Redwood Tech@101 Project by Smith Engineering & Management (May 20, 2021) (“Smith Comments”).

⁴ **Attachment C:** Redwood Tech @ 101 Comments, Wilson Ihrig (May 25, 2021) (“Jue Comments”).
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Based on our review, it is clear that the City has not complied with the California Environmental Quality Act (“CEQA”)⁵, the Subdivision Map Act, or with local and State land use laws in its review of the Project and its proposed entitlements.

The City initially prepared a draft environmental impact report (“DEIR”) for the Technology Center Project, which found that the Technology Center Project (which included the instant Project plus the additional components) would have significant impacts on air quality, biological resources, cultural resources, greenhouse gas (“GHG”) emissions, hazardous materials, noise, and transportation which required mitigation.⁶ Before the DEIR was certified, the Project application was withdrawn. The Applicant has now repropoed the industrial/commercial component of the Technology Center Project as the Redwood 101 Project, which the City now claims does not require CEQA review because it was previously analyzed in the 2035 General Plan EIR. As discussed below, the General Plan EIR was a planning-level CEQA document which did not analyze the Project’s environmental impacts with the degree of specificity required for project-level environmental review. Nor were the project-specific impacts that were identified in the Technology Center DEIR addressed in the General Plan EIR. An EIR is required for the Project for these reasons.⁷

The City is also improperly piecemealing its environmental review of the Project from other components of the original Technology Center Project. As the Staff Report explains, the residential component of the Technology Center Project has been reduced from 319 units to 269 units and is being concurrently developed by Dividend Homes under a separate application.⁸ Two of the original project components are being reviewed by the City for a second time, yet the City failed to prepare an EIR that analyzes the impacts of both developments.

Finally, as discussed below, the Redwood 101 Project has potentially significant, unmitigated impacts on air quality, public health, GHG emissions, noise, and transportation that must be disclosed and mitigated in an EIR. These unmitigated impacts also preclude the Planning Commission from making the

⁵ Pub. Res. Code §§ 21000 et seq; 14 Cal. Code Regs. (“CCR” or “CEQA Guidelines”) §§ 150000 et seq.

⁶ See Technology Center DEIR, pp. iv-xxx, available at <https://www.morgan-hill.ca.gov/DocumentCenter/View/36693/Draft-EIR-Morgan-Hill-Tech-Center-12-May-2020-webready> (last visited 5/25/21).

⁷ See 14 CCR § 15152.

⁸ Staff Report, p. 6.

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findings required to approve the Project under the Subdivision Map Act and the City land use codes. The Planning Commission should remand the Project to staff to prepare a legally adequate EIR before the Project can be considered for approval.⁹

I. STATEMENT OF INTEREST

Residents is an unincorporated association of individuals and labor organizations that may be adversely affected by the potential public and worker health and safety standards associated with Project development, as well as its potential environmental impacts. Residents includes local unions, their members and families, and other individuals that live and/or work in the City of Morgan Hill and Santa Clara County.

Individual members of Residents and the affiliated labor organizations live, work, recreate and raise their families in the City of Morgan Hill and Santa Clara County. They would be directly affected by the Project's environmental and health and safety impacts. Individual members, including Santa Clara County resident Fermin Layos, may also work on the Project itself. Accordingly, they will be first in line to be exposed to any health and safety hazards that exist onsite. Residents have a strong interest in enforcing the State's environmental laws that encourage sustainable development and ensure a safe working environment for its members. Environmentally detrimental projects can jeopardize future jobs by making it more difficult and more expensive for business and industry to expand in the region, and by making it less desirable for businesses to locate and people to live there.

II. LEGAL STANDARD

In an effort to ensure the long-term protection of the environment of the state, CEQA requires governmental agencies at all levels to develop standards and procedures necessary to protect environmental quality. To this end, CEQA requires preparation of an EIR whenever a public agency proposes to approve or to carry out a project that may have a significant effect on the environment.¹⁰ In this way, CEQA is designed to inform decision makers and the public about the potentially

⁹ We reserve the right to supplement these comments at later hearings and proceedings on this Project. Gov. Code § 65009(b); PRC § 21177(a); *Bakersfield Citizens for Local Control v. Bakersfield ("Bakersfield")* (2004) 124 Cal. App. 4th 1184, 1199-1203; see *Galante Vineyards v. Monterey Water Dist.* (1997) 60 Cal. App. 4th 1109, 1121.

¹⁰ *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 390. 5175-002acp

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significant environmental impacts of a project before it is approved and implemented.¹¹

Described as “an environmental ‘alarm bell’ whose purpose it is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return,”¹² an EIR’s purpose is to “inform the public and its responsible officials of the environmental consequences of their decisions *before* they are made. Thus, the EIR protects not only the environment, but also informed self-government.”¹³ To fulfill this purpose, the discussion of impacts in an EIR must be detailed, complete, and “reflect a good faith effort at full disclosure.”¹⁴ Furthermore, CEQA imposes an affirmative obligation on agencies to avoid or reduce environmental harm by adopting feasible project alternatives or mitigation measures to address all potentially significant impacts identified in the agency’s CEQA analysis.¹⁵ An adequate EIR must contain facts and analysis, not just an agency’s conclusions.¹⁶

CEQA “projects” include activities undertaken by public agencies that cause direct physical changes to the environment.¹⁷ Following preliminary review of a project to determine whether an activity is subject to CEQA, a lead agency is required to prepare an initial study to identify several key objectives, including whether to prepare an EIR or negative declaration, as well as the appropriate process to be used for analysis of the project’s environmental effects and potential mitigation.¹⁸ CEQA requires an agency to analyze the potential environmental impacts of its proposed actions in an EIR except in certain limited circumstances.¹⁹

¹¹ Cal. Code Regs., tit. 14, § 15002, subd. (a)(1) (“CEQA Guidelines”); *Berkeley Keep Jets Over the Bay v. Bd. of Port Comm’rs.* (2001) 91 Cal.App.4th 1344, 1354 (“*Berkeley Jets*”); *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810.

¹² *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810.

¹³ *Citizens of Goleta Valley v. Bd. of Supervisors* (1990) 52 Cal.3d 553, 564 (internal citations omitted).

¹⁴ CEQA Guidelines, § 15151; *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 721-722.

¹⁵ Pub. Resources Code, §§ 21002-21002.1.

¹⁶ See *Citizens of Goleta Valley v. Bd. of Supervisors* (1990) 52 Cal.3d 553, 568.

¹⁷ *County of Ventura v. City of Moorpark* (2018) 24 Cal.App.5th 377, 385.

¹⁸ CEQA Guidelines, §§ 15060, 15063, subd. (c).

¹⁹ See, e.g., Pub. Resources Code, § 21100.
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III. CEQA PROHIBITS PIECEMEALING OF A PROJECT

CEQA prohibits a project proponent from seeking approval of a project by breaking it up, piecemeal fashion, in order to take advantage of environmental exemptions or less rigorous CEQA review for smaller projects.²⁰ The law mandates that “environmental considerations do not become submerged by chopping a large project into many little ones—each with a minimal potential impact on the environment—which cumulatively may have disastrous consequences.”²¹ As courts have explained, “... [t]he CEQA process is intended to be a careful examination, fully open to the public, of the environmental consequences of a given project, covering the entire project, from start to finish.”²²

Specifically, the description of a project must describe a larger future project and analyze its effects if (1) the larger project is a reasonably foreseeable consequence of the initial project, and (2) the future project will be significant in that it will likely change the scope or nature of the initial project or its environmental effects.²³ This rule applies even if (1) the Lead Agency has not yet formally approved the larger future project, and (2) it is impossible to predict with precision the environmental effects of less-than-definite future plans, as long as these effects can be discussed at least in general terms.²⁴ Difficulty in describing the effects of less-than-definite future plans does not excuse an agency from CEQA compliance, especially since CEQA provides mechanisms, such as Program EIRs and tiering of EIRs, to facilitate environmental analysis of larger future projects.²⁵

Furthermore, “[t]iering does not excuse the lead agency from adequately analyzing reasonably foreseeable significant environmental impacts of the project and does not justify deferring such analysis to a later tier EIR or negative declaration.”²⁶ If a program-level EIR has been released, it is nonetheless still not appropriate to piecemeal later tiers in order to avoid environmental review.

²⁰ *Arviv Enterprises, Inc. v. South Valley Area Planning Com.* (2002) 101 Cal. App. 4th 1336, 1340.

²¹ *Bozung v. LAFCO* (1975) 13 Cal.3d 263, 283-84; *City of Santee v. County of San Diego*, (1989) 214 Cal.App.3d 1438, 1452; *Citizens Assn. for Sensible Development of Bishop Area v. County of Inyo* (1985) 172 Cal.App.3d 151, 165.

²² *Natural Resources Defense Council v. City of Los Angeles* (2002) 103 Cal.App.4th 268, (emphasis added).

²³ *Laurel Heights Improvement Assn. v. Regents of Univ. of California* (1988) 47 Cal. 3d 376, 396.

²⁴ *Id.* at 398-99.

²⁵ *Id.* at 399, n.8.

²⁶ 14 C.C.R. § 15152 (b); *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal. 4th 412, 431, 150 P.3d 709, 720.

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A. Development of Multiple Components of the Original Morgan Hill Technology Center Project is Reasonably Foreseeable and Cumulative Impacts Must be Analyzed Together in an EIR

Similar to *Laurel Heights*, in which the Court found that future development was reasonably foreseeable and the university had to include environmental analysis of the anticipated future uses of the site, the Project is just one fragment of anticipated development of the site, which was already analyzed in an EIR.²⁷ Though the Applicant abandoned the larger project in September 2020, the proposed Project is merely a selection excerpted from that larger development, pulled out to be considered on a smaller scale.

Considering the sequence of events associated with development at the site, it is difficult to imagine a scenario in which the Applicant and the City are not attempting to piecemeal a large project into several smaller ones that will require less rigorous CEQA review—or none at all, as the City alleges here. The larger project, the impacts of which the DEIR concluded would be numerous, significant and, in some cases, unavoidable, was abruptly abandoned by the Applicant after considerable pushback from the community.²⁸ When the Applicant submitted the much-abbreviated application for the currently proposed Project, the City pointed out that a Vesting Tentative Map of five or more parcels would require additional CEQA review, after which the Applicant immediately revised the Project, reconfiguring the proposed site into four parcels.²⁹

Moreover, the residential portion of the larger project had been evaluated in the Technology Center DEIR together with all project components. It is now being developed concurrently under a separate application—and separate environmental review.³⁰ As the court in *Laurel Heights* found, “this is not the type of situation where it is unclear as to whether a parcel of land will be developed or as to whether activity will commence.”³¹ In fact, though no formal land use entitlement applications had been filed with the City at the time, the Technology Center DEIR acknowledged that “[t]he future development of [the residential component] is

²⁷ *Id.* at 399.

²⁸ See, e.g., public comment letters, <https://www.morgan-hill.ca.gov/1966/Morgan-Hill-Technology-Park>.

²⁹ See City Letter of Application Incompleteness (Jan. 11, 2021), p. 3; Applicant Response Letter (Feb. 1, 2021), p. 8.

³⁰ Morgan Hill Planning Commission Staff Report, p. 6.

³¹ *Laurel Heights*, 47 Cal.3d at 395.

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reasonably foreseeable given the existing land use designation and zoning.”³² Now that that foreseeable development has come to pass, the adjacent development projects are being evaluated separately.

By now omitting from its environmental review the reasonably foreseeable development of all projects at the same sites originally analyzed in the EIR for the Technology Center Project, the City has impermissibly engaged in piecemealing and must prepare an EIR for the entire site which fully describes, analyzes and mitigates potentially significant impacts.

IV. TIERING

In preparing an initial study, a lead agency is required to identify the appropriate level of environmental review and must determine whether a previously prepared EIR could be used with the project.³³ Tiering, in which the analysis of general matters contained in a broader EIR, such as one prepared for a general plan, is used to frame the general discussion of a later, narrower project and its specific issues and impacts, can be appropriate when considering large-scale planning approval or separate but related projects. A later EIR shall be required when the initial study or other analysis finds that the later project may cause significant effects on the environment that were not adequately addressed in the prior EIR.³⁴

Where a program EIR has been prepared that could apply to a later project, CEQA requires the lead agency to conduct a two-step process to examine the later project to determine whether additional environmental review is required.³⁵ First, the agency must consider whether the project will result in environmental effects that were not examined in the program EIR.³⁶ Whether a later activity is within the scope of a program EIR is a factual question that the lead agency determines based on substantial evidence in the record.³⁷ If the agency finds the activity would have environmental effects that were not examined in the program EIR, it must

³² Technology Center DEIR, p. 17.

³³ CEQA Guidelines, §§ 15060, 15063, subd. (c).

³⁴ 14 C.C.R. § 15152(f).

³⁵ See CEQA Guidelines, 15168, subd. (c); S. Kostka & M. Zischke, Practice Under the California Environmental Quality Act 2d, § 10.16 (Mar. 2018).

³⁶ CEQA Guidelines, § 15168, subd. (c)(1).

³⁷ *Id.* at (c)(2).

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then prepare an initial study to determine whether to prepare an EIR or negative declaration to address those effects.³⁸

Second, if the agency determines the project is covered by the program EIR, it must then consider whether any new or more significant environmental effects could occur due to changes in circumstances or project scope, or new information that could not have been considered in the program EIR.³⁹ More specifically, pursuant CEQA Guidelines section 15162, subsequent or supplemental environmental review is required when one or more of the following events occur:

- (1) Substantial changes are proposed in the project which will require major revisions of the previous EIR due to the involvement of new significant effects or a substantial increase in the severity of previously identified effects;
- (2) Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or
- (3) New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the negative declaration was adopted, shows any of the following:
 - (A) The project will have one or more significant effects not discussed in the previous EIR or negative declaration;
 - (B) Significant effects previously examined will be substantially more severe than shown in the previous EIR;
 - (C) Mitigation measures or alternatives previously found not to be feasible would in fact be feasible, and would substantially reduce one or more significant effects of the

³⁸ CEQA Guidelines, § 15168, subd. (c)(1).

³⁹ CEQA Guidelines, § 15168, subd. (c)(2).

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project, but the project proponents decline to adopt the mitigation measure or alternative; or

- (D) Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.⁴⁰

The terms “supplement” and “subsequent” are not interchangeable. “A supplement to an EIR is a document that contains additions or changes needed to make the previous EIR adequate ... In contrast ... a subsequent EIR revises the previous EIR, rather than simply supplements it.”⁴¹ With subsequent review the “revised EIR must receive the same circulation and review as the original EIR.”⁴²

Similarly, Section 15183 provides a streamlined process for environmental review of projects that are “consistent with the development density established by existing zoning, community plan, or general plan policies for which an EIR was certified,” authorizing agencies to avoid duplicative environmental review “except as might be necessary to examine whether there are project-specific significant effects which are peculiar to the project or its site.”⁴³

Courts have held that if “no EIR has been prepared for a nonexempt project, but substantial evidence in the record supports a fair argument that the project may result in significant adverse impacts, the proper remedy is to order preparation of an EIR.”⁴⁴ The fair argument standard creates a “low threshold” favoring environmental review through an EIR, rather than through issuance of a negative declaration.⁴⁵ An agency’s decision not to require an EIR can be upheld only when there is no credible evidence to the contrary.⁴⁶

⁴⁰ CEQA Guidelines, § 15162, subd. (a)(1)-(3); see also Pub. Resources Code, § 21166.

⁴¹ S. Koskte & M. Zischke, Practice Under the Environmental Quality Act 2d., § 19.4, p. 19-8 (Mar. 2018).

⁴² S. Koskte & M. Zischke, Practice Under the Environmental Quality Act 2d., § 19.4, p. 19-8, (Mar. 2018), emphasis added; see also CEQA Guidelines, §§ 15162, 15163.

⁴³ 14 C.C.R. § 15183(a).

⁴⁴ See, e.g., *Communities for a Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal.4th 310, 319-320.

⁴⁵ *Citizens Action to Serve All Students v. Thornley* (1990) 222 Cal.App.3d 748, 754.

⁴⁶ *Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th, 1307, 1318; see also *Friends of B Street v. City of Hayward* (1980) 106 Cal.App.3d 988, 1002 (“If there was substantial evidence that the proposed

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A. The Project Was Not Analyzed by the 2035 General Plan EIR

In 2016, the Morgan Hill City Council certified the Morgan Hill 2035 General Plan EIR analyzing “land use, urban design, circulation, public services, natural resources, and safety goals, policies, and actions to guide investment and development” in the City over a 20-year period. Prepared as a program EIR pursuant to CEQA Guidelines Section 15168, the EIR states that its intended purpose is to serve as a long-term “policy document[] guiding future development activities and City actions.”⁴⁷

The Staff Report asserts that the General Plan EIR “adequately addressed the potential environmental impacts associated with the comprehensive update of the City’s constitution for growth including certain implementation activities and provided for streamlining of the environmental review process for projects proposed subsequent to the certification of the EIR.”⁴⁸ The Report’s entire analysis of the EIR’s evaluation of impacts from activities specific to the Project consists of the following paragraph:

The proposed project entails dividing the subject property and constructing buildings consistent with the General Plan. The division and development of parcels consistent with the General Plan was addressed in the program EIR for the 2035 General Plan and, therefore, pursuant to Section 15162 and Section 15183 of the State CEQA Guidelines, no additional review under the California Environmental Quality Act is required for the proposed project.⁴⁹

It is unclear from this description how the General Plan EIR’s analysis of development and population growth over the next 15 years applies to the Project’s specific impacts, let alone how those impacts are examined in enough detail as to make further environmental review unnecessary. The Staff Report appears to conclude that, in light of the Project’s proposal to divide “the subject property and construct[] buildings,” the General Plan EIR’s analysis of the “division and development of parcels” is sufficiently adequate that no further review is

project might have a significant environmental impact, evidence to the contrary is not sufficient to support a decision to dispense with preparation of an EIR and adopt a negative declaration, because it could be ‘fairly argued’ that the project might have a significant environmental impact”).

⁴⁷ General Plan EIR, p. 2-2.

⁴⁸ Staff Report, p. 19.

⁴⁹ Staff Report, p. 15.

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warranted. A thorough search of the General Plan EIR, however, reveals that it does not analyze impacts from specific subdivisions or construction whatsoever. In fact, specifics of any kind associated with the Project—environmental setting, baseline, potential impacts from development, subdivision or construction, mitigation—are nowhere to be found in the EIR.

In its insistence that the General Plan EIR’s analysis of future impacts renders any further environmental review unnecessary, the Staff Report seems to unequivocally reject the EIR’s stated objective with respect to its status as a program EIR. Recognizing the utility of program EIRs when a project “consists of a series of actions related to the issuance of rules, regulations, and other planning criteria,” the EIR distinguishes itself as a document that serves to guide policy and City actions over time, rather than as a benchmark for specific project impacts:

No specific development projects are proposed as part of the proposed Project. Therefore, this EIR is a program-level EIR that analyzes the potential significant environmental effects of the adoption of the proposed Project. As a program EIR, it is not project-specific, and does not evaluate the impacts of individual projects that may be proposed under the General Plan. Such subsequent projects will require a separate environmental review, when applicable as required by CEQA, which could be in the form of a Negative Declaration, Mitigated Negative Declaration, or a Subsequent EIR, to secure the necessary development permits. Therefore, while subsequent environmental review may be tiered from this EIR, this EIR is not intended to address project-specific impacts of individual projects.⁵⁰

The City had to make a significant effort to disregard this statement in the EIR, whose preparers went so far as to announce no less than 7 times that it was not to be used to evaluate individual projects.⁵¹ The City cannot do an about-face now to claim that its own General Plan EIR analyzed something which the City has previously and unequivocally stated it did not.

Section 15168’s two-step inquiry of a program EIR’s applicability to later activities holds that “if a later activity would have effects that were not examined in the program EIR, a new initial study would need to be prepared leading to either an

⁵⁰ General Plan EIR, p. 2-2.

⁵¹ See, e.g., pp. 2-2, 3-1fn.2, 3-42, 4.3-34, 4.3-37, 4.3-38, 4.3-53.
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EIR or a negative declaration.”⁵² The City insists that, pursuant to sections 15162 and 15183, the Project is within the scope of the program EIR and no subsequent EIR is required. “Whether a later activity is within the scope of a program EIR is a factual question that the lead agency determines based on substantial evidence in the record.”⁵³ The City does not offer any substantial evidence to support its dubious conclusion. At most, it suggests a vague association between the EIR’s illusory “division and development of parcels” and the Project’s subdivision and development.

In contrast, as demonstrated below and supported by substantial evidence, the Project is likely to result in significant impacts to transportation, air quality, and public health—impacts specific to its development and that were not contemplated by the General Plan EIR. Since the EIR, by its own admission, did not evaluate the impacts of any specific projects, a subsequent EIR to examine “project-specific significant effects which are peculiar to the project or its site” should be prepared.⁵⁴

V. ENVIRONMENTAL REVIEW IS REQUIRED FOR DISCRETIONARY ACTIONS

In addition to claiming that the program-level General Plan EIR adequately analyzed impacts of future development, including the Project, the City advised the Applicant that the Project was further excused from CEQA review because “Environmental Review is not required for Design Review or Tentative Parcel Map applications.”⁵⁵ This conclusion is patently false for the reasons that follow.

A. Design Review

The City’s conclusion that environmental review is not required for Design Review is incorrect. Per the City’s own Municipal Code, a Design Review permit, which is required for significant projects like the Applicant’s,⁵⁶ “is a discretionary action that enables the city to ensure that proposed development exhibits high

⁵² 14 C.C.R. § 15168(c)(1).

⁵³ *Id.*

⁵⁴ 14 C.C.R. § 15183(a).

⁵⁵ City of Morgan Hill Development Services Center Completeness Comment Letter, February 16, 2021, p. 3.

⁵⁶ Municipal Code 18.108.040(D)(2) states that “[a]ny structure with more than seventy-five thousand square feet of floor area is presumed significant.”

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quality design consistent with the general plan and any other applicable specific plan or area plan adopted by the city council.”⁵⁷ CEQA clearly requires environmental review of all “discretionary projects proposed to be carried out or approved by public agencies.”⁵⁸

The Staff Report notes the receipt of a letter on behalf of the Applicant asserting that the Planning Commission “lacks discretion to address potential environmental effects, making the Project ministerial for CEQA purposes.”⁵⁹ Analogizing to a case in which a court found that approval of a design review permit limited the reviewing agency to consideration of design-related issues, the letter attempts to establish that the Planning Commission has no discretion to consider the Project’s potential environmental impacts. This is because, as the letter contends, the discretion granted to the Commission by the Municipal Code refers only to discretionary review of a project’s design elements. The letter’s interpretation of the case law, however, suffers from two fundamental flaws: (1) it attempts to apply the court’s reasoning to an inapposite set of facts, and (2) it overlooks the other discretionary approval sought for this Project, the Vesting Tentative Parcel Map.

The letter attempts to draw parallels where they do not exist, asserting that “[l]ike the fourteen design review criteria applied by St. Helena in *McCorkle*, the City’s design review criteria are limited to design review and not environmental issues.”⁶⁰ In that case, the St. Helena City Council found the local design review ordinances prevented it from disapproving the project for non-design related matters. Those ordinances did not include any required findings related to CEQA review or otherwise allow the agency to “shape the project in any way which could respond to any of the concerns which might be identified in an environmental impact report.”⁶¹ Here, on the other hand, Morgan Hill’s design review ordinance requires a finding that a project has been reviewed in compliance with CEQA, as well as a determination that it will not be “detrimental to the public health, safety, or welfare or materially injurious to the properties or improvements in the vicinity”—distinctly discretionary actions that require consideration of the Project’s effects on the environment and potential mitigation.⁶²

⁵⁷ MHMC 18.108.040(A).

⁵⁸ Pub. Resources Code § 21080(a).

⁵⁹ Staff Report, p. 19.

⁶⁰ Staff Report, p. 72.

⁶¹ *McCorkle Eastside Neighborhood Group v. City of St. Helena* (2018) 31 Cal.App 5th 80, 90.

⁶² Zoning Code, § 18.108.040.

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Furthermore, even if a design permit did limit the Planning Commission to consideration only of design-related elements, the Project also seeks a Vesting Tentative Parcel Map, a discretionary permit subject to the provisions of CEQA.⁶³ As discussed above, it is well established that a project cannot be divided into smaller parts that individually will not have a significant effect on the environment. This rule is applicable even if one of the smaller parts might require only ministerial, rather than discretionary, approval.⁶⁴ Moreover, when a project “involves an approval that contains elements of both a ministerial action and a discretionary action, the project will be deemed to be discretionary.”⁶⁵

B. Vesting Tentative Parcel Map

The Project requires a Vesting Tentative Parcel Map to subdivide the existing two parcels into four separate parcels, approval of which requires that the Tentative Map is consistent with all applicable city ordinances, general and specific plans adopted by the city, and the State Subdivision Map Act (“Map Act”).⁶⁶ The Map Act, as well as the Morgan Hill Municipal Code, requires specific environmental findings before a parcel map can be approved. A map shall not be approved, for example, if its design or proposed improvements are “likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat,” or are “likely to cause serious public health problems.”⁶⁷ Regulating land subdivisions in Morgan Hill, according to the Municipal Code, is “necessary for the preservation of the public health, safety and general welfare, to promote orderly growth and development and to promote open space, conservation, protection and proper use of land and to insure provision for adequate traffic circulation, utilities and services.”⁶⁸

Once again, making these findings confers on the agency a discretionary duty to determine compliance with the statute.⁶⁹ This discretion, furthermore, involves

⁶³ See, e.g., Pub. Resources Code § 21080: “this division shall apply to discretionary projects proposed to be carried out or approved by public agencies, including, but not limited to, the enactment and amendment of zoning ordinances, the issuance of zoning variances, the issuance of conditional use permits, and the approval of tentative subdivision maps ...”

⁶⁴ *Orinda Assoc. v. Board of Supervisors* (1986) 182 Cal.App.3d 1145, 1171–1172.

⁶⁵ 14 C.C.R. § 15268(d).

⁶⁶ MHMC § 17.24.050 A; 17.24.070 A; .

⁶⁷ Gov. Code § 66474(e), (f); MHMC § 17.20.100.

⁶⁸ MHMC, § 17.04.020.

⁶⁹ Pub. Res. Code § 21080(a); *Rominger v. County of Colusa* (2014) 229 Cal.App.4th 690. 5175-002acp

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consideration of activities that have the “potential to cause a direct physical change or a reasonably foreseeable indirect physical change in the environment.”⁷⁰

The City, in an exercise of this discretionary duty, states in the Staff Report that the Project “will not be detrimental to the public health, safety, or welfare, and will not be materially injurious to the properties or improvements in the vicinity.”⁷¹ As it had previously concluded that no environmental review was required,⁷² however, it is unclear how it reached this determination, and no substantial evidence is offered in support of this conclusory statement. In addition, as discussed in Section VI. below, there is substantial evidence demonstrating that the Project is likely to have potentially significant and unmitigated impacts on air quality, public health, climate change, and traffic. As a result of these unmitigated impacts, the Project fails to comply with the Map Act and Municipal Code and the City cannot make the requisite findings to approve the Project’s Tentative Map.

VI. THE CITY MUST PREPARE AN EIR TO ANALYZE THE PROJECT’S POTENTIALLY SIGNIFICANT ENVIRONMENTAL IMPACTS THAT WERE NOT ANALYZED IN THE MORGAN HILL 2035 GENERAL PLAN EIR

Agencies must fully disclose all potentially significant impacts of a project, and must implement all feasible mitigation to reduce those impacts to less than significant levels. The lead agency’s significance determination with regard to each impact must be supported by accurate scientific and factual data.⁷³ An agency cannot conclude that an impact is less than significant unless it produces rigorous analysis and concrete substantial evidence justifying the finding.⁷⁴

Moreover, the failure to provide information required by CEQA is a failure to proceed in the manner required by CEQA.⁷⁵ Challenges to an agency’s failure to proceed in the manner required by CEQA, such as the failure to disclose

⁷⁰ *Id.*

⁷¹ Staff Report, p. 16.

⁷² Asserting that the Project “is consistent with the development projections analyzed in the Morgan Hill 2035 General Plan program EIR for the project site” and that it “is designed to be consistent with the development standards in the General Plan and Zoning Code” the City concluded that no further environmental review would be required. Staff Report, p. 52.

⁷³ 14 CCR § 15064(b).

⁷⁴ *Kings Cty. Farm Bur. v. Hanford* (1990) 221 Cal.App.3d 692, 732.

⁷⁵ *Sierra Club v. State Bd. Of Forestry* (1994) 7 Cal.4th 1215, 1236.
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information about a project's environmental effects or alternatives, are subject to a less deferential standard than challenges to an agency's factual conclusions.⁷⁶ In reviewing challenges to an agency's approval of an EIR based on a lack of substantial evidence, the court will "determine de novo whether the agency has employed the correct procedures, scrupulously enforcing all legislatively mandated CEQA requirements."⁷⁷

As explained above, where a program EIR has been prepared that can apply to a later project, CEQA requires the lead agency to conduct a two-step process to examine the later project to determine whether additional environmental review is required.⁷⁸ First, the agency must consider whether the project will result in environmental effects that were not examined in the program EIR.⁷⁹ If the later activity involves site-specific operations, as it does here, the City must evaluate the site and activity to determine whether the environmental effects were covered in the program EIR and document its findings by a checklist.⁸⁰ If the agency finds the activity would have environmental effects that were not examined in the program EIR, it must then prepare an initial study to determine whether to prepare an EIR or negative declaration to address those effects.⁸¹

Because the 2035 General Plan EIR did not address any project-specific impacts of future projects, significant effects resulting from the Project will be substantially more severe than anything analyzed in the General Plan EIR. Without completing additional environmental analysis, the Project cannot satisfy the requirements for disclosure and analysis under CEQA and must complete a subsequent EIR.

⁷⁶ *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 435.

⁷⁷ *Id.*, *Madera Oversight Coal., Inc. v. County of Madera* (2011) 199 Cal. App. 4th 48, 102.

⁷⁸ See CEQA Guidelines, 15168, subd. (c); S. Kostka & M. Zischke, Practice Under the California Environmental Quality Act 2d, § 10.16 (Mar. 2018).

⁷⁹ CEQA Guidelines, § 15168, subd. (c)(1).

⁸⁰ 14 CCR §15168(c)(4).

⁸¹ CEQA Guidelines, § 15168, subd. (c)(1).

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A. Air Quality

i. Updated Analysis Provides Substantial Evidence of Potentially Significant Air Quality Impacts

Using Project-specific information, as well as site-specific information such as land use type, meteorological data, total acreage, and typical equipment, experts from SWAPE estimated the Project's construction and operational emissions using the most updated version of CalEEMod.⁸² SWAPE found that emissions of VOCs from construction at the Project site would be 268.96 lb/day, nearly twice the BAAQMD threshold of 137 lb/day.⁸³

This is new information about significant impacts that were not analyzed in the General Plan EIR because this specific development project was not before the City at the time the General Plan was approved. The results substantiate the conclusion that impacts to air quality will be significant and must be analyzed and mitigated in a project-specific EIR.

ii. A Health Risk Analysis Must be Prepared

SWAPE found that potentially significant impacts to public health were undisclosed and the Project failed to provide sufficient information regarding the Project's potential health risk impacts.⁸⁴ The Project will produce emissions of diesel particulate matter ("DPM") through the exhaust stacks of construction equipment throughout its construction period, and will generate daily vehicle trips, which will generate additional exhaust emissions and continue to expose nearby sensitive receptors to DPM emissions.⁸⁵ The City, however, failed to make a reasonable effort to connect the Project's construction-related and operational toxic air contaminant ("TAC") emissions to the potential health risks posed to nearby receptors.⁸⁶ These pose a significant risk to public health, and should be disclosed and mitigated in an EIR.

⁸² SWAPE Comments, p. 3.

⁸³ Id.; California Environmental Quality Act Air Quality Guidelines. BAAQMD, May 2017, *available at*: https://www.baaqmd.gov/~media/files/planning-and-research/ceqa/ceqa_guidelines_may2017-pdf.pdf?la=en, p. 2-2, Table 2-1.

⁸⁴ SWAPE Comments, p. 4.

⁸⁵ *Id.*

⁸⁶ *Id.*

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CEQA requires that a lead agency analyze the human health effects of the air emissions generated by a development project.⁸⁷ Additionally, as SWAPE explained, the Office of Environmental Health Hazard Assessment (“OEHHA”), recommends that exposure from projects lasting more than 6 months be evaluated for the duration of the project and recommends that an exposure duration of 30 years be used to estimate individual cancer risk for the maximally exposed individual resident (“MEIR”).⁸⁸

SWAPE calculated the Project’s excess cancer risk to the MEIR using applicable HRA methodologies prescribed by OEHHA:

Consistent with the default CalEEMod construction schedule, the annualized average concentration for construction was used for the entire third trimester of pregnancy (0.25 years) and the first 1.28 years of the infantile stage of life (0 – 2 years). The annualized averaged concentration for operation was used for the remainder of the 30-year exposure period, which makes up the remainder of the infantile stage of life, and the entire child and adult stages of life (2 – 16 years) and (16 – 30 years), respectively.⁸⁹

Consistent with OEHHA, as recommended by SCAQMD, BAAQMD, and SJVAPCD guidance, we used Age Sensitivity Factors (“ASFs”) to account for the heightened susceptibility of young children to the

⁸⁷ CEQA Appendix G, Section III.D; CEQA Guidelines section 15126.2(a) (“health and safety problems caused by the physical changes” that the proposed project will precipitate); *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 516; *Berkeley Keep Jets. v. Bd. of Port Comrs.* (“*Berkeley Jets*”) (2001) 91 Cal.App.4th 1344, 1369; *Bakersfield*, 124 Cal.App.4th at 1219–1220.

⁸⁸ SWAPE Comments, p. 4; Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments. OEHHA, February 2015, available at: http://oehha.ca.gov/air/hot_spots/2015/2015GuidanceManual.pdf, p. 8-6, 8-15

⁸⁹ SWAPE Comments, p. 5.
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carcinogenic toxicity of air pollution.^{90, 91, 92, 93} According to this guidance, the quantified cancer risk should be multiplied by a factor of ten during the third trimester of pregnancy and during the first two years of life (infant) as well as multiplied by a factor of three during the child stage of life (2 – 16 years). Furthermore, in accordance with the guidance set forth by OEHHA, we used the 95th percentile breathing rates for infants.⁹⁴ Finally, according to BAAQMD guidance, we used a Fraction of Time At Home (“FAH”) value of 0.85 for the 3rd trimester and infant receptors, 0.72 for child receptors, and 0.73 for the adult receptors.⁹⁵ We used a cancer potency factor of 1.1 (mg/kg-day)⁻¹ and an averaging time of 25,550 days.

The resulting impacts, SWAPE found, were highly significant and demonstrate a high risk to the health and welfare of the public from the Project:

The excess cancer risk to adults, children, infants, and during the 3rd trimester of pregnancy at the MEIR located approximately 300 meters away, over the course of Project construction and operation, utilizing

⁹⁰ “Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments.” OEHHA, February 2015, *available at*:

<https://oehha.ca.gov/media/downloads/crn/2015guidancemanual.pdf>.

⁹¹ “Draft Environmental Impact Report (DEIR) for the Proposed The Exchange (SCH No. 2018071058).” SCAQMD, March 2019, *available at*: <http://www.aqmd.gov/docs/default-source/ceqa/comment-letters/2019/march/RVC190115-03.pdf?sfvrsn=8>, p. 4.

⁹² “California Environmental Quality Act Air Quality Guidelines.” BAAQMD, May 2017, *available at*: http://www.baaqmd.gov/~media/files/planning-and-research/ceqa/ceqa_guidelines_may2017-pdf.pdf?la=en, p. 56; see also “Recommended Methods for Screening and Modeling Local Risks and Hazards.” BAAQMD, May 2011, *available at*: <http://www.baaqmd.gov/~media/Files/Planning%20and%20Research/CEQA/BAAQMD%20Modeling%20Approach.ashx>, p. 65, 86.

⁹³ “Update to District’s Risk Management Policy to Address OEHHA’s Revised Risk Assessment Guidance Document.” SJVAPCD, May 2015, *available at*: <https://www.valleyair.org/busind/pto/staff-report-5-28-15.pdf>, p. 8, 20, 24.

⁹⁴ “Supplemental Guidelines for Preparing Risk Assessments for the Air Toxics ‘Hot Spots’ Information and Assessment Act,” June 5, 2015, *available at*: <http://www.aqmd.gov/docs/default-source/planning/risk-assessment/ab2588-risk-assessment-guidelines.pdf?sfvrsn=6>, p. 19. “Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments.” OEHHA, February 2015, *available at*:

<https://oehha.ca.gov/media/downloads/crn/2015guidancemanual.pdf>

⁹⁵ “Air Toxics NSR Program Health Risk Assessment (HRA) Guidelines.” BAAQMD, January 2016, *available at*: http://www.baaqmd.gov/~media/files/planning-and-research/rules-and-regs/workshops/2016/reg-2-5/hra-guidelines_clean_jan_2016-pdf.pdf?la=en
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ASFs, are approximately 2.4, 15, 23, and 1.1 in one million, respectively. We estimate an excess cancer risk of approximately 42 in one million over the course of a residential lifetime (30 years), utilizing ASFs. The infant, child, and lifetime cancer risks exceed the BAAQMD threshold of 10 in one million, thus resulting in a potentially significant impact.

Neither the General Plan EIR nor the Staff Report disclose this potentially significant health risk impact from the Project. This is new information about significant impacts that were not analyzed in the General Plan EIR because this specific development project was not before the City at the time the General Plan was approved. The City must prepare an EIR to fully disclose the health risk posed to nearby, existing receptors from Project construction and operation, and to require binding mitigation measures to reduce the health impacts from the Project's DPM emissions to less than significant levels.

iii. GHG Emissions Will be Significant

Because the City failed to conduct any project-specific impact analysis, the Staff Report and supporting documentation lack sufficient information regarding the Project's potentially significant GHG emissions.

SWAPE conducted an analysis of the Project's GHG emissions utilizing its CalEEMod model, with the 2030 "Substantial Progress" threshold of 660 metric tons of carbon dioxide equivalents per year ("MT CO₂e/year").⁹⁶ The CalEEMod output files, modeled by SWAPE with Project-specific information, showed "the Project's mitigated emissions, which include approximately 1,389 MT CO₂e of total construction emissions (sum of 2021 and 2022 emissions) and approximately 5,250 MT CO₂e/year of annual operational emissions (sum of area, energy, mobile, waste,

⁹⁶ SWAPE Comments, p. 9; See: JEFFERSON UNION HIGH SCHOOL DISTRICT FACULTY & STAFF HOUSING PROJECT AIR QUALITY & GREENHOUSE GAS ASSESSMENT. City of Daly City, June 2019, available at: https://files.ceganet.opr.ca.gov/257215-2/attachment/k-aC8VdC7LV3xz75yuUmtGiiExH-Y7HEPQ-dU-YIxuhNp95Dx9bK_TbVP3sWar00-Zx87dh7ji80vrbRH0, p. 7; "TO 20-01 PAPÉ MACHINERY AIR QUALITY & GREENHOUSE GAS EMISSIONS ASSESSMENT." City of Fremont, February 2020, available at: "SOLAR4AMERICA ICE FACILITY EXPANSION AIR QUALITY AND GREENHOUSE GAS EMISSION ASSESSMENT." City of San Jose, September 2019, available at: https://www.fremont.gov/DocumentCenter/View/44974/4_Appendix-1_Air-Quality-GHG-Assessment, p. 18; and <https://www.sanjoseca.gov/Home/ShowDocument?id=45200>, p. 6. 5175-002acp

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and water-related emissions). When compared to the Project's net annual GHG emissions of 853 MT CO₂e/year to the Bay Area Air Quality Management District's ("BAAQMD") 2030 "Substantial Progress" threshold of 660 MT CO₂e/year, SWAPE found a potentially significant GHG impact, exceeding the "Substantial Progress" threshold by eightfold.⁹⁷

The Project's potentially significant GHG impacts are new information that was not analyzed in the General Plan EIR which must be fully disclosed and mitigated in an EIR.

B. Transportation

The City asserts that CEQA review is not required for the Project because the General Plan EIR evaluated impacts specific enough to release the Applicant or agency from any duty to perform subsequent environmental review. As Mr. Smith points out, however, the projected 2035 impacts to the intersections surrounding the Project site that are listed in the General Plan EIR are far less significant than those anticipated as a result of the Morgan Hill Technology Center in that project's DEIR.⁹⁸ Some of the relevant intersections, meanwhile, were not evaluated at all in the General Plan EIR. Impacts resulting from specific development of the Project site were clearly not evaluated in the General Plan EIR, necessitating further environmental review.⁹⁹

⁹⁷ SWAPE Comments, p. 9; See: "JEFFERSON UNION HIGH SCHOOL DISTRICT FACULTY & STAFF HOUSING PROJECT AIR QUALITY & GREENHOUSE GAS ASSESSMENT." City of Daly City, June 2019, available at: https://files.ceqanet.opr.ca.gov/257215-2/attachment/k-aC8VdC7LV3xz75yuUmtGiiExH-Y7HEPQ-dU-YIxuhNp95Dx9bK_TbVP3sWar00-Zx87dh7ji80vbRH0, p. 7; "TO 20-01 PAPÉ MACHINERY AIR QUALITY & GREENHOUSE GAS EMISSIONS ASSESSMENT." City of Fremont, February 2020, available at: "SOLAR4AMERICA ICE FACILITY EXPANSION AIR QUALITY AND GREENHOUSE GAS EMISSION ASSESSMENT." City of San Jose, September 2019, available at: https://www.fremont.gov/DocumentCenter/View/44974/4_Appendix-1_Air-Quality-GHG-Assessment, p. 18; and <https://www.sanjoseca.gov/Home/ShowDocument?id=45200>, p. 6.

⁹⁸ The General Plan EIR estimated that the intersection of Cochrane Road and DePaul Drive would operate at average delays per vehicle of 18.6 seconds and 19.8 seconds in the morning and evening peak periods, respectively. It found that the intersection of Cochrane Road and Mission View Drive would operate at average delays per vehicle of 20.2 seconds and 19.0 seconds in the morning and evening peaks. These values are characteristic of what the Morgan Hill Technology Center DEIR reports as *existing conditions*. It estimates significantly higher impacts to the intersections as a result of that larger project. General Plan EIR 4.14-43.

⁹⁹ Smith Comments, p. 4.
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Furthermore, Mr. Smith explains, the DEIR prepared for the Morgan Hill Technology Center project acknowledged that the General Plan EIR did not contemplate the development at issue in that project.¹⁰⁰ As one of its project alternatives, it compared potential project impacts with those estimated in the General Plan EIR buildout of the site. A Traffic Analysis concluded that, using the City's Travel Demand Forecasting Model and the General Plan's 20-year estimation for buildout of the site, VMT would increase significantly with development of the Technology Park project.¹⁰¹ That project, the analysis determined, would result in nearly double the number of miles traveled.¹⁰² The DEIR, however, attempted to cast doubt on the veracity of this conclusion by asserting that the development projections included in the General Plan EIR were "significantly lower" in intensity and "not reflective of the maximum allowed uses under the existing General Plan designations and zoning districts."¹⁰³ The DEIR acknowledges, therefore, that the Technology Park project and its specific development could not have been under consideration in the General Plan's environmental review. Likewise, the General Plan could not have contemplated this Project, as the larger Technology Center encompassed this Project's development.¹⁰⁴

Mr. Smith examined the DEIR prepared for the larger project proposed at the site. The traffic analysis performed for that DEIR, he found, showed highly significant deteriorations at the intersections surrounding the project site, from LOS B or C to LOS F in one or the other of the peak hours:

- The intersection of Cochrane Road with DePaul Drive would deteriorate in the PM peak hour from 18.7 seconds average delay per vehicle and LOS B to 101 seconds per vehicle and LOS F.
- The intersection of Cochrane Road and Mission View Drive would deteriorate in the AM peak hour from 23.0 seconds average delay per vehicle and LOS C to 94.6 seconds per vehicle and LOS F.
- The intersection of Mission View Drive and Half Road would deteriorate from 22.6 seconds average delay per vehicle and LOS C in the PM peak hour to 136.9 seconds and LOS F.¹⁰⁵

¹⁰⁰ *Id.*

¹⁰¹ Technology Park DEIR, p. 160; Technology Park DEIR Traffic Impact Analysis, Appendix H, p. 79.

¹⁰² *Id.*

¹⁰³ Technology Park DEIR, p. 201; Smith Comments, p. 4.

¹⁰⁴ MHMC, Sustainable Building Regulations, § 17.32.040.

¹⁰⁵ Smith Comments, p. 3.

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He further explained: If one takes the trip generation for the RedwoodTech@101 Project as fairly calculated in the section above and assumes its share of responsibility for the delay increments disclosed in the Morgan Hill Technology Center Mixed-Use Project DEIR is proportional to the ratio of its trip generation to that of the whole Mixed-Use Project, then the following results are obtained:

- The RedwoodTech@101 Project would cause the intersection of Cochrane Road with DePaul Drive to deteriorate in the PM peak hour from 18.7 seconds average delay per vehicle and LOS B to approximately 63.55 seconds delay and LOS E in the PM peak.
- The intersection of Cochrane Road and Mission View Drive would deteriorate in the AM peak hour from 23.0 seconds average delay per vehicle and LOS C to approximately 78.99 seconds and LOS E in the AM peak.
- The intersection of Mission View Drive and Half Road would deteriorate from 22.6 seconds average delay per vehicle and LOS C in the PM peak hour to approximately 84.89 seconds and LOS F.¹⁰⁶

“The fact that the revised and renamed Project,” Mr. Smith stated, “could have effects on this scale should have been obvious to the City.”¹⁰⁷ This is new information about significant transportation impacts that were not analyzed in the General Plan EIR because this specific development project was not before the City at the time the General Plan was approved. The City must prepare an EIR to disclose and mitigate these impacts.

C. Noise

Noise expert Deborah Jue, in examining the DEIR prepared for the prior Technology Center Project, found that noise impacts were not properly identified, relying on incorrect distances between the noise sensitive land use and the project construction.¹⁰⁸ This error, she explained, may result in an inaccurate analysis of impacts for the Redwood 101 Project.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ Jue Comments, p. 1: “Construction noise analyses can be done using the shortest distance between the noise sensitive land use and the work area for the project, or it can be done using the distance from the noise sensitive land use to the center, or possibly the centroid of the project. Given 5175-002acp

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The prior analysis identified a significance threshold of 60 dBA hourly Leq for construction noise received at residential land use and 70 dBA hourly Leq received at commercial land use. Ambient noise in excess of these thresholds by at least 5 dBA for more than one year would constitute a significant temporary noise increase.¹⁰⁹

Ms. Jue explained the measurements contained in the prior analysis:

[O]nly a short-term noise measurement was made near the residential neighborhood on Tolusa Place (ST-1) measuring two short 10-minute periods ranging from 58 to 62 dBA Leq; given the location's distance from the main arterial and highway noise sources, it is expected that the ambient at the future residential project, which is being permitted concurrently, would be more similar to the noise measurement data collected at ST-2 near the medical facilities which yielded 64 dBA Leq. According to the prior analysis, construction noise which exceeds 60 dBA Leq and 63 dBA Leq over the course of a year would be significant at the Tolusa Place residents, and construction noise which exceeds 60 dBA Leq and 68 dBA Leq over the course of the year would be significant at the future residential project.¹¹⁰

Putting this one-year allowance into context, Ms. Jue pointed out that the Oakland Noise Ordinance limits long-term construction projects that last more than 10 days to 65 dBA at residential land use and 70 at commercial land use, regardless of the existing ambient conditions. From this perspective, Ms. Jue stated, "the one-year requirement to determine significance seems particularly lenient."¹¹¹

Since the Project is being permitted concurrently with the residential component of the Technology Center project, residents could experience a full year or more of cumulative construction noise. The noise levels at the east residential neighborhood would exceed 60 dBA Leq and the existing environment of 58 dBA would be increased by 5 dBA or more for a period of a year or more.¹¹²

that the extent of the prior project was so large (89 acres), using either of these distances would potentially over-estimate or under-estimate the actual impacts, respectively."

¹⁰⁹ Jue Comments, p. 1.

¹¹⁰ Jue Comments, pp. 1–2.

¹¹¹ Jue Comments, p. 2.

¹¹² Jue Comments, p. 2

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The concurrent residential project would be slightly closer to existing noise sources such as Hwy 101, but still within 50 ft of the project construction. If completed prior to the commercial project, Ms. Jue explained, “some number of homes within the future residential project would be exposed to a significant noise impact as shown in Table 3. The noise levels would exceed 60 dBA Leq and the existing environment of 64 dBA would be increased by 5 dBA or more for a period of a year or more.”¹¹³

Table 1 Construction Noise Impacts from Commercial Buildings at Future Residential Project

Construction Phase	Commercial Project Source to Future Residential	
	Distance to Center: 515 ft	Distance to nearest PL 50 ft
Site Preparation	64	84
Grading	65	85
Trenching	59	79
Build Exterior	63	83
Build Interior	55	75
Paving	63	83

CEQA impact analysis, Ms. Jue points out, is necessary to determine the best mitigation measures to address these temporary, substantial noise impacts. Such measures could include buffer distances and sound barriers. Adequate materials for such sound barriers, she explains, would include “temporary barriers using STC 20-25 blankets on a tubular steel frame or scaffolding or 3 PSF wood frame barriers (e.g., using ¾” thick plywood).”¹¹⁴ The material, she said, should overlap or otherwise be constructed to avoid gaps of any size, and should be high enough to block the line of sight between the construction noise sources and the affected windows.¹¹⁵ “The sound barrier has to interrupt the line of sight between the source(s) and the receiver(s) and the best placement to maximize the sound barrier benefit is close the source or close to the receiver.”¹¹⁶

¹¹³ Jue Comments, 3.

¹¹⁴ Jue Comments, p. 3.

¹¹⁵ *Id.*

¹¹⁶ *Id.*

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Ms. Jue concluded that, because the noise analysis prepared for the prior project appears to contain some errors “which could lead one to conclude that construction activities for the proposed project and the future residential project could be less than significant.”¹¹⁷ This is new information about significant impacts that were not analyzed in the General Plan EIR because this specific development project was not before the City at the time the General Plan was approved. An EIR must be prepared to disclose and mitigate these impacts.

VII. THE CITY CANNOT MAKE THE NECESSARY FINDINGS TO ISSUE A DESIGN PERMIT OR TENTATIVE MAP FOR THE PROJECT

Approval of the Project’s Design Permit and Tentative Map requires factual findings, supported by substantial evidence, pursuant to the Morgan Hill Municipal Code and the State Subdivision Map Act that a proposed subdivision is consistent with the City’s general plan and specific plans, and does not have any detrimental environmental or public health effects.¹¹⁸

The Staff Report claims that the Project is in compliance with the General Plan, Zoning Code and other City Codes as required by Section 17.50.030 of the Municipal Code, but nowhere does it make findings, or offer substantial evidence, that the Project will not have any detrimental environmental or public health effects.

As discussed in Section VI above, substantial evidence demonstrates that the Project is likely to have potentially significant impacts on air quality, public health, climate change, noise, and traffic. Silicon Valley Residents’ experts have provided ample evidence demonstrating the Project’s significant impacts, including:

- Emissions of VOCs and TACs from Project construction and operation will be significant.
- DPM emissions from construction and operation
- The cancer risk from the Project to nearby receptors would be 42 in one million over 30 years, exceeding the BAAQMD threshold of 10 in one million.¹¹⁹

¹¹⁷ Jue Comments, p. 4.

¹¹⁸ Gov Code §§66473.5, 66474; MHMC 18.108.040(A).

¹¹⁹ SWAPE Comments, p. 8.

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- Traffic and transportation in the Project vicinity could be significantly impacted by Project construction and operation.
- Nearby residents could experience significant impacts from noise for a year or more.

These effects have not been disclosed or analyzed by the City, which continues to claim that the General Plan EIR is sufficient to address any potential impacts, despite that document's repeated claim that it did not analyze any project-specific impacts. As a result, the Project fails to comply with mandatory Map Act requirements. The City, therefore, cannot make the requisite findings pursuant to Government Code Sections 66473.5 and 66474 and must deny the Project's Design Permit and Tentative Map.

VIII. CONCLUSION

The City has improperly tried to rely on the 2035 General Plan EIR as a program EIR with analysis sufficient to satisfy CEQA. That EIR, however, was never meant to serve as a review document for specific projects. Many of the impacts likely to result from the Project will be significantly more severe than what was evaluated in the General Plan EIR, while others were never analyzed at all.

Furthermore, the Design Review Permit and Vesting Tentative Map required for the Project cannot be issued. As supported by substantial evidence above and in expert comment letters attached herein, the Project will result in significant and unmitigated impacts that are not disclosed or analyzed by the General Plan EIR. Without further mitigation measures to reduce the Project's significant impacts, the City cannot find that it is not detrimental to public health, safety, or welfare, and thus cannot approve the permits necessary for the Project to move forward.

Sincerely,



Kendra Hartmann

KDH:acp
Attachments

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ATTACHMENT A



Technical Consultation, Data Analysis and
Litigation Support for the Environment

2656 29th Street, Suite 201
Santa Monica, CA 90405

Matt Hagemann, P.G., C.Hg.
(949) 887-9013
mhagemann@swape.com

Paul E. Rosenfeld, PhD
(310) 795-2335
prosenfeld@swape.com

May 24, 2021

Kendra Hartmann
Adams Broadwell Joseph & Cardozo
601 Gateway Blvd #1000
South San Francisco, CA 94080

Subject: Comments on the De Paul – TC Morgan Hill Venture (Redwood Tech at 101) Project

Dear Ms. Hartmann,

We have reviewed the February 2021 Completeness Comment Letter (“Completeness Letter”) for the De Paul – TC Morgan Hill Venture (Redwood Tech at 101) (“Project”) located in the City of Morgan Hill (“City”). The Project proposes to construct five buildings consisting of 501,314-SF of flexible industrial/commercial space and 854 parking spaces on the 28.96-acre site.

Our review concludes that the Completeness Letter fails to adequately evaluate the Project’s air quality, health risk, and greenhouse gas impacts. As a result, emissions and health risk impacts associated with construction and operation of the proposed Project are underestimated and inadequately addressed. An analysis should be prepared to adequately assess and mitigate the potential air quality, health risk, and greenhouse gas impacts that the project may have on the surrounding environment.

Air Quality & Greenhouse Gas

Failure to Evaluate Potential Environmental Impacts

Regarding the Project’s completeness of application, the Completeness Letter states:

“Pursuant to the Permit Streamlining Act (Government Code Chapter 4.5 of Title 7), your application is complete” (p. 1).

Furthermore, regarding the Project’s environmental impacts, the Completeness Letter states:

“Your application is consistent with the existing zoning and General Plan designation of the site. In addition, Environmental Review is not required for Design Review or Tentative Parcel Map

applications; therefore, Environmental Review is not required for the resubmitted project” (p. 3).

As demonstrated above, the Completeness Letter concludes that the Project does not require environmental review. However, this conclusion is unsubstantiated. According to the Permit Streamlining Act:

(a) The information compiled pursuant to Section 65940 shall also indicate the criteria which the agency will apply in order to determine the completeness of any application submitted to it for a development project.

(b) If a public agency is a lead or responsible agency for purposes of the California Environmental Quality Act, Division 13 (commencing with Section 21000) of the Public Resources Code, that criteria shall not require the applicant to submit the informational equivalent of an environmental impact report as part of a complete application, or to otherwise require proof of compliance with that act as a prerequisite to a permit application being deemed complete. However, that criteria may require sufficient information to permit the agency to make the determination required by Section 21080.1 of the Public Resources Code (emphasis added).¹

Section 21080.1 of the Public Resources Code states:

“The lead agency shall be responsible for determining whether an environmental impact report, a negative declaration, or a mitigated negative declaration shall be required for any project which is subject to this division.”²

As demonstrated in the excerpts above, the criteria required to determine the completeness of an application does not require the applicant to submit information equivalent to an environmental impact report pursuant to CEQA. However, sufficient information is necessary for a lead agency to determine whether an environmental impact report, a negative declaration, or a mitigated negative declaration is required for the project. Thus, as the Completeness Letter concludes that the Project does not require environmental review, sufficient information regarding the Project’s potential environmental impacts is not available, and the agency is unable to make an informed determination, as required by Section 21080.1 of the Public Resources Code.

¹ “TITLE 7. Planning and Land Use, DIVISION 1. Planning and Zoning, CHAPTER 4.5. Review and Approval of Development Projects, ARTICLE 3. Applications for Development Projects.” California Legislative Information, available at: https://leginfo.ca.gov/faces/codes_displayText.xhtml?lawCode=GOV&division=1.&title=7.&part=&chapter=4.5.&article=3.

² “PUBLIC RESOURCES CODE DIVISION 13 ENVIRONMENTAL QUALITY CHAPTER 2.6 General.” California Legislative Information, available at: https://leginfo.ca.gov/faces/codes_displaySection.xhtml?lawCode=PRC§ionNum=21080.1.

As such, we recommend that the Project not be approved until the preparation of an adequate environmental analysis evaluates the potential air quality, health risk, and greenhouse gas impacts the Project may have on the surrounding environment.

Updated Analysis Indicates a Potentially Significant Air Quality Impact

In an effort to estimate the Project's construction-related and operational emissions, we utilized CalEEMod.2016.3.2, as well as the Project-specific information provided by the Completeness Letter.³ CalEEMod provides recommended default values based on site-specific information, such as land use type, meteorological data, total lot acreage, project type and typical equipment associated with project type. In our model, we included 501,314-SF of "General Light Industry" and 854 spaces of "Parking Lot." We assumed that the Project would be located within Climate Zone 3⁴ and the Project's utilities would be provided by the Pacific Gas and Electric Company.⁵ All other values were left as default.

Our updated analysis estimates that the Project's construction-related VOC emissions exceed the applicable BAAQMD threshold of 54 pounds per day ("lbs/day") (see table below).⁶

Maximum Daily Construction-Related Emissions:

Model	ROG
SWAPE Construction	268.96
BAAQMD Threshold (lbs/day)	137
Threshold Exceeded?	Yes

As you can see in the excerpt above, the Project's construction-related VOC emissions, as estimated by SWAPE, exceed the applicable BAAQMD significance threshold. Thus, our model demonstrates that the Project would result in a potentially significant air quality impact that was not previously identified or addressed in the Completeness Letter. As a result, an EIR should be prepared to adequately assess and mitigate the potential air quality impacts that the Project may have on the surrounding environment.

Diesel Particulate Matter Health Risk Emissions Inadequately Evaluated

As previously stated, the Completeness Letter concludes the Project does not require environmental review. However, the Completeness Letter fails to provide sufficient information regarding the Project's potential health risk impacts. We recommend the Project conduct a quantified construction and operational health risk analysis ("HRA") for the following three reasons.

³ CAPCOA (November 2017) CalEEMod User's Guide, http://www.aqmd.gov/docs/default-source/caleemod/01_user-39-s-guide2016-3-2_15november2017.pdf?sfvrsn=4.

⁴ "Appendix F Climate Zones Lookup." CAPCOA, September 2016, available at: http://www.aqmd.gov/docs/default-source/caleemod/upgrades/2016.3/07_appendix-f2016-3-1.pdf?sfvrsn=2, p. F-17.

⁵ "Electric Service Area Maps." Pacific Gas and Electric Company, November 2014, available at: https://www.pge.com/tariffs/assets/pdf/tariffbook/ELEC_MAPS_Service%20Area%20Map.pdf, pp. 2.

⁶ "California Environmental Quality Act Air Quality Guidelines." BAAQMD, May 2017, available at: https://www.baaqmd.gov/~media/files/planning-and-research/ceqa/ceqa_guidelines_may2017-pdf.pdf?la=en, p. 2-2, Table 2-1.

First, construction of the proposed Project will produce emissions of diesel particulate matter (“DPM”) through the exhaust stacks of construction equipment throughout its construction period. Furthermore, the proposed land uses will generate daily vehicle trips, which will generate additional exhaust emissions and continue to expose nearby sensitive receptors to DPM emissions. However, the Completeness Letter fails to make a reasonable effort to connect the Project’s construction-related and operational toxic air contaminant (“TAC”) emissions to the potential health risks posed to nearby receptors. As a result, the Project fails to provide sufficient information regarding the Project’s potential health risk impacts.

Second, the Office of Environmental Health Hazard Assessment (“OEHHA”), the organization responsible for providing guidance on conducting HRAs in California, released its most recent *Risk Assessment Guidelines: Guidance Manual for Preparation of Health Risk Assessments* in February 2015.⁷ This guidance document describes the types of projects that warrant the preparation of an HRA. The OEHHA document recommends that all short-term projects lasting at least two months be evaluated for cancer risks to nearby sensitive receptors.⁸ As Project construction would last approximately 13 months, the anticipated construction duration would exceed the 2-month recommendation set forth by OEHHA, thus meeting the threshold warranting a quantified HRA under OEHHA guidance (Project Description, p. 3).

Furthermore, the OEHHA document recommends that exposure from projects lasting more than 6 months be evaluated for the duration of the project and recommends that an exposure duration of 30 years be used to estimate individual cancer risk for the maximally exposed individual resident (“MEIR”).⁹ Even though we were not provided with the expected lifetime of the Project, we can reasonably assume that the Project will operate for at least 30 years, if not more. Therefore, we recommend that health risk impacts from Project operation also be evaluated, as a 30-year exposure duration vastly exceeds the 6-month recommendation set forth by OEHHA. These recommendations reflect the most recent state health risk policies, and as such, we recommend the Project not be approved until an adequate analysis of the health risk impacts posed to nearby sensitive receptors from Project construction and operation is prepared.

Third, the Project fails to compare the excess health risk impact to the applicable BAAQMD numeric threshold of 10 in one million.¹⁰ Thus, an analysis of the health risk posed to nearby, existing receptors from Project construction and operation should be conducted.

⁷ “Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments.” OEHHA, February 2015, available at: http://oehha.ca.gov/air/hot_spots/hotspots2015.html

⁸ “Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments.” OEHHA, February 2015, available at: http://oehha.ca.gov/air/hot_spots/2015/2015GuidanceManual.pdf, p. 8-18

⁹ “Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments.” OEHHA, February 2015, available at: http://oehha.ca.gov/air/hot_spots/2015/2015GuidanceManual.pdf, p. 8-6, 8-15

¹⁰ “California Environmental Quality Act Air Quality Guidelines.” BAAQMD, May 2017, available at: https://www.baaqmd.gov/~/media/files/planning-and-research/ceqa/ceqa_guidelines_may2017-pdf.pdf?la=en, p. 2-2, Table 2-1.

Screening-Level Analysis Demonstrates Significant Impacts

In order to conduct our screening-level risk assessment we relied upon AERSCREEN, which is a screening level air quality dispersion model.¹¹ The model replaced SCREEN3, and AERSCREEN is included in the OEHHA¹² and the California Air Pollution Control Officers Associated (“CAPCOA”)¹³ guidance as the appropriate air dispersion model for Level 2 health risk screening assessments (“HRSAs”). A Level 2 HRSA utilizes a limited amount of site-specific information to generate maximum reasonable downwind concentrations of air contaminants to which nearby sensitive receptors may be exposed. If an unacceptable air quality hazard is determined to be possible using AERSCREEN, a more refined modeling approach is required prior to approval of the Project.

We prepared a preliminary HRA of the Project’s construction and operational health-related impact to residential sensitive receptors using the annual PM₁₀ exhaust estimates from SWAPE’s air model. Consistent with recommendations set forth by OEHHA, we assumed residential exposure begins during the third trimester stage of life. SWAPE’s CalEEMod output files indicate that construction activities will generate approximately 299 pounds of DPM over the CalEEMod default 559-day construction period. The AERSCREEN model relies on a continuous average emission rate to simulate maximum downward concentrations from point, area, and volume emission sources. To account for the variability in equipment usage and truck trips over Project construction, we calculated an average DPM emission rate by the following equation:

$$\text{Emission Rate} \left(\frac{\text{grams}}{\text{second}} \right) = \frac{298.6 \text{ lbs}}{559 \text{ days}} \times \frac{453.6 \text{ grams}}{\text{lbs}} \times \frac{1 \text{ day}}{24 \text{ hours}} \times \frac{1 \text{ hour}}{3,600 \text{ seconds}} = \mathbf{0.0028 \text{ g/s}}$$

Using this equation, we estimated a construction emission rate of 0.0028 grams per second (“g/s”). Subtracting the 559-day construction period from the total residential duration of 30 years, we assumed that after Project construction, the sensitive receptor would be exposed to the Project’s operational DPM for an additional 28.47 years, approximately. SWAPE’s CalEEMod output indicate that operational activities will generate approximately 123 pounds of DPM per year throughout operation. Applying the same equation used to estimate the construction DPM rate, we estimated the following emission rate for Project operation:

$$\text{Emission Rate} \left(\frac{\text{grams}}{\text{second}} \right) = \frac{123.4 \text{ lbs}}{365 \text{ days}} \times \frac{453.6 \text{ grams}}{\text{lbs}} \times \frac{1 \text{ day}}{24 \text{ hours}} \times \frac{1 \text{ hour}}{3,600 \text{ seconds}} = \mathbf{0.00177 \text{ g/s}}$$

Using this equation, we estimated an operational emission rate of 0.00177 g/s. Construction and operational activity was simulated as a 29-acre rectangular area source in AERSCREEN with dimensions of 500 by 235 meters. A release height of three meters was selected to represent the height of exhaust stacks on operational equipment and other heavy-duty vehicles, and an initial vertical dimension of one-

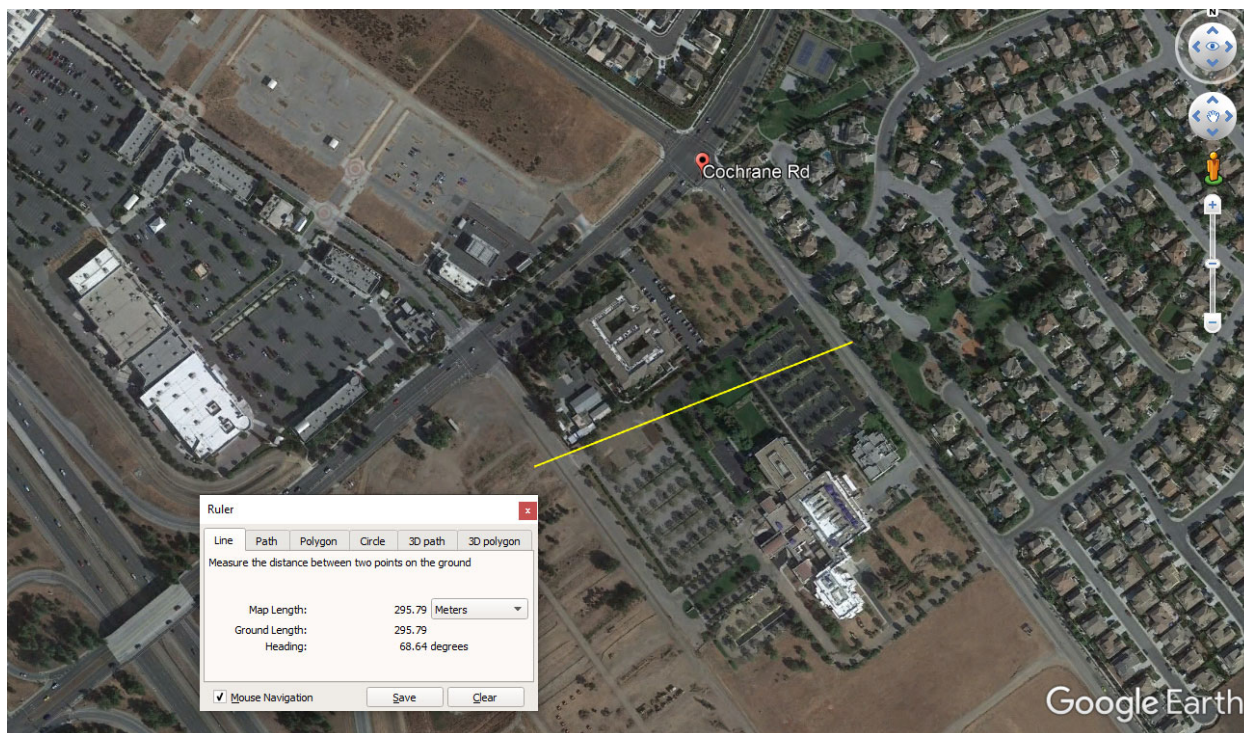
¹¹ U.S. EPA (April 2011) AERSCREEN Released as the EPA Recommended Screening Model, http://www.epa.gov/ttn/scram/guidance/clarification/20110411_AERSCREEN_Release_Memo.pdf

¹² OEHHA (February 2015) Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments, <https://oehha.ca.gov/media/downloads/cnr/2015guidancemanual.pdf>.

¹³ CAPCOA (July 2009) Health Risk Assessments for Proposed Land Use Projects, http://www.capcoa.org/wp-content/uploads/2012/03/CAPCOA_HRA_LU_Guidelines_8-6-09.pdf.

and-a-half meters was used to simulate instantaneous plume dispersion upon release. An urban meteorological setting was selected with model-default inputs for wind speed and direction distribution.

The AERSCREEN model generates maximum reasonable estimates of single-hour DPM concentrations from the Project site. EPA guidance suggests that in screening procedures, the annualized average concentration of an air pollutant be estimated by multiplying the single-hour concentration by 10%.¹⁴ Google Earth demonstrates that the closest sensitive receptors are located approximately 300 meters from the Project site (see excerpt below).



Thus, the single-hour concentration estimated by AERSCREEN for Project construction is approximately $0.934 \mu\text{g}/\text{m}^3$ DPM at approximately 300 meters downwind. Multiplying this single-hour concentration by 10%, we get an annualized average concentration of $0.0934 \mu\text{g}/\text{m}^3$ for Project construction at the MEIR. For Project operation, the single-hour concentration estimated by AERSCREEN is $0.5913 \mu\text{g}/\text{m}^3$ DPM at approximately 300 meters downwind. Multiplying this single-hour concentration by 10%, we get an annualized average concentration of $0.05913 \mu\text{g}/\text{m}^3$ for Project operation at the MEIR.

We calculated the excess cancer risk to the MEIR using applicable HRA methodologies prescribed by OEHHA. Consistent with the default CalEEMod construction schedule, the annualized average concentration for construction was used for the entire third trimester of pregnancy (0.25 years) and the first 1.28 years of the infantile stage of life (0 – 2 years). The annualized averaged concentration for

¹⁴ "Screening Procedures for Estimating the Air Quality Impact of Stationary Sources Revised." EPA, 1992, available at: http://www.epa.gov/ttn/scram/guidance/guide/EPA-454R-92-019_OCR.pdf; see also "Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments." OEHHA, February 2015, available at: <https://oehha.ca.gov/media/downloads/cnr/2015guidancemanual.pdf> p. 4-36.

operation was used for the remainder of the 30-year exposure period, which makes up the remainder of the infantile stage of life, and the entire child and adult stages of life (2 – 16 years) and (16 – 30 years), respectively.

Consistent with OEHHA, as recommended by SCAQMD, BAAQMD, and SJVAPCD guidance, we used Age Sensitivity Factors (“ASFs”) to account for the heightened susceptibility of young children to the carcinogenic toxicity of air pollution.^{15, 16, 17, 18} According to this guidance, the quantified cancer risk should be multiplied by a factor of ten during the third trimester of pregnancy and during the first two years of life (infant) as well as multiplied by a factor of three during the child stage of life (2 – 16 years). Furthermore, in accordance with the guidance set forth by OEHHA, we used the 95th percentile breathing rates for infants.¹⁹ Finally, according to BAAQMD guidance, we used a Fraction of Time At Home (“FAH”) value of 0.85 for the 3rd trimester and infant receptors, 0.72 for child receptors, and 0.73 for the adult receptors.²⁰ We used a cancer potency factor of 1.1 (mg/kg-day)⁻¹ and an averaging time of 25,550 days. The results of our calculations are shown below.

¹⁵ “Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments.” OEHHA, February 2015, available at: <https://oehha.ca.gov/media/downloads/cnr/2015guidancemanual.pdf>.

¹⁶ “Draft Environmental Impact Report (DEIR) for the Proposed The Exchange (SCH No. 2018071058).” SCAQMD, March 2019, available at: <http://www.aqmd.gov/docs/default-source/ceqa/comment-letters/2019/march/RVC190115-03.pdf?sfvrsn=8>, p. 4.

¹⁷ “California Environmental Quality Act Air Quality Guidelines.” BAAQMD, May 2017, available at: http://www.baaqmd.gov/~media/files/planning-and-research/ceqa/ceqa_guidelines_may2017-pdf.pdf?la=en, p. 56; see also “Recommended Methods for Screening and Modeling Local Risks and Hazards.” BAAQMD, May 2011, available at: <http://www.baaqmd.gov/~media/Files/Planning%20and%20Research/CEQA/BAAQMD%20Modeling%20Approach.ashx>, p. 65, 86.

¹⁸ “Update to District’s Risk Management Policy to Address OEHHA’s Revised Risk Assessment Guidance Document.” SJVAPCD, May 2015, available at: <https://www.valleyair.org/busind/pto/staff-report-5-28-15.pdf>, p. 8, 20, 24.

¹⁹ “Supplemental Guidelines for Preparing Risk Assessments for the Air Toxics ‘Hot Spots’ Information and Assessment Act,” June 5, 2015, available at: <http://www.aqmd.gov/docs/default-source/planning/risk-assessment/ab2588-risk-assessment-guidelines.pdf?sfvrsn=6>, p. 19.

“Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments.” OEHHA, February 2015, available at: <https://oehha.ca.gov/media/downloads/cnr/2015guidancemanual.pdf>

²⁰ “Air Toxics NSR Program Health Risk Assessment (HRA) Guidelines.” BAAQMD, January 2016, available at: http://www.baaqmd.gov/~media/files/planning-and-research/rules-and-regs/workshops/2016/reg-2-5/hra-guidelines_clean_jan_2016-pdf.pdf?la=en

The Closest Exposed Individual at an Existing Residential Receptor

Activity	Duration (years)	Concentration (ug/m3)	Breathing Rate (L/kg-day)	Cancer Risk without ASFs*	ASF	Cancer Risk with ASFs*
Construction	0.25	0.0934	361	1.1E-07	10	1.1E-06
3rd Trimester Duration	0.25			1.1E-07	3rd Trimester Exposure	1.1E-06
Construction	1.28	0.0934	1090	1.7E-06	10	1.7E-05
Operation	0.72	0.05913	1090	7.0E-07	10	5.9E-06
Infant Exposure Duration	2.00			2.4E-06	Infant Exposure	2.3E-05
Operation	14.00	0.05913	572	5.1E-06	3	1.5E-05
Child Exposure Duration	14.00			5.1E-06	Child Exposure	1.5E-05
Operation	14.00	0.05913	261	2.4E-06	1	2.4E-06
Adult Exposure Duration	14.00			2.4E-06	Adult Exposure	2.4E-06
Lifetime Exposure Duration	30.00			1.0E-05	Lifetime Exposure	4.2E-05

* We, along with CARB and BAAQMD, recommend using the more updated and health protective 2015 OEHHA guidance, which includes ASFs.

As demonstrated in the table above, the excess cancer risk to adults, children, infants, and during the 3rd trimester of pregnancy at the MEIR located approximately 300 meters away, over the course of Project construction and operation, utilizing ASFs, are approximately 2.4, 15, 23, and 1.1 in one million, respectively. We estimate an excess cancer risk of approximately 42 in one million over the course of a residential lifetime (30 years), utilizing ASFs. The infant, child, and lifetime cancer risks exceed the BAAQMD threshold of 10 in one million, thus resulting in a potentially significant impact.

Utilizing ASFs is the most conservative, health-protective analysis according to the most recent guidance by OEHHA and reflects recommendations from the air district. Results without ASFs are presented in the table above, although we **do not** recommend utilizing these values for health risk analysis. Regardless, the estimated excess cancer risk to adults, children, infants, and during the 3rd trimester of pregnancy at the MEIR located approximately 300 meters away, over the course of Project construction and operation, without ASFs, are approximately 2.4, 5.1, 2.4, and 0.11 in one million, respectively. The estimated excess cancer risk over the course of a residential lifetime (30 years), without ASFs, is approximately 10 in one million.

An agency must include an analysis of health risks that connects the Project's air emissions with the health risk posed by those emissions. Our analysis represents a screening-level HRA, which is known to

be conservative and tends to err on the side of health protection.²¹ The purpose of the screening-level construction and operational HRA shown above is to demonstrate the link between the proposed Project's emissions and the potential health risk. Our screening-level HRA demonstrates that construction and operation of the Project could result in a potentially significant health risk impact, when correct exposure assumptions and up-to-date, applicable guidance are used. Thus, the City should prepare a quantified air pollution model as well as a quantified refined HRA that adequately and accurately evaluates health risk impacts associated with both Project construction and operation.

Screening-Level Assessment Indicates Significant Greenhouse Gas Impacts

As discussed above, the Completeness Letter concludes the Project does not require environmental review. As a result, the Completeness Letter fails to provide sufficient information regarding the Project's potential greenhouse gas ("GHG") impacts. However, as discussed above, the Project would result in potentially significant air quality and health risk impacts. Thus, we recommend that a full environmental analysis, including estimated GHG emissions, be prepared for the Project, prior to approval.

In an effort to evaluate the Project's GHG impacts, we conducted an analysis of the Project's GHG emissions utilizing SWAPE's CalEEMod model, as previously described. To evaluate the Project's estimated GHG emissions, we recommend the use of the widely used 2030 "Substantial Progress" threshold of 660 metric tons of carbon dioxide equivalents per year ("MT CO₂e/year").²² The CalEEMod output files, modeled by SWAPE with Project-specific information, disclose the Project's mitigated emissions, which include approximately 1,389 MT CO₂e of total construction emissions (sum of 2021 and 2022 emissions) and approximately 5,250 MT CO₂e/year of annual operational emissions (sum of area, energy, mobile, waste, and water-related emissions). When we compare the Project's net annual GHG emissions of 853 MT CO₂e/year to the 2030 "Substantial Progress" threshold of 660 MT CO₂e/year, we find a potentially significant GHG impact (see table below).²³

²¹ "Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments." OEHHA, February 2015, available at: <https://oehha.ca.gov/media/downloads/crn/2015guidancemanual.pdf>, p. 1-5

²² See: "JEFFERSON UNION HIGH SCHOOL DISTRICT FACULTY & STAFF HOUSING PROJECT AIR QUALITY & GREENHOUSE GAS ASSESSMENT." City of Daly City, June 2019, available at: https://files.ceganet.opr.ca.gov/257215-2/attachment/k-aC8VdC7LV3xz75yuUmtGiiExH-Y7HEPQ-dU-YlxuhNp95Dx9bK_TbVP3sWar00-Zx87dh7ji80vbRH0, p. 7; "TO 20-01 PAPÉ MACHINERY AIR QUALITY & GREENHOUSE GAS EMISSIONS ASSESSMENT." City of Fremont, February 2020, available at: "SOLAR4AMERICA ICE FACILITY EXPANSION AIR QUALITY AND GREENHOUSE GAS EMISSION ASSESSMENT." City of San Jose, September 2019, available at: https://www.fremont.gov/DocumentCenter/View/44974/4_Appendix-1_Air-Quality-GHG-Assessment, p. 18; and <https://www.sanjoseca.gov/Home/ShowDocument?id=45200>, p. 6.

²³ See: "JEFFERSON UNION HIGH SCHOOL DISTRICT FACULTY & STAFF HOUSING PROJECT AIR QUALITY & GREENHOUSE GAS ASSESSMENT." City of Daly City, June 2019, available at: https://files.ceganet.opr.ca.gov/257215-2/attachment/k-aC8VdC7LV3xz75yuUmtGiiExH-Y7HEPQ-dU-YlxuhNp95Dx9bK_TbVP3sWar00-Zx87dh7ji80vbRH0, p. 7; "TO 20-01 PAPÉ MACHINERY AIR QUALITY & GREENHOUSE GAS EMISSIONS ASSESSMENT." City of Fremont, February 2020, available at: "SOLAR4AMERICA ICE FACILITY EXPANSION AIR QUALITY AND GREENHOUSE GAS EMISSION ASSESSMENT." City of San Jose, September 2019, available at: https://www.fremont.gov/DocumentCenter/View/44974/4_Appendix-1_Air-Quality-GHG-Assessment, p. 18; and <https://www.sanjoseca.gov/Home/ShowDocument?id=45200>, p. 6.

SWAPE Greenhouse Gas Emissions	
Project Phase	Proposed Project (MT CO ₂ e/year)
Construction (amortized over 30 years)	46.29
Area	0.03
Energy	1,887.88
Mobile	2,708.28
Waste	312.61
Water	341.00
Net Annual GHG Emissions	5,296
Threshold	660
<i>Exceed?</i>	<i>Yes</i>

As the table above demonstrates, the Project's net annual GHG emissions, as estimated by SWAPE, exceed the 2030 "Substantial Progress" bright-line threshold, thus demonstrating a potentially significant impact. Therefore, since our screening-level quantitative GHG analysis indicates a potentially significant impact, the City should prepare a Project-specific environmental analysis in order to further evaluate the Project's GHG impacts.

Feasible Mitigation Measures Available to Reduce Emissions

Our analysis demonstrates that the Project would result in potentially significant air quality, health risk, and GHG impacts that should be mitigated further. In an effort to reduce the Project's emissions, we identified several mitigation measures that are applicable to the proposed Project. Feasible mitigation measures can be found in the Department of Justice Warehouse Project Best Practices document.²⁴ Therefore, to reduce the Project's emissions, consideration of the following measures should be made:

- Requiring off-road construction equipment to be zero-emission, where available, and all diesel-fueled off-road construction equipment, to be equipped with CARB Tier IV-compliant engines or better, and including this requirement in applicable bid documents, purchase orders, and contracts, with successful contractors demonstrating the ability to supply the compliant construction equipment for use prior to any ground-disturbing and construction activities.
- Prohibiting off-road diesel-powered equipment from being in the "on" position for more than 10 hours per day.
- Requiring on-road heavy-duty haul trucks to be model year 2010 or newer if diesel-fueled.
- Providing electrical hook ups to the power grid, rather than use of diesel-fueled generators, for electric construction tools, such as saws, drills and compressors, and using electric tools whenever feasible.
- Limiting the amount of daily grading disturbance area.

²⁴ "Warehouse Projects: Best Practices and Mitigation Measures to Comply with the California Environmental Quality Act." State of California Department of Justice.

- Prohibiting grading on days with an Air Quality Index forecast of greater than 100 for particulates or ozone for the project area.
- Forbidding idling of heavy equipment for more than two minutes.
- Keeping onsite and furnishing to the lead agency or other regulators upon request, all equipment maintenance records and data sheets, including design specifications and emission control tier classifications.
- Conducting an on-site inspection to verify compliance with construction mitigation and to identify other opportunities to further reduce construction impacts.
- Using paints, architectural coatings, and industrial maintenance coatings that have volatile organic compound levels of less than 10 g/L.
- Providing information on transit and ridesharing programs and services to construction employees.
- Providing meal options onsite or shuttles between the facility and nearby meal destinations for construction employees.
- Requiring that all facility-owned and operated fleet equipment with a gross vehicle weight rating greater than 14,000 pounds accessing the site meet or exceed 2010 model-year emissions equivalent engine standards as currently defined in California Code of Regulations Title 13, Division 3, Chapter 1, Article 4.5, Section 2025. Facility operators shall maintain records on-site demonstrating compliance with this requirement and shall make records available for inspection by the local jurisdiction, air district, and state upon request.
- Requiring all heavy-duty vehicles entering or operated on the project site to be zero-emission beginning in 2030.
- Requiring on-site equipment, such as forklifts and yard trucks, to be electric with the necessary electrical charging stations provided.
- Requiring tenants to use zero-emission light- and medium-duty vehicles as part of business operations.
- Forbidding trucks from idling for more than two minutes and requiring operators to turn off engines when not in use.
- Posting both interior- and exterior-facing signs, including signs directed at all dock and delivery areas, identifying idling restrictions and contact information to report violations to CARB, the air district, and the building manager.

These measures offer a cost-effective, feasible way to incorporate lower-emitting design features into the proposed Project, which subsequently, reduce emissions released during Project construction and operation. An adequate environmental review should be prepared to include all feasible mitigation measures, as well as include an updated air quality, health risk, and GHG analysis to ensure that the necessary mitigation measures are implemented to reduce emissions to below thresholds.

Disclaimer

SWAPE has received limited discovery regarding this project. Additional information may become available in the future; thus, we retain the right to revise or amend this report when additional information becomes available. Our professional services have been performed using that degree of

care and skill ordinarily exercised, under similar circumstances, by reputable environmental consultants practicing in this or similar localities at the time of service. No other warranty, expressed or implied, is made as to the scope of work, work methodologies and protocols, site conditions, analytical testing results, and findings presented. This report reflects efforts which were limited to information that was reasonably accessible at the time of the work, and may contain informational gaps, inconsistencies, or otherwise be incomplete due to the unavailability or uncertainty of information obtained or provided by third parties.

Sincerely,



Matt Hagemann, P.G., C.Hg.



Paul E. Rosenfeld, Ph.D.

Attachment A:	SWAPE Health Risk Calculations
Attachment B:	SWAPE Project CalEEMod Modeling
Attachment C:	SWAPE Project AERSCREEN Modeling
Attachment D:	Paul Rosenfeld CV
Attachment E:	Matt Hagemann CV

Tel: (949) 887-9013

Email: mhagemann@swape.com

Matthew F. Hagemann, P.G., C.Hg., QSD, QSP

**Geologic and Hydrogeologic Characterization
Investigation and Remediation Strategies
Litigation Support and Testifying Expert
Industrial Stormwater Compliance
CEQA Review**

Education:

M.S. Degree, Geology, California State University Los Angeles, Los Angeles, CA, 1984.

B.A. Degree, Geology, Humboldt State University, Arcata, CA, 1982.

Professional Certifications:

California Professional Geologist

California Certified Hydrogeologist

Qualified SWPPP Developer and Practitioner

Professional Experience:

Matt has 30 years of experience in environmental policy, contaminant assessment and remediation, stormwater compliance, and CEQA review. He spent nine years with the U.S. EPA in the RCRA and Superfund programs and served as EPA's Senior Science Policy Advisor in the Western Regional Office where he identified emerging threats to groundwater from perchlorate and MTBE. While with EPA, Matt also served as a Senior Hydrogeologist in the oversight of the assessment of seven major military facilities undergoing base closure. He led numerous enforcement actions under provisions of the Resource Conservation and Recovery Act (RCRA) and directed efforts to improve hydrogeologic characterization and water quality monitoring. For the past 15 years, as a founding partner with SWAPE, Matt has developed extensive client relationships and has managed complex projects that include consultation as an expert witness and a regulatory specialist, and a manager of projects ranging from industrial stormwater compliance to CEQA review of impacts from hazardous waste, air quality and greenhouse gas emissions.

Positions Matt has held include:

- Founding Partner, Soil/Water/Air Protection Enterprise (SWAPE) (2003 – present);
- Geology Instructor, Golden West College, 2010 – 2014, 2017;
- Senior Environmental Analyst, Komex H2O Science, Inc. (2000 -- 2003);

- Executive Director, Orange Coast Watch (2001 – 2004);
- Senior Science Policy Advisor and Hydrogeologist, U.S. Environmental Protection Agency (1989–1998);
- Hydrogeologist, National Park Service, Water Resources Division (1998 – 2000);
- Adjunct Faculty Member, San Francisco State University, Department of Geosciences (1993 – 1998);
- Instructor, College of Marin, Department of Science (1990 – 1995);
- Geologist, U.S. Forest Service (1986 – 1998); and
- Geologist, Dames & Moore (1984 – 1986).

Senior Regulatory and Litigation Support Analyst:

With SWAPE, Matt's responsibilities have included:

- Lead analyst and testifying expert in the review of over 300 environmental impact reports and negative declarations since 2003 under CEQA that identify significant issues with regard to hazardous waste, water resources, water quality, air quality, greenhouse gas emissions, and geologic hazards. Make recommendations for additional mitigation measures to lead agencies at the local and county level to include additional characterization of health risks and implementation of protective measures to reduce worker exposure to hazards from toxins and Valley Fever.
- Stormwater analysis, sampling and best management practice evaluation at more than 100 industrial facilities.
- Expert witness on numerous cases including, for example, MTBE litigation, air toxins at hazards at a school, CERCLA compliance in assessment and remediation, and industrial stormwater contamination.
- Technical assistance and litigation support for vapor intrusion concerns.
- Lead analyst and testifying expert in the review of environmental issues in license applications for large solar power plants before the California Energy Commission.
- Manager of a project to evaluate numerous formerly used military sites in the western U.S.
- Manager of a comprehensive evaluation of potential sources of perchlorate contamination in Southern California drinking water wells.
- Manager and designated expert for litigation support under provisions of Proposition 65 in the review of releases of gasoline to sources drinking water at major refineries and hundreds of gas stations throughout California.

With Komex H2O Science Inc., Matt's duties included the following:

- Senior author of a report on the extent of perchlorate contamination that was used in testimony by the former U.S. EPA Administrator and General Counsel.
- Senior researcher in the development of a comprehensive, electronically interactive chronology of MTBE use, research, and regulation.
- Senior researcher in the development of a comprehensive, electronically interactive chronology of perchlorate use, research, and regulation.
- Senior researcher in a study that estimates nationwide costs for MTBE remediation and drinking water treatment, results of which were published in newspapers nationwide and in testimony against provisions of an energy bill that would limit liability for oil companies.
- Research to support litigation to restore drinking water supplies that have been contaminated by MTBE in California and New York.

- Expert witness testimony in a case of oil production-related contamination in Mississippi.
- Lead author for a multi-volume remedial investigation report for an operating school in Los Angeles that met strict regulatory requirements and rigorous deadlines.
- Development of strategic approaches for cleanup of contaminated sites in consultation with clients and regulators.

Executive Director:

As Executive Director with Orange Coast Watch, Matt led efforts to restore water quality at Orange County beaches from multiple sources of contamination including urban runoff and the discharge of wastewater. In reporting to a Board of Directors that included representatives from leading Orange County universities and businesses, Matt prepared issue papers in the areas of treatment and disinfection of wastewater and control of the discharge of grease to sewer systems. Matt actively participated in the development of countywide water quality permits for the control of urban runoff and permits for the discharge of wastewater. Matt worked with other nonprofits to protect and restore water quality, including Surfrider, Natural Resources Defense Council and Orange County CoastKeeper as well as with business institutions including the Orange County Business Council.

Hydrogeology:

As a Senior Hydrogeologist with the U.S. Environmental Protection Agency, Matt led investigations to characterize and cleanup closing military bases, including Mare Island Naval Shipyard, Hunters Point Naval Shipyard, Treasure Island Naval Station, Alameda Naval Station, Moffett Field, Mather Army Airfield, and Sacramento Army Depot. Specific activities were as follows:

- Led efforts to model groundwater flow and contaminant transport, ensured adequacy of monitoring networks, and assessed cleanup alternatives for contaminated sediment, soil, and groundwater.
- Initiated a regional program for evaluation of groundwater sampling practices and laboratory analysis at military bases.
- Identified emerging issues, wrote technical guidance, and assisted in policy and regulation development through work on four national U.S. EPA workgroups, including the Superfund Groundwater Technical Forum and the Federal Facilities Forum.

At the request of the State of Hawaii, Matt developed a methodology to determine the vulnerability of groundwater to contamination on the islands of Maui and Oahu. He used analytical models and a GIS to show zones of vulnerability, and the results were adopted and published by the State of Hawaii and County of Maui.

As a hydrogeologist with the EPA Groundwater Protection Section, Matt worked with provisions of the Safe Drinking Water Act and NEPA to prevent drinking water contamination. Specific activities included the following:

- Received an EPA Bronze Medal for his contribution to the development of national guidance for the protection of drinking water.
- Managed the Sole Source Aquifer Program and protected the drinking water of two communities through designation under the Safe Drinking Water Act. He prepared geologic reports, conducted

public hearings, and responded to public comments from residents who were very concerned about the impact of designation.

- Reviewed a number of Environmental Impact Statements for planned major developments, including large hazardous and solid waste disposal facilities, mine reclamation, and water transfer.

Matt served as a hydrogeologist with the RCRA Hazardous Waste program. Duties were as follows:

- Supervised the hydrogeologic investigation of hazardous waste sites to determine compliance with Subtitle C requirements.
- Reviewed and wrote "part B" permits for the disposal of hazardous waste.
- Conducted RCRA Corrective Action investigations of waste sites and led inspections that formed the basis for significant enforcement actions that were developed in close coordination with U.S. EPA legal counsel.
- Wrote contract specifications and supervised contractor's investigations of waste sites.

With the National Park Service, Matt directed service-wide investigations of contaminant sources to prevent degradation of water quality, including the following tasks:

- Applied pertinent laws and regulations including CERCLA, RCRA, NEPA, NRDA, and the Clean Water Act to control military, mining, and landfill contaminants.
- Conducted watershed-scale investigations of contaminants at parks, including Yellowstone and Olympic National Park.
- Identified high-levels of perchlorate in soil adjacent to a national park in New Mexico and advised park superintendent on appropriate response actions under CERCLA.
- Served as a Park Service representative on the Interagency Perchlorate Steering Committee, a national workgroup.
- Developed a program to conduct environmental compliance audits of all National Parks while serving on a national workgroup.
- Co-authored two papers on the potential for water contamination from the operation of personal watercraft and snowmobiles, these papers serving as the basis for the development of nation-wide policy on the use of these vehicles in National Parks.
- Contributed to the Federal Multi-Agency Source Water Agreement under the Clean Water Action Plan.

Policy:

Served senior management as the Senior Science Policy Advisor with the U.S. Environmental Protection Agency, Region 9.

Activities included the following:

- Advised the Regional Administrator and senior management on emerging issues such as the potential for the gasoline additive MTBE and ammonium perchlorate to contaminate drinking water supplies.
- Shaped EPA's national response to these threats by serving on workgroups and by contributing to guidance, including the Office of Research and Development publication, Oxygenates in Water: Critical Information and Research Needs.
- Improved the technical training of EPA's scientific and engineering staff.
- Earned an EPA Bronze Medal for representing the region's 300 scientists and engineers in negotiations with the Administrator and senior management to better integrate scientific

principles into the policy-making process.

- Established national protocol for the peer review of scientific documents.

Geology:

With the U.S. Forest Service, Matt led investigations to determine hillslope stability of areas proposed for timber harvest in the central Oregon Coast Range. Specific activities were as follows:

- Mapped geology in the field, and used aerial photographic interpretation and mathematical models to determine slope stability.
- Coordinated his research with community members who were concerned with natural resource protection.
- Characterized the geology of an aquifer that serves as the sole source of drinking water for the city of Medford, Oregon.

As a consultant with Dames and Moore, Matt led geologic investigations of two contaminated sites (later listed on the Superfund NPL) in the Portland, Oregon, area and a large hazardous waste site in eastern Oregon. Duties included the following:

- Supervised year-long effort for soil and groundwater sampling.
- Conducted aquifer tests.
- Investigated active faults beneath sites proposed for hazardous waste disposal.

Teaching:

From 1990 to 1998, Matt taught at least one course per semester at the community college and university levels:

- At San Francisco State University, held an adjunct faculty position and taught courses in environmental geology, oceanography (lab and lecture), hydrogeology, and groundwater contamination.
- Served as a committee member for graduate and undergraduate students.
- Taught courses in environmental geology and oceanography at the College of Marin.

Matt is currently a part time geology instructor at Golden West College in Huntington Beach, California where he taught from 2010 to 2014 and in 2017.

Invited Testimony, Reports, Papers and Presentations:

Hagemann, M.F., 2008. Disclosure of Hazardous Waste Issues under CEQA. Presentation to the Public Environmental Law Conference, Eugene, Oregon.

Hagemann, M.F., 2008. Disclosure of Hazardous Waste Issues under CEQA. Invited presentation to U.S. EPA Region 9, San Francisco, California.

Hagemann, M.F., 2005. Use of Electronic Databases in Environmental Regulation, Policy Making and Public Participation. Brownfields 2005, Denver, Colorado.

Hagemann, M.F., 2004. Perchlorate Contamination of the Colorado River and Impacts to Drinking Water in Nevada and the Southwestern U.S. Presentation to a meeting of the American Groundwater Trust, Las Vegas, NV (served on conference organizing committee).

Hagemann, M.F., 2004. Invited testimony to a California Senate committee hearing on air toxins at schools in Southern California, Los Angeles.

Brown, A., Farrow, J., Gray, A. and **Hagemann, M.**, 2004. An Estimate of Costs to Address MTBE Releases from Underground Storage Tanks and the Resulting Impact to Drinking Water Wells. Presentation to the Ground Water and Environmental Law Conference, National Groundwater Association.

Hagemann, M.F., 2004. Perchlorate Contamination of the Colorado River and Impacts to Drinking Water in Arizona and the Southwestern U.S. Presentation to a meeting of the American Groundwater Trust, Phoenix, AZ (served on conference organizing committee).

Hagemann, M.F., 2003. Perchlorate Contamination of the Colorado River and Impacts to Drinking Water in the Southwestern U.S. Invited presentation to a special committee meeting of the National Academy of Sciences, Irvine, CA.

Hagemann, M.F., 2003. Perchlorate Contamination of the Colorado River. Invited presentation to a tribal EPA meeting, Pechanga, CA.

Hagemann, M.F., 2003. Perchlorate Contamination of the Colorado River. Invited presentation to a meeting of tribal representatives, Parker, AZ.

Hagemann, M.F., 2003. Impact of Perchlorate on the Colorado River and Associated Drinking Water Supplies. Invited presentation to the Inter-Tribal Meeting, Torres Martinez Tribe.

Hagemann, M.F., 2003. The Emergence of Perchlorate as a Widespread Drinking Water Contaminant. Invited presentation to the U.S. EPA Region 9.

Hagemann, M.F., 2003. A Deductive Approach to the Assessment of Perchlorate Contamination. Invited presentation to the California Assembly Natural Resources Committee.

Hagemann, M.F., 2003. Perchlorate: A Cold War Legacy in Drinking Water. Presentation to a meeting of the National Groundwater Association.

Hagemann, M.F., 2002. From Tank to Tap: A Chronology of MTBE in Groundwater. Presentation to a meeting of the National Groundwater Association.

Hagemann, M.F., 2002. A Chronology of MTBE in Groundwater and an Estimate of Costs to Address Impacts to Groundwater. Presentation to the annual meeting of the Society of Environmental Journalists.

Hagemann, M.F., 2002. An Estimate of the Cost to Address MTBE Contamination in Groundwater (and Who Will Pay). Presentation to a meeting of the National Groundwater Association.

Hagemann, M.F., 2002. An Estimate of Costs to Address MTBE Releases from Underground Storage Tanks and the Resulting Impact to Drinking Water Wells. Presentation to a meeting of the U.S. EPA and State Underground Storage Tank Program managers.

Hagemann, M.F., 2001. From Tank to Tap: A Chronology of MTBE in Groundwater. Unpublished report.

Hagemann, M.F., 2001. Estimated Cleanup Cost for MTBE in Groundwater Used as Drinking Water. Unpublished report.

Hagemann, M.F., 2001. Estimated Costs to Address MTBE Releases from Leaking Underground Storage Tanks. Unpublished report.

Hagemann, M.F., and VanMouwerik, M., 1999. Potential Water Quality Concerns Related to Snowmobile Usage. Water Resources Division, National Park Service, Technical Report.

VanMouwerik, M. and **Hagemann, M.F.** 1999, Water Quality Concerns Related to Personal Watercraft Usage. Water Resources Division, National Park Service, Technical Report.

Hagemann, M.F., 1999, Is Dilution the Solution to Pollution in National Parks? The George Wright Society Biannual Meeting, Asheville, North Carolina.

Hagemann, M.F., 1997, The Potential for MTBE to Contaminate Groundwater. U.S. EPA Superfund Groundwater Technical Forum Annual Meeting, Las Vegas, Nevada.

Hagemann, M.F., and Gill, M., 1996, Impediments to Intrinsic Remediation, Moffett Field Naval Air Station, Conference on Intrinsic Remediation of Chlorinated Hydrocarbons, Salt Lake City.

Hagemann, M.F., Fukunaga, G.L., 1996, The Vulnerability of Groundwater to Anthropogenic Contaminants on the Island of Maui, Hawaii. Hawaii Water Works Association Annual Meeting, Maui, October 1996.

Hagemann, M. F., Fukunaga, G. L., 1996, Ranking Groundwater Vulnerability in Central Oahu, Hawaii. Proceedings, Geographic Information Systems in Environmental Resources Management, Air and Waste Management Association Publication VIP-61.

Hagemann, M.F., 1994. Groundwater Characterization and Cleanup at Closing Military Bases in California. Proceedings, California Groundwater Resources Association Meeting.

Hagemann, M.F. and Sabol, M.A., 1993. Role of the U.S. EPA in the High Plains States Groundwater Recharge Demonstration Program. Proceedings, Sixth Biennial Symposium on the Artificial Recharge of Groundwater.

Hagemann, M.F., 1993. U.S. EPA Policy on the Technical Impracticability of the Cleanup of DNAPL-contaminated Groundwater. California Groundwater Resources Association Meeting.

Hagemann, M.F., 1992. Dense Nonaqueous Phase Liquid Contamination of Groundwater: An Ounce of Prevention... Proceedings, Association of Engineering Geologists Annual Meeting, v. 35.

Other Experience:

Selected as subject matter expert for the California Professional Geologist licensing examinations, 2009-2011.



Technical Consultation, Data Analysis and
Litigation Support for the Environment

SOIL WATER AIR PROTECTION ENTERPRISE

1640 Fifth Street, Suite 204
Santa Monica, California 90401
Attn: Paul Rosenfeld, Ph.D.
Mobil: (310) 795-2335
Office: (310) 434-0110
Fax: (310) 434-0011
Email: prosenfeld@swape.com

Paul Rosenfeld, Ph.D.

Principal Environmental Chemist

Chemical Fate and Transport & Air Dispersion Modeling

Risk Assessment & Remediation Specialist

Education

Ph.D. Soil Chemistry, University of Washington, 1999. Dissertation on VOC filtration.

M.S. Environmental Science, U.C. Berkeley, 1995. Thesis on organic waste economics.

B.A. Environmental Studies, U.C. Santa Barbara, 1991. Thesis on wastewater treatment.

Professional Experience

Dr. Rosenfeld is the Co-Founder and Principal Environmental Chemist at Soil Water Air Protection Enterprise (SWAPE). His focus is the fate and transport of environmental contaminants, risk assessment, and ecological restoration. His project experience ranges from monitoring and modeling of pollution sources as they relate to human and ecological health. Dr. Rosenfeld has investigated and designed remediation programs and risk assessments for contaminated sites containing, petroleum, MtBE and fuel oxygenates, chlorinated solvents, pesticides, radioactive waste, PCBs, PAHs, dioxins, furans, volatile organics, semi-volatile organics, perchlorate, heavy metals, asbestos, PFOA, unusual polymers, and odor. Significant projects performed by Dr. Rosenfeld include the following:

Litigation Support

Client: Missouri Department of Natural Resources (Jefferson City, Missouri)

Serving as an expert in evaluating air pollution and odor emissions from a Republic Landfill in St. Louis, Missouri. Conducted. Project manager overseeing daily, weekly and comprehensive sampling of odor and chemicals.

Client: Louisiana Department of Transportation and Development (Baton Rouge, Louisiana)

Serving as an expert witness, conducting groundwater modeling of an ethylene dichloride DNAPL and soluble plume resulting from spill caused by Conoco Phillips.

Client: Missouri Department of Natural Resources (St. Louis, Missouri)

Serving as a consulting expert and potential testifying expert regarding a landfill fire directly adjacent to another landfill containing radioactive waste. Implemented an air monitoring program testing for over 100 different compounds using approximately 12 different analytical methods.

Client: Baron & Budd, P.C. (Dallas, Texas) and Weitz & Luxenberg (New York, New York)

Served as a consulting expert in MTBE Federal Multi District Litigation (MDL) in New York. Consolidated ground water data, created maps for test cases, constructed damage model, evaluated taste and odor threshold levels. Resulted in a settlement of over \$440 million.

Client: The Buzbee Law Firm (Houston, Texas)

Served as a as an expert in ongoing litigation involving over 50,000+ plaintiffs who are seeking compensation for chemical exposure and reduction in property value resulting from chemicals released from the BP facility.

Client: Environmental Litigation Group (Birmingham, Alabama)

Serving as an expert on property damage, medical monitoring and toxic tort claims that have been filed on behalf of over 13,000 plaintiffs who were exposed to PCBs and dioxins/furans resulting from emissions from Monsanto and Cerro Copper's operations in Sauget, Illinois. Developed AERMOD models to demonstrate plaintiff's exposure.

Client: Baron & Budd P.C. (Dallas Texas) and Korein Tillery (St. Louis, Missouri)

Served as a consulting expert for a Class Action defective product claim filed in Madison County, Illinois against Syngenta and five other manufacturers for atrazine. Evaluated health issues associated with atrazine and determined treatment cost for filtration of public drinking water supplies. Resulted in \$105 million dollar settlement.

Client: The Buzbee Law Firm (Houston, Texas)

Served as a consulting expert in catalyst release and refinery emissions cases against the BP Refinery in Texas City. A jury verdict for 10 employees exposed to catalyst via BP's irresponsible behavior.

Client: Baron & Budd, P.C. (Dallas, Texas)

Served as a consulting expert to calculate the Maximum Allowable Dose Level (MADL) and No Significant Risk Level (NSRL), based on Cal EPA and OEHHA guidelines, for Polychlorinated Biphenyls (PCBs) in fish oil dietary supplements.

Client: Girardi Keese (Los Angeles, California)

Served as an expert testifying on hydrocarbon exposure of a woman who worked on a fuel barge operated by Chevron. Demonstrated that the plaintiff was exposed to excessive amounts of benzene.

Client: Mason & Cawood (Annapolis, Maryland) and Girardi & Keese (Los Angeles, California)

Serving as an expert consultant on the Battlefield Golf Club fly ash disposal site in Chesapeake, VA, where arsenic, other metals and radionuclides are leaching into groundwater, and ash is blowing off-site onto the surrounding communities.

Client: California Earth Mineral Corporation (Culver City, California)

Evaluating the montmorillonite clay deposit located near El Centro, California. Working as a Defense Expert representing an individual who owns a 2,500 acre parcel that will potentially be seized by the United States Navy via eminent domain.

Client: Matthews & Associates (Houston, Texas)

Serving as an expert witness, preparing air model demonstrating residential exposure via emissions from fracking in natural gas wells in Duncan, Texas.

Client: Baron & Budd P.C. (Dallas, Texas) and Korein Tillery (St. Louis, Missouri)

Served as a consulting expert for analysis of private wells relating to litigation regarding compensation of private well owners for MTBE testing. Coordinated data acquisition and GIS analysis evaluating private well proximity to leaking underground storage tanks.

Client: Lurie & Park LLP (Los Angeles, California)

Served as an expert witness evaluating a vapor intrusion toxic tort case that resulted in a settlement. The Superfund site is a 4 ½ mile groundwater plume of chlorinated solvents in Whittier, California.

Client: Mason & Cawood (Annapolis, Maryland)

Evaluated data from the Hess Gasoline Station in northern Baltimore, Maryland that had a release resulting in flooding of plaintiff's homes with gasoline-contaminated water, foul odor, and biofilm growth.

Client: The Buzbee Law Firm (Houston, Texas)

Evaluated air quality resulting from grain processing emissions in Muscatine, Iowa.

Client: Anderson Kill & Olick, P.C. (Ventura, California)

Evaluated historical exposure and lateral and vertical extent of contamination resulting from a ~150 million gallon Exxon Mobil tank farm located near Watts, California.

Client: Packard Law Firm (Petaluma, California)

Served as an expert witness, evaluated lead in Proposition 65 Case where various products were found to have elevated lead levels.

Client: The Buzbee Law Firm (Houston, Texas)

Evaluated data resulting from an oil spill in Port Arthur, Texas.

Client: Nexsen Pruet, LLC (Charleston, South Carolina)

Serving as expert in chlorine exposure in a railroad tank car accident where approximately 120,000 pounds of chlorine were released.

Client: Girardi & Keese (Los Angeles, California)

Serving as an expert investigating hydrocarbon exposure and property damage for ~600 individuals and ~280 properties in Carson, California where homes were constructed above a large tank farm formerly owned by Shell.

Client: Brent Coon Law Firm (Cleveland, Ohio)

Served as an expert, calculating an environmental exposure to benzene, PAHs, and VOCs from a Chevron Refinery in Hooven, Ohio. Conducted AERMOD modeling to determine cumulative dose.

Client: Lundy Davis (Lake Charles, Louisiana)

Served as consulting expert on an oil field case representing the lease holder of a contaminated oil field. Conducted field work evaluating oil field contamination in Sulphur, Louisiana. Property is owned by Conoco Phillips, but leased by Yellow Rock, a small oil firm.

Client: Cox Cox Filo (Lake Charles, Louisiana)

Served as testifying expert on a multimillion gallon oil spill in Lake Charles which occurred on June 19, 2006, resulting in hydrocarbon vapor exposure to hundreds of workers and residents. Prepared air model and calculated exposure concentration. Demonstrated that petroleum odor alone can result in significant health harms.

Client: Cotchett Pitre & McCarthy (San Francisco, California)

Served as testifying expert representing homeowners who unknowingly purchased homes built on an old oil field in Santa Maria, California. Properties have high concentrations of petroleum hydrocarbons in subsurface soils resulting in diminished property value.

Client: Law Offices Of Anthony Liberatore P.C. (Los Angeles, California)

Served as testifying expert representing individuals who rented homes on the Inglewood Oil Field in California. Plaintiffs were exposed to hydrocarbon contaminated water and air, and experienced health harms associated with the petroleum exposure.

Client: Orange County District Attorney (Orange County, California)

Coordinated a review of 143 ARCO gas stations in Orange County to assist the District Attorney's prosecution of CCR Title 23 and California Health and Safety Code violators.

Client: Environmental Litigation Group (Birmingham, Alabama)

Served as a testifying expert in a health effects case against ABC Coke/Drummond Company for polluting a community with PAHs, benzene, particulate matter, heavy metals, and coke oven emissions. Created air dispersion models and conducted attic dust sampling, exposure modeling, and risk assessment for plaintiffs.

Client: Masry & Vitatoe (Westlake Village, California), Engstrom Lipscomb Lack (Los Angeles, California) and Baron & Budd P.C. (Dallas, Texas)

Served as a consulting expert in Proposition 65 lawsuit filed against major oil companies for benzene and toluene releases from gas stations and refineries resulting in contaminated groundwater. Settlement included over \$110 million dollars in injunctive relief.

Client: Tommy Franks Law Firm (Austin, Texas)

Served as expert evaluating groundwater contamination which resulted from the hazardous waste injection program and negligent actions of Morton Thiokol and Rohm Hass. Evaluated drinking water contamination and community exposure.

Client: Baron & Budd P.C. (Dallas, Texas) and Sher Leff (San Francisco, California)

Served as consulting expert for several California cities that filed defective product cases against Dow Chemical and Shell for 1,2,3-trichloropropane groundwater contamination. Generated maps showing capture zones of impacted wells for various municipalities.

Client: Weitz & Luxenberg (New York, New York)

Served as expert on Property Damage and Nuisance claims resulting from emissions from the Countywide Landfill in Ohio. The landfill had an exothermic reaction or fire resulting from aluminum dross dumping, and the EPA fined the landfill \$10,000,000 dollars.

Client: Baron & Budd P.C. (Dallas, Texas)

Served as a consulting expert for a groundwater contamination case in Pensacola, Florida where fluorinated compounds contaminated wells operated by Escambia County.

Client: Environmental Litigation Group (Birmingham, Alabama)

Served as an expert on groundwater case where Exxon Mobil and Helena Chemical released ethylene dichloride into groundwater resulting in a large plume. Prepared report on the appropriate treatment technology and cost, and flaws with the proposed on-site remediation.

Client: Environmental Litigation Group (Birmingham, Alabama)

Served as an expert on air emissions released when a Bartlo Packaging Incorporated facility in West Helena, Arkansas exploded resulting in community exposure to pesticides and smoke from combustion of pesticides.

Client: Omara & Padilla (San Diego, California)

Served as a testifying expert on nuisance case against Nutro Dogfood Company that constructed a large dog food processing facility in the middle of a residential community in Victorville, California with no odor control devices. The facility has undergone significant modifications, including installation of a regenerative thermal oxidizer.

Client: Environmental Litigation Group (Birmingham, Alabama)

Serving as an expert on property damage and medical monitoring claims that have been filed against International Paper resulting from chemical emissions from facilities located in Bastrop, Louisiana; Prattville, Alabama; and Georgetown, South Carolina.

Client: Estep and Shafer L.C. (Kingwood, West Virginia)

Served as expert calculating acid emissions doses to residents resulting from coal-fired power plant emissions in West Virginia using various air models.

Client: Watts Law Firm (Austin, Texas), Woodfill & Pressler (Houston, Texas) and Woska & Associates (Oklahoma City, Oklahoma)

Served as testifying expert on community and worker exposure to CCA, creosote, PAHs, and dioxins/furans from a BNSF and Koppers Facility in Somerville, Texas. Conducted field sampling, risk assessment, dose assessment and air modeling to quantify exposure to workers and community members.

Client: Environmental Litigation Group (Birmingham, Alabama)

Served as expert regarding community exposure to CCA, creosote, PAHs, and dioxins/furans from a Louisiana Pacific wood treatment facility in Florala, Alabama. Conducted blood sampling and environmental sampling to determine environmental exposure to dioxins/furans and PAHs.

Client: Sanders Law Firm (Colorado Springs, Colorado) and Vamvoras & Schwartzberg (Lake Charles, Louisiana)

Served as an expert calculating chemical exposure to over 500 workers from large ethylene dichloride spill in Lake Charles, Louisiana at the Conoco Phillips Refinery.

Client: Baron & Budd P.C. (Dallas, Texas)

Served as consulting expert in a defective product lawsuit against Dow Agroscience focusing on Clopyralid, a recalcitrant herbicide that damaged numerous compost facilities across the United States.

Client: Sullivan Papain Block McGrath & Cannavo (New York, New York) and The Cochran Firm (Dothan, Mississippi)

Served as an expert regarding community exposure to metals, PAHs PCBs, and dioxins/furans from the burning of Ford paint sludge and municipal solid waste in Ringwood, New Jersey.

Client: Rose, Klein & Marias LLP (Los Angeles, California)

Served as an expert in 55 Proposition 65 cases against individual facilities in the Port of Los Angeles and Port of Long Beach. Prepared air dispersion and risk models to demonstrate that each facility emits diesel particulate matter that results in risks exceeding 1/100,000, hence violating the Proposition 65 Statute.

Client: Rose, Klein & Marias LLP (Los Angeles, California) and Environmental Law Foundation (San Francisco, California)

Served as an expert in a Proposition 65 case against potato chip manufacturers. Conducted an analysis of several brands of potato chips for acrylamide concentrations and found that all samples exceeded Proposition 65 No Significant Risk Levels.

Client: Gonzales & Robinson (Westlake Village, California)

Served as a testifying expert in a toxic tort case against Chevron (Ortho) for allowing a community to be contaminated with lead arsenate pesticide. Created air dispersion and soil vadose zone transport models, and evaluated bioaccumulation of lead arsenate in food.

Client: Environment Now (Santa Monica, California)

Served as expert for Environment Now to convince the State of California to file a nuisance claim against automobile manufactures to recover MediCal damages from expenditures on asthma-related health care costs.

Client: Trutanich Michell (Long Beach, California)

Served as expert representing San Pedro Boat Works in the Port of Los Angeles. Prepared air dispersion, particulate air dispersion, and storm water discharge models to demonstrate that Kaiser Bulk Loading is responsible for copper concentrate accumulating in the bay sediment.

Client: Azurix of North America (Fort Myers, Florida)

Provided expert opinions, reports and research pertaining to a proposed County Ordinance requiring biosolids applicators to measure VOC and odor concentrations at application sites' boundaries.

Client: MCP Polyurethane (Pittsburg, Kansas)

Provided expert opinions and reports regarding metal-laden landfill runoff that damaged a running track by causing the reversion of the polyurethane due to its catalytic properties.

Risk Assessment And Air Modeling

Client: Hager, Dewick & Zuengler, S.C. (Green Bay, Wisconsin)

Conducted odor audit of rendering facility in Green Bay, Wisconsin.

Client: ABT-Haskell (San Bernardino, California)

Prepared air dispersion model for a proposed state-of-the-art enclosed compost facility. Prepared a traffic analysis and developed odor detection limits to predict 1, 8, and 24-hour off-site concentrations of sulfur, ammonia, and amine.

Client: Jefferson PRP Group (Los Angeles, California)

Evaluated exposure pathways for chlorinated solvents and hexavalent chromium for human health risk assessment of Los Angeles Academy (formerly Jefferson New Middle School) operated by Los Angeles Unified School District.

Client: Covanta (Susanville, California)

Prepared human health risk assessment for Covanta Energy focusing on agricultural worker exposure to caustic fertilizer.

Client: CIWMB (Sacramento, California)

Used dispersion models to estimate traveling distance and VOC concentrations downwind from a composting facility for the California Integrated Waste Management Board.

Client: Carboquimeca (Bogotá, Columbia)

Evaluated exposure pathways for human health risk assessment for a confidential client focusing on significant concentrations of arsenic and chlorinated solvents present in groundwater used for drinking water.

Client: Navy Base Realignment and Closure Team (Treasure Island, California)

Used Johnson-Ettinger model to estimate indoor air PCB concentrations and compared estimated values with empirical data collected in homes.

Client: San Diego State University (San Diego, California)

Measured CO₂ flux from soils amended with different quantities of biosolids compost at Camp Pendleton to determine CO₂ credit values for coastal sage under fertilized and non-fertilized conditions.

Client: Navy Base Realignment and Closure Team (MCAS Tustin, California)

Evaluated cumulative risk of a multiple pathway scenario for a child resident and a construction worker. Evaluated exposure to air and soil via particulate and vapor inhalation, incidental soil ingestion, and dermal contact with soil.

Client: MCAS Miramar (San Diego, California)

Evaluated exposure pathways of metals in soil by comparing site data to background data. Risk assessment incorporated multiple pathway scenarios assuming child resident and construction worker particulate and vapor inhalation, soil ingestion, and dermal soil contact.

Client: Naval Weapons Station (Seal Beach, California)

Used a multiple pathway model to generate dust emission factors from automobiles driving on dirt roads. Calculated bioaccumulation of metals, PCBs, dioxin congeners and pesticides to estimate human and ecological risk.

Client: King County, Douglas County (Washington State)

Measured PM₁₀ and PM_{2.5} emissions from windblown soil treated with biosolids and a polyacrylamide polymer in Douglas County, Washington. Used Pilat Mark V impactor for measurement and compared data to EPA particulate regulations.

Client: King County (Seattle, Washington)

Created emission inventory for several compost and wastewater facilities comparing VOC, particulate, and fungi concentrations to NIOSH values estimating risk to workers and individuals at neighboring facilities.

Air Pollution Investigation and Remediation**Client: Republic Landfill (Santa Clarita, California)**

Managed a field investigation of odor around a landfill during 30+ events. Used hedonic tone, butanol scale, dilution-to-threshold values, and odor character to evaluate odor sources and character and intensity.

Client: California Biomass (Victorville, California)

Managed a field investigation of odor around landfill during 9+ events. Used hedonic tone, butanol scale, dilution-to-threshold values, and odor character to evaluate odor sources, character and intensity.

Client: ABT-Haskell (Redlands, California)

Assisted in permitting a compost facility that will be completely enclosed with a complex scrubbing system using acid scrubbers, base scrubbers, biofilters, heat exchangers and chlorine to reduce VOC emissions by 99 percent.

Client: Synagro (Corona, California)

Designed and monitored 30-foot by 20-foot by 6-foot biofilter for VOC control at an industrial composting facility in Corona, California to reduce VOC emissions by 99 percent.

Client: Jeff Gage (Tacoma, Washington)

Conducted emission inventory at industrial compost facility using GC/MS analyses for VOCs. Evaluated effectiveness of VOC and odor control systems and estimated human health risk.

Client: Daishowa America (Port Angeles Mill, Washington)

Analyzed industrial paper sludge and ash for VOCs, heavy metals and nutrients to develop a land application program. Metals were compared to federal guidelines to determine maximum allowable land application rates.

Client: Jeff Gage (Puyallup, Washington)

Measured effectiveness of biofilters at composting facility and conducted EPA dispersion models to estimate traveling distance of odor and human health risk from exposure to volatile organics.

Surface Water, Groundwater, and Wastewater Investigation/Remediation**Client: Confidential (Downey, California)**

Managed groundwater investigation to determine horizontal extent of 1,000 foot TCE plume associated with a metal finishing shop.

Client: Confidential (West Hollywood, California)

Designing soil vapor extraction system that is currently being installed for confidential client. Managing groundwater investigation to determine horizontal extent of TCE plume associated with dry cleaning.

Client: Synagro Technologies (Sacramento, California)

Managed groundwater investigation to determine if biosolids application impacted salinity and nutrient concentrations in groundwater.

Client: Navy Base Realignment and Closure Team (Treasure Island, California)

Assisted in the design and remediation of PCB, chlorinated solvent, hydrocarbon and lead contaminated groundwater and soil on Treasure Island. Negotiated screening levels with DTSC and Water Board. Assisted in the preparation of FSP/QAPP, RI/FS, and RAP documents and assisted in CEQA document preparation.

Client: Navy Base Realignment and Closure Team (MCAS Tustin, California)

Assisted in the design of groundwater monitoring systems for chlorinated solvents at Tustin MCAS. Contributed to the preparation of FS for groundwater treatment.

Client: Mission Cleaning Facility (Salinas, California)

Prepared a RAP and cost estimate for using an oxygen releasing compound (ORC) and molasses to oxidize diesel fuel in soil and groundwater at Mission Cleaning in Salinas.

Client: King County (Washington)

Established and monitored experimental plots at a US EPA Superfund Site in wetland and upland mine tailings contaminated with zinc and lead in Smelterville, Idaho. Used organic matter and pH adjustment for wetland remediation and erosion control.

Client: City of Redmond (Richmond, Washington)

Collected storm water from compost-amended and fertilized turf to measure nutrients in urban runoff. Evaluated effectiveness of organic matter-lined detention ponds on reduction of peak flow during storm events. Drafted compost amended landscape installation guidelines to promote storm water detention and nutrient runoff reduction.

Client: City of Seattle (Seattle, Washington)

Measured VOC emissions from Renton wastewater treatment plant in Washington. Ran GC/MS, dispersion models, and sensory panels to characterize, quantify, control and estimate risk from VOCs.

Client: Plumas County (Quincy, California)

Installed wetland to treat contaminated water containing 1% copper in an EPA Superfund site. Revegetated 10 acres of acidic and metal laden sand dunes resulting from hydraulic mining. Installed and monitored piezometers in wetland estimating metal loading.

Client: Adams Egg Farm (St. Kitts, West Indies)

Designed, constructed, and maintained 3 anaerobic digesters at Springfield Egg Farm, St. Kitts. Digesters treated chicken excrement before effluent discharged into sea. Chicken waste was converted into methane cooking gas.

Client: BLM (Kremmling, Colorado)

Collected water samples for monitoring program along upper stretch of the Colorado River. Rafted along river and protected water quality by digging and repairing latrines.

Soil Science and Restoration Projects

Client: Hefner, Stark & Marois, LLP (Sacramento, California)

Facilitated in assisting Hefner, Stark & Marois, LLP in working with the Regional Water Quality board to determine how to utilize Calcium Particulate as a by-product of processing sugar beets.

Client: Kinder Morgan (San Diego County, California)

Designed and monitored the restoration of a 110-acre project on Camp Pendleton along a 26-mile pipeline. Managed crew of 20, planting coastal sage, riparian, wetland, native grassland, and marsh ecosystems. Negotiated with the CDFW concerning species planting list and success standards.

Client: NAVY BRAC (Orote Landfill, Guam)

Designed and monitored pilot landfill cap mimicking limestone forest. Measured different species' root-penetration into landfill cap. Plants were used to evapotranspire water, reducing water leaching through soil profile.

Client: LA Sanitation District Puente Hills Landfill (Whittier, California)

Monitored success of upland and wetland mitigation at Puente Hills Landfill operated by Sanitation Districts of Los Angeles. Negotiated with the Army Corps of Engineers and CDFG to obtain an early sign-off.

Client: City of Escondido (Escondido, California)

Designed, managed, installed, and monitored a 20-acre coastal sage scrub restoration project at Kit Carson Park, Escondido, California.

Client: Home Depot (Encinitas, California)

Designed, managed, installed and monitored a 15-acre coastal sage scrub and wetland restoration project at Home Depot in Encinitas, California.

Client: Alvarado Water Filtration Plant (San Diego, California)

Planned, installed and monitored 2-acre riparian and coastal sage scrub mitigation in San Diego California.

Client: Monsanto and James River Corporation (Clatskanie, Oregon)

Served as a soil scientist on a 50,000-acre hybrid poplar farm. Worked on genetically engineering study of Poplar trees to see if glyphosate resistant poplar clones were economically viable.

Client: World Wildlife Fund (St. Kitts, West Indies)

Managed 2-year biodiversity study, quantifying and qualifying the various flora and fauna in St. Kitts' expanding volcanic rainforest. Collaborated with skilled botanists, ornithologists and herpetologists.

Publications

Chen, J. A., Zapata, A R., Sutherland, A. J., Molmen, D. R., Chow, B. S., Wu, L. E., **Rosenfeld, P. E.**, Hesse, R. C., (2012) Sulfur Dioxide and Volatile Organic Compound Exposure To A Community In Texas City Texas Evaluated Using Aermid and Empirical Data. American Journal of Environmental Science, 2012, 8 (6), 622-632

Rosenfeld, P.E. & Feng, L. (2011). *The Risks of Hazardous Waste*, Amsterdam: Elsevier Publishing.

Cheremisinoff, N.P., & **Rosenfeld, P.E.** (2011). *Handbook of Pollution Prevention and Cleaner Production: Best Practices in the Agrochemical Industry*, Amsterdam: Elsevier Publishing.

Gonzalez, J., Feng, L., Sutherland, A., Waller, C., Sok, H., Hesse, R., **Rosenfeld, P.** (2011). PCBs and Dioxins/Furans in Attic Dust Collected Near Former PCB Production and Secondary Copper Facilities in Sauget, IL. *Procedia Environmental Sciences* 4(2011):113-125.

Feng, L., Wu, C., Tam, L., Sutherland, A.J., Clark, J.J., **Rosenfeld, P.E.**, (2010). Dioxin and Furan Blood Lipid and Attic Dust Concentrations in Populations Living Near Four Wood Treatment Facilities in the United States. *Journal of Environmental Health* 73(6):34-46.

Cheremisinoff, N.P., & **Rosenfeld, P.E.** (2010). *Handbook of Pollution Prevention and Cleaner Production: Best Practices in the Wood and Paper Industries*, Amsterdam: Elsevier Publishing.

Cheremisinoff, N.P., & **Rosenfeld, P.E.** (2009). *Handbook of Pollution Prevention and Cleaner Production: Best Practices in the Petroleum Industry*, Amsterdam: Elsevier Publishing.

Wu, C., Tam, L., Clark, J., **Rosenfeld, P.** (2009). 'Dioxin and furan blood lipid concentrations in populations living near four wood treatment facilities in the United States', in Brebbia, C.A. and Popov, V., eds., *Air Pollution XVII: Proceedings of the Seventeenth International Conference on Modelling, Monitoring and Management of Air Pollution*, Tallinn, Estonia. 20-22 July, 2009, Southampton, Boston. WIT Press.

Tam L. K., Wu C. D., Clark J. J. and **Rosenfeld, P.E.** (2008) A Statistical Analysis Of Attic Dust And Blood Lipid Concentrations Of Tetrachloro-p-Dibenzodioxin (TCDD) Toxicity Equivalency Quotients (TEQ) In Two Populations Near Wood Treatment Facilities. *Organohalogen Compounds*, Volume 70 (2008) page 002254.

Tam L. K., Wu C. D., Clark J. J. and **Rosenfeld, P.E.** (2008) Methods For Collect Samples For Assessing Dioxins And Other Environmental Contaminants In Attic Dust: A Review. *Organohalogen Compounds*, Volume 70 (2008) page 000527.

Hensley, A.R. A. Scott, J. J. J. Clark, **P. E. Rosenfeld** (2007) "Attic Dust and Human Blood Samples Collected near a Former Wood Treatment Facility" *Environmental Research*. 105, pp 194-197.

Rosenfeld, P.E., J. J. J. Clark, A. R. Hensley, M. Suffet. (2007) "The Use of an Odor Wheel Classification for Evaluation of Human Health Risk Criteria for Compost Facilities" –*Water Science & Technology* 55(5): 345-357.

Rosenfeld, P. E., M. Suffet. (2007) "The Anatomy Of Odour Wheels For Odours Of Drinking Water, Wastewater, Compost And The Urban Environment " *Water Science & Technology* 55(5): 335-344.

Sullivan, P. J. Clark, J.J.J., Agardy, F. J., **Rosenfeld, P.E.**, (2007) "Toxic Legacy, Synthetic Toxins in the Food, Water, and Air in American Cities," Elsevier Publishing, Boston Massachusetts.

Rosenfeld P.E., and Suffet, I.H. (Mel) (2007) "Anatomy Of An Odor Wheel" *Water Science and Technology*, In Press.

Rosenfeld, P.E., Clark, J.J.J., Hensley A.R., Suffet, I.H. (Mel) (2007) "The use of an odor wheel classification for evaluation of human health risk criteria for compost facilities." *Water Science And Technology*, In Press.

Hensley A.R., Scott, A., **Rosenfeld P.E.**, Clark, J.J.J. (2006) "Dioxin Containing Attic Dust And Human Blood Samples Collected Near A Former Wood Treatment Facility." The 26th International Symposium on Halogenated Persistent Organic Pollutants – DIOXIN2006, August 21 – 25, 2006. Radisson SAS Scandinavia Hotel in Oslo Norway.

Rosenfeld, P.E., and Suffet I.H. (2004) "Control of Compost Odor Using High Carbon Wood Ash", Water Science and Technology, Vol. 49, No. 9. pp. 171-178.

Rosenfeld, P.E., Clark J. J. and Suffet, I.H. (2004) "Value of and Urban Odor Wheel." (2004). WEFTEC 2004. New Orleans, October 2 - 6, 2004.

Rosenfeld, P.E., and Suffet, I.H. (2004) "Understanding Odorants Associated With Compost, Biomass Facilities, and the Land Application of Biosolids" Water Science and Technology. Vol. 49, No. 9. pp 193-199.

Rosenfeld, P.E., and Suffet I.H. (2004) "Control of Compost Odor Using High Carbon Wood Ash", Water Science and Technology, Vol. 49, No. 9. pp. 171-178.

Rosenfeld, P. E., Grey, M. A., Sellew, P. (2004) Measurement of Biosolids Odor and Odorant Emissions from Windrows, Static Pile and Biofilter. Water Environment Research. 76 (4): 310-315 JUL-AUG 2004.

Rosenfeld, P. E., Grey, M., (2003) Two stage biofilter for biosolids composting odor control. Seventh International In Situ And On Site Bioremediation Symposium. Batelle Conference Orlando Florida. June 2 and June 6, 2003.

Rosenfeld, P.E., Grey, M and Suffet, M. 2002. "Controlling Odors Using High Carbon Wood Ash." Biocycle, March 2002, Page 42.

Rosenfeld, P.E., Grey, M and Suffet, M. (2002). "Compost Demonstration Project, Sacramento, California Using High-Carbon Wood Ash to Control Odor at a Green Materials Composting Facility Integrated Waste Management Board Public Affairs Office, Publications Clearinghouse (MS-6), Sacramento, CA Publication #442-02-008. April 2002.

Rosenfeld, P.E., and C.L. Henry. 2001. Characterization of odor emissions from three different biosolids. Water Soil and Air pollution. Vol. 127 Nos. 1-4, pp. 173-191.

Rosenfeld, P.E., and Henry C. L., 2000. Wood ash control of odor emissions from biosolids application. Journal of Environmental Quality. 29:1662-1668.

Rosenfeld, P.E., C.L. Henry and D. Bennett. 2001. Wastewater dewatering polymer affect on biosolids odor emissions and microbial activity. Water Environment Research. 73: 363-367.

Rosenfeld, P.E., and C.L. Henry. 2001. Activated Carbon and Wood Ash Sorption of Wastewater, Compost, and Biosolids Odorants Water Environment Research, 73: 388-392.

Rosenfeld, P.E., and Henry C. L., 2001. High carbon wood ash effect on biosolids microbial activity and odor. Water Environment Research. Volume 131 No. 1-4, pp. 247-262.

Rosenfeld, P.E., C.L. Henry, R. Harrison. 1998. Oat and Grass Seed Germination and Nitrogen and Sulfur Emissions Following Biosolids Incorporation With High-Carbon Wood-Ash. Water Environment Federation 12th Annual Residuals and Biosolids Management Conference Proceedings. Bellevue Washington.

Chollack, T. and **P. Rosenfeld.** 1998. Compost Amendment Handbook For Landscaping. Prepared for and distributed by the City of Redmond, Washington State.

P. Rosenfeld. 1992. The Mount Liamuiga Crater Trail. Heritage Magazine of St. Kitts, Vol. 3 No. 2.

P. Rosenfeld. 1993. High School Biogas Project to Prevent Deforestation On St. Kitts. Biomass Users Network, Vol. 7, No. 1, 1993.

P. Rosenfeld. 1992. British West Indies, St. Kitts. Surf Report, April issue.

P. Rosenfeld. 1998. Characterization, Quantification, and Control of Odor Emissions From Biosolids Application To Forest Soil. Doctoral Thesis. University of Washington College of Forest Resources.

P. Rosenfeld. 1994. Potential Utilization of Small Diameter Trees On Sierra County Public Land. Masters thesis reprinted by the Sierra County Economic Council. Sierra County, California.

P. Rosenfeld. 1991. How to Build a Small Rural Anaerobic Digester & Uses Of Biogas In The First And Third World. Bachelors Thesis. University of California.

England Environmental Agency, 2002. Landfill Gas Control Technologies. Publishing Organization Environment Agency, Rio House, Waterside Drive, Aztec West, Almondsbury BRISTOL, BS32 4UD.

Presentations

Sok, H.L.; Waller, C.C.; Feng, L.; Gonzalez, J.; Sutherland, A.J.; Wisdom-Stack, T.; Sahai, R.K.; Hesse, R.C.; **Rosenfeld, P.E.** "Atrazine: A Persistent Pesticide in Urban Drinking Water." Urban Environmental Pollution, Boston, MA, June 20-23, 2010.

Feng, L.; Gonzalez, J.; Sok, H.L.; Sutherland, A.J.; Waller, C.C.; Wisdom-Stack, T.; Sahai, R.K.; La, M.; Hesse, R.C.; **Rosenfeld, P.E.** "Bringing Environmental Justice to East St. Louis, Illinois." Urban Environmental Pollution, Boston, MA, June 20-23, 2010.

Rosenfeld, P.E. (2009) "Perfluorooctanoic Acid (PFOA) and Perfluorooctane Sulfonate (PFOS) Contamination in Drinking Water From the Use of Aqueous Film Forming Foams (AFFF) at Airports in the United States" Presentation at the 2009 Ground Water Summit and 2009 Ground Water Protection Council Spring Meeting, April 19-23, 2009. Tuscon, AZ.

Rosenfeld, P.E. (2009) "Cost to Filter Atrazine Contamination from Drinking Water in the United States" Contamination in Drinking Water From the Use of Aqueous Film Forming Foams (AFFF) at Airports in the United States" Presentation at the 2009 Ground Water Summit and 2009 Ground Water Protection Council Spring Meeting, April 19-23, 2009. Tuscon, AZ.

Rosenfeld, P. E. (2007) "Moss Point Community Exposure To Contaminants From A Releasing Facility" Platform Presentation at the 23rd Annual International Conferences on Soils Sediment and Water, October 15-18, 2007. University of Massachusetts, Amherst MA.

Rosenfeld, P. E. (2007) "The Repeated Trespass of Tritium-Contaminated Water Into A Surrounding Community Form Repeated Waste Spills From A Nuclear Power Plant" Platform Presentation at the 23rd Annual International Conferences on Soils Sediment and Water, October 15-18, 2007. University of Massachusetts, Amherst MA.

Rosenfeld, P. E. (2007) "Somerville Community Exposure To Contaminants From Wood Treatment Facility Emissions" Poster Presentation at the 23rd Annual International Conferences on Soils Sediment and Water, October 15-18, 2007. University of Massachusetts, Amherst MA.

Rosenfeld P. E. "Production, Chemical Properties, Toxicology, & Treatment Case Studies of 1,2,3-Trichloropropane (TCP)" – Platform Presentation at the Association for Environmental Health and Sciences (AEHS) Annual Meeting, San Diego, CA, 3/2007.

Rosenfeld P. E. "Blood and Attic Sampling for Dioxin/Furan, PAH, and Metal Exposure in Florala, Alabama" – Platform Presentation at the AEHS Annual Meeting, San Diego, CA, 3/2007.

Hensley A.R., Scott, A., **Rosenfeld P.E.**, Clark, J.J.J. (2006) "Dioxin Containing Attic Dust And Human Blood Samples Collected Near A Former Wood Treatment Facility." APHA 134 Annual Meeting & Exposition, Boston Massachusetts. November 4 to 8th, 2006.

Paul Rosenfeld Ph.D. “Fate, Transport and Persistence of PFOA and Related Chemicals.” Mealey’s C8/PFOA Science, Risk & Litigation Conference” October 24, 25. The Rittenhouse Hotel, Philadelphia.

Paul Rosenfeld Ph.D. “Brominated Flame Retardants in Groundwater: Pathways to Human Ingestion, Toxicology and Remediation PEMA Emerging Contaminant Conference. September 19. Hilton Hotel, Irvine California.

Paul Rosenfeld Ph.D. “Fate, Transport, Toxicity, And Persistence of 1,2,3-TCP.” PEMA Emerging Contaminant Conference. September 19. Hilton Hotel in Irvine, California.

Paul Rosenfeld Ph.D. “Fate, Transport and Persistence of PDBEs.” Mealey’s Groundwater Conference. September 26, 27. Ritz Carlton Hotel, Marina Del Ray, California.

Paul Rosenfeld Ph.D. “Fate, Transport and Persistence of PFOA and Related Chemicals.” International Society of Environmental Forensics: Focus On Emerging Contaminants. June 7,8. Sheraton Oceanfront Hotel, Virginia Beach, Virginia.

Paul Rosenfeld Ph.D. “Rate Transport, Persistence and Toxicology of PFOA and Related Perfluorochemicals”. 2005 National Groundwater Association Ground Water And Environmental Law Conference. July 21-22, 2005. Wyndham Baltimore Inner Harbor, Baltimore Maryland.

Paul Rosenfeld Ph.D. “Brominated Flame Retardants in Groundwater: Pathways to Human Ingestion, Toxicology and Remediation.” 2005 National Groundwater Association Ground Water And Environmental Law Conference. July 21-22, 2005. Wyndham Baltimore Inner Harbor, Baltimore Maryland.

Paul Rosenfeld, Ph.D. and James Clark Ph.D. and Rob Hesse R.G. Tert-butyl Alcohol Liability and Toxicology, A National Problem and Unquantified Liability. National Groundwater Association. Environmental Law Conference. May 5-6, 2004. Congress Plaza Hotel, Chicago Illinois.

Paul Rosenfeld, Ph.D., 2004. Perchlorate Toxicology. Presentation to a meeting of the American Groundwater Trust. March 7th, 2004. Pheonix Arizona.

Hagemann, M.F., **Paul Rosenfeld, Ph.D.** and Rob Hesse, 2004. Perchlorate Contamination of the Colorado River. Invited presentation to a meeting of tribal representatives, Parker, AZ.

Paul Rosenfeld, Ph.D. A National Damage Assessment Model For PCE and Dry Cleaners. Drycleaner Symposium. California Ground Water Association. Radison Hotel, Sacramento, California. April 7, 2004.

Paul Rosenfeld, Ph.D. and James Clark Ph.D. Understanding Historical Use, Chemical Properties, Toxicity and Regulatory Guidance of 1,4 Dioxane. National Groundwater Association. Southwest Focus Conference. Water Supply and Emerging Contaminants. February 20-21, 2003. Hyatt Regency Phoenix Arizona.

Paul Rosenfeld, Ph.D. Underground Storage Tank Litigation and Remediation. California CUPA Forum. Marriott Hotel. Anaheim California. February 6-7, 2003.

Paul Rosenfeld, Ph.D. Underground Storage Tank Litigation and Remediation. EPA Underground Storage Tank Roundtable. Sacramento California. October 23, 2002.

Rosenfeld, P.E. and Suffet, M. 2002. Understanding Odor from Compost, Wastewater and Industrial Processes. Sixth Annual Symposium On Off Flavors in the Aquatic Environment. International Water Association. Barcelona Spain. October 7- 10.

Rosenfeld, P.E. and Suffet, M. 2002. Using High Carbon Wood Ash to Control Compost Odor. Sixth Annual Symposium On Off Flavors in the Aquatic Environment. International Water Association. Barcelona Spain. October 7- 10.

Rosenfeld, P.E. and Grey, M. A. 2002. Biocycle Composting For Coastal Sage Restoration. Northwest Biosolids Management Association. Vancouver Washington. September 22-24.

Rosenfeld, P.E. and Grey, M. A. 2002. Soil Science Society Annual Conference. Indianapolis, Maryland. November 11-14.

Rosenfeld, P.E. 2000. Two stage biofilter for biosolids composting odor control. Water Environment Federation. Anaheim California. September 16, 2000.

Rosenfeld, P. E. 2000. Wood ash and biofilter control of compost odor. Biofest. October 16, 2000. Ocean Shores, California.

Rosenfeld, P. E. 2000. Bioremediation Using Organic Soil Amendments. California Resource Recovery Association. Sacramento California.

Rosenfeld, P.E., C.L. Henry, R. Harrison. 1998. Oat and Grass Seed Germination and Nitrogen and Sulfur Emissions Following Biosolids Incorporation With High-Carbon Wood-Ash. Water Environment Federation 12th Annual Residuals and Biosolids Management Conference Proceedings. Bellevue Washington.

Rosenfeld, P.E., and C.L. Henry. 1999. An evaluation of ash incorporation with biosolids for odor reduction. Soil Science Society of America. Salt Lake City Utah.

Rosenfeld, P.E., C.L. Henry, R. Harrison. 1998. Comparison of Microbial Activity and Odor Emissions from Three Different Biosolids Applied to Forest Soil. Brown and Caldwell, Seattle Washington.

Rosenfeld, P.E., C.L. Henry. 1998. Characterization, Quantification, and Control of Odor Emissions from Biosolids Application To Forest Soil. Biofest Lake Chelan, Washington.

Rosenfeld, P.E., C.L. Henry, R. B. Harrison, and R. Dills. 1997. Comparison of Odor Emissions From Three Different Biosolids Applied to Forest Soil. Soil Science Society of America, Anaheim California.

Professional History

Soil Water Air Protection Enterprise (SWAPE); 2003 to present; Founding And Managing Partner
 UCLA School of Public Health; 2007 to 2010; Lecturer (Asst Res)
 UCLA School of Public Health; 2003 to 2006; Adjunct Professor
 UCLA Environmental Science and Engineering Program; 2002-2004; Doctoral Intern Coordinator
 UCLA Institute of the Environment, 2001-2002; Research Associate
 Komex H₂O Science, 2001 to 2003; Senior Remediation Scientist
 National Groundwater Association, 2002-2004; Lecturer
 San Diego State University, 1999-2001; Adjunct Professor
 Anteon Corp., San Diego, 2000-2001; Remediation Project Manager
 Ogden (now Amec), San Diego, 2000-2000; Remediation Project Manager
 Bechtel, San Diego, California, 1999 – 2000; Risk Assessor
 King County, Seattle, 1996 – 1999; Scientist
 James River Corp., Washington, 1995-96; Scientist
 Big Creek Lumber, Davenport, California, 1995; Scientist
 Plumas Corp., California and USFS, Tahoe 1993-1995; Scientist
 Peace Corps and World Wildlife Fund, St. Kitts, West Indies, 1991-1993; Scientist
 Bureau of Land Management, Kremmling Colorado 1990; Scientist

Teaching Experience

UCLA Department of Environmental Health (Summer 2003 through 2010) Taught Environmental Health Science 100 to students, including undergrad, medical doctors, public health professionals and nurses. Course focuses on the health effects of environmental contaminants.

National Ground Water Association, Successful Remediation Technologies. Custom Course In Sante Fe, New Mexico. May 21, 2002. Focused on fate and transport of fuel contaminants associated with underground storage tanks.

National Ground Water Association; Successful Remediation Technologies Course in Chicago Illinois. April 1, 2002. Focused on fate and transport of contaminants associated with Superfund and RCRA sites.

California Integrated Waste Management Board, April and May, 2001. Alternative Landfill Caps Seminar in San Diego, Ventura, and San Francisco. Focused on both prescriptive and innovative landfill cover design.

UCLA Department of Environmental Engineering, February 5 2002 Seminar on Successful Remediation Technologies focusing on Groundwater Remediation.

University Of Washington, Soil Science Program, Teaching Assistant for several courses including: Soil Chemistry, Organic Soil Amendments, and Soil Stability.

U.C. Berkeley, Environmental Science Program Teaching Assistant for Environmental Science 10.

Academic Grants Awarded

California Integrated Waste Management Board. \$41,000 grant awarded to UCLA Institute of the Environment. Goal: To investigate effect of high carbon wood ash on volatile organic emissions from compost. 2001.

Synagro Technologies, Corona California: \$10,000 grant awarded to San Diego State University. Goal: investigate effect of biosolids for restoration and remediation of degraded coastal sage soils. 2000.

King County, Department of Research and Technology, Washington State. \$100,000 grant awarded to University of Washington: Goal: To investigate odor emissions from biosolids application and the effect of polymers and ash on VOC emissions. 1998.

Northwest Biosolids Management Association, Washington State. \$20,000 grant awarded to investigate effect of polymers and ash on VOC emissions from biosolids. 1997.

James River Corporation, Oregon: \$10,000 grant was awarded to investigate the success of genetically engineered Poplar trees with resistance to round-up. 1996.

United State Forest Service, Tahoe National Forest: \$15,000 grant was awarded to investigating fire ecology of the Tahoe National Forest. 1995.

Kellogg Foundation, Washington D.C. \$500 grant was awarded to construct a large anaerobic digester on St. Kitts in West Indies. 1993.

Cases that Dr. Rosenfeld Provided Deposition or Trial Testimony

In the Court of Common Pleas of Tuscarawas County Ohio

John Michael Abicht, et al., *Plaintiffs*, vs. Republic Services, Inc., et al., *Defendants*

Case Number: 2008 CT 10 0741 (Cons. w/ 2009 CV 10 0987)

In the Court of Common Pleas for the Second Judicial Circuit, State of South Carolina, County of Aiken

David Anderson, et al., *Plaintiffs*, vs. Norfolk Southern Corporation, et al., *Defendants*.

Case Number: 2007-CP-02-1584

In the Circuit Court of Jefferson County Alabama

Jaeanette Moss Anthony, et al., *Plaintiffs*, vs. Drummond Company Inc., et al., *Defendants*

Civil action No. CV 2008-2076

In the Ninth Judicial District Court, Parish of Rapides, State of Louisiana

Roger Price, et al., *Plaintiffs*, vs. Roy O. Martin, L.P., et al., *Defendants*.

Civil Suit Number 224,041 Division G

In the United States District Court, Western District Lafayette Division

Ackle et al., *Plaintiffs*, vs. Citgo Petroleum Corporation, et al., *Defendants*.

Case Number 2:07CV1052

In the United States District Court for the Southern District of Ohio

Carolyn Baker, et al., *Plaintiffs*, vs. Chevron Oil Company, et al., *Defendants*.

Case Number 1:05 CV 227

In the Fourth Judicial District Court, Parish of Calcasieu, State of Louisiana

Craig Steven Arabie, et al., *Plaintiffs*, vs. Citgo Petroleum Corporation, et al., *Defendants*.

Case Number 07-2738 G

In the Fourteenth Judicial District Court, Parish of Calcasieu, State of Louisiana

Leon B. Brydels, *Plaintiffs*, vs. Conoco, Inc., et al., *Defendants*.

Case Number 2004-6941 Division A

In the District Court of Tarrant County, Texas, 153rd Judicial District

Linda Faust, *Plaintiff*, vs. Burlington Northern Santa Fe Rail Way Company, Witco Chemical Corporation A/K/A Witco Corporation, Solvents and Chemicals, Inc. and Koppers Industries, Inc., *Defendants*.

Case Number 153-212928-05

In the Superior Court of the State of California in and for the County of San Bernardino

Leroy Allen, et al., *Plaintiffs*, vs. Nutro Products, Inc., a California Corporation and DOES 1 to 100, inclusive, *Defendants*.

John Loney, Plaintiff, vs. James H. Didion, Sr.; Nutro Products, Inc.; DOES 1 through 20, inclusive, *Defendants*.

Case Number VCVVS044671

In the United States District Court for the Middle District of Alabama, Northern Division

James K. Benefield, et al., *Plaintiffs*, vs. International Paper Company, *Defendant*.

Civil Action Number 2:09-cv-232-WHA-TFM

In the Superior Court of the State of California in and for the County of Los Angeles

Leslie Hensley and Rick Hensley, *Plaintiffs*, vs. Peter T. Hoss, as trustee on behalf of the Cone Fee Trust; Plains Exploration & Production Company, a Delaware corporation; Rayne Water Conditioning, Inc., a California corporation; and DOES 1 through 100, *Defendants*.

Case Number SC094173

In the Superior Court of the State of California in and for the County of Santa Barbara, Santa Maria Branch
Clifford and Shirley Adelhelm, et al., all individually, *Plaintiffs*, vs. Unocal Corporation, a Delaware
Corporation; Union Oil Company of California, a California corporation; Chevron Corporation, a
California corporation; ConocoPhillips, a Texas corporation; Kerr-McGee Corporation, an Oklahoma
corporation; and DOES 1 through 100, *Defendants*.

Case Number 1229251 (Consolidated with case number 1231299)

In the United States District Court for Eastern District of Arkansas, Eastern District of Arkansas
Harry Stephens Farms, Inc, and Harry Stephens, individual and as managing partner of Stephens
Partnership, *Plaintiffs*, vs. Helena Chemical Company, and Exxon Mobil Corp., successor to Mobil
Chemical Co., *Defendants*.

Case Number 2:06-CV-00166 JMM (Consolidated with case number 4:07CV00278 JMM)

In the United States District Court for the Western District of Arkansas, Texarkana Division
Rhonda Brasel, et al., *Plaintiffs*, vs. Weyerhaeuser Company and DOES 1 through 100, *Defendants*.
Civil Action Number 07-4037

In The Superior Court of the State of California County of Santa Cruz
Constance Acevedo, et al. *Plaintiffs* Vs. California Spray Company, et al. *Defendants*
Case No CV 146344

In the District Court of Texas 21st Judicial District of Burleson County
Dennis Davis, *Plaintiff*, vs. Burlington Northern Santa Fe Rail Way Company, *Defendant*.
Case Number 25,151

In the United States District Court of Southern District of Texas Galveston Division
Kyle Cannon, Eugene Donovan, Genaro Ramirez, Carol Sassler, and Harvey Walton, each Individually and
on behalf of those similarly situated, *Plaintiffs*, vs. BP Products North America, Inc., *Defendant*.
Case 3:10-cv-00622

ATTACHMENT B



SMITH ENGINEERING & MANAGEMENT

May 20, 2021

Ms. Kendra Hartmann
Adams Broadwell Joseph & Cardozo
601 Gateway Boulevard, Suite 1000
South San Francisco, CA 94080-7037

Subject: RedwoodTech@101 Project

P21015

Dear Ms. Hartmann:

Per your request, I reviewed the Documentation for the RedwoodTech@101 Project (the "Project") in the City of Morgan Hill (the "City"). My review is with respect to transportation and circulation considerations despite the fact that the current documentation contains no transportation analysis.

My qualifications to perform this review include registration as a Civil and Traffic Engineer in California, over 50 years professional consulting practice in these fields and both preparation and review of the traffic and transportation components of numerous environmental documents prepared under the California Environmental Quality Act ("CEQA"). My professional resume is attached hereto.

The Project Is Best Described as a Business Park, a Category of Land Use That Generates Significant Numbers of Daily, AM and PM Peak Trips.

The Applicant's documentation describes the Project as follows: "The property will be reconfigured into 4 legal lots with 5 buildings designated for flexible industrial and commercial uses, including advanced manufacturing, warehouse, supporting office, and similar industrial and commercial uses totaling up to 501,314 square feet." The documentation goes on to state that "All 5 buildings are designed to be divisible into 2 or 3 tenant spaces." This description

Ms. Kendra Hartmann
 Adams Broadwell Joseph & Cardozo
 May 20, 2021
 Page 2

corresponds to the description for Land Use Category 770, Business Park in the Institute of Transportation Engineers' *Trip Generation, 10th Edition*. That description states "A business park consists of a group of flex-type or incubator one- or two-story buildings served by a common roadway system. The tenant space is flexible and lends itself to a variety of uses; the rear side of the building is usually served by a garage door. Tenants may be start-up companies or small mature companies that require a variety of space. The space may include offices, retail and wholesale stores, restaurants, recreational areas and warehousing, manufacturing, light industrial, or scientific research functions."

Trip Generation, 10th Edition indicates the following equations for estimating daily trips at a Business Park:

Daily: $T = 10.62(X) = 715.67$
 AM Peak $\ln(T) = .97 \ln(X) + 0.49$
 PM Peak $\ln(T) = .90 \ln(X) + 0.85$ where T equals trips and X equals building floor area in thousands of square feet.

With the Project's building area of 501.314 thousand square feet, these equations give trip totals of 6040 trips daily, 818 in the AM peak hour and 629 in the PM peak hour. The peak hour trip totals far exceed both the City and the Santa Clara County Valley Transportation Authority ("VTA") guidelines for new peak hour trip levels where a Transportation Impact Report becomes required.¹ Yet no transportation impact analysis for the Project has been performed.

The City Knew or Should Have Known that the Project Would Cause Intersections in the Vicinity to Operate at Worse than LOS D

In May 2020 the City circulated a Draft EIR for a larger development project, the Morgan Hill Technology Center Mixed Use Project, which included the current RedwoodTech@101 Project as a part. That DEIR disclosed that the mixed-use project would have caused conditions at three intersections in the immediate vicinity to deteriorate from LOS B or C to LOS F in one or the other of the peak hours:

- The intersection of Cochrane Road with DePaul Drive would deteriorate in the PM peak hour from 18.7 seconds average delay per vehicle and LOS B to 101 seconds per vehicle and LOS F.

¹ The VTA policy requires a transportation impact analysis to be performed whenever a project adds 100 or more peak hour trips to the roadway system. The City policy is slightly more stringent, requiring a transportation impact report when a project adds 50 to 99 peak hour trips that would logically affect a nearby intersection or intersections operating at LOS D or worse or one(s) that are projected to operate at LOS D or worse when traffic from already approved but not yet completed projects is added. At or above 100 peak hour trips, the VTA requirement kicks in without necessarily identifying a nearby intersection at LOS D or worse.

Ms. Kendra Hartmann
 Adams Broadwell Joseph & Cardozo
 May 20, 2021
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- The intersection of Cochrane Road and Mission View Drive would deteriorate in the AM peak hour from 23.0 seconds average delay per vehicle and LOS C to 94.6 seconds per vehicle and LOS F.
- The intersection of Mission View Drive and Half Road would deteriorate from 22.6 seconds average delay per vehicle and LOS C in the PM peak hour to 136.9 seconds and LOS F.

If one takes the trip generation for the RedwoodTech@101 Project as fairly calculated in the section above and assumes its share of responsibility for the delay increments disclosed in the Morgan Hill Technology Center Mixed-Use Project DEIR is proportional to the ratio of its trip generation to that of the whole Mixed-Use Project, then the following results are obtained:

- The RedwoodTech@101 Project would cause the intersection of Cochrane Road with DePaul Drive to deteriorate in the PM peak hour from 18.7 seconds average delay per vehicle and LOS B to approximately 63.55 seconds delay and LOS E in the PM peak.
- The intersection of Cochrane Road and Mission View Drive would deteriorate in the AM peak hour from 23.0 seconds average delay per vehicle and LOS C to approximately 78.99 seconds and LOS E in the AM peak.
- The intersection of Mission View Drive and Half Road would deteriorate from 22.6 seconds average delay per vehicle and LOS C in the PM peak hour to approximately 84.89 seconds and LOS F.

The fact that the revised and renamed Project could have effects on this scale should have been obvious to the City, but apparently nobody gave it any thought.

Some may argue that none of the above matters because CEQA has transitioned to the VMT metric for transportation analysis. This, however, ignores the explicit policy stated in the City's 2035 General Plan that the City continues to use LOS to evaluate impacts to transportation. Failure to conform to General Plan policies remains a matter of significance under CEQA.

There Is No Basis for A Claim That the Project Was Somehow Analyzed In the 2035 General Plan EIR

There is no basis for a claim that this Project was somehow analyzed in the 2035 General Plan EIR. That EIR found that at 2035 development level the intersection of Cochrane Road with DePaul Drive would operate at average delays per vehicle of 18.6 seconds and 19.8 seconds in the AM and PM peaks, respectively. It found that the intersection of Cochrane Road with Mission View Drive would operate at average delays per vehicle of 20.2 seconds and 19.0 seconds in the AM and PM peaks, respectively LOS C and B. These reported 2035 values are characteristic of what the Morgan Hill Technology Center Mixed

Ms. Kendra Hartmann
 Adams Broadwell Joseph & Cardozo
 May 20, 2021
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Use Project DEIR reports as *existing conditions* and nothing like what it reports as conditions with development of that project. Moreover, the 2035 General Plan EIR did not even evaluate the intersection of Mission View Drive and Half Road. It would defy common sense to assert that the impacts of the current RedwoodTech@101 Project were already disclosed in the 2035 General Plan EIR.

Furthermore, preparers of the Morgan Hill Technology Center DEIR performed an analysis of projected VMT for that project and compared the results to a “No Project” alternative using the development intensity anticipated by the 2035 General Plan. The comparison indicated that development of the Technology Park would result in significantly more VMT than that anticipated by the General Plan. In attempting to cast doubt on the significance of this result, the DEIR stated this: “At the time that the General Plan EIR was prepared, it was assumed that the project site would be developed at a low intensity within the 20-year period. The development assumptions for the site included in the City’s TDF model are significantly lower than development allowed on-site based on the existing General Plan and zoning designations (refer to Section 7.6.3, No Project/Existing General Plan/Zoning Development Alternative in this EIR).”² By acknowledging that the development of the site anticipated by the General Plan EIR was significantly less intense than that proposed by that project, the DEIR recognized that the 2035 General Plan EIR clearly does not reflect the current Project.

Placed In Context, Approval of RedwoodTech@101 Appears To Be a Project Segmentation That Is Improper Under CEQA

Considering that the proposed Project consists of one component, proposed by the same applicant under a new name, of the recently withdrawn Morgan Hill Technology Center Mixed Use Project, appears to be a case of project segmentation that is improper under CEQA. The City must explain how this is not a matter of piecemealing. Given the City’s admission in the Staff Report that it is undertaking concurrent review of a 269-unit residential development on another portion of the former Morgan Hill Technology Center Mixed Use Project, the evidence of piecemealing is clear.

Conclusion

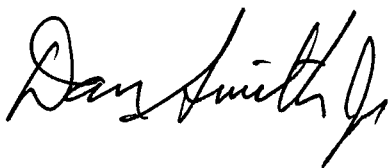
Given the above, the Project cannot be approved without further CEQA review. A full EIR on the whole of the Project should be prepared and circulated in “draft” status.

² See Morgan Hill Technology Center Mixed Use Project Draft EIR, page 160.

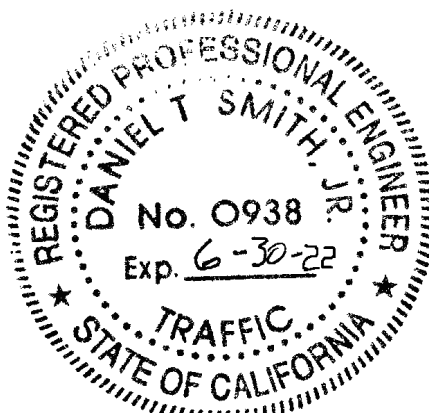
Ms. Kendra Hartmann
Adams Broadwell Joseph & Cardozo
May 20, 2021
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Sincerely,

Smith Engineering & Management
A California Corporation



Daniel T. Smith Jr., P.E.
President



Ms. Kendra Hartmann
 Adams Broadwell Joseph & Cardozo
 May 20, 2021
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SMITH ENGINEERING & MANAGEMENT

DANIEL T. SMITH, Jr. President

EDUCATION

Bachelor of Science, Engineering and Applied Science, Yale University, 1967
 Master of Science, Transportation Planning, University of California, Berkeley, 1968

PROFESSIONAL REGISTRATION

California No. 21913 (Civil) Nevada No. 7969 (Civil) Washington No. 29337 (Civil)
 California No. 938 (Traffic) Arizona No. 22131 (Civil)

PROFESSIONAL EXPERIENCE

Smith Engineering & Management, 1993 to present. President.
 DKS Associates, 1979 to 1993. Founder, Vice President, Principal Transportation Engineer.
 De Leuw, Cather & Company, 1968 to 1979. Senior Transportation Planner.
 Personal specialties and project experience include:

Litigation Consulting. Provides consultation, investigations and expert witness testimony in highway design, transit design and traffic engineering matters including condemnations involving transportation access issues; traffic accidents involving highway design or traffic engineering factors; land use and development matters involving access and transportation impacts; parking and other traffic and transportation matters.

Urban Corridor Studies/Alternatives Analysis. Principal-in-charge for State Route (SR) 102 Feasibility Study, a 35-mile freeway alignment study north of Sacramento. Consultant on I-280 Interstate Transfer Concept Program, San Francisco, an AA/EIS for completion of I-280, demolition of Embarcadero freeway, substitute light rail and commuter rail projects. Principal-in-charge, SR 238 corridor freeway/expressway design/environmental study, Hayward (Calif.) Project manager, Sacramento Northeast Area multi-modal transportation corridor study. Transportation planner for I-80N West Terminal Study, and Harbor Drive Traffic Study, Portland, Oregon. Project manager for design of surface segment of Woodward Corridor LRT, Detroit, Michigan. Directed staff on I-80 National Strategic Corridor Study (Sacramento-San Francisco), US 101-Sonoma freeway operations study, SR 92 freeway operations study, I-880 freeway operations study, SR 152 alignment studies, Sacramento RTD light rail systems study, Tasman Corridor LRT AA/EIS, Fremont-Warm Springs BART extension plan/EIR, SRs 70/99 freeway alternatives study, and Richmond Parkway (SR 93) design study.

Area Transportation Plans. Principal-in charge for transportation element of City of Los Angeles General Plan Framework, shaping nations largest city two decades into 21st century. Project manager for the transportation element of 300-acre Mission Bay development in downtown San Francisco. Mission Bay involves 7 million gsf office/commercial space, 8,500 dwelling units, and community facilities. Transportation features include relocation of commuter rail station; extension of MUNI-Metro LRT; a multi-modal terminal for LRT, commuter rail and local bus; removal of a quarter mile elevated freeway; replacement by new ramps and a boulevard; an internal roadway network overcoming constraints imposed by an internal tidal basin; freeway structures and rail facilities; and concept plans for 20,000 structured parking spaces. Principal-in-charge for circulation plan to accommodate 9 million gsf of office/commercial growth in downtown Bellevue (Wash.). Principal-in-charge for 64 acre, 2 million gsf multi-use complex for FMC adjacent to San Jose International Airport. Project manager for transportation element of Sacramento Capitol Area Plan for the state governmental complex, and for Downtown Sacramento Redevelopment Plan. Project manager for Napa (Calif.) General Plan Circulation Element and Downtown Riverfront Redevelopment Plan, on parking program for downtown Walnut Creek, on downtown transportation plan for San Mateo and redevelopment plan for downtown Mountain View (Calif.), for traffic circulation and safety plans for California cities of Davis, Pleasant Hill and Hayward, and for Salem, Oregon.

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Ms. Kendra Hartmann
 Adams Broadwell Joseph & Cardozo
 May 20, 2021
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Transportation Centers. Project manager for Daly City Intermodal Study which developed a \$7 million surface bus terminal, traffic access, parking and pedestrian circulation improvements at the Daly City BART station plus development of functional plans for a new BART station at Colma. Project manager for design of multi-modal terminal (commuter rail, light rail, bus) at Mission Bay, San Francisco. In Santa Clarita Long Range Transit Development Program, responsible for plan to relocate system's existing timed-transfer hub and development of three satellite transfer hubs. Performed airport ground transportation system evaluations for San Francisco International, Oakland International, Sea-Tac International, Oakland International, Los Angeles International, and San Diego Lindberg.

Campus Transportation. Campus transportation planning assignments for UC Davis, UC Berkeley, UC Santa Cruz and UC San Francisco Medical Center campuses; San Francisco State University; University of San Francisco; and the University of Alaska and others. Also developed master plans for institutional campuses including medical centers, headquarters complexes and research & development facilities.

Special Event Facilities. Evaluations and design studies for football/baseball stadiums, indoor sports arenas, horse and motor racing facilities, theme parks, fairgrounds and convention centers, ski complexes and destination resorts throughout western United States.

Parking. Parking programs and facilities for large area plans and individual sites including downtowns, special event facilities, university and institutional campuses and other large site developments; numerous parking feasibility and operations studies for parking structures and surface facilities; also, resident preferential parking .

Transportation System Management & Traffic Restraint. Project manager on FHWA program to develop techniques and guidelines for neighborhood street traffic limitation. Project manager for Berkeley, (Calif.), Neighborhood Traffic Study, pioneered application of traffic restraint techniques in the U.S. Developed residential traffic plans for Menlo Park, Santa Monica, Santa Cruz, Mill Valley, Oakland, Palo Alto, Piedmont, San Mateo County, Pasadena, Santa Ana and others. Participated in development of photo/radar speed enforcement device and experimented with speed humps. Co-author of Institute of Transportation Engineers reference publication on neighborhood traffic control.

Bicycle Facilities. Project manager to develop an FHWA manual for bicycle facility design and planning, on bikeway plans for Del Mar, (Calif.), the UC Davis and the City of Davis. Consultant to bikeway plans for Eugene, Oregon, Washington, D.C., Buffalo, New York, and Skokie, Illinois. Consultant to U.S. Bureau of Reclamation for development of hydraulically efficient, bicycle safe drainage inlets. Consultant on FHWA research on effective retrofits of undercrossing and overcrossing structures for bicyclists, pedestrians, and handicapped.

MEMBERSHIPS

Institute of Transportation Engineers Transportation Research Board

PUBLICATIONS AND AWARDS

Residential Street Design and Traffic Control, with W. Homburger *et al.* Prentice Hall, 1989.

Co-recipient, Progressive Architecture Citation, *Mission Bay Master Plan*, with I.M. Pei WRT Associated, 1984.

Residential Traffic Management, State of the Art Report, U.S. Department of Transportation, 1979.

Improving The Residential Street Environment, with Donald Appleyard *et al.*, U.S. Department of Transportation, 1979.

Strategic Concepts in Residential Neighborhood Traffic Control, International Symposium on Traffic Control Systems, Berkeley, California, 1979.

Planning and Design of Bicycle Facilities: Pitfalls and New Directions, Transportation Research Board, Research Record 570, 1976.

Co-recipient, Progressive Architecture Award, *Livable Urban Streets, San Francisco Bay Area and London*, with Donald Appleyard, 1979.

ATTACHMENT C



WILSON IHRIG

ACOUSTICS, NOISE & VIBRATION

CALIFORNIA
WASHINGTON
NEW YORK

WI #21-xxx

May 25, 2021

Kendra Hartmann, Esq.
Christina Caro, Esq.
Adams Broadwell Joseph & Cardozo
601 Gateway Blvd, Suite 1000
South San Francisco, California 94080

SUBJECT: Redwood Tech @1010 Comments on the CEQA document

Dear Ms. Hartmann and Ms. Caro,

Per your request, I have reviewed the background documents for the subject matter project, Redwood Tech @ 101, a new industrial park providing five new buildings on a vacant lot. The staff report indicates that no separate CEQA analysis is required. A previous project was proposed in this area, which also included a residential development on an adjacent lot to the east. The noise and vibration technical report for that project were reviewed for context (Morgan Hill Technology Park, Draft EIR, Appendix G, "Fry's Site Noise and Vibration Assessment – Morgan Hill, California," March 9, 2020, prepared by Illingworth and Rodkin,) referenced as "prior analysis".

Noise Impacts at Noise Sensitive Land Uses not Properly Identified

The construction noise analysis in the prior analysis appears to rely on incorrect distances between the noise sensitive land use and the project construction. Construction noise analyses can be done using the shortest distance between the noise sensitive land use and the work area for the project, or it can be done using the distance from the noise sensitive land use to the center, or possibly the centroid of the project. Given that the extent of the prior project was so large (89 acres), using either of these distances would potentially over-estimate or under-estimate the actual impacts, respectively.

The prior analysis identified a significance threshold of 60 dBA hourly Leq for construction noise received at residential land use and 70 dBA hourly Leq received at commercial land use and exceed the ambient noise environment by at least 5 dBA for more than one year would constitute a significant temporary noise increase.

In the prior analysis, only a short-term noise measurement was made near the residential neighborhood on Tolusa Place (ST-1) measuring two short 10-minute periods ranging from 58 to 62 dBA Leq; given the location's distance from the main arterial and highway noise sources, it is

expected that the ambient at the future residential project, which is being permitted concurrently, would be more similar to the noise measurement data collected at ST-2 near the medical facilities which yielded 64 dBA Leq. According to the prior analysis, construction noise which exceeds 60 dBA Leq and 63 dBA Leq over the course of a year would be significant at the Tolusa Place residents, and construction noise which exceeds 60 dBA Leq and 68 dBA Leq over the course of the year would be significant at the future residential project.

For context, the Oakland Noise Ordinance limits long-term construction projects that last more than 10 days to 65 dBA at residential land use and 70 at commercial land use, regardless of the existing ambient conditions¹. From this perspective the one year requirement to determine significance seems particularly lenient.

The prior analysis relies upon construction equipment noise provided by the FHWA in their Roadway Construction Noise Model. This is common practice as there are many similarities in equipment and noise levels. The prior analysis does not disclose the specific noise level assumptions for each construction phase. Table 1 below extrapolates those values, and these extrapolated source levels provide the same values reported in Tables 7 and 8 of the prior analysis.

Table 1 Extrapolated Construction Source Levels and Activity Duration from Prior Analysis

Construction Phase	Housing Project		Office/Light Industrial	
	Construction Noise Source Levels ¹ (dBA)	Duration (Days)	Construction Noise Source Levels ¹ (dBA)	Duration (Days)
Site Preparation	84	20	84	5
Grading	87	45	85	8
Trenching	79	20	79	10
Build Exterior	80	440	83	230
Build Interior	72	35	75	18
Paving	82	35	83	18
Note 1: noise levels at 50 ft distance				

Focusing attention only on the residential area on Tolusa Place and the future residential project, Tables 2 and 3 provide updated analyses of the construction noise impacts. Since the current project and the residential project are being permitted concurrently, the cumulative effect could be to cause the residents in this area to experience a full year or more of construction noise. The noise levels at the east residential neighborhood would exceed 60 dBA Leq and the existing environment of 58 dBA would be increased by 5 dBA or more for a period of a year or more.

Table 2 Construction Noise Impacts at East Residential Neighborhood

Construction Phase	Residential Construction Source to Tolusa Pl	Commercial Project Source to Tolusa Pl
--------------------	--	--

¹ Oakland Planning Code 17.120.050, Table 17.120.05, accessed via the web on 5/24/21.

https://library.municode.com/ca/oakland/codes/planning_code?nodeId=TIT17PL_CH17.120PEST_17.120.050NO

	Distance to Center: 440 ft	Distance to nearest PL 50 ft	Distance to Center: 1340 ft	Distance to nearest PL 880 ft
Site Preparation	65	84	55	59
Grading	68	87	56	60
Trenching	60	79	50	54
Build Exterior	61	80	54	58
Build Interior	53	72	46	50
Paving	63	82	54	58

The future residential project would be slightly closer to existing noise sources such as Hwy 101, but still within 50 ft of the project construction. If completed prior to the commercial project, some number of homes within the future residential project would be exposed to a significant noise impact as shown in Table 3. The noise levels would exceed 60 dBA Leq and the existing environment of 64 dBA would be increased by 5 dBA or more for a period of a year or more.

Table 3 Construction Noise Impacts from Commercial Buildings at Future Residential Project

Construction Phase	Commercial Project Source to Future Residential Project	
	Distance to Center: 515 ft	Distance to nearest PL 50 ft
Site Preparation	64	84
Grading	65	85
Trenching	59	79
Build Exterior	63	83
Build Interior	55	75
Paving	63	83

CEQA impact analysis should be provided to determine mitigation measures to address these temporary, substantial noise impacts such as buffer distances and sound barriers. Adequate materials for such sound barriers would include temporary barriers using STC 20-25 blankets on a tubular steel frame or scaffolding or 3 PSF wood frame barriers (e.g., using $\frac{3}{4}$ " thick plywood)². In any case the material should overlap or otherwise be constructed to avoid gaps of any size, and should be high enough to block line of sight between the construction noise sources and the affected windows. The sound barrier has to interrupt the line of sight between the source(s) and the receiver(s) and the best placement to maximize the sound barrier benefit is close the source or close to the receiver.

² FHWA *Highway Noise Barrier Design Handbook*, February 2020, pp. 25-27, indicates that materials with a transmission loss of 20 dB or better are well suited for noise barriers, and that the corresponding STC rating is usually 5 to 10 points less than its transmission loss. Practically speaking, many common materials are available with STC 25 or TL 20 to the necessary performance for a construction sound wall. Accessed via the web March 18, 2021. https://rosap.nhtl.bts.gov/view/dot/38373/dot_38373_DS1.pdf

WILSON IHRIG
RedwoodTech @101 CEQA

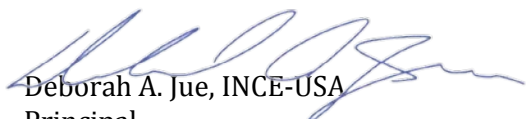
Conclusions

The construction noise analysis for the prior project appears to contain some errors which could lead one to conclude that construction activities for the proposed project and the future residential project could be less than significant. Mitigation measures would be required to reduce the construction noise impact.

Please feel free to contact me with any questions on this information.

Very truly yours,

WILSON IHRIG


Deborah A. Jue, INCE-USA
Principal

redwoodtech @ 101_noise review_wilson ihrig.docx

Attachment: Appeal by Adams Broadwell Joseph & Cardozo (3130 : Trammell Crow Redwood Tech at 101 Appeal)



DEBORAH JUE

Principal

Since joining Wilson Ihrig in 1990, Ms. Jue has been involved in with many projects from environmental assessments and entitlements, through design development, construction documents and construction administration support. As an acoustical consultant, she has provided noise measurement, analysis and recommendations to control noise and vibration both at the interior of the project and at the neighboring properties. She has authored many reports concerning compliance with the requirements of California Noise Insulation Standards, Title 24, local Noise Elements, environmental assessments and Federal noise criteria, and is well aware of the additional design and construction technique requirements to achieve industry standards. Ms. Jue has authored or provided input for many environmental documents and technical studies in accordance with NEPA and California's CEQA regulations, most of them related to surface transportation, and she gives presentations to public officials when necessary to explain construction noise problems, noise mitigation goals, and noise control methods. She can develop construction noise and vibration criteria to address vibration damage potential to nearby buildings and sensitive structures, and vibration annoyance or disruption potential for occupants of nearby buildings.

Education

- M.S. in Mechanical Engineering, University of California, Berkeley, 1998
- B.S. in General Engineering: Acoustics, Stanford University, 1988

Professional Associations (Member)

- American Society of Mechanical Engineers
- Acoustical Society of America
- National Council of Acoustical Consultants
- Institute of Noise Control Engineering
- WTS
- Transportation Research Board, AEP80 Standing Committee Member (2021-2024)

Research and Published Papers

- ACRP Report 175, ACRP 07-14, *Improving Intelligibility of Airport Terminal Public Address Systems*
- NCHRP 25-25, *Current Practices to Address Construction Vibration and Potential Effects to Historic Buildings Adjacent to Transportation Projects*
- *Transportation Research Record*, V. 2502, "Considerations to Establish Ground-Borne Noise Criteria to Define Mitigation for Noise-Sensitive Spaces"

Relevant Experience

- California High Speed Rail Caltrain Corridor EIR/EIS, San Francisco to San Jose
- UC Berkeley Northgate Hall A/V Renovations, Berkeley
- MacArthur Station, *long-term construction noise and vibration monitoring*, Oakland
- Safeway @ Claremont & College, *HVAC noise and construction noise monitoring*, Oakland
- ACTC I-80/Ashby, *interchange traffic noise analysis*, Berkeley and Emeryville
- ACTC I-680 Express Lanes, *traffic noise analysis*, Contra Costa County, CA
- Chase Arena, *construction noise and vibration monitoring*, San Francisco

[VIA Hand Delivery]

June 4, 2021

Michelle Bigelow, City Clerk
Morgan Hill City Clerk's Office
17575 Peak Avenue
Morgan Hill, CA 95037

Re: Notice of Appeal Planning Commission Approval of Resolutions 21-04 and 21-05

Dear Ms. Bigelow:

Pursuant to Chapter 18.112 of the Morgan Hill Municipal Code, I hereby submit, representing the Morgan Hill Responsible Growth Coalition (MHRGC), this Notice of Appeal with associated references, a Completed Uniform Application and a check in the amount of \$627.60 for the posted application fee.

The **specific action being appealed** is the City of Morgan Hill Planning Commission approval of Resolutions NO. 21-04 and 21-05. Resolution 21-04, "approving a design permit to allow for the construction of the Redwood Tech at 101 project" and Resolution 21-05, "approving a vesting tentative parcel map for a 4-lot parcel map on a 28-acre site located on the northern intersection of Condit Road and Half Road (APNS 728-30-006 AND 728-30-009) were approved as part of the agenda item #1, Public Hearing ([SD2020-0011/SR2020-0029 THROUGH SR2020-0033 DE PAUL - TC MORGAN HILL VENTURE: REQUEST FOR A TENTATIVE PARCEL MAP AND DESIGN PERMITS FOR THE REDWOOD TECH AT 101, A FIVE BUILDING INDUSTRIAL PARK, ON A 29± ACRE SITE \(APNS 728-30-006 AND 728-30-009\)](#) on May 25th, 2021.

The specific grounds for this appeal are:

- 1) Neither resolution is consistent with the General Plan. General Plan Policies CNF-18.3 and CNF-18.4 were both objected to not being considered by a Planning Commissioner and by the public and there is nothing in the record which supports the staff's claim that the City Attorney's office has made a 'determination' which allowed those General Plan requirements to be waived for the case at hand.
- 2) The Planning Commission could not make the necessary findings to approve a design permit or tentative map for the project based on information in the record. The MHRGC agrees with and by reference includes all the grounds and all of the analysis included in public comments Supplement #1 (http://morganhillca.igm2.com/Citizens/Detail_Meeting.aspx?ID=2033) by Michael Lozeau and Supplement #3 (http://morganhillca.igm2.com/Citizens/Detail_Meeting.aspx?ID=2033) by Kendra Hartmann. In summary, as taken directly (all text in italics) from Ms. Hartmann's public comment:

Approval of the Project's Design Permit and Tentative Map requires factual findings, supported by substantial evidence, pursuant to the Morgan Hill Municipal Code and the State Subdivision Map Act that a proposed subdivision is consistent with the City's general plan and specific plans, and does not have any detrimental environmental or public health effects.

"The Staff Report claims that the Project is in compliance with the General Plan, Zoning Code and other City Codes as required by Section 17.50.030 of the Municipal Code, but nowhere does it make findings, or offer substantial evidence, that the Project will not have any detrimental environmental or public health effects."

Ms. Hartman's submittal and other information provide substantial evidence that *demonstrates that the Project is likely to have potentially significant impacts on air quality, public health, climate change, noise, and traffic. Silicon Valley Residents' experts have provided ample evidence demonstrating the Project's significant impacts, including:*

- *Emissions of VOCs and TACs from Project construction and operation will be significant.*
- *DPM emissions from construction and operation*
- *The cancer risk from the Project to nearby receptors would be 42 in one million over 30 years, exceeding the BAAQMD threshold of 10 in one million.*
- *Traffic and transportation in the Project vicinity could be significantly impacted by Project construction and operation.*
- *Nearby residents could experience significant impacts from noise for a year or more.*

These effects have not been disclosed or analyzed by the City, which continues to claim that the General Plan EIR is sufficient to address any potential impacts, despite that document's repeated claim that it did not analyze any project specific impacts. As a result, the Project fails to comply with mandatory Map Act requirements. The City, therefore, cannot make the requisite findings pursuant to Government Code Sections 66473.5 and 66474 and must deny the Project's Design Permit and Tentative Map.

In addition, the MHRGC notes that the City received the results of the Citygate Standards of Coverage Assessment for Fire and EMS services in 2019 and is fully aware that there are issues with Emergency Service response times, with the area in which the project is located (the North-East quadrant) being one of the most effected locations in the entire City. The 2035 General Plan EIR certainly did not adequately analyze the Redwood Tech @ 101 project's impact on Emergency Services response times and public safety as required.

The City has improperly tried to rely on the 2035 General Plan EIR as a program EIR with analysis sufficient to satisfy CEQA. That EIR, however, was never meant to serve as a review document for specific projects. Many of the impacts likely to result from the Project will be significantly more severe than what was evaluated in the General Plan EIR, while others were never analyzed at all.

The Design Review Permit and Vesting Tentative Map required for the Project cannot be issued. As supported by substantial evidence, the Project will result in significant and unmitigated impacts that are not disclosed or analyzed by the General Plan EIR. Without further mitigation measures to reduce the Project's significant impacts, the City cannot find that it is not detrimental to public health, safety, or welfare, and thus cannot approve the permits necessary for the Project to move forward.

Because the Citizens of Morgan Hill are, unfortunately, keenly aware of the Shoe Palace project which was approved without requiring a Conditional Use Permit, we wish to also highlight the following portions of Mr. Lozeau's public comment (text in italics is directly quoted):

The CEQA analysis presented in the staff report is fundamentally flawed because it improperly recommends for the City to approve the Project prior to complying with CEQA for the whole project, i.e., its foreseeable uses. Staff suggests that the City may make a CEQA determination and approve the proposed Design Permit and the Vesting Tentative Parcel Map separate from any future conditional use permits for the Project. Staff claims that “[n]o other approvals are required at this time.” Packet Pg. 7. Staff further asserts that “[s]hould a future use on the site require a conditional use permit, that user will be responsible for conducting environmental review for the proposed use as required under CEQA.” Id., p. 19. This two-tiered approach to the Project’s CEQA review violates CEQA’s prohibition on approving any aspect of a proposed project prior to completing the environmental review for the whole project required by CEQA. Moreover, it is inconsistent with the City’s requirements for processing a proposed vested tentative map.

The proposed action items include both the Project’s design permit and a vesting tentative parcel map. The City’s Code sets forth the process and information required to process a vesting tentative parcel map application. The City’s approval of a vesting tentative map provides the applicant with a vested right to proceed with the proposed development: “When the city approves or conditionally approves a vesting tentative map, that approval shall confer a vested right to proceed with development in substantial compliance with the ordinances, policies and standards in effect on the date the city has determined that the application for approval of the vesting tentative map is complete pursuant to Section 65943 of the Government Code.” Muni. Code §17.50.040(A). As a result, the City’s Code requires additional information and considerations that the City must consider in making its discretionary decision whether or not to approve a proposed vesting tentative parcel map. In particular, the City is not authorized to defer or not address the proposed uses of the development proposed by the tentative map. Moreover, given the vesting implications of the City’s decision, the decisionmakers must have access to an environmental review of the whole Project, including its uses and not just its building design or proposed number of parcels.

Particularly relevant here is the express requirement that, “[i]f a conditional use permit is required, such permit shall be **processed prior or concurrently with the vesting tentative map**. Muni. Code § 17.50.060(B)(2) (emphasis added). As described in the staff report, the Project includes 232,000 square feet of warehousing use. Packet Pg. 13. The Project site’s zoning of Light Industrial requires a conditional use permit for “Warehousing and Distribution, Large. (the MH Zoning Code defines the threshold for ‘Large’ as 75,000 square feet)..... the proposed 232,000 square feet of warehousing is large. As a result, the conditional use permit necessary for the proposed warehousing use must be proposed and processed prior to or concurrently with the vesting tentative map. Muni. Code § 17.50.060(B)(2). By choosing to ignore the Project’s uses, the staff report’s CEQA recommendations are deficient as a matter of law, having failed to consider the potential environmental effects of the Project’s warehousing and other uses, including impacts from additional truck trips on air quality and wildlife, additional vehicle miles traveled and transportation impacts as a result of the Project, operational and construction-related noise and health impacts on residents located adjacent to the south corner of the Project site, the impacts of Project design features, such as the large glass facades, on bird-life and other potential impacts. As a result, any CEQA determination by the City must consider the Project’s contemplated uses now.

In addition, underscoring the need for staff to address the impacts of the anticipated uses, “[d]evelopment’ means the uses to which the land which is the subject of the map shall be put, the buildings to be constructed on it and all alterations of the land and construction incident thereto.” Muni. Code §17.08.055 (emphasis added). Thus, rather than defer any consideration of the Project’s uses, the vesting tentative parcel map procedure requires the applicant to submit “[t]he height, size, location, preliminary or conceptual architectural plans and use of all buildings to be constructed within the subdivision....” Muni. Code §17.50.060(B)(4) (emphasis added). Relatedly, to qualify for approval of a vested tentative

parcel map, the applicant must provide "[s]pecific information on the uses to which the proposed buildings will be put...." Muni. Code §17.50.060(B)(10). Thus, should the Planning Commission accept staff's invitation to put off addressing the Project's uses, any decision will be contrary to the City's ordinances.

In addition, CEQA forbids putting off environmental review of the whole project subsequent to approving any of its components. This is especially true for a decision to approve a vesting right in a development. The necessary CEQA document must be prepared and approved prior to any approval of a project subject to CEQA. "Before granting any approval of a project subject to CEQA, every lead agency or responsible agency shall consider a final EIR or negative declaration or another document authorized by these guidelines to be used in the place of an EIR or negative declaration." (14 CCR § 15004(a) [emphasis added].) "EIRs and negative declarations should be prepared as early as feasible in the planning process to enable environmental considerations to influence project program and design" (14 CCR § 15004(b).) Consistent with that goal: The environmental document preparation and review should be coordinated in a timely fashion with the existing planning, review, and project approval processes being used by each public agency. These procedures, to the maximum extent feasible, are to run concurrently, not consecutively. (14 CCR § 15004(c); see also PRC § 21003(a).) By attempting to defer addressing impacts from the Project's anticipated uses until the future, staff's proposals violate these fundamental tenets of CEQA.

Note: As mentioned above, this notice of appeal incorporates, by reference, the entirety of Supplement #1 and Supplement #3 of Agenda Item #1 of the May 25th, 2021 Planning Commission Meeting (http://morganhillca.igm2.com/Citizens/Detail_Meeting.aspx?ID=2033). For reference, the text of those public comment submittals are attached to this appeal but due to the large size the attachments included with Supplement #3 are not.

The **specific relief and actions** which the applicant requests from the City Council are:

- 1) Protect the health, safety and public welfare of Morgan Hill Citizens and follow your commitment to abide by the General Plan, the Morgan Hill Municipal Code, California State law and CEQA Guidelines by overturning the Planning Commission's approval of Resolutions 21-04 and 21-05.
- 2) Require that the General Plan be interpreted as written even if it is inconvenient to a particular project and may be in the process of revision. Treat every applicant according to the currently approved version. Instruct staff to follow General Plan policies CNF-18.3 and CNF-18.4, or to revise the General Plan and have an amended version adopted before the approval of a Design Permit and Vesting Tentative Parcel Map for Redwood Tech @101 project is reconsidered.
- 3) Recognize the public's legitimate and acute concern for the potential environmental and safety impacts which a 510,000 square foot industrial project that allows for the installation of up to 76 dock-high doors and is located near senior living, a high school, the DePaul Health center and multiple existing and proposed residential neighborhoods and is in a location which has been identified as subject to Emergency Response time issues may have. While substantial evidence exists and should be the basis for your decision, also use your common sense to recognize that when the following language appears **seven times** in the 2035 General Plan EIR:

No specific development projects are proposed as part of the proposed Project. Therefore, this EIR is a program-level EIR that analyzes the potential significant environmental effects

of the adoption of the proposed Project. As a program EIR, it is not project-specific, and does not evaluate the impacts of individual projects that may be proposed under the General Plan. Such subsequent projects will require a separate environmental review, when applicable as required by CEQA, which could be in the form of a Negative Declaration, Mitigated Negative Declaration, or a Subsequent EIR, to secure the necessary development permits. Therefore, while subsequent environmental review may be tiered from this EIR, this EIR is not intended to address project-specific impacts of individual projects.

there is no way the 2035 General Plan EIR can be used to justify that this project is consistent for the project site **without completely losing public trust.**

Instruct staff to prepare an Initial Study and either an MND or EIR to identify, analyze and mitigate the Project's adverse environmental impact including analyzing the project's impact on Emergency Response Times.

Should you have any questions or comments, please do not hesitate to contact me and thank you in advance for your assistance.

Joe Baranowski
joe.b@mh-rgc.org
408-674-2846



Community Development Agency
 Planning Division
 17575 Peak Avenue
 Morgan Hill, CA 95037-4128
 Phone: (408) 778-6480
 Fax: (408) 779-7236
 www.morganhill.ca.gov

UNIFORM APPLICATION

The City of Morgan Hill Planning Division has designed this application in order to obtain important information about your proposed project that will help to expedite the application review process. Please complete all sections, providing as much detail as possible regarding the scope of your proposal.

PROJECT SITE INFORMATION

Project Location: Northern Intersection of Condit Road and Half Road

Street Address: n/a

Assessor's Parcel Number(s): 728-30-006 and 728-30-009

Site Acreage: 29

Zoning: Light Industrial (IL)

General Plan: Commercial/Industrial

Specific Plan and/or PD Overlay(s): Planned Development Combining District (PD)

Project Request: Select all that apply

- | | |
|---|--|
| ☐ Admin. Development Plan Review | ☐ General Plan Amendment |
| ☐ Annexation | ☐ Minor Exception |
| ☒ Appeal | ☐ Parcel Map |
| ☐ Conceptual Plan Review | ☐ Preliminary Plan Review |
| ☐ Conditional Use Permit | ☐ Planned Development |
| ☐ Cultural Resource Alteration/Designation | ☐ Sign Permit, Uniform Sign Program |
| ☐ Design Review | ☐ Subdivision |
| ☐ Development Agreement | ☐ Temporary Use Permit |
| ☐ Development Approval Amendment | ☐ Urban Service Area Amendment |
| ☐ Environmental Assessment | ☐ Variance |
| ☐ Extension of Time | ☐ Zoning Amendment |

☐ Other:

OWNER INFORMATION

Contact Name: Don Little

Company Name: TC Morgan Hill Venture

Mailing Address: unknown by applicant

City:

State:

Zip:

Phone: unknown by applicant

Email Address: unknown by applicant

CONTINUED ON NEXT PAGE

STAFF USE ONLY

Date Received:	Received By:	Complete: ☐ yes ☐ no	Fees Collected:
File Number(s):			
Related File(s):			
Notes:			

APPLICANT INFORMATION

Contact Name: Joe Baranowski

Company Name: Morgan Hill Responsible Growth Coalition

Mailing Address: 17500 Monterey Highway, 178

City: Morgan Hill

State: CA

Zip: 95038

Phone: 408-674-2846

Email Address: joe.b@mh-rgc.org

ENGINEER/ARCHITECT INFORMATION

Contact Name: N/A

Company Name:

Mailing Address:

City:

State:

Zip:

Phone:

Email Address:

NOTE: The individual(s) listed above will receive correspondence from the City regarding this application.

Attachment: Appeal by Morgan Hill Responsible Growth Coalition (3130 : Trammell Crow Redwood Tech at 101 Appeal)

CONTINUED ON NEXT PAGE

CITY OF MORGAN HILL
Letter of Agency

If the applicant is not the owner of record of the subject site, a Letter of Agency from the owner or the owner's authorized representative must be submitted which grants the applicant permission to submit an application for the requested entitlement(s).

PROPERTY OWNER INFORMATION

Property Owner Name: n/a Phone: () -
Address: _____ City: _____ Zip: _____
Email: _____

Date: _____

To: City of Morgan Hill
Development Services Department
Planning Division
17575 Peak Avenue
Morgan Hill, CA 95037

Development Services Department:

I, the undersigned legal owner of record, hereby grant permission to: _____

Applicant: _____ Phone Number: () -
Address: _____ City: _____ Zip: _____

To apply for the following entitlement(s): _____

For the subject property located at: _____

Address of Owner of Record: _____ Phone: () -

Assessor's Parcel Number: _____

Signature of Owner of Record: _____

(must be original signature)

Attachment: Appeal by Morgan Hill Responsible Growth Coalition (3130 : Trammell Crow Redwood Tech at 101 Appeal)

INDEMNIFICATION AGREEMENT

As part of, and in connection, with this application to the City of Morgan Hill, Applicant agrees to defend, indemnify, and hold harmless the City of Morgan Hill, its officers, agents, employees, officials and representatives (Indemnitees) from and against any and all claims, actions, or proceedings arising from any suit for damages or for equitable or injunctive relief which is filed against City to attack, set aside, void or annul its approval of this application or any related decision, or the adoption of any environmental documents which relates to said approval. The City shall promptly notify the Applicant of any such claim, action or proceeding and the City shall cooperate fully in the defense thereof. In the event that Applicant is required to defend Indemnitees in connection with the proceeding, Indemnitees shall retain the right to approve (a) the counsel to so defend Indemnitees; (b) all significant decisions concerning the manner in which the defense is conducted; and (c) any and all settlements, which approval shall not be unreasonably withheld. This indemnification shall include, but is not limited to, (a) all pre-tender litigation costs incurred on behalf of the City, including City's attorney's fees and all other litigation costs and expenses, including expert witnesses, required to defend against any lawsuit brought as a result of City's approval or approvals; (b) reasonable internal City administrative costs, including but not limited to staff time and expense spent on the litigation, after tender is accepted; and (c) all damages, costs, expenses, attorney fees or expert witness fees that may be awarded to the prevailing party arising out of or in connection with the approval of the application or related decision. City may, in its sole discretion, participate in the defense of such action; but such participation shall not relieve Applicant of its obligations under this condition. The undersigned hereby represents that they are the Applicant or are fully empowered by the Applicant as their agent to agree to provide the indemnification, defense and hold harmless obligations, and the signature below represents the unconditional agreement by Applicant to be bound by such conditions.

AFTER REVIEW AND CONSIDERATION OF ALL OF THE FOREGOING TERMS AND CONDITIONS, APPLICANT, BY ITS SIGNATURE BELOW, HEREBY AGREES TO BE BOUND BY AND TO FULLY AND TIMELY COMPLY WITH ALL OF THE FOREGOING TERMS AND CONDITIONS.

Applicant (Print): Joe Baranowski

Date: 06/04/2021

Applicant Signature:

Joe Baranowski

Digitally signed by Joe Baranowski

Date: 2021.06.04 10:30:07 -07'00'

PUBLIC NOTICE/PROJECT IDENTIFICATION SIGN

A. PROCEDURE

A public notice project identification sign shall be posted by the applicant a minimum of 10-days prior to the date of the public hearing or project approval by the Development Services Department. If the notice sign is not posted on the project site before end of business on the posting deadline, the project's public hearing or approval date will be rescheduled until the sign is posted for the minimum 10-day period. The posted notice shall be maintained and remain on the project site until after the City renders a decision on the project. The hearing notice shall be removed from the project site within seven days after the City has rendered a final decision on the project, although the portion of the sign which does not mentioned the hearing may remain to identify the project.

B. SIGN REQUIREMENTS:

There are two sizes of public notice signs:

- 2' x 3' with a maximum overall height of 8' for "minor" projects. Minor projects consist of Minor Subdivisions of four or fewer parcels and Conditional Use Permits or Design Reviews which do not involve the establishment of new buildings on vacant sites.
- 4' x 8' with a maximum overall height of 8' for "major" projects. Major projects include Subdivision of five or more parcels, Conditional Use Permits or Design Reviews which involve the establishment of new buildings on vacant sites.

The notice sign content must contain but is not limited to the following information:

- a) Approval requested by applicant
- b) General description of project/scope of work
- c) Project site identification information such as (address and APN)
- d) Detailed site plan or colored elevation of project

The final version of the notice sign shall be approved by the Planning Division prior to posting to ensure accuracy of information and consistency of design.

I hereby agree to post the subject property with a Public Notice/Project Identification Sign at least ten days prior to the public hearing or final action date. The sign shall be posted on the subject property in a visible location at least five feet behind the property line.

Applicant Name (Print)

Applicant's Signature

Date

Jenna Luna

From: Alisha C. Pember <apember@adamsbroadwell.com>
Sent: Tuesday, May 25, 2021 6:39 PM
To: PC Public Comment; Jennifer Carman; Adam Paszkowski
Subject: [EXTERNAL] Agenda Item No. 1: Redwood Tech at 101 Project (SR2020-0029 through SR2020-0033 and SD2020-0011)
Attachments: 5175-002acp - Redwood Tech at 101 comments 05.25.21 with Attachments A-C.pdf
Follow Up Flag: Follow up
Flag Status: Flagged

Good evening,

Please see the attached **Comments on Agenda Item No. 1: Redwood Tech at 101 Project (SR2020-0029 through SR2020-0033 and SD2020-0011)** and **Attachments A-C**.

We are also providing a Dropbox link containing references in support of

Attachments: <https://www.dropbox.com/sh/svh1g5h9gg0bx1r/AABFq1jmYW5mlAV6upl2bU9sa?dl=0>.

If you have any questions, please contact Kendra Hartmann.

Thank you.

Alisha Pember

Alisha C. Pember
 Adams Broadwell Joseph & Cardozo
 601 Gateway Boulevard, Suite 1000
 South San Francisco, CA 94080
 (650) 589-1660 voice, Ext. 24
apember@adamsbroadwell.com

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ADAMS BROADWELL JOSEPH & CARDOZO

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

601 GATEWAY BOULEVARD, SUITE 1000
SOUTH SAN FRANCISCO, CA 94080-7037

TEL: (650) 589-1660

FAX: (650) 589-5062

khartmann@adamsbroadwell.com

SACRAMENTO OFFICE

520 CAPITOL MALL, SUITE 360
SACRAMENTO, CA 95814-4721

TEL: (916) 444-6201

FAX: (916) 444-6209

DANIEL L. CARDOZO
KEVIN T. CARMICHAEL
CHRISTINA M. CARO
JAVIER J. CASTRO
THOMAS A. ENSLOW
KELILAH D. FEDERMAN
ANDREW J. GRAF
TANYA A. GULESSERIAN
KENDRA D. HARTMANN*
KYLE C. JONES
DARIEN K. KEY
RACHAEL E. KOSS
AIDAN P. MARSHALLMARC D. JOSEPH
Of Counsel*Not admitted in California.
Licensed in Colorado.

May 25, 2021

Via Email OnlyMohammad Habib, Chair
Members of the Planning Commission
City of Morgan Hill
c/o Minutes Clerk
17575 Peak Avenue
Morgan Hill, CA 95037
pcpubliccomment@morganhill.ca.govJennifer Carman, Community Development Director
jennifer.carman@morganhill.ca.gov
Adam Paszkowski
Adam.Paszkowski@morganhill.ca.gov**Re: Agenda Item No. 1: Redwood Tech at 101 Project (SR2020-0029 through SR2020-0033 and SD2020-0011)**

Dear Chair Habib, Commissioners, Minutes Clerk, Ms. Carman, Mr. Paszkowski:

We are writing on behalf of Morgan Hill Residents for Responsible Development ("Residents") to provide comments to the Morgan Hill Planning Commission ("Commission") on Agenda Item No. 1, the Redwood Tech at 101 Project, SR2020-0029 through SR2020-0033 and SD2020-0011 ("Project"). Proposed by Trammel Crow Morgan Hill Ventures ("Applicant"), the Project proposes approximately 501,314 square feet of flexible industrial/commercial space spread across 5 separate buildings on four separate lots in the approximately 29-acre lot south of the former Tree Farm site on Hwy 101 south of Cochrane Road in the City of Morgan Hill ("City").

The Applicant seeks a Design Permit and a Vesting Tentative Parcel Map, both discretionary approvals, to divide the property's existing 2 parcels into 4 legal lots. In accordance with Section 18.108.040.D of the City's Municipal Code, the size

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of the Project is considered significant and, as such, the Development Services Director has elevated the Project to the Planning Commission for review and consideration of the two proposed Project entitlements. The Project proposes to construct 5 buildings on the site, all designated for flexible industrial and commercial uses, including advanced manufacturing, warehouse, supporting office, and similar industrial and commercial uses. The property has a Commercial/Industrial General Plan designation and is zoned Light Industrial (IL). Access to the property will be provided via four driveways from the extension of De Paul Drive to the south from Cochrane Road. All street frontages will be improved to City Standards with sidewalk and landscaping.

The Applicant previously submitted to the City a different project titled the Morgan Hill Technology Center ("Technology Center"), which was withdrawn by the Applicant on September 18, 2020.¹ That previous project encompassed the proposed Project site and the parcels to the north. The original Technology Center proposed a mix of industrial, commercial, and residential uses on an 89-acre site. The industrial and commercial portions of the Technology Center project proposed 1.04 million square feet of light industrial uses contained in six buildings, 45,000 square feet of industrial office in one building situated between the industrial buildings on a 2.31-acre parcel, and 50,000 square feet of retail/commercial on a 2.92-acre parcel fronting Cochrane Road.

We reviewed the Staff Report and related Project documents with the assistance of environmental health, air quality, and GHG expert Paul E. Rosenfeld, Ph.D., and hazardous materials expert Matt Hagemann, P.G., C.Hg. of Soil Water Air Protection Enterprise ("SWAPE"), transportation expert Dan Smith, and noise expert Deborah Jue, INCE-USA. Comments and curriculum vitae of SWAPE are attached to this letter as Attachment A.² Mr. Smith's comments and curriculum vitae are included as Attachment B,³ and Ms. Jue's comments and curriculum vitae are attached as Attachment C.⁴ All expert comments are fully incorporated herein and submitted to the City herewith. Therefore, the City must separately respond to the technical comments in Attachments A, B and C.

¹ Staff Report, p. 6; see <http://www.morgan-hill.ca.gov/1966/Morgan-Hill-Technology-Park> (last visited 5/25/21).

² **Attachment A:** Comments on Redwood Tech at 101 Project (May 21, 2021) ("SWAPE Comments").

³ **Attachment B:** Transportation Comments re Redwood Tech@101 Project by Smith Engineering & Management (May 20, 2021) ("Smith Comments").

⁴ **Attachment C:** Redwood Tech @ 101 Comments, Wilson Ihrig (May 25, 2021) ("Jue Comments").
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Based on our review, it is clear that the City has not complied with the California Environmental Quality Act ("CEQA")⁵, the Subdivision Map Act, or with local and State land use laws in its review of the Project and its proposed entitlements.

The City initially prepared a draft environmental impact report ("DEIR") for the Technology Center Project, which found that the Technology Center Project (which included the instant Project plus the additional components) would have significant impacts on air quality, biological resources, cultural resources, greenhouse gas ("GHG") emissions, hazardous materials, noise, and transportation which required mitigation.⁶ Before the DEIR was certified, the Project application was withdrawn. The Applicant has now repropoed the industrial/commercial component of the Technology Center Project as the Redwood 101 Project, which the City now claims does not require CEQA review because it was previously analyzed in the 2035 General Plan EIR. As discussed below, the General Plan EIR was a planning-level CEQA document which did not analyze the Project's environmental impacts with the degree of specificity required for project-level environmental review. Nor were the project-specific impacts that were identified in the Technology Center DEIR addressed in the General Plan EIR. An EIR is required for the Project for these reasons.⁷

The City is also improperly piecemealing its environmental review of the Project from other components of the original Technology Center Project. As the Staff Report explains, the residential component of the Technology Center Project has been reduced from 319 units to 269 units and is being concurrently developed by Dividend Homes under a separate application.⁸ Two of the original project components are being reviewed by the City for a second time, yet the City failed to prepare an EIR that analyzes the impacts of both developments.

Finally, as discussed below, the Redwood 101 Project has potentially significant, unmitigated impacts on air quality, public health, GHG emissions, noise, and transportation that must be disclosed and mitigated in an EIR. These unmitigated impacts also preclude the Planning Commission from making the

⁵ Pub. Res. Code §§ 21000 et seq; 14 Cal. Code Regs. ("CCR" or "CEQA Guidelines") §§ 150000 et seq.

⁶ See Technology Center DEIR, pp. iv-xxx, available at <https://www.morgan-hill.ca.gov/DocumentCenter/View/36693/Draft-EIR-Morgan-Hill-Tech-Center-12-May-2020-webready> (last visited 5/25/21).

⁷ See 14 CCR § 15152.

⁸ Staff Report, p. 6.
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findings required to approve the Project under the Subdivision Map Act and the City land use codes. The Planning Commission should remand the Project to staff to prepare a legally adequate EIR before the Project can be considered for approval.⁹

I. STATEMENT OF INTEREST

Residents is an unincorporated association of individuals and labor organizations that may be adversely affected by the potential public and worker health and safety standards associated with Project development, as well as its potential environmental impacts. Residents includes local unions, their members and families, and other individuals that live and/or work in the City of Morgan Hill and Santa Clara County.

Individual members of Residents and the affiliated labor organizations live, work, recreate and raise their families in the City of Morgan Hill and Santa Clara County. They would be directly affected by the Project's environmental and health and safety impacts. Individual members, including Santa Clara County resident Fermin Layos, may also work on the Project itself. Accordingly, they will be first in line to be exposed to any health and safety hazards that exist onsite. Residents have a strong interest in enforcing the State's environmental laws that encourage sustainable development and ensure a safe working environment for its members. Environmentally detrimental projects can jeopardize future jobs by making it more difficult and more expensive for business and industry to expand in the region, and by making it less desirable for businesses to locate and people to live there.

II. LEGAL STANDARD

In an effort to ensure the long-term protection of the environment of the state, CEQA requires governmental agencies at all levels to develop standards and procedures necessary to protect environmental quality. To this end, CEQA requires preparation of an EIR whenever a public agency proposes to approve or to carry out a project that may have a significant effect on the environment.¹⁰ In this way, CEQA is designed to inform decision makers and the public about the potentially

⁹ We reserve the right to supplement these comments at later hearings and proceedings on this Project. Gov. Code § 65009(b); PRC § 21177(a); *Bakersfield Citizens for Local Control v. Bakersfield ("Bakersfield")* (2004) 124 Cal. App. 4th 1184, 1199-1203; see *Galante Vineyards v. Monterey Water Dist.* (1997) 60 Cal. App. 4th 1109, 1121.

¹⁰ *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 390. 5175-002acp

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significant environmental impacts of a project before it is approved and implemented.¹¹

Described as “an environmental ‘alarm bell’ whose purpose it is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return,”¹² an EIR’s purpose is to “inform the public and its responsible officials of the environmental consequences of their decisions *before* they are made. Thus, the EIR protects not only the environment, but also informed self-government.”¹³ To fulfill this purpose, the discussion of impacts in an EIR must be detailed, complete, and “reflect a good faith effort at full disclosure.”¹⁴ Furthermore, CEQA imposes an affirmative obligation on agencies to avoid or reduce environmental harm by adopting feasible project alternatives or mitigation measures to address all potentially significant impacts identified in the agency’s CEQA analysis.¹⁵ An adequate EIR must contain facts and analysis, not just an agency’s conclusions.¹⁶

CEQA “projects” include activities undertaken by public agencies that cause direct physical changes to the environment.¹⁷ Following preliminary review of a project to determine whether an activity is subject to CEQA, a lead agency is required to prepare an initial study to identify several key objectives, including whether to prepare an EIR or negative declaration, as well as the appropriate process to be used for analysis of the project’s environmental effects and potential mitigation.¹⁸ CEQA requires an agency to analyze the potential environmental impacts of its proposed actions in an EIR except in certain limited circumstances.¹⁹

¹¹ Cal. Code Regs., tit. 14, § 15002, subd. (a)(1) (“CEQA Guidelines”); *Berkeley Keep Jets Over the Bay v. Bd. of Port Comm’rs.* (2001) 91 Cal.App.4th 1344, 1354 (“*Berkeley Jets*”); *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810.

¹² *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810.

¹³ *Citizens of Goleta Valley v. Bd. of Supervisors* (1990) 52 Cal.3d 553, 564 (internal citations omitted).

¹⁴ CEQA Guidelines, § 15151; *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 721-722.

¹⁵ Pub. Resources Code, §§ 21002-21002.1.

¹⁶ See *Citizens of Goleta Valley v. Bd. of Supervisors* (1990) 52 Cal.3d 553, 568.

¹⁷ *County of Ventura v. City of Moorpark* (2018) 24 Cal.App.5th 377, 385.

¹⁸ CEQA Guidelines, §§ 15060, 15063, subd. (c).

¹⁹ See, e.g., Pub. Resources Code, § 21100.
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III. CEQA PROHIBITS PIECEMEALING OF A PROJECT

CEQA prohibits a project proponent from seeking approval of a project by breaking it up, piecemeal fashion, in order to take advantage of environmental exemptions or less rigorous CEQA review for smaller projects.²⁰ The law mandates that “environmental considerations do not become submerged by chopping a large project into many little ones—each with a minimal potential impact on the environment—which cumulatively may have disastrous consequences.”²¹ As courts have explained, “... [t]he CEQA process is intended to be a careful examination, fully open to the public, of the environmental consequences of a given project, *covering the entire project, from start to finish.*”²²

Specifically, the description of a project must describe a larger future project and analyze its effects if (1) the larger project is a reasonably foreseeable consequence of the initial project, and (2) the future project will be significant in that it will likely change the scope or nature of the initial project or its environmental effects.²³ This rule applies even if (1) the Lead Agency has not yet formally approved the larger future project, and (2) it is impossible to predict with precision the environmental effects of less-than-definite future plans, as long as these effects can be discussed at least in general terms.²⁴ Difficulty in describing the effects of less-than-definite future plans does not excuse an agency from CEQA compliance, especially since CEQA provides mechanisms, such as Program EIRs and tiering of EIRs, to facilitate environmental analysis of larger future projects.²⁵

Furthermore, “[t]iering does not excuse the lead agency from adequately analyzing reasonably foreseeable significant environmental impacts of the project and does not justify deferring such analysis to a later tier EIR or negative declaration.”²⁶ If a program-level EIR has been released, it is nonetheless still not appropriate to piecemeal later tiers in order to avoid environmental review.

²⁰ *Arviv Enterprises, Inc. v. South Valley Area Planning Com.* (2002) 101 Cal. App. 4th 1336, 1340.

²¹ *Bozung v. LAFCO* (1975) 13 Cal.3d 263, 283-84; *City of Santee v. County of San Diego*, (1989) 214 Cal.App.3d 1438, 1452; *Citizens Assn. for Sensible Development of Bishop Area v. County of Inyo* (1985) 172 Cal.App.3d 151, 165.

²² *Natural Resources Defense Council v. City of Los Angeles* (2002) 103 Cal.App.4th 268, (emphasis added).

²³ *Laurel Heights Improvement Assn. v. Regents of Univ. of California* (1988) 47 Cal. 3d 376, 396.

²⁴ *Id.* at 398-99.

²⁵ *Id.* at 399, n.8.

²⁶ 14 C.C.R. § 15152 (b); *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal. 4th 412, 431, 150 P.3d 709, 720.

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A. Development of Multiple Components of the Original Morgan Hill Technology Center Project is Reasonably Foreseeable and Cumulative Impacts Must be Analyzed Together in an EIR

Similar to *Laurel Heights*, in which the Court found that future development was reasonably foreseeable and the university had to include environmental analysis of the anticipated future uses of the site, the Project is just one fragment of anticipated development of the site, which was already analyzed in an EIR.²⁷ Though the Applicant abandoned the larger project in September 2020, the proposed Project is merely a selection excerpted from that larger development, pulled out to be considered on a smaller scale.

Considering the sequence of events associated with development at the site, it is difficult to imagine a scenario in which the Applicant and the City are not attempting to piecemeal a large project into several smaller ones that will require less rigorous CEQA review—or none at all, as the City alleges here. The larger project, the impacts of which the DEIR concluded would be numerous, significant and, in some cases, unavoidable, was abruptly abandoned by the Applicant after considerable pushback from the community.²⁸ When the Applicant submitted the much-abbreviated application for the currently proposed Project, the City pointed out that a Vesting Tentative Map of five or more parcels would require additional CEQA review, after which the Applicant immediately revised the Project, reconfiguring the proposed site into four parcels.²⁹

Moreover, the residential portion of the larger project had been evaluated in the Technology Center DEIR together with all project components. It is now being developed concurrently under a separate application—and separate environmental review.³⁰ As the court in *Laurel Heights* found, “this is not the type of situation where it is unclear as to whether a parcel of land will be developed or as to whether activity will commence.”³¹ In fact, though no formal land use entitlement applications had been filed with the City at the time, the Technology Center DEIR acknowledged that “[t]he future development of [the residential component] is

²⁷ *Id.* at 399.

²⁸ See, e.g., public comment letters, <https://www.morgan-hill.ca.gov/1966/Morgan-Hill-Technology-Park>.

²⁹ See City Letter of Application Incompleteness (Jan. 11, 2021), p. 3; Applicant Response Letter (Feb. 1, 2021), p. 8.

³⁰ Morgan Hill Planning Commission Staff Report, p. 6.

³¹ *Laurel Heights*, 47 Cal.3d at 395.

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reasonably foreseeable given the existing land use designation and zoning.”³² Now that that foreseeable development has come to pass, the adjacent development projects are being evaluated separately.

By now omitting from its environmental review the reasonably foreseeable development of all projects at the same sites originally analyzed in the EIR for the Technology Center Project, the City has impermissibly engaged in piecemealing and must prepare an EIR for the entire site which fully describes, analyzes and mitigates potentially significant impacts.

IV. TIERING

In preparing an initial study, a lead agency is required to identify the appropriate level of environmental review and must determine whether a previously prepared EIR could be used with the project.³³ Tiering, in which the analysis of general matters contained in a broader EIR, such as one prepared for a general plan, is used to frame the general discussion of a later, narrower project and its specific issues and impacts, can be appropriate when considering large-scale planning approval or separate but related projects. A later EIR shall be required when the initial study or other analysis finds that the later project may cause significant effects on the environment that were not adequately addressed in the prior EIR.³⁴

Where a program EIR has been prepared that could apply to a later project, CEQA requires the lead agency to conduct a two-step process to examine the later project to determine whether additional environmental review is required.³⁵ First, the agency must consider whether the project will result in environmental effects that were not examined in the program EIR.³⁶ Whether a later activity is within the scope of a program EIR is a factual question that the lead agency determines based on substantial evidence in the record.³⁷ If the agency finds the activity would have environmental effects that were not examined in the program EIR, it must

³² Technology Center DEIR, p. 17.

³³ CEQA Guidelines, §§ 15060, 15063, subd. (c).

³⁴ 14 C.C.R. § 15152(f).

³⁵ See CEQA Guidelines, 15168, subd. (c); S. Kostka & M. Zischke, Practice Under the California Environmental Quality Act 2d, § 10.16 (Mar. 2018).

³⁶ CEQA Guidelines, § 15168, subd. (c)(1).

³⁷ *Id.* at (c)(2).

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then prepare an initial study to determine whether to prepare an EIR or negative declaration to address those effects.³⁸

Second, if the agency determines the project is covered by the program EIR, it must then consider whether any new or more significant environmental effects could occur due to changes in circumstances or project scope, or new information that could not have been considered in the program EIR.³⁹ More specifically, pursuant CEQA Guidelines section 15162, subsequent or supplemental environmental review is required when one or more of the following events occur:

- (1) Substantial changes are proposed in the project which will require major revisions of the previous EIR due to the involvement of new significant effects or a substantial increase in the severity of previously identified effects;
- (2) Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or
- (3) New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the negative declaration was adopted, shows any of the following:
 - (A) The project will have one or more significant effects not discussed in the previous EIR or negative declaration;
 - (B) Significant effects previously examined will be substantially more severe than shown in the previous EIR;
 - (C) Mitigation measures or alternatives previously found not to be feasible would in fact be feasible, and would substantially reduce one or more significant effects of the

³⁸ CEQA Guidelines, § 15168, subd. (c)(1).

³⁹ CEQA Guidelines, § 15168, subd. (c)(2).

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project, but the project proponents decline to adopt the mitigation measure or alternative; or

- (D) Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.⁴⁰

The terms “supplement” and “subsequent” are not interchangeable. “A supplement to an EIR is a document that contains additions or changes needed to make the previous EIR adequate ... In contrast ... a subsequent EIR revises the previous EIR, rather than simply supplements it.”⁴¹ With subsequent review the “revised EIR must receive the same circulation and review as the original EIR.”⁴²

Similarly, Section 15183 provides a streamlined process for environmental review of projects that are “consistent with the development density established by existing zoning, community plan, or general plan policies for which an EIR was certified,” authorizing agencies to avoid duplicative environmental review “except as might be necessary to examine whether there are project-specific significant effects which are peculiar to the project or its site.”⁴³

Courts have held that if “no EIR has been prepared for a nonexempt project, but substantial evidence in the record supports a fair argument that the project may result in significant adverse impacts, the proper remedy is to order preparation of an EIR.”⁴⁴ The fair argument standard creates a “low threshold” favoring environmental review through an EIR, rather than through issuance of a negative declaration.⁴⁵ An agency’s decision not to require an EIR can be upheld only when there is no credible evidence to the contrary.⁴⁶

⁴⁰ CEQA Guidelines, § 15162, subd. (a)(1)-(3); see also Pub. Resources Code, § 21166.

⁴¹ S. Koskte & M. Zischke, Practice Under the Environmental Quality Act 2d., § 19.4, p. 19-8 (Mar. 2018).

⁴² S. Koskte & M. Zischke, Practice Under the Environmental Quality Act 2d., § 19.4, p. 19-8, (Mar. 2018), emphasis added; see also CEQA Guidelines, §§ 15162, 15163.

⁴³ 14 C.C.R. § 15183(a).

⁴⁴ See, e.g., *Communities for a Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal.4th 310, 319-320.

⁴⁵ *Citizens Action to Serve All Students v. Thornley* (1990) 222 Cal.App.3d 748, 754.

⁴⁶ *Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th, 1307, 1318; see also *Friends of B Street v. City of Hayward* (1980) 106 Cal.App.3d 988, 1002 (“If there was substantial evidence that the proposed

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A. The Project Was Not Analyzed by the 2035 General Plan EIR

In 2016, the Morgan Hill City Council certified the Morgan Hill 2035 General Plan EIR analyzing “land use, urban design, circulation, public services, natural resources, and safety goals, policies, and actions to guide investment and development” in the City over a 20-year period. Prepared as a program EIR pursuant to CEQA Guidelines Section 15168, the EIR states that its intended purpose is to serve as a long-term “policy document[] guiding future development activities and City actions.”⁴⁷

The Staff Report asserts that the General Plan EIR “adequately addressed the potential environmental impacts associated with the comprehensive update of the City’s constitution for growth including certain implementation activities and provided for streamlining of the environmental review process for projects proposed subsequent to the certification of the EIR.”⁴⁸ The Report’s entire analysis of the EIR’s evaluation of impacts from activities specific to the Project consists of the following paragraph:

The proposed project entails dividing the subject property and constructing buildings consistent with the General Plan. The division and development of parcels consistent with the General Plan was addressed in the program EIR for the 2035 General Plan and, therefore, pursuant to Section 15162 and Section 15183 of the State CEQA Guidelines, no additional review under the California Environmental Quality Act is required for the proposed project.⁴⁹

It is unclear from this description how the General Plan EIR’s analysis of development and population growth over the next 15 years applies to the Project’s specific impacts, let alone how those impacts are examined in enough detail as to make further environmental review unnecessary. The Staff Report appears to conclude that, in light of the Project’s proposal to divide “the subject property and construct[] buildings,” the General Plan EIR’s analysis of the “division and development of parcels” is sufficiently adequate that no further review is

project might have a significant environmental impact, evidence to the contrary is not sufficient to support a decision to dispense with preparation of an EIR and adopt a negative declaration, because it could be ‘fairly argued’ that the project might have a significant environmental impact”).

⁴⁷ General Plan EIR, p. 2-2.

⁴⁸ Staff Report, p. 19.

⁴⁹ Staff Report, p. 15.

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warranted. A thorough search of the General Plan EIR, however, reveals that it does not analyze impacts from specific subdivisions or construction whatsoever. In fact, specifics of any kind associated with the Project—environmental setting, baseline, potential impacts from development, subdivision or construction, mitigation—are nowhere to be found in the EIR.

In its insistence that the General Plan EIR's analysis of future impacts renders any further environmental review unnecessary, the Staff Report seems to unequivocally reject the EIR's stated objective with respect to its status as a program EIR. Recognizing the utility of program EIRs when a project "consists of a series of actions related to the issuance of rules, regulations, and other planning criteria," the EIR distinguishes itself as a document that serves to guide policy and City actions over time, rather than as a benchmark for specific project impacts:

No specific development projects are proposed as part of the proposed Project. Therefore, this EIR is a program-level EIR that analyzes the potential significant environmental effects of the adoption of the proposed Project. As a program EIR, it is not project-specific, and does not evaluate the impacts of individual projects that may be proposed under the General Plan. Such subsequent projects will require a separate environmental review, when applicable as required by CEQA, which could be in the form of a Negative Declaration, Mitigated Negative Declaration, or a Subsequent EIR, to secure the necessary development permits. Therefore, while subsequent environmental review may be tiered from this EIR, this EIR is not intended to address project-specific impacts of individual projects.⁵⁰

The City had to make a significant effort to disregard this statement in the EIR, whose preparers went so far as to announce no less than 7 times that it was not to be used to evaluate individual projects.⁵¹ The City cannot do an about-face now to claim that its own General Plan EIR analyzed something which the City has previously and unequivocally stated it did not.

Section 15168's two-step inquiry of a program EIR's applicability to later activities holds that "if a later activity would have effects that were not examined in the program EIR, a new initial study would need to be prepared leading to either an

⁵⁰ General Plan EIR, p. 2-2.

⁵¹ See, e.g., pp. 2-2, 3-1fn.2, 3-42, 4.3-34, 4.3-37, 4.3-38, 4.3-53.
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EIR or a negative declaration.”⁵² The City insists that, pursuant to sections 15162 and 15183, the Project is within the scope of the program EIR and no subsequent EIR is required. “Whether a later activity is within the scope of a program EIR is a factual question that the lead agency determines based on substantial evidence in the record.”⁵³ The City does not offer any substantial evidence to support its dubious conclusion. At most, it suggests a vague association between the EIR’s illusory “division and development of parcels” and the Project’s subdivision and development.

In contrast, as demonstrated below and supported by substantial evidence, the Project is likely to result in significant impacts to transportation, air quality, and public health—impacts specific to its development and that were not contemplated by the General Plan EIR. Since the EIR, by its own admission, did not evaluate the impacts of any specific projects, a subsequent EIR to examine “project-specific significant effects which are peculiar to the project or its site” should be prepared.⁵⁴

V. ENVIRONMENTAL REVIEW IS REQUIRED FOR DISCRETIONARY ACTIONS

In addition to claiming that the program-level General Plan EIR adequately analyzed impacts of future development, including the Project, the City advised the Applicant that the Project was further excused from CEQA review because “Environmental Review is not required for Design Review or Tentative Parcel Map applications.”⁵⁵ This conclusion is patently false for the reasons that follow.

A. Design Review

The City’s conclusion that environmental review is not required for Design Review is incorrect. Per the City’s own Municipal Code, a Design Review permit, which is required for significant projects like the Applicant’s,⁵⁶ “is a discretionary action that enables the city to ensure that proposed development exhibits high

⁵² 14 C.C.R. § 15168(c)(1).

⁵³ *Id.*

⁵⁴ 14 C.C.R. § 15183(a).

⁵⁵ City of Morgan Hill Development Services Center Completeness Comment Letter, February 16, 2021, p. 3.

⁵⁶ Municipal Code 18.108.040(D)(2) states that “[a]ny structure with more than seventy-five thousand square feet of floor area is presumed significant.”

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quality design consistent with the general plan and any other applicable specific plan or area plan adopted by the city council.”⁵⁷ CEQA clearly requires environmental review of all “discretionary projects proposed to be carried out or approved by public agencies.”⁵⁸

The Staff Report notes the receipt of a letter on behalf of the Applicant asserting that the Planning Commission “lacks discretion to address potential environmental effects, making the Project ministerial for CEQA purposes.”⁵⁹ Analogizing to a case in which a court found that approval of a design review permit limited the reviewing agency to consideration of design-related issues, the letter attempts to establish that the Planning Commission has no discretion to consider the Project’s potential environmental impacts. This is because, as the letter contends, the discretion granted to the Commission by the Municipal Code refers only to discretionary review of a project’s design elements. The letter’s interpretation of the case law, however, suffers from two fundamental flaws: (1) it attempts to apply the court’s reasoning to an inapposite set of facts, and (2) it overlooks the other discretionary approval sought for this Project, the Vesting Tentative Parcel Map.

The letter attempts to draw parallels where they do not exist, asserting that “[l]ike the fourteen design review criteria applied by St. Helena in *McCorkle*, the City’s design review criteria are limited to design review and not environmental issues.”⁶⁰ In that case, the St. Helena City Council found the local design review ordinances prevented it from disapproving the project for non-design related matters. Those ordinances did not include any required findings related to CEQA review or otherwise allow the agency to “shape the project in any way which could respond to any of the concerns which might be identified in an environmental impact report.”⁶¹ Here, on the other hand, Morgan Hill’s design review ordinance requires a finding that a project has been reviewed in compliance with CEQA, as well as a determination that it will not be “detrimental to the public health, safety, or welfare or materially injurious to the properties or improvements in the vicinity”—distinctly discretionary actions that require consideration of the Project’s effects on the environment and potential mitigation.⁶²

⁵⁷ MHMC 18.108.040(A).

⁵⁸ Pub. Resources Code § 21080(a).

⁵⁹ Staff Report, p. 19.

⁶⁰ Staff Report, p. 72.

⁶¹ *McCorkle Eastside Neighborhood Group v. City of St. Helena* (2018) 31 Cal.App 5th 80, 90.

⁶² Zoning Code, § 18.108.040.

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Furthermore, even if a design permit did limit the Planning Commission to consideration only of design-related elements, the Project also seeks a Vesting Tentative Parcel Map, a discretionary permit subject to the provisions of CEQA.⁶³ As discussed above, it is well established that a project cannot be divided into smaller parts that individually will not have a significant effect on the environment. This rule is applicable even if one of the smaller parts might require only ministerial, rather than discretionary, approval.⁶⁴ Moreover, when a project “involves an approval that contains elements of both a ministerial action and a discretionary action, the project will be deemed to be discretionary.”⁶⁵

B. Vesting Tentative Parcel Map

The Project requires a Vesting Tentative Parcel Map to subdivide the existing two parcels into four separate parcels, approval of which requires that the Tentative Map is consistent with all applicable city ordinances, general and specific plans adopted by the city, and the State Subdivision Map Act (“Map Act”).⁶⁶ The Map Act, as well as the Morgan Hill Municipal Code, requires specific environmental findings before a parcel map can be approved. A map shall not be approved, for example, if its design or proposed improvements are “likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat,” or are “likely to cause serious public health problems.”⁶⁷ Regulating land subdivisions in Morgan Hill, according to the Municipal Code, is “necessary for the preservation of the public health, safety and general welfare, to promote orderly growth and development and to promote open space, conservation, protection and proper use of land and to insure provision for adequate traffic circulation, utilities and services.”⁶⁸

Once again, making these findings confers on the agency a discretionary duty to determine compliance with the statute.⁶⁹ This discretion, furthermore, involves

⁶³ See, e.g., Pub. Resources Code § 21080: “this division shall apply to discretionary projects proposed to be carried out or approved by public agencies, including, but not limited to, the enactment and amendment of zoning ordinances, the issuance of zoning variances, the issuance of conditional use permits, and the approval of tentative subdivision maps ...”

⁶⁴ *Orinda Assoc. v. Board of Supervisors* (1986) 182 Cal.App.3d 1145, 1171–1172.

⁶⁵ 14 C.C.R. § 15268(d).

⁶⁶ MHMC § 17.24.050 A; 17.24.070 A; .

⁶⁷ Gov. Code § 66474(e), (f); MHMC § 17.20.100.

⁶⁸ MHMC, § 17.04.020.

⁶⁹ Pub. Res. Code § 21080(a); *Rominger v. County of Colusa* (2014) 229 Cal.App.4th 690. 5175-002acp

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consideration of activities that have the “potential to cause a direct physical change or a reasonably foreseeable indirect physical change in the environment.”⁷⁰

The City, in an exercise of this discretionary duty, states in the Staff Report that the Project “will not be detrimental to the public health, safety, or welfare, and will not be materially injurious to the properties or improvements in the vicinity.”⁷¹ As it had previously concluded that no environmental review was required,⁷² however, it is unclear how it reached this determination, and no substantial evidence is offered in support of this conclusory statement. In addition, as discussed in Section VI. below, there is substantial evidence demonstrating that the Project is likely to have potentially significant and unmitigated impacts on air quality, public health, climate change, and traffic. As a result of these unmitigated impacts, the Project fails to comply with the Map Act and Municipal Code and the City cannot make the requisite findings to approve the Project’s Tentative Map.

VI. THE CITY MUST PREPARE AN EIR TO ANALYZE THE PROJECT’S POTENTIALLY SIGNIFICANT ENVIRONMENTAL IMPACTS THAT WERE NOT ANALYZED IN THE MORGAN HILL 2035 GENERAL PLAN EIR

Agencies must fully disclose all potentially significant impacts of a project, and must implement all feasible mitigation to reduce those impacts to less than significant levels. The lead agency’s significance determination with regard to each impact must be supported by accurate scientific and factual data.⁷³ An agency cannot conclude that an impact is less than significant unless it produces rigorous analysis and concrete substantial evidence justifying the finding.⁷⁴

Moreover, the failure to provide information required by CEQA is a failure to proceed in the manner required by CEQA.⁷⁵ Challenges to an agency’s failure to proceed in the manner required by CEQA, such as the failure to disclose

⁷⁰ *Id.*

⁷¹ Staff Report, p. 16.

⁷² Asserting that the Project “is consistent with the development projections analyzed in the Morgan Hill 2035 General Plan program EIR for the project site” and that it “is designed to be consistent with the development standards in the General Plan and Zoning Code” the City concluded that no further environmental review would be required. Staff Report, p. 52.

⁷³ 14 CCR § 15064(b).

⁷⁴ *Kings Cty. Farm Bur. v. Hanford* (1990) 221 Cal.App.3d 692, 732.

⁷⁵ *Sierra Club v. State Bd. Of Forestry* (1994) 7 Cal.4th 1215, 1236.

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information about a project's environmental effects or alternatives, are subject to a less deferential standard than challenges to an agency's factual conclusions.⁷⁶ In reviewing challenges to an agency's approval of an EIR based on a lack of substantial evidence, the court will "determine de novo whether the agency has employed the correct procedures, scrupulously enforcing all legislatively mandated CEQA requirements."⁷⁷

As explained above, where a program EIR has been prepared that can apply to a later project, CEQA requires the lead agency to conduct a two-step process to examine the later project to determine whether additional environmental review is required.⁷⁸ First, the agency must consider whether the project will result in environmental effects that were not examined in the program EIR.⁷⁹ If the later activity involves site-specific operations, as it does here, the City must evaluate the site and activity to determine whether the environmental effects were covered in the program EIR and document its findings by a checklist.⁸⁰ If the agency finds the activity would have environmental effects that were not examined in the program EIR, it must then prepare an initial study to determine whether to prepare an EIR or negative declaration to address those effects.⁸¹

Because the 2035 General Plan EIR did not address any project-specific impacts of future projects, significant effects resulting from the Project will be substantially more severe than anything analyzed in the General Plan EIR. Without completing additional environmental analysis, the Project cannot satisfy the requirements for disclosure and analysis under CEQA and must complete a subsequent EIR.

⁷⁶ *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 435.

⁷⁷ *Id.*, *Madera Oversight Coal., Inc. v. County of Madera* (2011) 199 Cal. App. 4th 48, 102.

⁷⁸ See CEQA Guidelines, 15168, subd. (c); S. Kostka & M. Zischke, Practice Under the California Environmental Quality Act 2d, § 10.16 (Mar. 2018).

⁷⁹ CEQA Guidelines, § 15168, subd. (c)(1).

⁸⁰ 14 CCR §15168(c)(4).

⁸¹ CEQA Guidelines, § 15168, subd. (c)(1).

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A. Air Quality

i. Updated Analysis Provides Substantial Evidence of Potentially Significant Air Quality Impacts

Using Project-specific information, as well as site-specific information such as land use type, meteorological data, total acreage, and typical equipment, experts from SWAPE estimated the Project's construction and operational emissions using the most updated version of CalEEMod.⁸² SWAPE found that emissions of VOCs from construction at the Project site would be 268.96 lb/day, nearly twice the BAAQMD threshold of 137 lb/day.⁸³

This is new information about significant impacts that were not analyzed in the General Plan EIR because this specific development project was not before the City at the time the General Plan was approved. The results substantiate the conclusion that impacts to air quality will be significant and must be analyzed and mitigated in a project-specific EIR.

ii. A Health Risk Analysis Must be Prepared

SWAPE found that potentially significant impacts to public health were undisclosed and the Project failed to provide sufficient information regarding the Project's potential health risk impacts.⁸⁴ The Project will produce emissions of diesel particulate matter ("DPM") through the exhaust stacks of construction equipment throughout its construction period, and will generate daily vehicle trips, which will generate additional exhaust emissions and continue to expose nearby sensitive receptors to DPM emissions.⁸⁵ The City, however, failed to make a reasonable effort to connect the Project's construction-related and operational toxic air contaminant ("TAC") emissions to the potential health risks posed to nearby receptors.⁸⁶ These pose a significant risk to public health, and should be disclosed and mitigated in an EIR.

⁸² SWAPE Comments, p. 3.

⁸³ Id.; California Environmental Quality Act Air Quality Guidelines. BAAQMD, May 2017, available at: https://www.baaqmd.gov/~media/files/planning-and-research/ceqa/ceqa_guidelines_may2017-pdf.pdf?la=en, p. 2-2, Table 2-1.

⁸⁴ SWAPE Comments, p. 4.

⁸⁵ Id.

⁸⁶ Id.

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CEQA requires that a lead agency analyze the human health effects of the air emissions generated by a development project.⁸⁷ Additionally, as SWAPE explained, the Office of Environmental Health Hazard Assessment (“OEHHA”), recommends that exposure from projects lasting more than 6 months be evaluated for the duration of the project and recommends that an exposure duration of 30 years be used to estimate individual cancer risk for the maximally exposed individual resident (“MEIR”).⁸⁸

SWAPE calculated the Project’s excess cancer risk to the MEIR using applicable HRA methodologies prescribed by OEHHA:

Consistent with the default CalEEMod construction schedule, the annualized average concentration for construction was used for the entire third trimester of pregnancy (0.25 years) and the first 1.28 years of the infantile stage of life (0 – 2 years). The annualized averaged concentration for operation was used for the remainder of the 30-year exposure period, which makes up the remainder of the infantile stage of life, and the entire child and adult stages of life (2 – 16 years) and (16 – 30 years), respectively.⁸⁹

Consistent with OEHHA, as recommended by SCAQMD, BAAQMD, and SJVAPCD guidance, we used Age Sensitivity Factors (“ASFs”) to account for the heightened susceptibility of young children to the

⁸⁷ CEQA Appendix G, Section III.D; CEQA Guidelines section 15126.2(a) (“health and safety problems caused by the physical changes” that the proposed project will precipitate); *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 516; *Berkeley Keep Jets. v. Bd. of Port Comrs.* (“Berkeley Jets”) (2001) 91 Cal.App.4th 1344, 1369; *Bakersfield*, 124 Cal.App.4th at 1219–1220.

⁸⁸ SWAPE Comments, p. 4; Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments. OEHHA, February 2015, available at: http://oehha.ca.gov/air/hot_spots/2015/2015GuidanceManual.pdf, p. 8-6, 8-15

⁸⁹ SWAPE Comments, p. 5.
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carcinogenic toxicity of air pollution.^{90, 91, 92, 93} According to this guidance, the quantified cancer risk should be multiplied by a factor of ten during the third trimester of pregnancy and during the first two years of life (infant) as well as multiplied by a factor of three during the child stage of life (2 – 16 years). Furthermore, in accordance with the guidance set forth by OEHHA, we used the 95th percentile breathing rates for infants.⁹⁴ Finally, according to BAAQMD guidance, we used a Fraction of Time At Home (“FAH”) value of 0.85 for the 3rd trimester and infant receptors, 0.72 for child receptors, and 0.73 for the adult receptors.⁹⁵ We used a cancer potency factor of 1.1 (mg/kg-day)⁻¹ and an averaging time of 25,550 days.

The resulting impacts, SWAPE found, were highly significant and demonstrate a high risk to the health and welfare of the public from the Project:

The excess cancer risk to adults, children, infants, and during the 3rd trimester of pregnancy at the MEIR located approximately 300 meters away, over the course of Project construction and operation, utilizing

⁹⁰ “Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments.” OEHHA, February 2015, *available at*:

<https://oehha.ca.gov/media/downloads/crn/2015guidancemanual.pdf>.

⁹¹ “Draft Environmental Impact Report (DEIR) for the Proposed The Exchange (SCH No. 2018071058).” SCAQMD, March 2019, *available at*: <http://www.aqmd.gov/docs/default-source/ceqa/comment-letters/2019/march/RVC190115-03.pdf?sfvrsn=8>, p. 4.

⁹² “California Environmental Quality Act Air Quality Guidelines.” BAAQMD, May 2017, *available at*: http://www.baaqmd.gov/~media/files/planning-and-research/ceqa/ceqa_guidelines_may2017-pdf.pdf?la=en, p. 56; see also “Recommended Methods for Screening and Modeling Local Risks and Hazards.” BAAQMD, May 2011, *available at*:

<http://www.baaqmd.gov/~media/Files/Planning%20and%20Research/CEQA/BAAQMD%20Modeling%20Approach.ashx>, p. 65, 86.

⁹³ “Update to District’s Risk Management Policy to Address OEHHA’s Revised Risk Assessment Guidance Document.” SJVAPCD, May 2015, *available at*: <https://www.valleyair.org/busind/pto/staff-report-5-28-15.pdf>, p. 8, 20, 24.

⁹⁴ “Supplemental Guidelines for Preparing Risk Assessments for the Air Toxics ‘Hot Spots’ Information and Assessment Act,” June 5, 2015, *available at*: <http://www.aqmd.gov/docs/default-source/planning/risk-assessment/ab2588-risk-assessment-guidelines.pdf?sfvrsn=6>, p. 19.

“Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments.” OEHHA, February 2015, *available at*:

<https://oehha.ca.gov/media/downloads/crn/2015guidancemanual.pdf>

⁹⁵ “Air Toxics NSR Program Health Risk Assessment (HRA) Guidelines.” BAAQMD, January 2016, *available at*: http://www.baaqmd.gov/~media/files/planning-and-research/rules-and-regis/workshops/2016/reg-2-5/hra-guidelines_clean_jan_2016-pdf.pdf?la=en

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ASFs, are approximately 2.4, 15, 23, and 1.1 in one million, respectively. We estimate an excess cancer risk of approximately 42 in one million over the course of a residential lifetime (30 years), utilizing ASFs. The infant, child, and lifetime cancer risks exceed the BAAQMD threshold of 10 in one million, thus resulting in a potentially significant impact.

Neither the General Plan EIR nor the Staff Report disclose this potentially significant health risk impact from the Project. This is new information about significant impacts that were not analyzed in the General Plan EIR because this specific development project was not before the City at the time the General Plan was approved. The City must prepare an EIR to fully disclose the health risk posed to nearby, existing receptors from Project construction and operation, and to require binding mitigation measures to reduce the health impacts from the Project's DPM emissions to less than significant levels.

iii. GHG Emissions Will be Significant

Because the City failed to conduct any project-specific impact analysis, the Staff Report and supporting documentation lack sufficient information regarding the Project's potentially significant GHG emissions.

SWAPE conducted an analysis of the Project's GHG emissions utilizing its CalEEMod model, with the 2030 "Substantial Progress" threshold of 660 metric tons of carbon dioxide equivalents per year ("MT CO₂e/year").⁹⁶ The CalEEMod output files, modeled by SWAPE with Project-specific information, showed "the Project's mitigated emissions, which include approximately 1,389 MT CO₂e of total construction emissions (sum of 2021 and 2022 emissions) and approximately 5,250 MT CO₂e/year of annual operational emissions (sum of area, energy, mobile, waste,

⁹⁶ SWAPE Comments, p. 9; See: JEFFERSON UNION HIGH SCHOOL DISTRICT FACULTY & STAFF HOUSING PROJECT AIR QUALITY & GREENHOUSE GAS ASSESSMENT. City of Daly City, June 2019, available at: https://files.ceqanet.opr.ca.gov/257215-2/attachment/k-aC8VdC7LV3xz75yuUmtGiiExH-Y7HEPQ-dU-YIxuhNp95Dx9bK_TbVP3sWar00-Zx87dh7ji80vbRH0, p. 7; "TO 20-01 PAPÉ MACHINERY AIR QUALITY & GREENHOUSE GAS EMISSIONS ASSESSMENT." City of Fremont, February 2020, available at: "SOLAR4AMERICA ICE FACILITY EXPANSION AIR QUALITY AND GREENHOUSE GAS EMISSION ASSESSMENT." City of San Jose, September 2019, available at: https://www.fremont.gov/DocumentCenter/View/44974/4_Appendix-1_Air-Quality-GHG-Assessment, p. 18; and <https://www.sanjoseca.gov/Home/ShowDocument?id=45200>, p. 6.

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and water-related emissions). When compared to the Project's net annual GHG emissions of 853 MT CO₂e/year to the Bay Area Air Quality Management District's ("BAAQMD") 2030 "Substantial Progress" threshold of 660 MT CO₂e/year, SWAPE found a potentially significant GHG impact, exceeding the "Substantial Progress" threshold by eightfold.⁹⁷

The Project's potentially significant GHG impacts are new information that was not analyzed in the General Plan EIR which must be fully disclosed and mitigated in an EIR.

B. Transportation

The City asserts that CEQA review is not required for the Project because the General Plan EIR evaluated impacts specific enough to release the Applicant or agency from any duty to perform subsequent environmental review. As Mr. Smith points out, however, the projected 2035 impacts to the intersections surrounding the Project site that are listed in the General Plan EIR are far less significant than those anticipated as a result of the Morgan Hill Technology Center in that project's DEIR.⁹⁸ Some of the relevant intersections, meanwhile, were not evaluated at all in the General Plan EIR. Impacts resulting from specific development of the Project site were clearly not evaluated in the General Plan EIR, necessitating further environmental review.⁹⁹

⁹⁷ SWAPE Comments, p. 9; See: "JEFFERSON UNION HIGH SCHOOL DISTRICT FACULTY & STAFF HOUSING PROJECT AIR QUALITY & GREENHOUSE GAS ASSESSMENT." City of Daly City, June 2019, *available at*: https://files.ceqanet.opr.ca.gov/257215-2/attachment/k-aC8VdC7LV3xz75yuUmtGiiExH-Y7HEPQ-dU-YIxuhNp95Dx9bK_TbVP3sWar00-Zx87dh7ji80vbRRH0, p. 7; "TO 20-01 PAPÉ MACHINERY AIR QUALITY & GREENHOUSE GAS EMISSIONS ASSESSMENT." City of Fremont, February 2020, *available at*: "SOLAR4AMERICA ICE FACILITY EXPANSION AIR QUALITY AND GREENHOUSE GAS EMISSION ASSESSMENT." City of San Jose, September 2019, *available at*: https://www.fremont.gov/DocumentCenter/View/44974/4_Appendix-1_Air-Quality-GHG-Assessment, p. 18; and <https://www.sanjoseca.gov/Home/ShowDocument?id=45200>, p. 6.

⁹⁸ The General Plan EIR estimated that the intersection of Cochrane Road and DePaul Drive would operate at average delays per vehicle of 18.6 seconds and 19.8 seconds in the morning and evening peak periods, respectively. It found that the intersection of Cochrane Road and Mission View Drive would operate at average delays per vehicle of 20.2 seconds and 19.0 seconds in the morning and evening peaks. These values are characteristic of what the Morgan Hill Technology Center DEIR reports as *existing conditions*. It estimates significantly higher impacts to the intersections as a result of that larger project. General Plan EIR 4.14-43.

⁹⁹ Smith Comments, p. 4.

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Furthermore, Mr. Smith explains, the DEIR prepared for the Morgan Hill Technology Center project acknowledged that the General Plan EIR did not contemplate the development at issue in that project.¹⁰⁰ As one of its project alternatives, it compared potential project impacts with those estimated in the General Plan EIR buildout of the site. A Traffic Analysis concluded that, using the City's Travel Demand Forecasting Model and the General Plan's 20-year estimation for buildout of the site, VMT would increase significantly with development of the Technology Park project.¹⁰¹ That project, the analysis determined, would result in nearly double the number of miles traveled.¹⁰² The DEIR, however, attempted to cast doubt on the veracity of this conclusion by asserting that the development projections included in the General Plan EIR were "significantly lower" in intensity and "not reflective of the maximum allowed uses under the existing General Plan designations and zoning districts."¹⁰³ The DEIR acknowledges, therefore, that the Technology Park project and its specific development could not have been under consideration in the General Plan's environmental review. Likewise, the General Plan could not have contemplated this Project, as the larger Technology Center encompassed this Project's development.¹⁰⁴

Mr. Smith examined the DEIR prepared for the larger project proposed at the site. The traffic analysis performed for that DEIR, he found, showed highly significant deteriorations at the intersections surrounding the project site, from LOS B or C to LOS F in one or the other of the peak hours:

- The intersection of Cochrane Road with DePaul Drive would deteriorate in the PM peak hour from 18.7 seconds average delay per vehicle and LOS B to 101 seconds per vehicle and LOS F.
- The intersection of Cochrane Road and Mission View Drive would deteriorate in the AM peak hour from 23.0 seconds average delay per vehicle and LOS C to 94.6 seconds per vehicle and LOS F.
- The intersection of Mission View Drive and Half Road would deteriorate from 22.6 seconds average delay per vehicle and LOS C in the PM peak hour to 136.9 seconds and LOS F.¹⁰⁵

¹⁰⁰ *Id.*

¹⁰¹ Technology Park DEIR, p. 160; Technology Park DEIR Traffic Impact Analysis, Appendix H, p. 79.

¹⁰² *Id.*

¹⁰³ Technology Park DEIR, p. 201; Smith Comments, p. 4.

¹⁰⁴ MHMC, Sustainable Building Regulations, § 17.32.040.

¹⁰⁵ Smith Comments, p. 3.

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He further explained: If one takes the trip generation for the RedwoodTech@101 Project as fairly calculated in the section above and assumes its share of responsibility for the delay increments disclosed in the Morgan Hill Technology Center Mixed-Use Project DEIR is proportional to the ratio of its trip generation to that of the whole Mixed-Use Project, then the following results are obtained:

- The RedwoodTech@101 Project would cause the intersection of Cochrane Road with DePaul Drive to deteriorate in the PM peak hour from 18.7 seconds average delay per vehicle and LOS B to approximately 63.55 seconds delay and LOS E in the PM peak.
- The intersection of Cochrane Road and Mission View Drive would deteriorate in the AM peak hour from 23.0 seconds average delay per vehicle and LOS C to approximately 78.99 seconds and LOS E in the AM peak.
- The intersection of Mission View Drive and Half Road would deteriorate from 22.6 seconds average delay per vehicle and LOS C in the PM peak hour to approximately 84.89 seconds and LOS F.¹⁰⁶

“The fact that the revised and renamed Project,” Mr. Smith stated, “could have effects on this scale should have been obvious to the City.”¹⁰⁷ This is new information about significant transportation impacts that were not analyzed in the General Plan EIR because this specific development project was not before the City at the time the General Plan was approved. The City must prepare an EIR to disclose and mitigate these impacts.

C. Noise

Noise expert Deborah Jue, in examining the DEIR prepared for the prior Technology Center Project, found that noise impacts were not properly identified, relying on incorrect distances between the noise sensitive land use and the project construction.¹⁰⁸ This error, she explained, may result in an inaccurate analysis of impacts for the Redwood 101 Project.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ Jue Comments, p. 1: “Construction noise analyses can be done using the shortest distance between the noise sensitive land use and the work area for the project, or it can be done using the distance from the noise sensitive land use to the center, or possibly the centroid of the project. Given 5175-002acp

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The prior analysis identified a significance threshold of 60 dBA hourly Leq for construction noise received at residential land use and 70 dBA hourly Leq received at commercial land use. Ambient noise in excess of these thresholds by at least 5 dBA for more than one year would constitute a significant temporary noise increase.¹⁰⁹

Ms. Jue explained the measurements contained in the prior analysis:

[O]nly a short-term noise measurement was made near the residential neighborhood on Tolusa Place (ST-1) measuring two short 10-minute periods ranging from 58 to 62 dBA Leq; given the location's distance from the main arterial and highway noise sources, it is expected that the ambient at the future residential project, which is being permitted concurrently, would be more similar to the noise measurement data collected at ST-2 near the medical facilities which yielded 64 dBA Leq. According to the prior analysis, construction noise which exceeds 60 dBA Leq and 63 dBA Leq over the course of a year would be significant at the Tolusa Place residents, and construction noise which exceeds 60 dBA Leq and 68 dBA Leq over the course of the year would be significant at the future residential project.¹¹⁰

Putting this one-year allowance into context, Ms. Jue pointed out that the Oakland Noise Ordinance limits long-term construction projects that last more than 10 days to 65 dBA at residential land use and 70 at commercial land use, regardless of the existing ambient conditions. From this perspective, Ms. Jue stated, "the one-year requirement to determine significance seems particularly lenient."¹¹¹

Since the Project is being permitted concurrently with the residential component of the Technology Center project, residents could experience a full year or more of cumulative construction noise. The noise levels at the east residential neighborhood would exceed 60 dBA Leq and the existing environment of 58 dBA would be increased by 5 dBA or more for a period of a year or more.¹¹²

that the extent of the prior project was so large (89 acres), using either of these distances would potentially over-estimate or under-estimate the actual impacts, respectively."

¹⁰⁹ Jue Comments, p. 1.

¹¹⁰ Jue Comments, pp. 1-2.

¹¹¹ Jue Comments, p. 2.

¹¹² Jue Comments, p. 2

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The concurrent residential project would be slightly closer to existing noise sources such as Hwy 101, but still within 50 ft of the project construction. If completed prior to the commercial project, Ms. Jue explained, “some number of homes within the future residential project would be exposed to a significant noise impact as shown in Table 3. The noise levels would exceed 60 dBA Leq and the existing environment of 64 dBA would be increased by 5 dBA or more for a period of a year or more.”¹¹³

Table 1 Construction Noise Impacts from Commercial Buildings at Future Residential Project

Construction Phase	Commercial Project Source to Future Residential	
	Distance to Center: 515	Distance to nearest PL 50
Site Preparation	64	84
Grading	65	85
Trenching	59	79
Build Exterior	63	83
Build Interior	55	75
Paving	63	83

CEQA impact analysis, Ms. Jue points out, is necessary to determine the best mitigation measures to address these temporary, substantial noise impacts. Such measures could include buffer distances and sound barriers. Adequate materials for such sound barriers, she explains, would include “temporary barriers using STC 20-25 blankets on a tubular steel frame or scaffolding or 3 PSF wood frame barriers (e.g., using $\frac{3}{4}$ ” thick plywood).”¹¹⁴ The material, she said, should overlap or otherwise be constructed to avoid gaps of any size, and should be high enough to block the line of sight between the construction noise sources and the affected windows.¹¹⁵ “The sound barrier has to interrupt the line of sight between the source(s) and the receiver(s) and the best placement to maximize the sound barrier benefit is close the source or close to the receiver.”¹¹⁶

¹¹³ Jue Comments, 3.

¹¹⁴ Jue Comments, p. 3.

¹¹⁵ *Id.*

¹¹⁶ *Id.*

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Ms. Jue concluded that, because the noise analysis prepared for the prior project appears to contain some errors “which could lead one to conclude that construction activities for the proposed project and the future residential project could be less than significant.”¹¹⁷ This is new information about significant impacts that were not analyzed in the General Plan EIR because this specific development project was not before the City at the time the General Plan was approved. An EIR must be prepared to disclose and mitigate these impacts.

VII. THE CITY CANNOT MAKE THE NECESSARY FINDINGS TO ISSUE A DESIGN PERMIT OR TENTATIVE MAP FOR THE PROJECT

Approval of the Project’s Design Permit and Tentative Map requires factual findings, supported by substantial evidence, pursuant to the Morgan Hill Municipal Code and the State Subdivision Map Act that a proposed subdivision is consistent with the City’s general plan and specific plans, and does not have any detrimental environmental or public health effects.¹¹⁸

The Staff Report claims that the Project is in compliance with the General Plan, Zoning Code and other City Codes as required by Section 17.50.030 of the Municipal Code, but nowhere does it make findings, or offer substantial evidence, that the Project will not have any detrimental environmental or public health effects.

As discussed in Section VI above, substantial evidence demonstrates that the Project is likely to have potentially significant impacts on air quality, public health, climate change, noise, and traffic. Silicon Valley Residents’ experts have provided ample evidence demonstrating the Project’s significant impacts, including:

- Emissions of VOCs and TACs from Project construction and operation will be significant.
- DPM emissions from construction and operation
- The cancer risk from the Project to nearby receptors would be 42 in one million over 30 years, exceeding the BAAQMD threshold of 10 in one million.¹¹⁹

¹¹⁷ Jue Comments, p. 4.

¹¹⁸ Gov Code §§66473.5, 66474; MHMC 18.108.040(A).

¹¹⁹ SWAPE Comments, p. 8.

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- Traffic and transportation in the Project vicinity could be significantly impacted by Project construction and operation.
- Nearby residents could experience significant impacts from noise for a year or more.

These effects have not been disclosed or analyzed by the City, which continues to claim that the General Plan EIR is sufficient to address any potential impacts, despite that document's repeated claim that it did not analyze any project-specific impacts. As a result, the Project fails to comply with mandatory Map Act requirements. The City, therefore, cannot make the requisite findings pursuant to Government Code Sections 66473.5 and 66474 and must deny the Project's Design Permit and Tentative Map.

VIII. CONCLUSION

The City has improperly tried to rely on the 2035 General Plan EIR as a program EIR with analysis sufficient to satisfy CEQA. That EIR, however, was never meant to serve as a review document for specific projects. Many of the impacts likely to result from the Project will be significantly more severe than what was evaluated in the General Plan EIR, while others were never analyzed at all.

Furthermore, the Design Review Permit and Vesting Tentative Map required for the Project cannot be issued. As supported by substantial evidence above and in expert comment letters attached herein, the Project will result in significant and unmitigated impacts that are not disclosed or analyzed by the General Plan EIR. Without further mitigation measures to reduce the Project's significant impacts, the City cannot find that it is not detrimental to public health, safety, or welfare, and thus cannot approve the permits necessary for the Project to move forward.

Sincerely,



Kendra Hartmann

KDH:acp
Attachments

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T 510.836.4200
F 510.836.4205

1939 Harrison Street, Ste. 150
Oakland, CA 94612

www.lozeaudrury.com
paige@lozeaudrury.com

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Via E-mail

Mohammad Habib - Chair
Malisha Kumar - Vice-Chair
Joseph Mueller
Wayne Tanda
Laura Gonzalez-Escoto
Liam Downey
Juan Miguel Munoz-Morris
Jennifer Carman, Community Services Director
Planning Commission
City of Morgan Hill
17575 Peak Avenue
Morgan Hill, CA 95037
pcpubliccomment@morganhill.ca.gov
Planning_Commission@morganhill.ca.gov
jennifer.carman@morganhill.ca.gov

Re: Comments Regarding The Redwood Tech at 101 - SD2020-0011/SR2020-0029 Through SR2020-0033 (APNS 728-30-006 AND 728-30-009)

Dear Chair Habib, Vice-Chair Kumar, Commissioners Mueller, Tanda, Gonzalez-Escoto, Downey, Munoz-Morris, and Ms. Carman:

I am writing on behalf of the Laborers International Union of North America, Local Union 270 and its members living in the City of Morgan Hill ("LIUNA") regarding the proposed The Redwood Tech at 101 Project, SD2020-0011/SR2020-0029 Through SR2020-0033, a proposed industrial park consisting of five concrete tilt-up buildings totaling about 501,000 square feet in to be constructed on four separate lots of about 29 acres at 1065 Half Road, on the north side of the intersection of Condit Road and Half Road (APN728-30-006 and 728-30-009) ("Project").

LIUNA is concerned that the City of Morgan Hill ("City") is proposing to approve the Project without adequate environmental review under the California Environmental Quality Act ("CEQA"), Public Resources Code section 21000, *et seq.* The staff report improperly proposes to exclude the Project's uses from the CEQA analysis for the development, thus undermining the already truncated CEQA analysis. The staff report also suggests inaccurately that the 2035 General Plan programmatic environmental impact report ("General Plan EIR") addressed this site-specific Project sufficiently to rely upon 14 Cal. Admin. Code 15183 or without preparing a tiered environmental review. Staff's cursory analysis, prepared without the benefit of an initial

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study reviewing the whole project's potential impacts, does not comply with CEQA's requirements and is inconsistent with the City's process for reviewing proposed vesting tentative parcel maps.

LIUNA respectfully requests that the Planning Commission not approve the Project until such time as the City has prepared an initial study followed by either a mitigated negative declaration ("MND") or an EIR for the Project prior to any approvals involving the Project.

I. LEGAL STANDARD

Once a program EIR has been prepared, "[s]ubsequent activities in the program must be examined in light of the program EIR to determine whether an additional environmental document must be prepared." 14 CCR ("CEQA Guidelines") § 15168(c). The first consideration is whether the activity proposed is covered by the PEIR. *Id.* If a later project is outside the scope of the program, then it is treated as a separate project and the PEIR may not be relied upon in further review. *Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th 1307. The second consideration is whether the "later activity would have effects that were not examined in the program EIR." CEQA Guidelines § 15168(c)(1). A PEIR may only serve "to the extent that it contemplates and adequately analyzes the potential environmental impacts of the project." *Sierra Nevada Conservation v. County of El Dorado* ("El Dorado") (2012) 202 Cal.App.4th 1156. If the PEIR does not evaluate the environmental impacts of the project, a tiered EIR must be completed before the project is approved. *Id.* For these inquiries, the "fair argument test" applies. *Sierra Club*, 6 Cal.App.4th 1307, 1318; *See also Sierra Club v. County of San Diego* (2014) 231 Cal.App.4th 1152, 1164 ("when a prior EIR has been prepared and certified for a program or plan, the question for a court reviewing an agency's decision not to use a tiered EIR for a later project 'is one of law, i.e., the sufficiency of the evidence to support a fair argument.'").

Under the fair argument test, a new EIR must be prepared "whenever it can be fairly argued on the basis of substantial evidence that the project may have significant environmental impact." *Sierra Club*, 6 Cal. App. 4th at 1316 (quotations omitted). When applying the fair argument test, "deference to the agency's determination is not appropriate and its decision not to require an EIR can be upheld only when there is no credible evidence to the contrary." *Id.* at 1312. "[I]f there is substantial evidence in the record that the later project may arguably have a significant adverse effect on the environment which was not examined in the prior program EIR, doubts must be resolved in favor of environmental review and the agency must prepare a new tiered EIR, notwithstanding the existence of contrary evidence." *Id.* at 1319.

In *Friends of College of San Mateo Gardens* the California Supreme Court explained the differing analyses that apply when a project EIR was originally approved and changes are being made to the project, and when a tiered program EIR was originally prepared and a subsequent project is proposed consistent with the program or plan:

For project EIRs, of course, a subsequent or supplemental impact report is required in the event there are substantial changes to the project or its circumstances, or in the event of material new and previously unavailable information. (*Friends of Mammoth*, citing §

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21166.) In contrast, when a tiered EIR has been prepared, review of a subsequent project proposal is more searching. **If the subsequent project is consistent with the program or plan for which the EIR was certified, then ‘CEQA requires a lead agency to prepare an initial study to determine if the later project may cause significant environmental effects not examined in the first tier EIR.’** (*Ibid.* citing Pub. Resources Code, § 21094, subds. (a), (c).) ‘If the subsequent project is not consistent with the program or plan, it is treated as a new project and must be fully analyzed in a project—or another tiered EIR if it may have a significant effect on the environment.’ (*Friends of Mammoth*, at pp. 528–529, 98 Cal.Rptr.2d 334.)

Friends of Coll. of San Mateo Gardens v. San Mateo County Cmty. Coll. Dist. (“*San Mateo Gardens*”) (2016) 1 Cal.5th 937, 960.

The City’s General Plan EIR was prepared in accordance with CEQA’s PEIR provisions and subsequent projects must undergo the tiered review process just described. *See* General Plan DEIR, p. 2-2. CEQA requires the City to prepare an initial study to determine if the Project *may* cause significant environmental effects not examined in the General Plan EIR. Pub. Res. Code § 21094. As discussed below, there is substantial evidence supporting a fair argument that the Project may result in a number of potential environmental impacts that were not previously analyzed in any of these EIRs. Accordingly, an initial study followed by an MND or EIR must be prepared for the Project.

II. ARGUMENT

A. The City Must Comply With CEQA for the Whole Project Prior to Issuing Any Approvals of the Project.

The CEQA analysis presented in the staff report is fundamentally flawed because it improperly recommends for the City to approve the Project prior to complying with CEQA for the whole project, *i.e.*, its foreseeable uses. Staff suggests that the City may make a CEQA determination and approve the proposed Design Permit and the Vesting Tentative Parcel Map separate from any future conditional use permits for the Project. Staff claims that “[n]o other approvals are required at this time.” Packet Pg. 7. Staff further asserts that “[s]hould a future use on the site require a conditional use permit, that user will be responsible for conducting environmental review for the proposed use as required under CEQA.” *Id.*, p. 19. This two-tiered approach to the Project’s CEQA review violates CEQA’s prohibition on approving any aspect of a proposed project prior to completing the environmental review for the whole project required by CEQA. Moreover, it is inconsistent with the City’s requirements for processing a proposed vested tentative map.

The proposed action items include both the Project’s design permit and a vesting tentative parcel map. The City’s Code sets forth the process and information required to process a vesting tentative parcel map application. The City’s approval of a vesting tentative map provides the applicant with a vested right to proceed with the proposed development: “When the

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city approves or conditionally approves a vesting tentative map, that approval shall confer a vested right to proceed with development in substantial compliance with the ordinances, policies and standards in effect on the date the city has determined that the application for approval of the vesting tentative map is complete pursuant to Section 65943 of the Government Code.” Muni. Code §17.50.040(A). As a result, the City’s Code requires additional information and considerations that the City must consider in making its discretionary decision whether or not to approve a proposed vesting tentative parcel map. In particular, the City is not authorized to defer or not address the proposed uses of the development proposed by the tentative map. Moreover, given the vesting implications of the City’s decision, the decisionmakers must have access to an environmental review of the whole Project, including its uses and not just its building design or proposed number of parcels.

Particularly relevant here is the express requirement that, “[i]f a conditional use permit is required, such permit shall be processed *prior or concurrently with the vesting tentative map*. Muni. Code § 17.50.060(B)(2) (emphasis added). As described in the staff report, the Project includes 232,000 square feet of warehousing use. Packet Pg. 13. The Project site’s zoning of Light Industrial requires a conditional use permit for “Warehousing and Distribution, Large.” The ordinance does not specify a square footage above which warehousing is large. For parcel hubs, which are not authorized, a building over 75,000 square feet is large. Municipal Code, §18.26.020(A), Table 18.26-1. By that measure, or any commonsense measure, the proposed 232,000 square feet of warehousing is large. As a result, the conditional use permit necessary for the proposed warehousing use must be proposed and processed prior to or concurrently with the vesting tentative map. Muni. Code § 17.50.060(B)(2). By choosing to ignore the Project’s uses, the staff report’s CEQA recommendations are deficient as a matter of law, having failed to consider the potential environmental effects of the Project’s warehousing and other uses, including impacts from additional truck trips on air quality and wildlife, additional vehicle miles traveled and transportation impacts as a result of the Project, operational and construction-related noise and health impacts on residents located adjacent to the south corner of the Project site, the impacts of Project design features, such as the large glass facades, on bird-life and other potential impacts. As a result, any CEQA determination by the City must consider the Project’s contemplated uses now.

In addition, underscoring the need for staff to address the impacts of the anticipated uses, “[d]evelopment’ means *the uses to which the land which is the subject of the map shall be put*, the buildings to be constructed on it and all alterations of the land and construction incident thereto.” Muni. Code §17.08.055 (emphasis added). Thus, rather than defer any consideration of the Project’s uses, the vesting tentative parcel map procedure requires the applicant to submit “[t]he height, size, location, preliminary or conceptual architectural plans and *use of all buildings* to be constructed within the subdivision....” Muni. Code §17.50.060(B)(4) (emphasis added). Relatedly, to qualify for approval of a vested tentative parcel map, the applicant must provide “[s]pecific information on the uses to which the proposed buildings will be put....” Muni. Code §17.50.060(B)(10). Thus, should the Planning Commission accept staff’s invitation to put off addressing the Project’s uses, any decision will be contrary to the City’s ordinances.

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In addition, CEQA forbids putting off environmental review of the whole project subsequent to approving any of its components. This is especially true for a decision to approve a vesting right in a development. The necessary CEQA document must be prepared and approved prior to any approval of a project subject to CEQA. ***“Before granting any approval of a project subject to CEQA, every lead agency or responsible agency shall consider a final EIR or negative declaration or another document authorized by these guidelines to be used in the place of an EIR or negative declaration.”*** (14 CCR § 15004(a) [emphasis added].) ***“EIRs and negative declarations should be prepared as early as feasible in the planning process to enable environmental considerations to influence project program and design”*** (14 CCR § 15004(b).) Consistent with that goal:

The environmental document preparation and review should be coordinated in a timely fashion with the existing planning, review, and project approval processes being used by each public agency. These procedures, to the maximum extent feasible, are to run concurrently, not consecutively.

(14 CCR § 15004(c); *see also* PRC § 21003(a).) By attempting to defer addressing impacts from the Project’s anticipated uses until the future, staff’s proposals violate these fundamental tenets of CEQA.

B. CEQA Guidelines Section 15183 is Not Available for the Project.

The staff report proposes that the City rely on CEQA Guidelines § 15183 to claim that no CEQA review of the Project is required. Section 15183 provides that:

CEQA mandates that projects which are consistent with the development density established by existing zoning, community plan, or general plan policies for which an EIR was certified shall not require additional environmental review, ***except as might be necessary to examine whether there are project-specific significant effects which are peculiar to the project or its site.*** This streamlines the review of such projects and reduces the need to prepare repetitive environmental studies.

CEQA Guidelines § 15183(a) (emphasis added). The situations requiring additional review are set forth in the provision:

In approving a project meeting the requirements of this section, a public agency shall limit its examination of environmental effects to those which the agency determines, in an initial study or other analysis:

- (1) Are peculiar to the project or the parcel on which the project would be located,
- (2) Were not analyzed as significant effects in a prior EIR on the zoning action, general plan or community plan with which the project is consistent,

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- (3) Are potentially significant off-site impacts and cumulative impacts which were not discussed in the prior EIR prepared for the general plan, community plan or zoning action, *or*
- (4) Are previously identified significant effects which, as a result of substantial new information which was not known at the time the EIR was certified, are determined to have a more severe adverse impact than discussed in the prior EIR.

CEQA Guidelines § 15193(b).

Here, it does not appear that the City made a determination as to whether there are environmental effects “peculiar to the project” or whether the other factors in § 15193(b) are met, as case law requires. *See Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1407. Nor does it appear that, in the alternative, the City found that the impacts of the Project “ha[ve] been addressed as a significant effect in the prior EIR, or can be substantially mitigated by the imposition of uniformly applied development policies or standards.” CEQA Guidelines § 15183(c). Nor has the City explained why the Project otherwise meets the requirements of § 15183. Indeed, § 15183(j) specifically provides: “This section does not affect any requirement to analyze potentially significant offsite or cumulative impacts if those impacts were not adequately discussed in the prior EIR.” It does not appear that the City has analyzed the impacts specific to this Project in the prior EIR. Rather, the City has discussed generally “research and development (R&D), warehouse, and industrial buildings.” General Plan DEIR, 3-33. There is no mention in the General plan EIR of any proposed warehouse buildings at the proposed location. That the City may have generally discussed the effects of warehouse and distribution facilities does not make the specific Project on this site exempt from CEQA. A full CEQA analysis is required.

Indeed, under staff’s proposed process, the City will fail to implement mitigations mandated by the General Plan 2035 EIR. For example, Mitigation Measure AQ-4a requires that:

Applicants for future non-residential land uses within the City that: 1) have the potential to generate 100 or more diesel truck trips per day or have 40 or more trucks with operating diesel-powered TRUs, and 2) are within 1,000 feet of a sensitive land use (e.g., residential, schools, hospitals, nursing homes), as measured from the property line of the proposed Project to the property line of the nearest sensitive use, ***shall submit a health risk assessment (HRA) to the City of Morgan Hill prior to future discretionary Project approval.***

General Plan EIR, p. 1-9 (emphasis added). Several houses are located across the street from the Project’s south corner that are within 1,000 feet of the Project site. The staff report makes no mention of this required mitigation measure or how granting a vested right to the Project would affect the City’s enforcement of this measure.

The City may not rely on 14 Cal. Admin. Code § 15183 for the Project. Section 15183 does not relieve the City of reviewing environmental effects that “[w]ere not analyzed as

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significant effects in a prior EIR on the zoning action, general plan or community plan with which the project is consistent.” 14 Cal. Admin. Code § 15183(b)(2). Section 15183 also excludes exempting impacts that are “peculiar” to the Project. Peculiar is a term of art specifically defined by the regulation:

An effect of a project on the environment shall not be considered peculiar to the project or the parcel for the purposes of this section if uniformly applied development policies or standards have been previously adopted by the city or county with a finding that the development policies or standards will substantially mitigate that environmental effect when applied to future projects, unless substantial new information shows that the policies or standards will not substantially mitigate the environmental effect.

14 Cal. Admin. Code § 15183(f). The General Plan EIR did not address the potential significant environmental impacts of bird strikes with new buildings to be constructed in Morgan Hill. Nor does the EIR address direct and cumulative off-site impacts on wildlife from collisions with additional truck and vehicle traffic associated with large warehousing projects. Nor can the City identify development standards or the findings identified by Section 15183 addressing these two categories of impacts that could make those impacts not peculiar to the Project. Other impacts peculiar to the proposed Project site include the health and noise impacts to the adjacent, off-site residents and impacts to wildlife likely present at the site, including burrowing owls and other sensitive species. None of these site-specific and off-site impacts were addressed in the General Plan EIR. The City should prepare an initial study and, based on that review, either an EIR or a mitigated negative declaration to address the Project’s potential impacts.

C. CEQA Guidelines § 15162 Does Not Apply Because the Project Is Not Within the Scope of the Program EIR Prepared for the General Plan

The alternative suggestion in the staff report that the Project is within the scope of the program EIR prepared for the General Plan and the City should rely on CEQA Guidelines § 15162 also is incorrect. Packet Pg. 19. Once a program EIR has been prepared, “[s]ubsequent activities in the program must be examined in light of the program EIR to determine whether an additional environmental document must be prepared.” CEQA Guidelines § 15168(c). The first consideration is whether the activity proposed is covered by the PEIR. *Id.* If a later project is outside the scope of the program, then it is treated as a separate project and the PEIR may not be relied upon in further review. *Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th 1307. The second consideration is whether the “later activity would have effects that were not examined in the program EIR.” CEQA Guidelines § 15168(c)(1). A PEIR may only serve “to the extent that it contemplates and adequately analyzes the potential environmental impacts of the project.” *Sierra Nevada Conservation v. County of El Dorado* (“*El Dorado*”) (2012) 202 Cal.App.4th 1156. If the PEIR does not evaluate the environmental impacts of the project, a tiered EIR must be completed before the project is approved. *Id.* For these inquiries, the “fair argument test” applies. *Sierra Club*, 6 Cal.App.4th 1307, 1318; *See also Sierra Club v. County of San Diego* (2014) 231 Cal.App.4th 1152, 1164 (“when a prior EIR has been prepared and certified for a program or

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plan, the question for a court reviewing an agency's decision not to use a tiered EIR for a later project 'is one of law, i.e., the sufficiency of the evidence to support a fair argument.'").

Under the fair argument test, a new EIR must be prepared "whenever it can be fairly argued on the basis of substantial evidence that the project may have significant environmental impact." *Sierra Club*, 6 Cal.App.4th at 1316 (quotations omitted). When applying the fair argument test, "deference to the agency's determination is not appropriate and its decision not to require an EIR can be upheld only when there is no credible evidence to the contrary." *Id.* at 1312. "[I]f there is substantial evidence in the record that the later project may arguably have a significant adverse effect on the environment which was not examined in the prior program EIR, doubts must be resolved in favor of environmental review and the agency must prepare a new tiered EIR, notwithstanding the existence of contrary evidence." *Id.* at 1319.

In *Friends of College of San Mateo Gardens*, the California Supreme Court explained the differing analyses that apply when a project EIR was originally approved and changes are being made to the project, and when a tiered program EIR was originally prepared and a subsequent project is proposed consistent with the program or plan:

For project EIRs, of course, a subsequent or supplemental impact report is required in the event there are substantial changes to the project or its circumstances, or in the event of material new and previously unavailable information. (*Friends of Mammoth*, citing § 21166.) In contrast, when a tiered EIR has been prepared, review of a subsequent project proposal is more searching. **If the subsequent project is consistent with the program or plan for which the EIR was certified, then 'CEQA requires a lead agency to prepare an initial study to determine if the later project may cause significant environmental effects not examined in the first tier EIR.'** (*Ibid.* citing Pub. Resources Code, § 21094, subds. (a), (c).) 'If the subsequent project is not consistent with the program or plan, it is treated as a new project and must be fully analyzed in a project—or another tiered EIR if it may have a significant effect on the environment.' (*Friends of Mammoth*, at pp. 528–529, 98 Cal.Rptr.2d 334.)

Friends of Coll. of San Mateo Gardens v. San Mateo County Cmty. Coll. Dist. (2016) 1 Cal.5th 937, 960.

The City's General Plan EIR were prepared in accordance with CEQA's PEIR provisions and subsequent projects must undergo the tiered review process just described. As the General Plan EIR states:

[T]his EIR is a program-level EIR that analyzes the potential significant environmental effects of the adoption of the proposed Project. As a program EIR, it is not project-specific, and does not evaluate the impacts of individual projects that may be proposed under the General Plan. Such subsequent projects will require a separate environmental review, when applicable as required by CEQA, which could be in the form of a Negative Declaration, Mitigated Negative Declaration, or a Subsequent EIR, to secure the necessary development permits. Therefore, while

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subsequent environmental review may be tiered from this EIR, this EIR is not intended to address project-specific impacts of individual projects.

General Plan DEIR, p. 2-2. CEQA requires the City to prepare an initial study to determine if the Project *may* cause significant environmental effects not examined in the General Plan EIR. Pub. Res. Code § 21094. As discussed above, there are a number of effects that an initial study should address, including impacts to wildlife at the site, impacts of the Project from bird collisions with the expansive glass façade, off-site impacts to wildlife from collisions with the many vehicle trips that will be generated by a project of this size, off-site transportation impacts on GHG emissions from the Project's increases in vehicle miles travelled, and off-site health and noise impacts from construction and operation on nearby residents. Accordingly, an initial study followed by an MND or EIR must be prepared for the Project.

D. Contrary to the Applicant's Assertion, the Project is Discretionary and Subject to CEQA.

Ignoring its client's request for a vesting tentative parcel map, the applicant's attorneys argue that the Project is ministerial and thus not a "project" under CEQA. Counsel claims that the decision in *McCorkle Eastside Neighborhood Group. v. City of St. Helena* (2018) 31 Cal. App. 5th 80 ("*McCorkle*") is instructive. It is not. Unlike the *McCorkle* decision, the Redwood Tech at 101 project involves multiple discretionary decisions by the City. The City's review and any approval of the proposed vesting tentative parcel map is a discretionary decision. *See* Municipal Code §17.20.090 ("The planning commission may modify or delete any of the conditions of approval recommended in the community development department's report, except conditions required by city ordinance or by the city engineer, related to public health and safety or standards approved by the city engineer, or add additional requirements as a condition of its approval"). Even the City's design review is endowed with discretion to deny the Project in order to make the required finding that "[t]he proposed development will not be detrimental to the public health, safety, or welfare or materially injurious to the properties or improvements in the vicinity." Muni. Code §18.108.040(J)(5). *See also* §18.108.040(A) ("A design permit is a discretionary action"). *McCorkle* involved the City of St. Helena's approval of demolition and design review permits for an in-fill housing development. No vesting tentative map was at issue in that case. Nor was there any potential need for any future CUP in that case. And the City's ordinances strictly limited the design permit review to the specified design criteria and did not encompass a finding such as is required in Morgan Hill, that the development "will not be detrimental to the public health, safety, or welfare or materially injurious to the properties or improvements in the vicinity." *See* 31 Cal.App.5th at 92-93.

The CUP required for the proposed warehousing uses also confirms that the Project is discretionary under CEQA. "Where a project involves an approval that contains elements of both a ministerial action and a discretionary action, the project will be deemed to be discretionary and will be subject to the requirements of CEQA." 14 CCR § 15268(d); *POW*, 10 Cal.5th at 497; *Miller v. City of Hermosa Beach* (1993) 13 Cal.App.4th 1118, 1139; *Friends of Westwood, Inc.*

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v. City of Los Angeles (1987) 191 Cal.App.3d 259, 270-71.) Furthermore, “any doubt whether a project is ministerial or discretionary should be resolved in favor of the latter characterization.” *POW*, 10 Cal.5th at 497. Because both CEQA as well as the City’s ordinance confirm that CEQA review must occur prior to any approvals for the project, whether ministerial or discretionary, even assuming the design review permit is ministerial, the City cannot proceed with that or any other approval until it has completed a legitimate CEQA review. Morgan Hill has discretion to address any potential impacts identified in a CEQA review as a result of its design review authority, its vesting tentative map approval authority, and the CUP authority. Accordingly, *McCorkle* has no bearing on the City’s review of the Project pursuant to CEQA.

III. Conclusion

LIUNA respectfully requests that the Planning Commission not approve these components of the Project and instead instruct staff to prepare an initial study and either an MND or EIR to identify, analyze and mitigate the Project’s adverse environmental impacts. Thank you for considering these comments.

Sincerely,



Michael R. Lozeau



Development Services
 17575 Peak Avenue
 Morgan Hill, CA 95037-4128
 TEL: (408) 778-6480
 FAX: (408) 779-7236
www.morganhill.ca.gov

David H. Blackwell, Esq.
 Allen Matkins Leck Gamble Mallory & Natsis LLP
 Three Embarcadero Center, 12th Floor
 San Francisco, CA 94111

RE: Request for PUD Zoning Interpretation

Dear Mr. Blackwell:

This is in response to your letter seeking an interpretation of Morgan Hill Municipal Code (MHMC) section 18.14.020.C relating to Legacy Zoning Districts. You have specifically requested an interpretation regarding the land uses and development standards that apply to Planned Unit Development (PUD) legacy districts that do not have an approved Master Plan. Please accept the following interpretation:

Text of Relevant Code Section:

18.14.020 Zoning Districts

C. Legacy Zones.

1. A legacy zone is base zoning district, overlay zone, or combining district which was applied to a property prior to July 7, 2018, remains the zoning in effect for the property, but which may not be applied to any additional properties as of July 7, 2018. All rules and regulations of the legacy zone, and any subsequent amendments thereto, continue to apply to the subject property.
2. The Zoning Map shows the following three legacy zones:
 - a. Residential planned development (RPD) overlay district.
 - b. Planned unit development (PUD) base zoning district.
 - c. Conditional (C) base zoning district.
3. Where a legacy zone is shown on the zoning map, the requirements of that legacy zone as originally applied to a property remain in full force and effect.
4. Permitted land uses, development standards, and other provisions that apply within a legacy zone may be amended in accordance with [Chapter 18.114](#) (Zoning Code Amendments).

Permitted Uses and Development Standards in the PUD Zoning Districts:

Areas designated on the Zoning Map as PUD districts that do not have an active Master Plan or Development Agreement, have a base zoning district, such as PUD(IL), PUD(CG), etc. In those cases, the uses and standards allowed in those zones are limited to the uses and standards set forth within the base zoning district. Despite the PUD zoning, a new approved Master Plan would be needed to allow any deviation from the standards and regulations under the base zoning.

Areas designated on the Zoning Map as PUD districts with an approved and active Master Plan are limited to the uses and development standards of the applicable Master Plan.

Analysis:

Under Government Code section 65850, a general law city may regulate the use of buildings and structures as well as development standards such as: (1) the location, height, bulk, number of stories and size of buildings and structures; (2) the size and use of lots, yards, courts and other open spaces; (3) the percentage of a lot which may be occupied by a building or structure; and (4) the intensity of land use. The uses and standards for development, consistent with the Morgan Hill 2035 General Plan, are found in the base zoning districts.

Under MHMC section 18.30.050, a Master Plan controls the permitted uses and development standards in districts with PD or PUD zoning and an approved Master Plan. A Master Plan may be approved on parcels with existing PUD zoning but no Master Plan under the procedures outlined in MHMC section 18.30.050(H). As required under 18.30.050(H)(4)(b), a Master Plan application must describe how the project as proposed is superior to the development that occur under the base zoning, and how it will achieve substantial public benefits.

Under MHMC section 18.30.050(H)(8), a substantial public benefit “is a project feature not otherwise required by the zoning code or any other provision of local, state, or federal law that substantially exceeds the city’s minimum development standards and significantly advances goals of the general plan. A project must include one or more substantial public benefits to be rezoned as a planned development. The public benefit provided shall be of sufficient value as determined by city council to justify deviation from the standards of the zoning district that currently apply to the property.”

Absent an approved Master Plan, a project may be developed under the base zoning. Except under limited circumstances, a property owner has a right to develop property in accordance with the existing established standards. See e.g. *Building Industry Legal Defense Foundation v. Superior Court (City of San Juan Capistrano)*, (1999) 72 Cal. App.4th 1410. Further, “[t]he power to establish uses does not include the power to fix procedures for processing development applications. Zoning ordinances merely determine what uses are permitted where. Once a permitted use is identified by the applicable zoning ordinance, the procedure for processing a development application is established by state laws other than zoning.” *Id.* at p. 1416-1417.¹

Conclusion:

Absent an approved Master Plan, properties in an existing PUD combining district may develop only to the base zoning. Properties in the PUD(IL) district would be subject to the uses and standards set forth in the IL zoning district. Similarly, the PUD(CH) and PUD(CO) districts would be subject to the uses and standards set forth in the CH and CO zoning districts respectively.

If you have any questions, please contact me or City Attorney Don Larkin at the contact information included below.

Sincerely,



Jennifer Carman
Development Services Director
jennifer.carman@morganhill.ca.gov

Donald Larkin

Donald Larkin
City Attorney
donald.larkin@morganhill.ca.gov

¹ However, cities may apply additional procedural requirements that do not conflict with state law. See e.g. *Tashner v. City Council*, (1973) 31 Cal.App.3d 48.

Proclaiming the month of July 2021 as Parks and Recreation Month

Park spaces are essential for equity within our community, providing places where everyone is welcome despite economic status.

Parks provide access to the serenity and the inspiration of nature and outdoor spaces as well as preserve and protect the historic, natural, and cultural resources in our community.

Residents value recreation as it provides positive alternatives for children and youth to reduce crime and mischief especially during non-school hours; it promotes the arts, it increases social connections; aids in therapy; and promotes lifelong learning.

The City Council of the City of Morgan Hill urges all its residents to recognize that parks and recreation enriches the lives of its residents and visitors as well as adding value to the community's homes and neighborhoods.

Supplement & Presentation List

June 23, 2021

City Council Meeting

Supplements

Item 1- Supplement 1 – TSC Motors – Supplemental Staff Report

Item 9- Supplement 1 – Trammel Crow – Email w/ letter from Kendra Hartmann

Item 9- Supplement 2 – Trammel Crow – Email from Swanee Edwards

Item 9- Supplement 3 – Trammel Crow – Presentation from Toni Navy

Item 9- Supplement 4 – Trammel Crow - Email from Armando Benavides

Presentations

Item 9- Trammel Crow - Staff Presentation

Item 9- Trammel Crow – Presentation from Joe Baranowski (? Haven't received yet)

From: Armando Be <[REDACTED]>
Sent: Thursday, June 24, 2021 6:34 PM
To: Donald Larkin <Donald.Larkin@morganhill.ca.gov>
Cc: Edith Ramirez <Edith.Ramirez@morganhill.ca.gov>; Jennifer Carman <Jennifer.Carman@morganhill.ca.gov>; Adam Paszkowski <adam.paszkowski@morganhill.ca.gov>; Angie Gonzalez <Angie.Gonzalez@MorganHill.ca.gov>; Michelle Bigelow <Michelle.Bigelow@morganhill.ca.gov>; Christina Turner <Christina.Turner@morganhill.ca.gov>
Subject: Re: [EXTERNAL] Item 9: CONSIDER APPEAL OF PLANNING COMMISSION'S APPROVAL OF SD2020-0011/SR2020-0029. ect.

Attorney Larkins,

Thank you for your response. The most important factor to the outcome of the case is the approach and perspective on the part of our city staff. How the leadership staff interprets their obligations and responsibilities regarding the impacts of proposed large scale development determines which direction the outcome will follow.

So, at the outset, our city staff interpreted the relevant city codes, the CEQA requirements, and the requirements of the General Plan and the scope and limitation of the program EIR. After that they reached conclusions that led to the determination that no new EIR is required for the Redwoods at 101 development during the design review process.

Now let's not mix apples and oranges. No one is questioning or challenging TC's right to build a cluster of five buildings which in the aggregate will amount to 1/2 million square feet. Those are the rights the TC has under the 5th and 13th amendments to the constitution. But those rights are not absolute and they may be impacted by the requirements of the State CEQA law and our local ordinances.

Now CEQA does have some overlay, but it consists of an overlay with city ordinances and the types of discretion the ordinances give to local decision makers. CEQA and local ordinances have to be read together. They are not exclusive to each other. Our Municipal Code 18.108.040 related to design permits clearly states "a design permit is discretionary". Our city leaders who drafted that language clearly understood the difference between discretionary and ministerial action. They chose "discretionary" as the standard. You can read the rest of the ordinance. The bottom line is that our own city code authorizes the governmental body to ensure new projects have compatibility with their surroundings and "minimize negative impacts on neighboring properties". And 18.108.40 (C) (1) subjects "new non-residential buildings to design review".

But then there are the CEQA requirements. Section 15168 provides "Whether a later activity is within the scope of a program EIR is a factual question that the lead agency determines based on substantial evidence in the record. Factors that an agency may consider in making that determination include, but are not limited to, consistency of the later activity with the type of allowable land use, overall planned density and building intensity, geographic area analyzed for environmental impacts, and covered infrastructure, as described in the program EIR."

Our City Code ordinance and the Program EIR do not in any way foreclose or restrict an initial determination by our city staff that an EIR will be required on any specific large scale project. So it is the conclusions drawn by our city staff and leadership at the outset that determines whether or not an EIR is necessary. Everything else flows from their initial determinations.

The courts will give great deference to any determinations made by our city staff. However, it is important that our City Council members understand that they are evaluating the decisions of the city staff regarding their factual findings that led to the conclusion that no EIR is required. Our City Council's ability to provide oversight is restricted when they are told that their hands are tied and they have no choice over whether or not an EIR is in order because it is merely a ministerial process. Or that TC has rights that cannot be restricted or that no conditions can be imposed pursuant to design review. I do not believe that is in the spirit of CEQA and our own ordinances that describe the process as "discretionary". The City Council has the power and authority to overturn any decision by the city staff and the development director. And Council Member Spring did just that. He exercised his judgment that TC's proposed development is large scale and that an EIR is in order.

McCorkle is an interesting case but factually it can be distinguished from its facts. In that case, the city ordinances and their General Plan were aligned with state law regarding high density housing development which allowed the development's exclusion from EIR requirements. The city's ordinances explicitly made the project ministerial and obviously led to the initial determination that an EIR was not necessary. Our city ordinances are not restrictive and our General Plan is not aligned with any state law related to large scale business facility development. In fact,

our ordinances on the matter clearly state the opposite and use the word "discretionary". Words matter and their clear meaning are used by courts to evaluate the meaning and intent of an ordinance.

The County of Stanislaus case does offer some guidance as to whether on the matter. It holds "Courts have developed a functional test to further refine this distinction. ([*Friends of Juana Briones House v. City of Palo Alto* \(2010\) 190 Cal.App.4th 286, 302 \[118 Cal.Rptr.3d 324\]](#) (*Friends of Juana Briones House*)).) Like the CEQA Guidelines, the functional test focuses on the scope of an agency's discretion. The "touchstone" is whether the relevant "approval process ... allows the government to shape the project in any way [by requiring modifications] which could respond to any of the concerns which might be identified" by environmental review.' Here pursuant to 18.108.40, the council does have discretion to impose mitigation conditions pursuant to a design permit.

If our city staff had determined that an EIR was in order because of the largeness of the project and the close proximity to residential neighborhoods, there is no doubt that our city ordinances, our General Plan, and CEQA gives authority to the city to shape the project by mitigation at the design review phase.

I understand that the project will have to abide by the mitigation requirements that are required in the program IER. But that is not the most important issue for me. The important issue for me relates to how the CC members carry out their oversight responsibilities.

Regards,
Armando Benavides

[REDACTED]

On Wed, Jun 23, 2021 at 7:19 PM Donald Larkin <Donald.Larkin@morganhill.ca.gov> wrote:
Dear Armando,

Thank you for sharing your thoughts. While I agree with some of what you have stated below, some of your assertions are incorrect.

As a general law city, we derive our authority over land use decisions from California law. State law provides that a city may regulate the use of buildings and structures as well as development standards such as: (1) the location, height, bulk, number of stories and size of buildings and structures; (2) the size and use of lots, yards, courts and other open spaces; (3) the percentage of a lot which may be occupied by a building or structure; and (4) the intensity of land use. We do this under our General Plan and zoning ordinance.

Extensive CEQA review was required prior to the adoption of our General Plan. The General Plan EIR analyzed the environmental impact of full build-out of the General Plan, and identified mitigation measures that will be applied to the Redwood Tech project. The property will

develop the property as anticipated and as reviewed in the 2035 General Plan update. All of the identified project mitigations are required as a condition of development.

In general, a property owner has a right to develop property in accordance with the existing established standards. See e.g. *Building Industry Legal Defense Foundation v. Superior Court (City of San Juan Capistrano)*, (1999) 72 Cal. App.4th 1410. Further, "[t]he power to establish uses does not include the power to fix procedures for processing development applications. Zoning ordinances merely determine what uses are permitted where. Once a permitted use is identified by the applicable zoning ordinance, the procedure for processing a development application is established by state laws other than zoning." *Id.* at p. 1416-1417. In other words, the Council does not have the authority to create additional procedural requirements, including environmental review, beyond the requirements of the zoning ordinance and state law.

In this case, there is no basis for requiring an EIR. "The "touchstone" for determining whether an agency is required to prepare an EIR is whether the agency could meaningfully address any environmental concerns that might be identified in the EIR" *McCorkle Eastside Neighborhood Group v. City of St. Helena* (2018) 31 Cal.App.5th 80, 89–90, *as modified* (Jan. 25, 2019). While site and design review does involve some discretion, "the discretionary component of the action must give the agency the authority to consider a project's environmental consequences to trigger CEQA. *Id.* Courts have held that site and design review, which involves aesthetic regulation, do not give an agency authority to consider the project's environmental consequences. "To rule otherwise would mean that an EIR would be required for every urban building project that is not exempt under CEQA if enough people could be marshaled to complain about how it will look." *Id.* at p. 93. I should note that the primary distinction between the St. Helena design review ordinance that was analyzed in the McCorkle case is that the St. Helena ordinance gave the City broader discretion to regulate uses (St. Helena has subsequently amended its design review ordinance).

In addition to California law, property rights are protected by the 5th and 14th Amendments to the United States Constitution. Property owners may not be deprived of a property interest without due process of law. Principles of substantive due process prohibit cities from arbitrarily adding procedural requirements or impediments to the use of property that are not found state or local law. Further, state and federal law can and often do supersede our local ordinances. As a subdivision of the state, we must comply with state law. Denying property rights puts the City at legal risk that could have significant financial consequences to the General Fund.

Best regards,

Don

Donald A. Larkin
City Attorney
City of Morgan Hill

Tel: (408) 778-3490

Email: donald.larkin@morganhill.ca.gov

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From: Armando Be <[REDACTED]>

Sent: Wednesday, June 23, 2021 11:57 AM

To: Rich Constantine <Rich.Constantine@morganhill.ca.gov>; Yvonne Martinez Beltran <yvonne.martinezbeltran@morganhill.ca.gov>; Rene Spring <Rene.Spring@morganhill.ca.gov>; John McKay <john.mckay@morganhill.ca.gov>; Christina Turner <Christina.Turner@morganhill.ca.gov>; Gino Borgioli <Gino.Borgioli@morganhill.ca.gov>

Subject: [EXTERNAL] Item 9: CONSIDER APPEAL OF PLANNING COMMISSION'S APPROVAL OF SD2020-0011/SR2020-0029. ect.

Mayor, City Council Members, and City Manager,

Today you are asked to reverse two decisions rendered by the planning commission regarding the proposed TC planned development. You have the right to pass on the issue de novo, which means weighing all of the facts and circumstances and to make your own independent determination on the matter.

The proposed development project is large (1/2 million square feet). We all know it is going to have an impact on the environment (increased traffic noise and congestion, increased impact on our water and sewer system, increase of release of pollutants in the air, ect.). I do not believe that you have your hands tied and have to approve this massive project without environmental review. If environmental review is carried out and significant negative findings are made, you have the authority to require mitigation. The ability to shape the project through mitigation is what takes this project out of the ministerial category.

That your task is not ministerial is noted in the agenda report. It reads that you may consider-"Factors that an agency may consider in making that determination include, but are not limited to, consistency of the later activity with the type of allowable land use, overall planned density and building intensity, geographic area analyzed for environmental impacts and covered infrastructure as described in the program EIR." The program EIR provides a blueprint but it does not curtail your discretion to make a determination whether or not an EIR is in order. As long as you can shape the project to mitigate negative impacts to the environment, you can certainly require an EIR.

So it is up for each of you to decide. Do you allow a major project, which you know will definitely have a negative impact on some aspects of the city, and bypass any mitigation to potential and reasonably foreseeable negative environmental impacts OR do you require an EIR?

Here is a snippet of the CEQA. "The California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.) was enacted to (1) inform the government and public about a proposed activity's potential environmental impacts; (2) identify ways to reduce, or avoid, those impacts; (3) require project changes through alternatives or mitigation measures when feasible; and (4) disclose the government's rationale for approving a project. CEQA embodies a central state policy requiring state and local governmental entities to perform their duties so that major consideration is given to preventing environmental damage. Accordingly, CEQA prescribes how governmental decisions will be made whenever an agency undertakes, approves, or funds a project".

So, you have the discretion to make the decision on whether to go blind on environmental impacts and bypass the public's right to mitigations or whether to order an EIR and implement the purpose of the CEQA. Your hands are not tied on this one.

Regards,

Armando Benavides

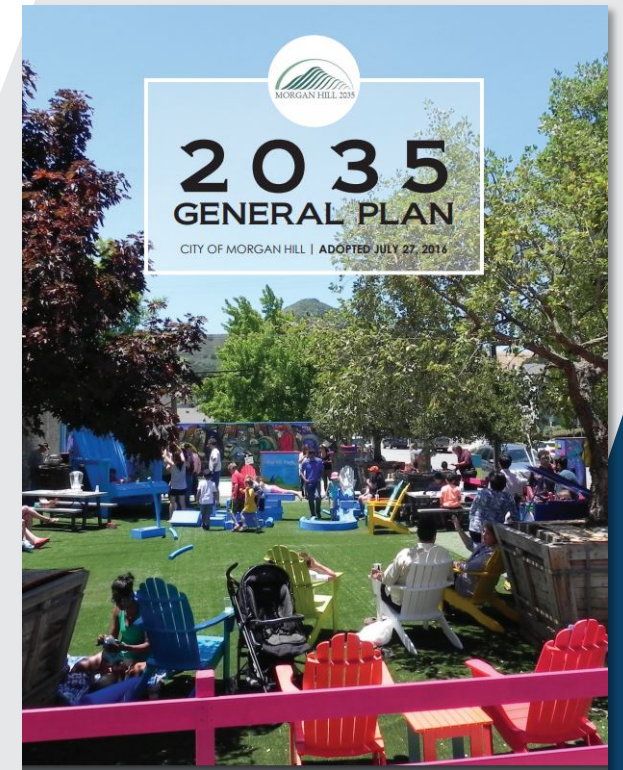
Housing and Sustainability



SUSTAINABILITY VISION

GENERAL PLAN

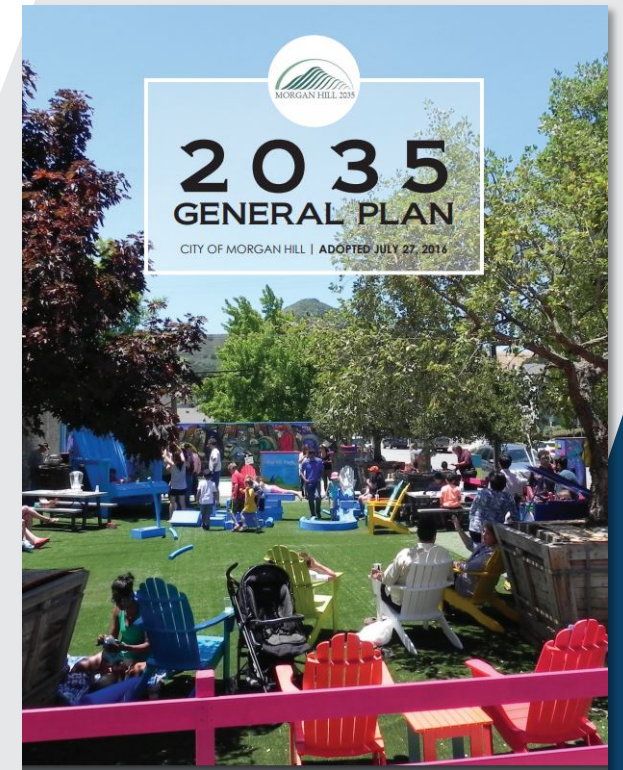
- Build new housing to meet the full range of future community housing needs, including affordability and accessibility, for all age groups, served by transit, recreational amenities, shopping, and health and personal services, that allow residents to age in place
- Encourage a balance and match between jobs and housing



SUSTAINABILITY VISION

GENERAL PLAN

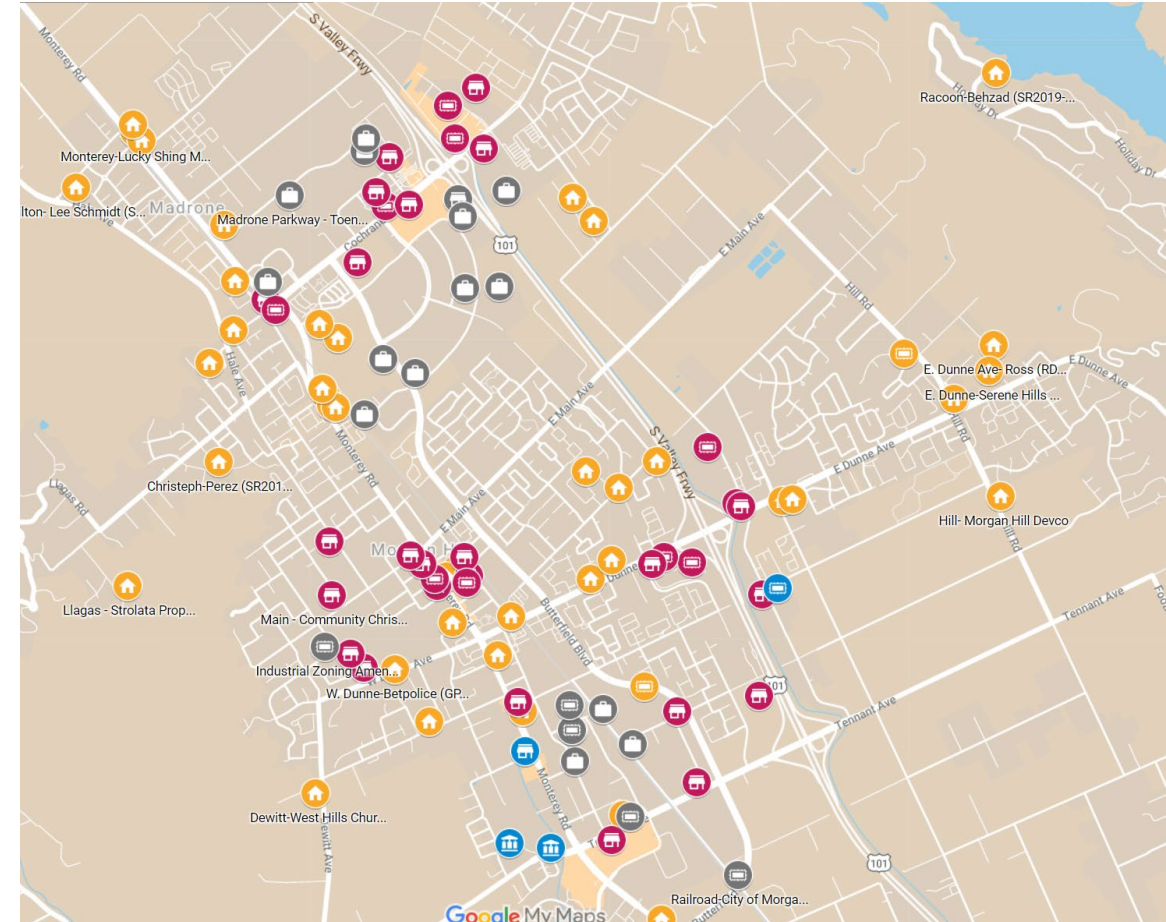
- Aim to develop a robust mix of land uses that support the City's fiscal sustainability, decrease the need for local residents to commute, create a thriving downtown, and enhance Morgan Hill's appeal as a tourist destination
- Planning for fiscal sustainability will help the City ensure that it has the financial resources to develop and maintain high-quality public infrastructure and services



What the community should know!

- Morgan Hill has been growing at a steady 2% rate
- No longer have the Residential Development Control System (RDCS), and cannot control growth
- 70% of residential land is for single family homes
- Currently processing 13 housing projects
- Future housing will likely be denser & taller

HOUSING



Next RHNA Cycle

Income Group	VLI	LI	MOD	MOD+	Total
Jurisdiction					
Campbell	752	434	499	1,292	2,977
Cupertino	1,193	687	755	1,953	4,588
Gilroy	669	385	200	519	1,773
Los Altos	501	288	326	843	1,958
Los Altos Hills	125	72	82	210	489
Los Gatos	537	310	320	826	1,993
Milpitas	1,685	970	1,131	2,927	6,713
Monte Sereno	53	30	31	79	163
Morgan Hill	262	151	174	450	1,037
Mountain View	2,773	1,597	1,885	4,880	11,135
Palo Alto	1,556	896	1,013	2,621	6,086
San Jose	15,088	8,687	10,711	27,714	62,200
Santa Clara	2,872	1,653	1,981	5,126	11,632
Saratoga	454	261	278	719	1,712
Sunnyvale	2,968	1,709	2,032	5,257	11,966
Unincorporated Santa Clara	828	477	508	1,312	3,125

HOUSING -Challenges

- No RDCS
- SB330 Streamlines Housing Projects
- Limited Hearings
- Limited City Regulation
- Six (6) 100% Affordable Projects
- 193 very low-income units needed for current RHNA Cycle
- Current projects could yield 256 very low-income (surplus of 63)

What the community should know!

- Housing is more expensive to maintain in the long run
- Affordable Housing has the implication of less property taxes
- Commercial lands at risk
- Need to have a job/housing balance
- 70% of residents commute for work
- Sales Tax, TOT & Property Tax help pay for services for the community

ECONOMIC SUSTAINABILITY



VACANT LAND 5+ ACRES



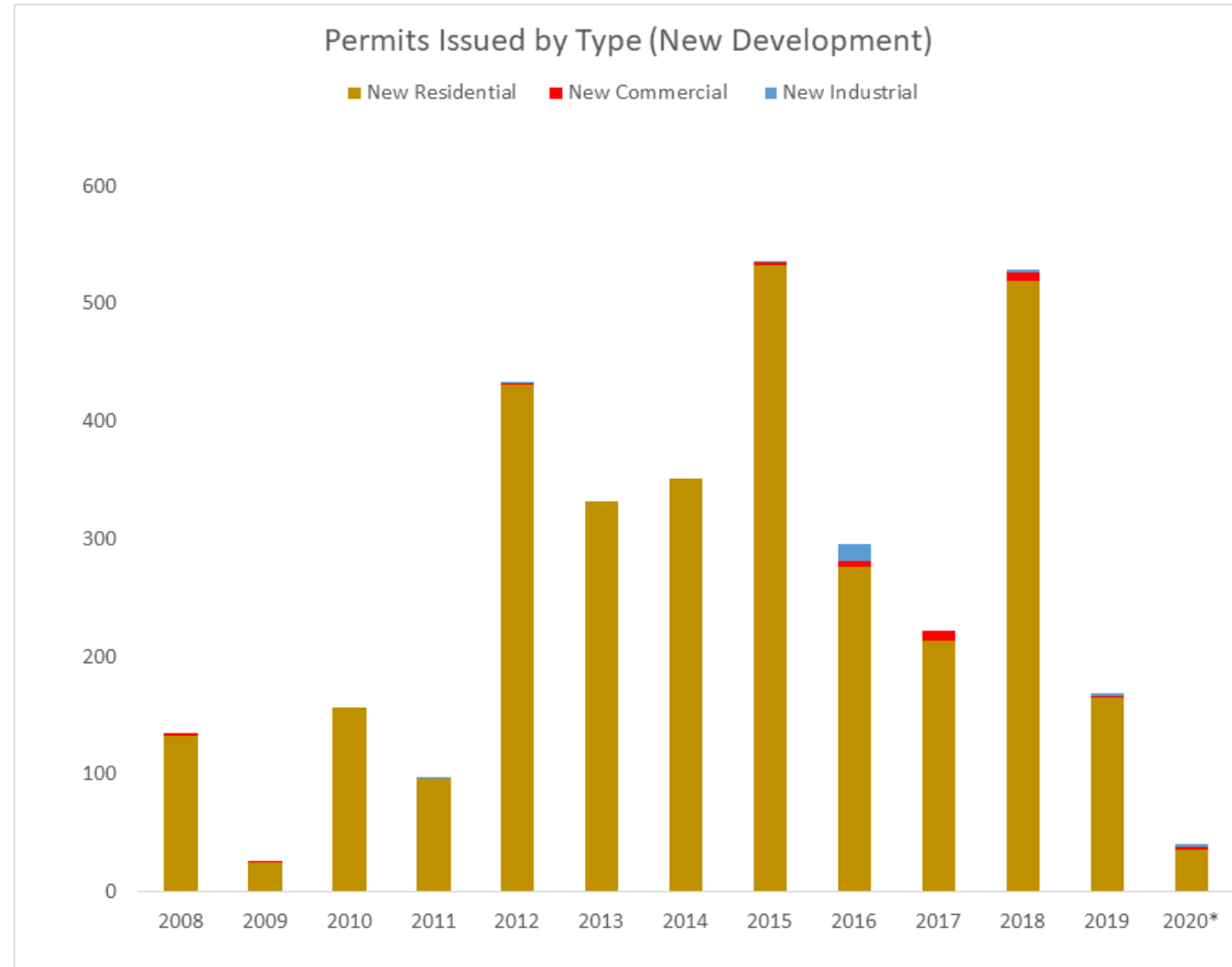
Vacant Acres	Commercial	Industrial	Total
Available	62	119	180
Constrained	28	29	57
New Projects	34	36	70
Entitled	46	2	47
	169	186	354

18-48 Years of
Industrial Land
Supply Left

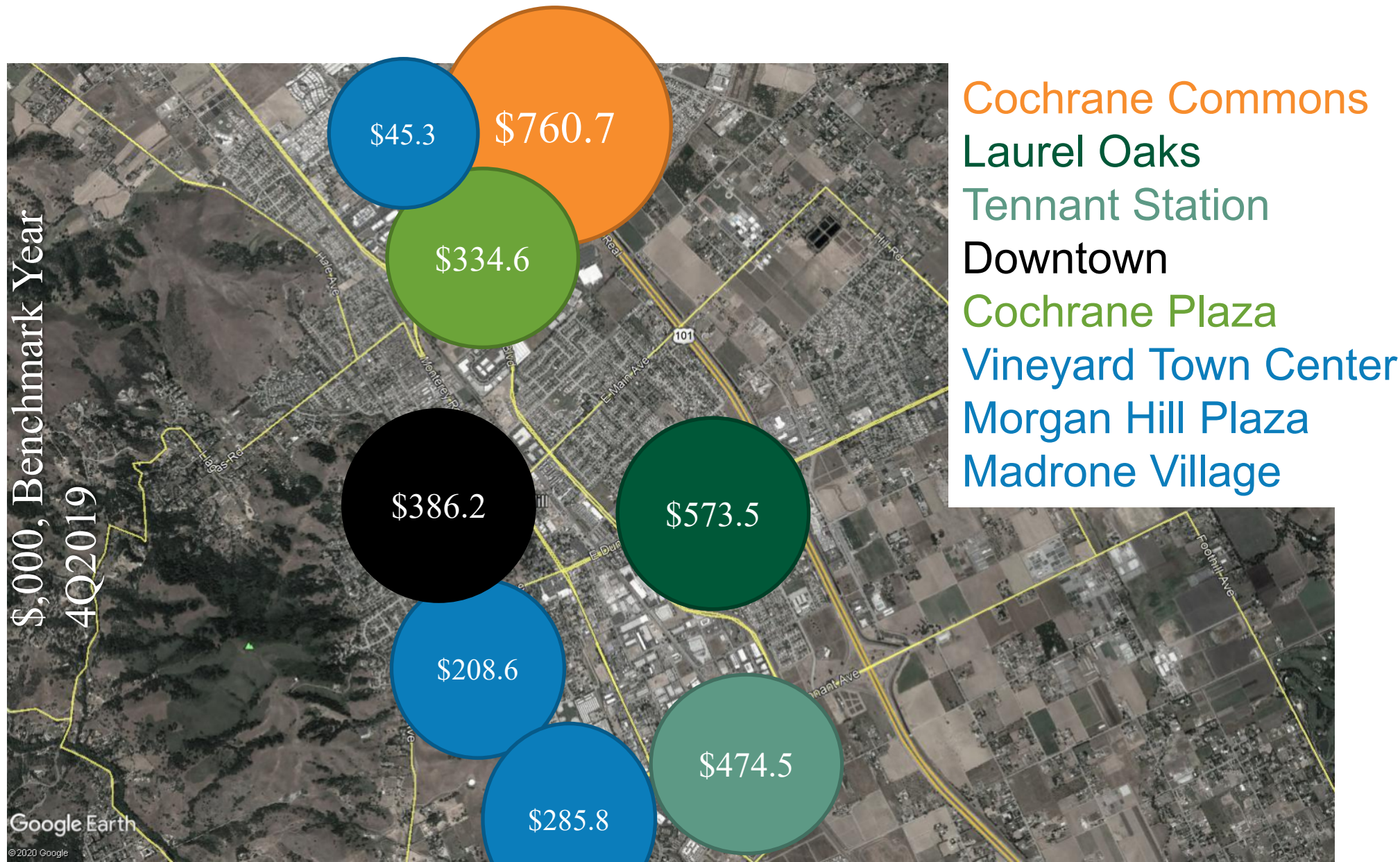
Industrial Development

For the last 10 years (2011-2020) We developed 2,955 units of housing resulting in an estimated 9,144 residents

During that same period, we issued 52 commercial/industrial permits resulting in an estimated 894 jobs



ANNUAL SALES FOR SHOPPING DISTRICTS



Did you know?

Tax revenue from new businesses helps our community.



 **TAX**
Revenue



1 Hotel



1.5 Police
Officers



 **TAX**
Revenue



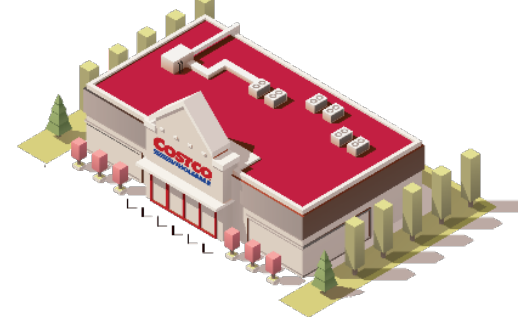
1 Dealership



2.5 Police
Officers



 **TAX**
Revenue



1 Costco



4.5 Police
Officers





Infrastructure and Development

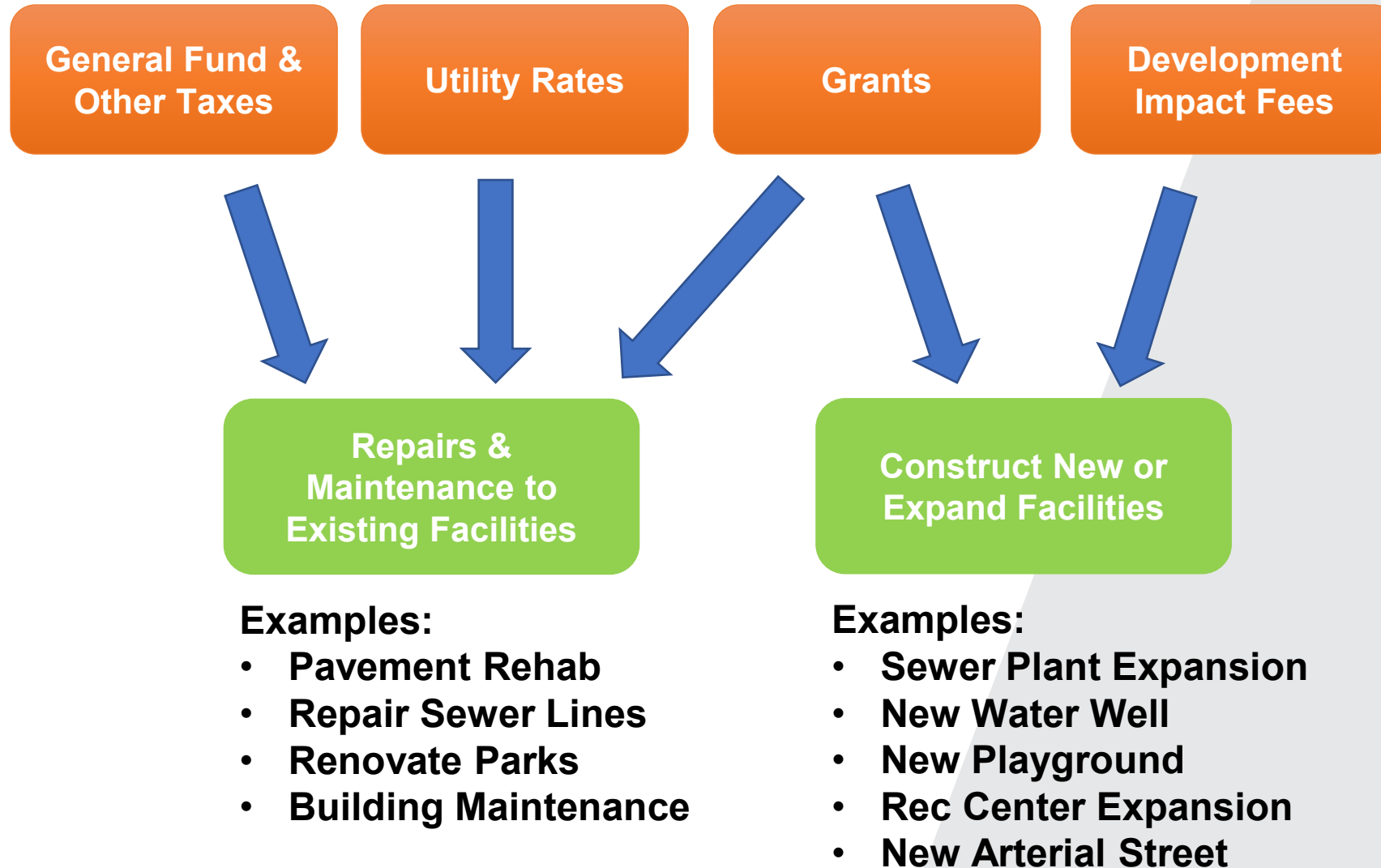


INFRASTRUCTURE

Areas of Infrastructure

- Water System
- Wastewater System
- Roadways/Streets/Sidewalks
- Storm Drain System
- Parks, Trails & Open Space
- Building and Facility Maintenance
- Downtown Facilities

Infrastructure Funding



Water System

Primary Funding Sources

- Customer Fees
- Impact Fees

Infrastructure Status

- System is well maintained
- Water System Needs increase with development

Impact fees for that planned growth

- New Lines
- New Wells
- New Reservoirs



Water System

Current Water Source

- City Gets 100% of Water Delivered from Groundwater
- Groundwater (Natural Recharge + Imported Water)
- Imported Water Travels Through Delta
- The entire County relies on Valley Water to manage the water supply

Future Alternate Water Sources

- Recycled Water



Wastewater System

Primary Funding Sources

- Customer Fees
- Impact Fees

Infrastructure Status

- System is well maintained, but has significant improvements planned for aging infrastructure
 - I & I Projects
- Wastewater Capacity Needs increase with development
- Impact fees for that planned growth.
 - Treatment Plant Expansion
 - Second Trunk Line to Treatment Plant



Roadways Streets & Sidewalks

Streets and Sidewalks

- Roadways are in good condition
Avg PCI of 73
- City has increased funding for maintenance over last several years
- Streets in new development cost far less to maintain
- Impact fees fund traffic congestion improvements
 - Signals
 - Hale Avenue



Roadways Streets & Sidewalks

Traffic

- New Development contributes to increased traffic
- Impact fee funded projects are designed to support congestion management
- The City cannot effectively mitigate cut-through traffic brought from development outside the City



Parks and Recreation



Parks

- Facilities are maintained in average condition
- New facilities can and will be constructed via impact fees
- New development will create more users
- The difficulty will continue to be maintaining parks spaces

Recreation

- Recreation's cost recovery model will be impacted positively by new growth



Summary



Infrastructure

- Maintenance of the City's infrastructure continues to improve
- Unfunded infrastructure need has been reduced from \$5.8 million annually in 2014 to just over \$600,000.

Future Risks

- Legislation aimed at reducing impact fees that can be collected
- State requirements for storm water management

POLICE DEPARTMENT

- Workload Study: Records, Dispatch, Evidence, Officers, Administration
- Funding for Technology Needs
- Impacts of Increased Unhoused/Mental Health Population
- Alternative Policing/Response Models
- Police Facility Expansion



BROADBAND SERVICES

Growth drives the need for increased Broadband services



FIRE DEPARTMENT

The Fire Department is engaged at every step of development

- Beginning with conceptual design review
 - Emergency access and egress
 - Firefighting water supplies
 - Addressing and street names
 - Construction types and materials
 - Automatic detection and suppression
- Recurring inspections ensure fire safety for the life of a building



Monitoring and Adjusting to Meet the Need

- 77% of calls for service are medical in nature
- Your Fire Department meets response time obligations for EMS calls
- Adding a Squad this summer to address increasing workload

FIRE DEPARTMENT



FIRE DEPARTMENT

Monitoring and Adjusting to Meet the Need

- Soliciting bids for the design of a third fire station
- Cooperative Fire Protection agreements benefit Morgan Hill, Gilroy, and unincorporated South Santa Clara County



In conclusion...

- Aim to develop a robust mix of land uses that support the City's fiscal sustainability, decrease the need for local residents to commute, create a thriving downtown, and enhance Morgan Hill's appeal as a tourist destination
- City has plans in place to support long term sustainability - the General Plan is our guiding document that gives us direction as to what and when to implement
- Our systems are in place to master plan and charge adequate fees that will pay for our needed infrastructure
- To support long term economic sustainability, we need to have: 1. A diversified tax base, 2. A balanced mix of uses, industrial revenue generating lands to match the pace of housing we are building. Sustainability is associated with the number of jobs and the revenues to maintain the quality of life we promise our community

In conclusion...

- Unknown legislation could be a challenge and could permit commercial land conversion to residential and eliminate impact fees
- Infrastructure and support for future development is in place, all of which is happening with the lowest per capita tax rate in the County
- Morgan Hill has long term financial unfunded infrastructure needs that we will, as a community, need to solve for