

IMPACT FEE FREEZE AGREEMENT

BY AND BETWEEN

THE CITY OF MORGAN HILL

AND

CUTINA MORGAN HILL, LLC

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THE CITY OF MORGAN HILL
AND
CUTINA MORGAN HILL, LLC**

This Impact Fee Freeze Agreement (the "Agreement") is entered into as of June 21, 2023, by and between Cutina Morgan Hill, LLC, a California Limited Liability Corporation (the "Developer") and the City of Morgan Hill, a municipal corporation duly organized and existing under the laws of the State of California (the "City"), with reference to the following facts and purposes:

RECITALS

The following recitals are a substantive portion of this Agreement:

A. Pursuant to the authority of Morgan Hill Municipal Code Sections 3.56.095, 12.02.115, and Resolution Number _23-0_, the City has established an Impact Fee Freeze Program (the "Program") to freeze Development Impact Fees to the Fiscal Year 2016-17 Fee Schedule for new commercial/industrial construction.

B. Developer owns or leases certain real property in the City described in the attached Exhibit A (the "Subject Property") upon which improvements are to be made for a new hotel, anticipated to be a Holiday Inn Express (the "Project").

C. The purpose of this Agreement is to lock in the Development Impact Fees for the Project. The Project's Development Impact Fees will be locked in at the rate set in the Fiscal Year 2016-17 Impact Fee Schedule attached hereto and incorporated herein as Exhibit B.

D. Developer and City have determined that the Project is the type of development for which this Agreement is appropriate. This Agreement will help to eliminate uncertainty in annual changes to Development Impact Fees, provide for the orderly development of the Project consistent with the planning goals, policies, and other provisions of the City's General Plan and City's Municipal Code, and otherwise achieve the goals and purposes for which the Development Impact Fee Program was adopted.

E. When constructed and open the Project will generate Transient Occupancy Tax ("TOT") for the City creating a public benefit which is required in order to enter into this Agreement.

ARTICLE 1
ADMINISTRATION

1.01 Definitions.

(a) The following terms, phrases and words shall have the meanings and be interpreted as set forth in this Section:

(1) **"Impact Fees"** shall mean those fees imposed so that developments bear a proportionate share of the cost of public facilities and service improvements that are reasonably related to the impacts and burdens of the Project, adopted pursuant to Morgan Hill Municipal Code Chapter 3.56 and California Government Code Section 66001 et seq.

(2) **"Legal Effect"** shall mean the ordinance, resolution, permit, license or other grant of approval has been adopted by City and has not been overturned or otherwise rendered without legal and/or equitable force and effect by a court of competent jurisdiction, and all applicable administrative appeal periods and statutes of limitations have expired.

(3) **"New City Laws"** shall mean any and all City ordinances, resolutions, orders, rules, official policies, standards, specifications and other regulations, whether adopted or enacted by City, its staff or its electorate (through their powers of initiative, referendum, recall or otherwise) that is not a Subsequent Approval, that takes **"Legal Effect"** after the Effective Date of this Agreement, and that applies City wide. **"Effective Date"** shall mean the date this Agreement is fully executed by both parties following approval of the Agreement by the City Council.

(4) **"Project Approvals"** mean, collectively, the Project's Existing Approvals and the Subsequent Approvals.

(5) **"Property"** shall mean that certain real property consisting of approximately __ acres located within the City, as more particularly described and shown on ***Exhibit A*** to this Agreement with APN #726-58-006.

(6) **"Subsequent Approvals" and "Subsequent Approval"** mean those City permits, entitlements, approvals or other grants of authority (and all text, terms and conditions of approval related thereto), that may be necessary or desirable for the development of the Project, that are sought by Developer, and that are granted by City.

(b) To the extent that any defined terms contained in this Agreement are not defined above, then such terms shall have the meaning otherwise ascribed to them elsewhere in this Agreement, or if not in this Agreement, by controlling law.

1.02 Term.

The term (**"Term"**) of this Agreement shall commence on the Effective Date, and then shall continue until December 31, 2024 or the issuance of all building permits and commencement of construction for the Project, whichever occurs first.

ARTICLE 2

APPLICABLE LAW

2.01 Project Impacts and Costs.

(a) Agreement Subject to Project Mitigation Requirements. Notwithstanding any other express or implied term or condition of this Agreement (or the Approvals) to the contrary, throughout the Term of this Agreement, the full and complete mitigation of all environmental (including any mitigation measure adopted pursuant to CEQA), physical, fiscal and other impacts of the Project and the Property on the community and on the City of Morgan Hill and its services, facilities, operations and maintenance (collectively, "**Project Mitigation**") shall be borne by and shall be the sole and exclusive responsibility of the Project (and the Developer who is the owner of same). Such Project Mitigation may be conditions of any Applicable Law or Project Approval and may include a mix of different approaches, including without limitation, Developer construction of and/or financing of such services, facilities, operations and maintenance through the payment of impact fees or other fees, taxes, levies, assessments, or other financing mechanisms including without limitation, reimbursement agreements, Landscaping and Lighting Districts, Mello-Roos Districts, Community Facilities Districts, Assessment Districts, Tax-Exempt and Taxable Financing Mechanisms, Maintenance Districts and participation in the Statewide Communities Infrastructure Program (collectively, "**Financing Mechanisms**"). The necessary scope and extent of such Project Mitigation, and which combination of Financing Mechanisms should be employed relating to such Project Mitigation to assure success of the Project Mitigation, shall be determined by City, in its sole and exclusive discretion, pursuant to appropriate City ordinance, resolution, regulations or procedures, taking into account and guided by the pre-existing rights of others in the existing and future public services and facilities (including their operations and maintenance) that Developer may seek to use.

(b) Impact Fees. As part of the Project's exclusive obligation (and the Developer's as the owner of same) to cover Project Mitigation, Developer shall pay all Impact Fees as described in Exhibit B at the time any such Impact Fees become due and payable as provided for in the City's Municipal Code, except as otherwise described and reduced by this Agreement. The Project's Impact Fees are frozen at the level set in the Impact Fee Schedule for Fiscal Year 2016-2017 Impact Fee Schedule in the attached Exhibit B, as long as all the building permits are obtained, and construction commenced on or before December 31, 2024 and a hotel project is constructed on the site.

(c) Processing Fees. The Project (including Developer as owner of same) shall be responsible for the costs to City of processing any and all Developer-requested land use approvals, including without limitation, building permits, plan checks, environmental studies required under CEQA and other similar requests for City permits and entitlements, when such costs are incurred by City. City shall impose those funding requirements needed to ensure that the processing costs to the City are fully covered by the Project (including Developer as owner of same). Further, if additional, accelerated, or more frequent inspections are requested by Developer of City than would otherwise take place in City's ordinary course of business, then City may either hire additional contract inspectors, plan checkers, engineers or planners, or City

may hire a full or part time employee. If City hires additional contractors, then Developer shall reimburse City, on a monthly basis in arrears, the cost to City of hiring such additional contract inspectors, plus Developer shall pay to City an additional ten percent (10%) of such cost to City on the same payment schedule. City shall use an additional 10% to defray administrative costs. If City hires a full or part time employee, then Developer shall reimburse City, on a monthly basis, in arrears, for a pro rata share of the total cost to the City of such employee, plus ten percent (10%) for administrative costs, for the period from hire to the end of the Term of this Agreement.

2.02 Construction Codes.

With respect to the development of any or all of the Project or the Property, Developer shall be subject to the California Building Code and all those other State-adopted construction, fire and other codes applicable to improvements, structures, and development, and the applicable version or revision of said codes by local City action (collectively referred to as "**Construction Codes**") in place at that time that a plan check application for a building, grading or other permit subject to such Construction Codes is submitted to City for approval, provided that such Construction Codes have been adopted by City and are in effect on a City-wide basis.

2.03 Timing of Development.

Developer agrees to secure building permits and to begin construction of the Project in accordance with the time requirements set forth in the Construction Codes, as these exist on the Effective Date. In the event Developer fails to comply with the above permit issuance and commence construction no later than December 31, 2024 this Agreement shall expire. The deadline may be extended at the sole discretion of the City Manager should Developer face unreasonable delays beyond its control.

2.04 New City Laws.

(a) City shall not be precluded from adopting and applying New City Laws to the Project to the extent that such New City Laws are specifically required to be applied by State or Federal laws or regulations, and implemented through the Federal, State, regional and/or local level) , or that such New City Laws are necessitated by or arise from a declaration of City, local, state or federal declaration of a state of emergency.

(b) City shall not be precluded from adopting new Impact or Development Fees that are not included in the Fiscal Year 2016-17 Impact Fee Schedule. These fees include but are not limited to those fees which were adopted or implemented after the 2016-2017 Impact Fee Schedule up to the date of building permit issuance for the Project.

ARTICLE 3

PROCESSING

3.01 Processing.

(a) This Agreement does not provide Developer with any right to the approval of Subsequent Approvals nor to develop or construct the Project beyond that which is authorized

in the Existing Approvals. For any Subsequent Approvals necessary for the Project, this Agreement simply provides a process by which such Subsequent Approvals may be processed by Developer, if and only if such Subsequent Approvals are compliant with all controlling California law (including proper Planning and Zoning Law and CEQA compliance), have secured approval of the Parties, and are adopted/approved by City, which shall retain all lawful discretion in this regard. Nothing in this Agreement shall be construed to limit the authority or obligation of City to hold necessary public hearings, or to limit the discretion of City or any of its officers or officials with regard to the Project Approvals that legally require the exercise of discretion by City. City's discretion as to the granting of Subsequent Approvals shall be the discretion afforded by the Applicable Law.

3.02 Significant Actions by Third Parties Necessary to Implement the Approvals.

(a) At Developer's sole discretion, Developer shall apply for such other permits, grants of authority, agreements, and other approvals from other private and/or public and quasi-public agencies, organizations, associations or other entities ("**Other Entity**") as may be necessary to the development of, or the provision of services and facilities to, the Project ("**Other Permits**").

ARTICLE 4

DEFAULT, VALIDITY PROVISIONS, ASSIGNMENT

4.01 Resolution of Disputes.

(a) In the event either Party is in default under the terms of this Agreement, the other Party may elect, in its sole and absolute discretion, to pursue any of the following courses of action: (i) waive such default; (ii) pursue administrative remedies as provided herein; (iii) pursue judicial remedies as provided for herein; and/or (iv) terminate this Agreement.

(b) Except as otherwise specifically stated in this Agreement, either Party may, in addition to any other rights or remedies, institute legal action to cure, correct, or remedy any default by another Party to this Agreement, to enforce any covenant or agreement herein, to enjoin any threatened or attempted violation hereunder, or to seek specific performance. It is expressly understood and agreed that the sole legal remedy available to Developer for a breach or violation of this Agreement by City shall be a legal action in mandamus, specific performance, and/or other injunctive or declaratory relief to enforce the provisions of this Agreement, and that Developer shall not be entitled to bring an action for damages including, but not limited to, lost profits, consequential damages or other economic damages. For purposes of instituting a legal action under this Agreement, any City Council determination under this Agreement shall be deemed a final agency action.

(c) The Parties agree to meet and confer regarding any dispute, in an effort to agree on utilizing Judicial Arbitration Mediation Services ("**JAMS**") for Alternative Dispute Resolution ("**ADR**"). However, no party shall be required to use JAMS or ADR.

4.02 Force Majeure Delay, Extension of Times of Performance.

(a) Performance by any Party hereunder shall be excused, waived or deemed not to be in default where delays or defaults are due to acts beyond a Party's control such as war, insurrection, strikes, walkouts, riots, floods, earthquakes, fires, casualties, acts of God, unexpected acts of governmental entities other than City, including revisions to capacity ratings of the wastewater plant by the Regional Water Quality Control Board, the State Water Resources Board, enactment of conflicting State or Federal laws or regulations, or litigation (including without limitation litigation contesting the validity, or seeking the enforcement or clarification of this Agreement whether instituted by the Developer, City, or any other person or entity) (each a "**Force Majeure Event**").

(b) Any Party claiming a delay as a result of a Force Majeure Event shall provide the other Party with written notice of such delay and an estimated length of delay. Upon the other Party's receipt of such notice, an extension of time shall be granted in writing for the period of the Force Majeure Event, or longer as may be mutually agreed upon by the Parties, unless the other Party objects in writing within ten (10) days after receiving the notice. In the event of such objection, the Parties shall meet and confer within thirty (30) days after the date of objection to arrive at a mutually acceptable solution to the disagreement regarding the delay. If no mutually acceptable solution is reached, any Party may take action as permitted in this Agreement.

4.03 Third Party Legal Actions.

(a) In the event of any administrative, legal or equitable action or other proceeding instituted by any person, entity or organization (that is not a Party to this Agreement) challenging the validity of this Agreement, any Project Approvals, or the sufficiency of any environmental review under CEQA ("**Third Party Challenge**"), the Parties shall cooperate with each other in good faith in the defense of any such challenge. Third Party Challenge shall include all City legal fees, costs including but not limited to staff costs should a local initiative which results in blocking or slowing the Project be approved by the voters and City in its reasonable discretion determines that a judicial action should be filed concerning the initiative or City is sued concerning the initiative.

(b) City shall have the option to defend such Third Party Challenge or to tender the complete defense of such Third Party Challenge to the Developer ("**Tender**"). If City chooses to defend the Third Party Challenge or Developer refuses City's Tender, City shall control all aspects of the defense and Developer shall pay City's attorneys' fees and costs (including related court costs).

(c) If Developer accepts City's Tender, Developer shall control all aspects of the defense and shall pay its own attorneys' fees and costs (including related court costs) and shall indemnify and hold harmless City against any and all third-party fees and costs arising out of such Third Party Challenge. If City wishes to assist Developer when Developer has accepted the Tender, Developer shall accept that assistance and City shall pay City's own attorneys' fees and costs (including related court costs) ("**City Costs**"), and Developer shall pay its own attorneys' fees and costs (including related court costs), and shall indemnify and hold harmless City against

any and all third-party fees and costs arising out of such Third Party Challenge (such third party fees and costs shall not include City Costs).

(d) If any part of this Agreement or any Project Approval is held by a court of competent jurisdiction to be invalid, the City shall: (1) use its best efforts to sustain and/or re-enact that part of this Agreement and/or Project Approval; and (2) take all steps possible to cure any inadequacies or deficiencies identified by the court in a manner consistent with the express and implied intent of this Agreement, and then adopting or re-enacting such part of this Agreement and/or Project Approval as necessary or desirable to permit execution of this Agreement and/or Project Approval.

4.04 Estoppel Certificate.

(a) Any Party may, at any time, and from time to time, deliver written notice to any other Party, and/or to the Developer's lender, requesting such Party to certify in writing that, to the knowledge of the certifying Party:

(1) This Agreement has not been amended or modified either orally or in writing or if so amended, identifying the amendments.

(2) The Agreement is in effect and the requesting Party is not known to be in default of the performance of its obligations under this Agreement, or if in default, to describe therein the nature and amount of any such defaults.

(b) This written certification shall be known as an "**Estoppel Certificate.**" A Party receiving a request hereunder shall execute and return such Estoppel Certificate within thirty(30) days following the receipt of the request, unless the Party, in order to determine the appropriateness of the Estoppel Certificate, promptly commences and proceeds to conclude an Annual Review. The Parties acknowledge that an Estoppel Certificate may be relied upon by Assignees and other persons having an interest in the Project, including holders of mortgages and deeds of trust. The City Manager shall be authorized to execute an Estoppel Certificate for City.

(c) If a Party fails to deliver an Estoppel Certificate within the thirty (30) day period, as provided for in Section 4.04(b) above, the Party requesting the Estoppel Certificate may deliver a second notice (the "**Second Notice**") to the other Party stating that the failure to deliver the Estoppel Certificate within ten (10) working days following the receipt of the Second Notice shall constitute conclusive evidence that this Agreement is without modification and there are no unexcused defaults in the performance of the requesting Party. Failure to deliver the requested Estoppel Certificate within the ten (10) working day period shall then constitute conclusive evidence that this Agreement is in full force and effect without modification and there are no unexcused defaults in the performance of the requesting Party.

4.05 Termination.

This Agreement shall terminate upon the expiration of the Term, as set forth in Section 1.02, or at such other time as this Agreement is terminated in accordance with the terms hereof, whichever occurs first.

ARTICLE 5

GENERAL PROVISIONS

5.01 Miscellaneous.

(a) Preamble, Recitals, Exhibits. References herein to "this Agreement" shall include the Preamble, Recitals and all of the exhibits of this Agreement.

(b) Governing Law and Attorneys' Fees. This Agreement shall be construed and enforced in accordance with the laws of the State of California and legal actions commenced under or pursuant to this Agreement shall be brought in Santa Clara Superior Court. Should any legal action be brought by a Party for breach of this Agreement or to enforce any provision herein, the prevailing party of such action shall be entitled to reasonable attorneys' fees, court costs, and such other costs as may be fixed by the court.

(c) Project as a Private Undertaking. No partnership, joint venture, or other association of any kind between Developer, on the one hand, and City on the other hand, is formed by this Agreement. The development of the Property is a separately undertaken private development. The only relationship between City and Developer is that of a governmental entity regulating the development of private property and the owners of such private property.

(d) Indemnification. Developer shall hold City, its elective and appointive boards, commissions, officers, agents, and employees, harmless from any liability for damage or claims for damage for personal injury, including death, as well as from claims for property damage which may arise from Developer's contractors, subcontractors', agents' or employees' operations on the Project, whether such operations be by Developer or by any Developer's contractors, subcontractors, or by any one or more persons directly or indirectly employed by, or acting as agent for Developer or any of Developer's contractors or subcontractors. Developer shall indemnify and defend City and its elective and appointive boards, commissions, officers, agents and employees from any suits or actions at law or in equity for damages caused, or alleged to have been caused, by reason of any of the aforesaid operations and Developer shall pay all reasonable attorney's fees and costs that the City may incur. City does not, and shall not, waive any rights against Developer which it may have by reason of the aforesaid hold-harmless requirement of Developer because of the acceptance of improvements by City, or the deposit of security with City by Developer. The aforesaid hold-harmless requirement of Developer shall apply to all damages and claims for damages of every kind suffered, or alleged to have been suffered, by reason of any of the aforesaid operations referred to in this subsection, regardless of whether or not City has prepared, supplied or approved of, plans and/or specifications for the Project. Notwithstanding anything herein to the contrary, Developer's indemnification of City shall not apply to the extent that such action, proceedings, demands, claims, damages, injuries or liability is based upon the active negligence of the City.

(e) Interpretation/Construction. This Agreement has been reviewed and revised by legal counsel for both Developer and City, and any rule or presumption that ambiguities shall be construed against the drafting Party shall not apply to the interpretation or enforcement of this Agreement. The standard of review of the validity and meaning of this

Agreement shall be that accorded legislative acts of City. As used in this Agreement, and as the context may require, the singular includes the plural and vice versa, and the masculine gender includes the feminine and neuter and vice versa.

(f) Notices.

(1) All notices, demands, or other communications that this Agreement contemplates or authorizes shall be in writing and shall be personally delivered or mailed to the respective Party as follows:

If to City: City Clerk
17575 Peak Avenue
Morgan Hill, CA 95037
Tel: (408) 779-7259
Fax: (408) 779-3117

With a Copy To: City Attorney
17575 Peak Avenue
Morgan Hill, CA 95037
Tel: (408) 779-7271
Fax: (408) 779-1592

If to Developer: Cutina Morgan Hill LLC
2801 Ocean Park #193
Santa Monica, CA 90405

With a Copy To:

(2) Any Party may change the address stated herein by giving notice in writing to the other Parties, and thereafter notices shall be addressed and transmitted to the new address. Any notice given to the Developer as required by this Agreement shall also be given to any lender which requests that such notice be provided. Any lender requesting receipt of such notice shall furnish in writing its address to the Parties to this Agreement.

(g) Severability. If any term or provision of this Agreement, or the application of any term or provision of this Agreement to a specific situation, is found to be invalid, void, or unenforceable, the remaining terms and provisions of this Agreement, or the application of this Agreement to other situations, shall continue in full force and effect.

(h) Jurisdiction. The interpretation, validity, and enforcement of the Agreement shall be governed by and construed under the laws of the State of California.

(i) Entire Agreement. This Agreement, including these pages and all the exhibits (set forth below) inclusive, and all documents incorporated by reference herein, constitute the entire understanding and agreement of the Parties.

(j) Signatures. The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of Developer and City. This Agreement may be executed in multiple originals, each of which is deemed to be an original.

(k) 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.

(l) Exhibits. The following exhibits are attached to this Agreement and are hereby incorporated herein by this reference for all purposes as if set forth herein in full:

Exhibit A Legal Description of Lot on Which Project is to be Located.

Exhibit B 2016-17 Impact Fee Schedule

IN WITNESS WHEREOF, City and Developer have executed this Agreement as of the date first hereinabove written.

CITY OF MORGAN HILL:

DEVELOPER:

s/ _____

Christina J. Turner
City Manager

s/ _____

Michelle Della Penna
Managing Partner

Date: _____

*Corporate entities must provide a
second signature:*

Attest:

s/ _____

s/ _____

Deputy City Clerk

Cosme Fagundo
Managing Partner

Date: _____

Approved as to Form:

s/ _____

Donald A. Larkin

City Attorney

Date: _____

EXHIBIT A

**LEGAL DESCRIPTION OF THE PROPERTY ON WHICH
PROJECT IS BE LOCATED**

For conveyancing purposes only: APN 726-58-006

PARCEL ONE: PARCEL 6 AS SHOWN ON THAT CERTAIN MAP ENTITLED AS "PARCEL MAP EVERGREEN VILLAGE" RECORDED ON JULY 17, 2019 IN BOOK 924, PAGES 45-47, SANTA CLARA COUNTY RECORDS.

PARCEL TWO: NON-EXCLUSIVE 60 FOOT WIDE ACCESS EASEMENT AS RETAINED IN THAT CERTAIN GRANT OF RECIPROCAL EASEMENTS, RECORDED JUNE 16, 1989, IN BOOK K988 AT PAGE 1623, OFFICIAL RECORDS, AND AS AMENDED BY THAT CERTAIN AMENDMENT TO GRANT OF RECIPROCAL EASEMENTS RECORDED DECEMBER 16, 1998 AS INSTRUMENT NO. 14554697, OFFICIAL RECORDS, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA AND AS AMENDED BY THAT CERTAIN SECOND AMENDMENT TO GRANT OF RECIPROCAL EASEMENTS RECORDED FEBRUARY 7, 2008 AS INSTRUMENT NO. 19736430, OFFICIAL RECORDS, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA.

PARCEL THREE: NON-EXCLUSIVE EASEMENTS FOR DRAINAGE, ACCESS, INGRESS AND EGRESS, PARKING, AND UTILITIES, ENCROACHMENTS OF CERTAIN IMPROVEMENTS, LANDSCAPING AND CONSTRUCTION OF IMPROVEMENTS, STORM WATER AND DRAINAGE FACILITIES, AND SIGNAGE CONTAINED IN COMMON OPERATION AND RECIPROCAL EASEMENT AGREEMENT, DATED DECEMBER 5, 2018, RECORDED DECEMBER 5, 2018 AS INSTRUMENT NO. 24076332, AS AFFECTED BY FIRST AMENDMENT TO COMMON OPERATION AND RECIPROCAL EASEMENT AGREEMENT, DATED JULY 17, 2019, RECORDED JULY 18, 2019 AS INSTRUMENT NO. 24228167.

For conveyancing purposes only: APN 726-58-006

EXHIBIT B
2016-17 Impact Fee Schedule



**PRELIMINARY
DRAFT**

CITY OF MORGAN HILL PUBLIC WORKS DEPARTMENT

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

<div style="border-bottom: 1px solid black; padding-bottom: 5px;">6/8/2023</div> <div style="border-bottom: 1px solid black; padding-bottom: 5px;">DATE</div> <div style="border-bottom: 1px solid black; padding-bottom: 5px; text-align: center;">726-58-006</div> <div style="border-bottom: 1px solid black; padding-bottom: 5px;">TRACT / APN</div> <div style="border-bottom: 1px solid black; padding-bottom: 5px; text-align: center;">18595 Cochrane Road</div> <div style="border-bottom: 1px solid black; padding-bottom: 5px;">ADDRESS / LOT</div> <div style="border-bottom: 1px solid black; padding-bottom: 5px; text-align: center;">Holiday Inn Express - Evergreen Village</div> <div style="border-bottom: 1px solid black; padding-bottom: 5px;">PROJECT DESCRIPTION</div>	<div style="background-color: yellow; border: 1px solid black; padding: 2px; font-weight: bold;">FEE SCHEDULE: 07.01.2016</div> <div style="border: 1px solid black; padding: 10px; margin-top: 10px;">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</div> <div style="border-bottom: 1px solid black; padding-bottom: 5px; text-align: center;">DRAFT</div> <div style="border-bottom: 1px solid black; padding-bottom: 5px;">FEE SCHEDULE EXPIRATION DATE</div>	<div style="border-bottom: 1px solid black; padding-bottom: 5px;">NAME</div> <div style="border-bottom: 1px solid black; padding-bottom: 5px;">MAILING ADDRESS</div> <div style="border-bottom: 1px solid black; padding-bottom: 5px;">CITY, STATE, ZIP CODE</div> <div style="border-bottom: 1px solid black; padding-bottom: 5px;">PHONE NUMBER</div>
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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**

IF BOX ABOVE CHECKED: FEE SCHEDULE IS ONLY FOR ESTIMATE PURPOSES. FEE SCHEDULE CALCULATED BASED ON INFORMATION PROVIDED TO CITY BY APPLICANT. FINAL FEE SCHEDULE MAY DIFFER BASED UPON CHANGE IN SCOPE OF PROJECT.

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 RDCA 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**

MA

CALCULATED BY

CHECKED BY

N/A

BUILDING PERMIT #

DATE BLD PERMIT ISSUED

**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	1	=	\$1,619
3" or larger-Time & Material + Meter Cost				=	\$0

METER CREDITS

\$0 x 0 = \$0

SUBTOTAL = \$3,521**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	0	LF	=	\$0

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	2.209	AC	=	\$22,726	

WATER CREDITS

\$0 x 0 = \$0

SUBTOTAL = \$22,726**WATER FEE TOTALS = \$26,433****5. ENGINEERING & INSPECTION FEE: 206-38734**

(Minimum \$500.00):

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

ENGINEERING ESTIMATE: \$15,000

DATE ENGINEERING EST. SUBMITTED: (City estimate)

% APPLIES TO ENGINEER'S ESTIMATE

13.3%	\$1	to	\$100,000	=	\$1,995
11.8%	\$100,001	to	\$200,000	=	\$0
10.3%	\$200,001	to	\$500,000	=	\$0
8.8%	OVER		\$500,000	=	\$0

ENGINEERING FEE = \$1,995

DEPOSIT PAID = \$0

ENGINEERING FEE TOTAL = \$1,995**5A. LONG RANGE PLANNING FEE: 207-37912**

LONG RANGE PLANNING FEE (15% of E&I) = \$299

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	0	LF	=	\$0

7. SEWER IMPACT FEE: 641-37648

(Auth: Res. #6082 approved 02.05.07 & Res. #5592 approved 08.21.02, Increased 01.15.16).

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	9,405	GPD	=	\$456,707	
\$48.56 /GPD	x	0	GPD	=	\$0	

SEWER CREDITS

\$0 x 0 = \$0

RDA 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 = \$456,707**SEWER FEE TOTALS = \$456,707****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 appr'd 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	2.209	AC	=	\$92,550	
(Commercial & Office)						
\$30,505 /ACRE	x	0	AC	=	\$0	
(Industrial)						

STORM CREDITS

\$0 x 0 = \$0

ASSUMING NO CREDIT IF REFUND PROVIDED TO MASTER DEVELOPER

SUBTOTAL = \$92,550**STORM DRAIN FEE TOTALS = \$92,550**

10. UNDERGROUNDING UTILITIES:					350-37649
<i>(Authority: Res. #5658 approved 03.19.03, Updated 07.01.16)</i>					
1 Side	\$681	x	0	LF	= \$0
2 Sides	\$343	x	0	LF	= \$0
11a. PARK IMPACT FEE:					301-37648
<i>(Auth: Res. #5592 appr'd 8.21.02, Amdd by Res. 6326 4.28.10, Increased 01.15.16)</i>					
\$5,378 /DU (Single Family - Sub)	x	0	DU	=	\$0
\$3,910 /DU (Single Family - No Sub)	x	0	DU	=	\$0
\$5,181 /DU (Multi Family - Sub)	x	0	DU	=	\$0
\$3,771 /DU (Multi Family - No Sub)	x	0	DU	=	\$0
11b. PARK MAINTENANCE DEV. FEE:					302-37649
\$0	x	0	EA	=	\$0
PARK CREDITS					
\$0	x	0		=	\$0
PARK FEE TOTAL =					\$0
12. TRAFFIC IMPACT FEE:					309-37648
<i>(Auth: Res. #15-152 approved 06.17.15 & Res. #5592 approved 08.21.02, Increased 01.15.16)</i>					
\$1,863 /DU (Single Family)	x	0	DU	=	\$0
\$1,155 /DU (Multi Family)	x	0	DU	=	\$0
\$1,863 /PHT (Commercial)	x	67	PHT	=	\$124,821
\$1,863 /PHT (Industrial)	x	0	PHT	=	\$0
TRAFFIC CREDITS					
\$0	x	0		=	\$0
TRAFFIC FEE TOTAL =					\$124,821
13. LIBRARY IMPACT FEE:					348-37648
<i>(Auth: Res. #5837 appr'd 09.01.04, Amdd by Res. 6326 4.28.10, Increased 01.15.16)</i>					
\$1,974 /DU (Single Family)	x	0	DU	=	\$0
\$1,902 /DU (Multi Family)	x	0	DU	=	\$0
LIBRARY CREDITS					
\$0	x	0		=	\$0
LIBRARY FEE TOTAL =					\$0
14. BURROWING OWL MITIGATION:					232-38145
<i>(Authority: Res. #5765 approved 01.21.04, Increased 07.01.16)</i>					
\$200 /DU (Residential)		0	DU	=	\$0
\$1,395 /AC (Commercial/Industrial)		0	AC	=	\$0
BURROWING OWL CREDITS					
\$0	x	0		=	\$0
CREDITED UNDER GRADING & SITE PERMIT (GRD2021-0005)					
BURROWING OWL FEE TOTAL =					\$0

15a. MAP CHECK FEE:					206-38716
<i>(Authority: Res. #5658 approved 03.19.03, Updated 07.01.16)</i>					
PARCEL MAP:	\$3,805	=			\$0
TRACT MAP:	\$5,667	=			\$0
16. POLICE IMPACT FEE:					311-37648
<i>(Auth: Res. #5686 appr'd 06.18.03, Amdd by Res. 6326 4.28.10, Increased 01.15.16)</i>					
\$767 /DU (Single Family)	x	0	DU	=	\$0
\$741 /DU (Multi Family)	x	0	DU	=	\$0
\$1,666 /ACRE (Commercial)	x	2.209	AC	=	\$3,680
\$2,333 /ACRE (Industrial)	x	0	AC	=	\$0
POLICE CREDITS					
\$0	x	0		=	\$0
POLICE FEE TOTAL =					\$3,680
17. FIRE IMPACT FEE:					313-37648
<i>(Auth: Res. #6671 approved 07.17.13, Increased 01.15.16)</i>					
\$118 /DU (Single Family)	x	0	DU	=	\$0
\$112 /DU (Multi Family)	x	0	DU	=	\$0
\$1,550 /ACRE (Commercial)	x	2.209	AC	=	\$3,424
\$1,550 /ACRE (Industrial)	x	0	AC	=	\$0
FIRE CREDITS					
\$0	x	0		=	\$0
FIRE FEE TOTAL =					\$3,424
18. PUBLIC FACILITIES IMPACT FEE:					347-37648
<i>(Auth: Res. #5592 appr'd 8.21.02, Amdd by Res. 6326 4.28.10, Increased 01.15.16)</i>					
\$512 /DU (Single Family)	x	0	DU	=	\$0
\$493 /DU (Multi Family)	x	0	DU	=	\$0
\$1,128 /ACRE (Commercial)	x	2.209	AC	=	\$2,492
\$1,579 /ACRE (Industrial)	x	0	AC	=	\$0
PUBLIC FACILITIES CREDITS					
\$0	x	0		=	\$0
PUBLIC FACILITIES FEE TOTAL =					\$2,492
20. COMMNTY/REC CTRS IMPACT FEE:					360-37648
<i>(Auth: Res. #15-152 appr'd 8.17.15, increased 01.15.16)</i>					
\$3,663 /DU (Single Family)	x	0	DU	=	\$0
\$3,213 /DU (Multi Family)	x	0	DU	=	\$0
PUBLIC FACILITIES CREDITS					
\$0	x	0		=	\$0
PUBLIC FACILITIES FEE TOTAL =					\$0

19		
BMP Initial Set-up	=	\$660
Additonal BMPs	=	\$792
Stormwater O&M Agreement (139)	=	\$2,070
	=	
SUB-TOTAL OF ABOVE FEES	=	<u>\$3,522</u>

OTHER:		
SWRMP Tier 3 Project		\$9,892
ESC Type 1		\$8,200
Type 1 & 2 Projects: +1 Acre Soil Dist		\$863
TOTAL FEES DUE		= <u>\$734,879</u>

Notes & Comments:

THE IMPACT FEES FOR THIS PROJECT IS LOCKED TO THE FISCAL YEAR 2016-2017 FEE SCHEDULE.
THIS IS DUE TO THE IMPACT FEE FREEZE AGREEMENT BETWEEN THE CITY AND EVERGREEN-BUTTERFIELD
& COCHRANE LLC (MASTER DEVELOPER/LANDLORD), WHICH WAS AMENDED, AND HAVE BEEN EXTENDED
PER CITY COUNCIL RESOLUTION 21-004 THROUGH JUNE 30, 2023.

THE STORM DRAIN IMPACT FEE AND BURROWING OWL FEE WERE PREVIOUSLY PAID BY THE MASTER
DEVELOPER/LANDLORD. THE AMOUNT OF APPLICABLE FEE CREDITS WILL BE NOTED IN FINAL FEE SCHEDULE.
NO FRONTAGE FEES APPLY TO THIS PROJECT.

New 114-room hotel (67,060 sq. ft building).

Site (APN): 726-58-006

Site Acreage (per Recorded Evergreen Village Parcel Map): 2.209 AC

Traffic:

Hotel Traffic Coefficient: 0.59 PHT per room *PHT = Peak Hour Trip*

(ITE 11th Edition - #310 Hotel; Weekday Peak Hour of Adjacent Street Traffic - PM peak)

Total PHT = 0.59 x 114 = **67 PHT**

Sewer:

Hotel Sewer Coefficient: 82.5 gpd per room

Sewer fee = 82.5 x 114 = **9,405 gpd**