



Special/Regular Meeting Agenda
City Council

Mark Turner - Mayor
Rene Spring - Mayor Pro Tem
Gino Borgioli - Council Member
Marilyn Librers - Council Member
Yvonne Martínez Beltrán - Council Member

Wednesday, April 19, 2023 5:00 PM

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

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

MEETING PARTICIPATION AND PUBLIC COMMENT

City Council meetings will be live-streamed on Channel 17, the City's website, and the City's Facebook page.

Those members of the community that would like to participate in the meetings remotely may do so by joining virtually at: <https://bit.ly/MHCityCouncilMeeting> or by calling (669) 900-9128, then enter the webinar id: 873 3200 8380#. Public comment may be provided in the following ways:

- Provide public comment in-person
- Join the City Council meeting virtually via the link above. When public comment is opened, raise your virtual hand and be called upon to speak for up to 3 minutes (YOU MUST BE RUNNING THE MOST CURRENT VERSION OF ZOOM TO BE UNMUTED)
- Join virtually by calling the number above, dial *9 to raise your hand, and be called upon to speak for up to 3 minutes
- Public comment in writing may be submitted via email to ccpubliccomment@morganhill.ca.gov or by mail to the City Clerk at 17575 Peak Avenue, Morgan Hill, CA 95037. Please email your comments to the City Clerk no later than 3:00 p.m. on Tuesday (the day before the City Council meeting) for your comments to be submitted to the members of the City Council with sufficient

time to review the comments. You may continue to provide written comments up to noon on Wednesday (the day of the meeting), although Council Members may not have sufficient time to review them before the meeting. Public comments submitted to the City Clerk after 12:00 pm on the day of the meeting will be provided to the City Council as time allows.

Written comments WILL NOT be read aloud during the City Council Meeting. Please note that written comments are posted on the City's website, so do not include any personal information you do not want to be posted on the web.

SPECIAL/REGULAR MEETING

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

SPECIAL MEETING

CALL TO ORDER

ROLL CALL ATTENDANCE

DECLARATION OF POSTING AGENDA

CLOSED SESSION

Threat to Public Services or Facilities

Authority: Pursuant Government Code Section 54957

Consultation with: Morgan Hill Police Department, Chief of Police

Conference with Labor Negotiators

Authority: Pursuant Government Code Section 54957.6

City Negotiators: Christina Turner, City Manager; Donald Larkin, City Attorney; Michael Horta, Human Resources Director; Edith Ramirez, Assistant City Manager, Development Services

Employee Organization: Morgan Hill Police Officers Association; AFSCME Local 101 Morgan Hill; Community Service Officers Association; Employees Covered under Management Resolution #21-050

OPPORTUNITY FOR PUBLIC COMMENT

ADJOURN TO CLOSED SESSION

REGULAR MEETING

6:00 P.M.

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

PROCLAMATIONS

Proclaiming April 22, 2023, as Earth Day

Proclaiming April 16 - 23, 2023, as the Days of Remembrance of Victims of the Holocaust

PRESENTATIONS

YAC Presentation - Asset #9 - Service to Others

CITY COUNCIL REPORTS

Mayor Mark Turner

CITY MANAGER'S REPORT

New Hire/Retired Teammate Recognitions

CITY ATTORNEY'S REPORT

OTHER REPORTS

PUBLIC COMMENT

This opportunity for public comment is for items that are not on the agenda. If you would like to make comments on an item that is on the agenda, please wait until we get to that item to offer your comments. Members of the public are entitled to address the City Council concerning any item within the Morgan Hill City Council's subject matter jurisdiction. Public comments are limited to no more than three minutes. Except for certain specific exceptions, the City Council is prohibited from discussing or taking

action on any item not appearing on the posted agenda. Public comment is intended for comments. Questions posed during public comment are not generally answered. If you have questions, please send them to the City Clerk at ccpubliccomment@morganhill.ca.gov to receive a response. (See additional noticing at the end of this agenda)

ADOPTION OF AGENDA

CONSENT CALENDAR

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

Time Estimate for Consent Calendar: 1 - 10 Minutes

1. **ADOPT RESOLUTION AMENDING THE CITY'S COUNTYWIDE SOLID WASTE BUDGET FOR ADMINISTRATION AND CONTRACTING SERVICES**

Recommendation:

Adopt resolution appropriating an additional \$37,680 to the City's fiscal year 2022-2023 budget in the General Fund (010) and the Countywide Solid Waste Administration Fund (246).

2. **APPROVE CONTRACT AMENDMENTS WITH PACIFIC UNDERGROUND CONSTRUCTION AND WEST VALLEY CONSTRUCTION COMPANY, INCREASING CONTRACT AMOUNTS FOR ON-CALL UNDERGROUND CONSTRUCTION CONTRACTORS**

Recommendation:

Authorize the City Manager to execute and administer contract amendments to Pacific Underground Construction, increasing compensation to \$450,000, and West Valley Construction Company, increasing compensation to \$300,000.

3. **APPROVE THE APRIL 5, 2023 CITY COUNCIL MEETING MINUTES**

Recommendation:

Approve the April 5, 2023 City Council meeting minutes.

4. **APPROVE AGREEMENT WITH MONTEREY BAY OFFICE PRODUCTS INC. FOR PURCHASE AND MAINTENANCE OF THE CITY'S MULTI-FUNCTION PRINTERS**

Recommendation:

1. Approve a Service Agreement with Monterey Bay Office Products, Inc. for \$212,005.73 for the purchase, maintenance, and repair of the City's multi-function printers (MFPs); and

2. Authorize the City Manager to execute and administer the Service Agreement with Monterey Bay Office Products, Inc. through June 30, 2028 with the option to extend five one-year periods.

5. AWARD 2023 INFLOW AND INFILTRATION SANITARY SEWER PROJECT

Recommendation:

1. Approve 2023 Inflow and Infiltration Sewer Repair Project plans and specifications;
2. Award contract to Pacific Underground Construction for the 2023 Inflow and Infiltration Sewer Repair Project in the amount of \$2,387,620;
3. Authorize expenditure of construction contingency funds not to exceed \$250,000; and
4. Authorize the City Manager to execute and administer the construction contract with Pacific Underground Construction.

6. AWARD 2023 SIDEWALK REPAIR PROJECT TO VILLALOBOS & ASSOCIATES

Recommendation:

1. Award contract to Villalobos & Associates in the amount of \$123,760.50; and authorize the expenditure of 40% construction contingency funds not to exceed \$49,504.20 for a total authorization of \$173,264.70; and
2. Authorize the City Manager to execute and administer that certain construction contract with Villalobos & Associates.

7. RATIFY CITY POSITIONS ON PENDING LEGISLATION

Recommendation:

1. Ratify the City's position on pending legislation, Assembly Bill 1708 (Muratsuchi) Theft;
2. Ratify the City's position on pending legislation, Assembly Bill 480 (Ting) Surplus Land; and
3. Ratify the City's position on pending legislation, Senate Bill 423 (Wiener) Land use: streamlined housing approvals: multifamily housing developments.

8. RECEIVE UPDATE REGARDING PAVEMENT REHABILITATION PLANNING

Recommendation:

Receive update on pavement rehabilitation planning.

OTHER BUSINESS

9. APPROVE LEADERSHIP MORGAN HILL RENOVATION AND ART PROJECT AT THE STAGE PICNIC AREA OF COMMUNITY PARK

Recommendation:

1. Approve Leadership Morgan Hill - Class of 2023 project for the renovation and installation of artwork at the Stage Picnic Area of Community Park;
and
2. Delegate final approval of artwork to Leadership Morgan Hill and a sub-committee of the Library, Culture and Arts Commission.

FUTURE COUNCIL INITIATED AGENDA ITEMS

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

ADJOURNMENT

NOTICE

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

PUBLIC COMMENT

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

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

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

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

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

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

AMERICANS WITH DISABILITIES ACT (ADA)

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

SUSTAINABLE MORGAN HILL



Vision

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



Choose Morgan Hill

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



City Council Ongoing Priorities

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



2022-2023 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 recovering from the global pandemic, and we will continue to have equity, public health, and financial responsibility in mind.



CITY COUNCIL STAFF REPORT

MEETING DATE: April 19, 2023

PREPARED BY:

Tanya Carothers, Environmental Services Administrator

APPROVED BY: City Manager

ADOPT RESOLUTION AMENDING THE CITY'S COUNTYWIDE SOLID WASTE BUDGET FOR ADMINISTRATION AND CONTRACTING SERVICES

RECOMMENDATION(S)

Adopt resolution appropriating an additional \$37,680 to the City's fiscal year 2022-2023 budget in the General Fund (010) and the Countywide Solid Waste Administration Fund (246).

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Protecting the Environment

Advocating for Local, Regional, and State Legislative Initiatives

2022-2023 Strategic Priorities

Fiscal Sustainability

REPORT NARRATIVE:

The purpose of this report is to provide the City Council with an opportunity to adopt a resolution appropriating an additional \$37,680 to the City's Countywide Solid Waste Program budget (Attachment 1).

In July 2021, City of Morgan Hill staff began providing Technical Advisory Committee (TAC) Administrator and Contracting Agent services for administering the work of the Recycling and Waste Reduction Commission (RWRC) Countywide Solid Waste Program. The County has retained the role of Fiscal Agent for these programs and is the entity authorized and responsible for collecting County solid waste fees as well as managing and reporting to the State on various Countywide solid waste planning efforts.

When the original Countywide Solid Waste Program budget was established for FY 2022/23, it was estimated that \$334,506 would cover costs associated with City fulfillment of TAC Administrator and Contracting Agent services. However, having completed a full year of providing program administration services, City staff proposed a budget amendment to the RWRC to cover costs associated with a small increase in staffing resources, legal support, program supplies and services, and the program's share of City overhead costs associated with building services, IT services, and

insurance. The adjustment was proposed to enable the City of Morgan Hill to operate as the Administrator and Contracting Agent while retaining dedicated staffing, office space, and supplies and services as warranted for a program of this scope and scale. The proposed amendment to the RWRC budget to cover the additional items was \$57,590, which increased the total RWRC budget for Administrator and Contracting Agent services to \$392,096.

Currently, the City's adopted budget for fulfillment of TAC Administrator and Contracting Agent services is \$354,416. This amount includes building services, IT services, and insurance, which are items that were not approved as part of the original RWRC budget, but which were approved as part of the amended RWRC budget. Appropriation of an additional \$37,680 to the City's Countywide Solid Waste Program would increase funds to match the amount approved by the RWRC, bringing the City budget total to \$392,096 for 2022/23.

Summary Table: 2022/23 RWRC and City Budgets for TAC Administrator and Contracting Agent Roles	
ADOPTED RWRC Budget: TAC Contracting Agent + TAC Administrator	\$334,506
AMENDED RWRC Budget: TAC Contracting Agent + TAC Administrator + Additional Budget, including Building/IT Services & Insurance	\$392,096
<u>Total Approved RWRC Budget Adjustment</u>	<u>\$57,590</u>
ADOPTED City Budget: TAC Contracting Agent + TAC Administrator + Building/IT Services & Insurance	\$354,416
PROPOSED City Amended Budget: TAC Contracting Agent + TAC Administrator + Building/IT Services & Insurance + Additional Budget	\$392,096
<u>Total Proposed City Budget Adjustment</u>	<u>\$37,680</u>

Staff recommends that the Council adopt the attached resolution (Attachment 1) appropriating \$37,680 of additional funds to the City's Countywide Solid Waste Program Administration and Contracting Agent budget to cover costs associated with the program that were not included in the original budget.

COMMUNITY ENGAGEMENT:

Not Applicable

The subject of this staff report is entirely administrative in nature and does not impact services directly provided to the Morgan Hill community. Given this, no community engagement was conducted prior to this meeting.

ALTERNATIVE ACTIONS:

The City Council could decline approval of the Resolution appropriating an additional \$37,680 to the City's Countywide Solid Waste Program budget. This would leave the City unable to fully cover costs for TAC Administrator and Contracting Agent services being provided through the Countywide Solid Waste Program.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The City has not previously amended the budget that supports services for fulfillment of the Countywide Solid Waste Program Administrator and Contracting Agent roles.

FISCAL AND RESOURCE IMPACT:

As described above, there is currently \$354,416 in the Countywide Solid Waste Services Program budget (010.5815) for fulfillment of the Administrator and Contracting Agent roles. The appropriation of additional funds in the amount of \$37,680 to this budget will allow the City to fully cover services being provided as part of the Countywide Solid Waste Program. The additional \$37,680 will be appropriated to 010.5815 via the attached resolution and budget scorecard.

As Fiscal Agent, the County is the entity authorized and responsible for collecting County solid waste fees. The City sends a Fund Transfer Request quarterly to the County to cover costs related to the City's role as TAC Administrator and Contracting Agent as well as all contract costs. The City's Fund Transfer Requests will be adjusted to cover the costs associated with the requested increased appropriation and there will be no net impact on the General Fund.

CEQA (California Environmental Quality Act):

Not a Project

The activities associated with this item are administrative activities that will not result in direct changes to the physical environment.

RESOLUTION NO. 23-_____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO THE CITY'S FISCAL YEAR 2022-2023 BUDGET IN THE GENERAL FUND (FUND NO. 010) AND THE COUNTYWIDE SOLID WASTE ADMINISTRATION FUND (FUND NO. 246) TO APPROPRIATE \$37,680.00 IN EACH FUND, 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

WHEREAS, the reasons supporting this Resolution are set forth in detail in that certain City Council Staff Report entitled "Adopt a Resolution Amending the City's Countywide Solid Waste Budget for Administration and Contracting Services" submitted for City Council consideration at its meeting of April 19, 2023, submitted to the City Council by the City Manager (the "Staff Report"), the contents of which Staff Report are incorporated herein by this reference; and

WHEREAS, recommended amendments are needed and proposed to the City's previously adopted Annual Budget for Fiscal Year 2022-2023 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 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 Fiscal Year 2022-2023 Budget, 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 Fiscal Year 2022-2023 Budget of City.

Section 3. This Resolution shall take effect immediately upon adoption.

PASSED, APPROVED, AND ADOPTED by the City Council of the City of Morgan Hill at its meeting held on this 19th day of April 2023 by the following vote:

AYES:	COUNCIL MEMBERS:	None
NOES:	COUNCIL MEMBERS:	None
ABSTAIN:	COUNCIL MEMBERS:	None
ABSENT:	COUNCIL MEMBERS:	None

APPROVED:

ATTEST:

MARK TURNER, Mayor

MICHELLE BIGELOW, City Clerk

— **CERTIFICATION** —

I, Michelle Bigelow, City Clerk of the City of Morgan Hill, California, do hereby certify that the foregoing is a true and correct copy of Resolution No. 23-_____ adopted by the City Council at the meeting held on the 19th day of April 2023.

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

DATE: _____

MICHELLE BIGELOW, City Clerk

EXHIBIT A

BUDGET SCORECARDS

AGENDA BUDGET SCORECARD**FISCAL YEAR 2022-2023****ADJUSTMENT #**

007

FUND:**DEPARTMENT:****OBJECT:**

246 Countywide Solid Waste Administration

5820 Countywide Solid Waste Administration

49210 TRANSFER OUT-010 (GENERAL FUND)

AGENDA DATE:**AGENDA ITEM TITLE:**

04/19/23

Countywide Solid Waste Program Budget

	07/01/22 AUDITED BEGINNING FUND BALANCE	ESTIMATED REVENUES	AMENDED APPROPRI- ATIONS	06/30/23 PROJECTED ENDING FUND BALANCE
ORIGINAL BUDGET	129,862	1,628,603	1,596,732	161,733
CUMULATIVE REVISIONS PRIOR TO RECOMMENDED ACTION	-	-	-	-
RECOMMENDED ACTION		57,590	37,680	19,910
RESULT OF RECOMMENDED ACTION	<u>129,862</u>	<u>1,686,193</u>	<u>1,634,412</u>	<u>181,643</u>

AGENDA BUDGET SCORECARD**FISCAL YEAR 2022-2023****ADJUSTMENT #**

006

FUND:

010 General Fund

DEPARTMENT:

5815 Countywide Solid Waste Administration

OBJECT:

42299 OTHER EXPENSE

AGENDA DATE:

04/19/23

AGENDA ITEM TITLE:

Countywide Solid Waste Program Budget

	07/01/22 AUDITED BEGINNING FUND BALANCE	ESTIMATED REVENUES	AMENDED APPROPRI- ATIONS	06/30/23 PROJECTED ENDING FUND BALANCE
ORIGINAL BUDGET	33,685,888	50,511,569	55,830,094	28,367,363
CUMULATIVE REVISIONS PRIOR TO RECOMMENDED ACTION	-	53,795	53,795	-
RECOMMENDED ACTION		37,680	37,680	-
RESULT OF RECOMMENDED ACTION	<u>33,685,888</u>	<u>50,603,044</u>	<u>55,921,569</u>	<u>28,367,363</u>

CITY COUNCIL STAFF REPORT

MEETING DATE: April 19, 2023

PREPARED BY:

Chris Ghione, Public Services Director

APPROVED BY: City Manager

APPROVE CONTRACT AMENDMENTS WITH PACIFIC UNDERGROUND CONSTRUCTION AND WEST VALLEY CONSTRUCTION COMPANY, INCREASING CONTRACT AMOUNTS FOR ON-CALL UNDERGROUND CONSTRUCTION CONTRACTORS

RECOMMENDATION(S)

Authorize the City Manager to execute and administer contract amendments to Pacific Underground Construction, increasing compensation to \$450,000, and West Valley Construction Company, increasing compensation to \$300,000.

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Enhancing Public Safety

Protecting the Environment and Preserving Open Space and Agricultural Land

Maintaining and Enhancing Infrastructure

REPORT NARRATIVE:

In September 2021, the City entered into contracts with West Valley Construction Company and Pacific Underground Construction to provide on-call underground construction work. Both companies have provided work for the City, including emergency response to utility repairs and emergency response work related to landslides caused by the recent large storms. The support of these companies has been extremely valuable in supporting quick repairs to emergency situations. However, due to a significant water line break and immediate storm system repairs, the contracted amounts are near the contract limits, with additional emergency repair work needed to continue. The City will seek compensation for this storm-related work through our insurance carrier and FEMA.

To undertake emergency repairs while at the same time ensuring the best value for the City, the City requests cost estimates from both on-call contractors prior to initiating work when possible. Pacific Underground Construction has a current contract amount of \$50,000, and the City is requesting an increase to \$450,000. Pacific Underground Construction has regularly provided the lowest-cost quotes for repair work. West Valley Construction Company has a current contract of \$150,000, and the City is requesting an increase to \$300,000. It is not anticipated that either contract limit will be fully utilized, but the higher contract amount for both will ensure the City can continue to get

competitive quotes from both companies for future work without going over the contract amount for either. This would also provide the City with additional protection should significant emergency situations arise again.

COMMUNITY ENGAGEMENT:

Not Applicable

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

ALTERNATIVE ACTIONS:

The City Council could choose not to amend the contract for one or both contractors. This is not recommended as it would leave the City without emergency repair support.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The Council previously approved the initial on-call underground repair contracts on September 1, 2021.

FISCAL AND RESOURCE IMPACT:

A limited amount of anticipated repairs are budgeted annually. The City estimates storm-related repair work of approximately \$200,000 for contract services is underway. The City is attempting to obtain reimbursement for some or all of these funds through insurance and/or FEMA. Staff will return to the City Council to request a budget amendment if required in the future.

CEQA (California Environmental Quality Act):

Categorical Exemption

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

**FIRST AMENDMENT TO AGREEMENT
PACIFIC UNDERGROUND CONSTRUCTION, INC.**

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

RECITALS

The following recitals are a substantive part of this Agreement:

1. This First Amendment to Agreement is entered into pursuant to the action of the Morgan Hill City Council taken on _____, _____, 20____.
2. The CITY and SERVICE PROVIDER entered into that "Maintenance Service Agreement" made as of September 16, 2021, for services for a maximum compensation of Fifty Thousand Dollars (\$50,000.00) ("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 4.1 shall be amended and replaced in its entirety by the following:

"4.1. Amount. Compensation under this Agreement shall not exceed FOUR HUNDRED FIFTY THOUSAND DOLLARS (\$450,000.00) and shall be billed based on the rate and basis set forth in **Exhibit B.**"

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[Signatures on the next Page]

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

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

TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS:

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

ATTEST:

CITY OF MORGAN HILL

Michelle Bigelow, City Clerk

Date: _____

Christina Turner, City Manager

Date: _____

APPROVED AS TO FORM:

**PACIFIC UNDERGROUND
CONSTRUCTION, INC.**

Donald Larkin, City Attorney

Date: _____

By:

Title: _____

Print Name and Title of Signer.

If Corporate: Chairman, President or
Vice President

Date: _____

By:

Title: _____

Print Name and Title of Signer.

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

Date: _____

EXHIBIT 1

**MAINTENANCE SERVICE AGREEMENT
PACIFIC UNDERGROUND CONSTRUCTION, INC.**

THIS AGREEMENT is entered into and becomes effective on 9/16/2021 (Effective Date), by and between the CITY OF MORGAN HILL, a municipal corporation, ("CITY"), and Pacific Underground Construction, Inc. a California corporation ("SERVICE PROVIDER") hereinafter referred to collectively as "Parties." In consideration of the promises and the mutual covenants contained in this Agreement, the Parties agree as follows:

1. **City Authority.** This Agreement is entered into pursuant to the action of the Morgan Hill City Council taken on September 01, 2021.

2. **Term of Agreement.** This Agreement shall cover services rendered from the Effective Date of this Agreement until August 30, 2023 at which time SERVICE PROVIDER'S services shall be completed. The City Manager is authorized to extend the term of this Agreement for a maximum of three one-year extensions. Any such extension shall be in writing and signed by both Parties to this Agreement.

3. **Scope of Service.** The services to be performed by SERVICE PROVIDER shall be Water and Sewer Repairs as further described in **Exhibit A**.

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

4.1. **Amount.** \$50,000.00. Total compensation to SERVICE PROVIDER under this Agreement during its initial term set forth in Section 2 above shall not exceed Fifty Thousand dollars and shall be billed based on the rate and basis set forth in **Exhibit B**. If the City Manager extends the term of this Agreement pursuant to the provisions of Section 2 above, the City Manager shall have the authority to increase the maximum compensation allowed to be paid to SERVICE PROVIDER during that extended term period, so long as City Council has appropriated sufficient funds therefor, the Parties mutually agree to such amount in a writing signed by both Parties to this Agreement and provided further that in no event shall such maximum compensation allowed for each subsequent extended one-year term exceed 105% of the maximum compensation allowed to be paid to SERVICE PROVIDER for one year of service during the immediately preceding prior year of service.

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

5. **Termination.** CITY or SERVICE PROVIDER shall have the right to terminate this Agreement, without cause, by giving thirty (30) days' written notice or less under urgent circumstances. Upon such termination,

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

- 5.1. **Non-Appropriations.** Notwithstanding anything contained in this Agreement to the contrary, if insufficient funds are appropriated, or funds are otherwise unavailable in the budget for CITY for any reason whatsoever in any fiscal year, for payments due under this Agreement, CITY will immediately notify SERVICE PROVIDER of such occurrence, and this Agreement shall terminate after the last day during the fiscal year for which appropriations shall have been budgeted for CITY or are otherwise available for payments.
- 5.2. **Temporary Suspension of Services.** CITY'S need for services may be suspended due to unforeseeable or unavoidable circumstances beyond its control. Such circumstances include, but are not limited to, earthquake, fire, explosion, flood or other natural catastrophe; governmental legislation, condemnation, acts, orders, or regulation; war or acts of terrorism; strikes or labor difficulties; and quarantine, epidemic, or pandemic. CITY shall provide a 5-days' written notice or less under urgent circumstances to temporarily suspend services at specific CITY facilities. CITY reserves the right to request which CITY facilities are to be serviced or not serviced due to unforeseeable or unavoidable circumstances; and the level of service at each CITY facility. Upon suspension, SERVICE PROVIDER shall submit to CITY an itemized statement of services performed for which compensation has not been paid up to the date of the suspension. No further payments will be made for services provided after the date of the suspension. CITY shall provide 5 days' written notice when the circumstances for the suspension of specific facilities' services are removed for SERVICE PROVIDER to commence providing services.
6. **Performance of Work.** SERVICE PROVIDER represents that it is qualified by virtue of experience, training, education, and expertise to accomplish these services. Services shall be performed by SERVICE PROVIDER in accordance with professional practices in a manner consistent with a level of care, competence and skill exercised by qualified members of SERVICE PROVIDER'S profession. By delivery of completed work, SERVICE PROVIDER certifies that the work conforms to the requirements of this Agreement and all applicable federal, state and local laws. SERVICE PROVIDER 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/her delegate, to do so, and any such storage shall occur only in the manner and location allowed by such CITY official and entirely at SERVICE PROVIDER's sole risk.
7. **Hazardous Materials.** Without limiting any other requirement or obligation of SERVICE PROVIDER under this Agreement, if SERVICE PROVIDER needs to use any material or chemical considered to be a hazardous material under any federal, state or local law, regulation or policy, SERVICE PROVIDER agrees to fully and timely abide by and comply with all laws, regulations and policies pertaining to the use, transport, removal, handling, disposal or other activity related to any and all such materials or chemicals. Prior to commencement of work or services under this Agreement, SERVICE PROVIDER shall provide CITY with a complete list of the hazardous materials SERVICE PROVIDER reasonably anticipates it may need to use to

provide the services of SERVICE PROVIDER under this Agreement, together with the reasonably anticipated quantities thereof, if requested by CITY.

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

8.1. **Insurance Types and Amounts.**

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

materials. Such coverage shall be in the minimum amount of: (i) one million dollars (\$1,000,000.00) for any one accident or occurrence, or (ii) the maximum amount of such insurance available to SERVICE PROVIDER under SERVICE PROVIDER's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

8.1.5. Professional Liability

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

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

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

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

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

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

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

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

Certificate Holder address:

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

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

10. Compliance with Law.

10.1. SERVICE PROVIDER and its officers, employees, agents, and subcontractors shall comply with all applicable laws, ordinances, administrative regulations, and permitting requirements in carrying out their obligations under this Agreement. SERVICE PROVIDER and its officers, employees, agents, and subcontractors covenant there shall be no discrimination based upon 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:

Pacific Underground Construction, Inc.
1817 Stone Avenue
San Jose, CA 95125

Address of CITY is as follows:

Utilities Division	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.

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17. Maintenance of Records.

- 17.1. Maintenance. SERVICE PROVIDER shall prepare, maintain, and preserve all reports and records that may be required by federal, state, and CITY rules and ordinances related to services provided under this Agreement. SERVICE PROVIDER shall maintain records for a period of at least 3 years after receipt of final payment under this Agreement. If any litigation, claim, negotiation, audit exception, or other action relating to this Agreement is pending at the end of the 3-year period, then SERVICE PROVIDER shall retain said records until such action is resolved.
- 17.2. Access to and Audit of Records. CITY shall have the right to examine, monitor and audit all records, documents, conditions, and activities of SERVICE PROVIDER and its subcontractors related to services under this Agreement. Pursuant to Government Code Section 8546.7, if this Agreement involves the expenditure of public funds in excess of \$10,000, the Parties to this Agreement may be subject, at the request of CITY or as part of any audit of CITY, to the examination and audit of the State Auditor pertaining to matters connected with the performance of this Agreement for a period of three years after final payment under the Agreement.
- 17.3. Ownership of Work Product. All documents or other information developed or received by SERVICE PROVIDER for work performed under this Agreement shall be the property of CITY. SERVICE PROVIDER shall provide CITY with copies of these items upon demand or upon termination of this Agreement.
18. Familiarity with Work. By executing this Agreement, SERVICE PROVIDER represents that: (1) it has investigated the work to be performed; (2) it has investigated the site of the work and is aware of all conditions there; and (3) it understands the difficulties and restrictions of the work under this Agreement. Should SERVICE PROVIDER discover any conditions materially differing from those inherent in the work or as represented by CITY, it shall immediately inform CITY and shall not proceed, except at SERVICE PROVIDER'S risk, until written instructions are received from CITY.
19. Time of Essence. Time is of the essence in the performance of this Agreement.
20. No Assignment. Neither this Agreement nor any portion shall be assigned by SERVICE PROVIDER, without prior written consent of CITY. Any attempted assignment not first approved by CITY shall be void and, at CITY's option, shall terminate this Agreement effective as of the date of such attempted assignment.
21. Attorney Fees. In any legal action, dispute or arbitration arising out of or relating to this Agreement, the prevailing party shall be entitled to an award of its reasonable attorney fees, costs and expenses incurred.
22. Defense and Indemnification.
- 22.1. Defense and Indemnification. SERVICE PROVIDER shall, to the fullest extent permitted by law, indemnify, defend and hold harmless CITY, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers ("INDEMNITEES") from and against any and all claims, liabilities, expenses, liens, or damages of any nature, including liability for bodily injury, property damage or personal injury, and including reasonable attorneys' fees and expenses, that arise out of, pertain to, or relate to the performance of this Agreement or the failure to comply with any obligations

contained in this Agreement by SERVICE PROVIDER, and/or its agents, officers, employees, subcontractors, or independent contractors ("CLAIM").

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

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

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

22.5. Interpretation. This Section shall constitute an agreement or contract of indemnity, incorporating the interpretations under California Civil Code Section 2778. It is expressly understood and agreed that the obligation of SERVICE PROVIDER to indemnify the INDEMNITEE shall be as broad and inclusive as permitted by the laws of the State of California and shall survive termination of this Agreement.

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

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

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

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

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

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

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

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

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

ATTEST:

DocuSigned by:
Michelle Bigelow
City Clerk/Deputy City Clerk

Michelle Bigelow
Print Name

Date: 9/16/2021

APPROVED AS TO FORM:

DocuSigned by:
Donald A. Larkin
City Attorney

Donald A. Larkin
Print Name

Date: 9/7/2021

CITY OF MORGAN HILL

DocuSigned by:
Christina Turner
City Manager

Christina J. Turner
Print Name

Date: 9/16/2021

Pacific Underground Construction, Inc.

By: [Signature]

Thad Michael Corbett, Vice President

Print Name and Title of Signer.

If Corporate: Chairman, President or Vice President

Date: August 2, 2021

By: [Signature]

Dean Romeo, Treasurer/CFO

Print Name and Title of Signer.

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

Date: August 2, 2021

423419
Contractor's License Number(s) (if applicable)

1000007603
Contractor's DIR Registration Number(s) (if applicable)

Expiration Date(s) 5/31/2022

Expiration Date(s) 6/30/2022

Seal:

U:\Legal Forms\Consultant Agreements\City Maintenance Service Agreement.Docx

EXHIBIT A SCOPE OF SERVICES

This project is to provide water and sewer repairs on an on-call, as-needed, time-and-materials basis for a period of two (2) years with the option for three (3) additional single year extensions. Any tasking shall be initiated solely by the City. Execution of this agreement by the City does not in any way guarantee that any tasking or request for on-call services will be issued to any party. Moreover, execution of this agreement by the City shall not entitle contracted parties to any form of payment or compensation from the City without first having issued tasking or request for services from a contractor.

Typical work to be performed under this contract includes repair of water service leaks, water main leaks, hydrant repair, valve replacement, water service replacement, meter installation, sewer main repairs, sewer lateral repair, manhole repair or installation, backfill of excavations, compaction, and final paving of streets. From time to time the City may request service for a backhoe with operator and/or laborers to assist the City repair crew. The Contractor also may be requested to do patch paving work. City staff and equipment will be made available for assistance with shutdowns and some activities.

The work to be performed under this contract consists of furnishing all tools, equipment, materials, supplies, and manufactured articles to complete the services as needed. It shall also include the furnishing of all transportation and services, including fuel, power, water, and essential communications, and for the performance of all labor, work, or other operations required for the fulfillment of the contract in strict accordance with the Contract Documents and City's Standard Details for Construction Standard Details for Construction -Link currently in effect.

The Contractor may utilize the services of specialty subcontractors on those parts of the work that, under normal contracting practices, are performed by specialty subcontractor. It is understood that at least 50 percent of the work to be performed shall be performed by the successful Contractor. Any subcontractor used must adhere to the same terms and conditions as the successful contractor. The Contractor is representing to City that he/she and any subcontractor has all appropriate licenses, certifications, and registrations to perform the work hereunder. The Contractor shall be fully responsible to the City for the performance of his/her subcontractors, and of persons either directly or indirectly employed by them.

City Responsibilities

City's personnel will identify and assess specific projects or repairs. The City will notify Contractor of general locations requiring construction or repair, and a general description of the field conditions at repair locations, and materials to be provided by the City. The City's Project Manager or designated representative will direct the general process to be followed but shall not generally direct the means or methods to be used by the Contractor. The City will provide base maps or record drawings of facilities when they are requested and available. All work to be completed will be agreed upon prior to the commencement of work with a general scope of services. Drawings will be provided if applicable. The City will issue a written task order and attach the contractor's scope of work for projects that are not an emergency. Notification of residents whose service may be interrupted will be the responsibility of the City.

Contractor's Responsibilities

The Contractor will provide a scope of work for each project that is not an emergency. The scope of work will be the basis for the project and will serve as supplement to the contract documents for that particular project. The scope of work shall include a not to exceed amount for the project. The Contractor shall be responsible for providing the following to complete the services in a timely manner as outlined below:

- Qualified Labor
- Tools
- Equipment, including all necessary Safety Equipment
- Materials and Supplies
- Transportation
- Services (including fuel, power, water, and communications)
- Sheeting and shoring as required
- Traffic control devices and measures

For an emergency repair the Contractor shall make every effort to begin the repair within four (4) hours of notification that a repair is needed. Notification of the repair will be made in the form of a phone call. The City is aware that the Contractor may have other commitments. The Contractor shall notify the City if they do not have the manpower to mobilize a crew to begin the repair within the allotted time. If the Contractor cannot mobilize the City will contact the other Contractor on the list. If none of the Contractors on the short list derived this solicitation can do the work within the time frame, the City reserves the right to seek assistance from another contracting firm.

Contractor is responsible for damage resulting from performing work and clean-up of effected area. The Contractor shall incur these damage costs and not pass these charges to the City.

The Contractor shall be cautioned that the City has Asbestos Cement Pipe (ACP) in some areas of the water distribution system as well as the wastewater collection system. Some of the repairs may be on ACP lines. The Contractor and its employees shall be properly trained for working on these ACP lines. All current OSHA standards shall be followed.

As some of the Infrastructure falls outside of City limits, the Contractor will have to obtain encroachment pennits, if needed, in the jurisdiction where the work is taking place.

Repair Standards

The Contractor is responsible for meeting all contract conditions and City's Standard Details for Construction (link on page 9), specifications, and drawings. If the City's Inspectors determine that any repair work is substandard, the Contractor shall be advised thereof orally and in writing, and shall redo all such work at the expense of the Contractor. The City's Project Manager and Inspectors will determine a time when the re-work is to be completed and re-inspect the repair to determine if the repair has been performed satisfactorily. The Contractor shall comply with all Federal, State, and Local safety rules and regulations.

Materials and Supplies

At the time of notification, the City will provide the Contractor with a list of City supplied materials. The Contractor is responsible for having a reliable supply chain in place to obtain, in a timely manner, all additional materials and supplies needed for the required repair. All materials and supplies obtained by the Contractor for the work must be new and free from defects. There will be no mark-up or other cost charged to the City for materials and supplies used from the City's

inventory. The City will deliver small materials and fittings such as repair clamps, corp stops, etc. to the project site. Any bulk materials such as aggregate base, temporary asphalt paving, etc. provided by the City shall be picked up by the Contractor at the City's Corporation Yard.

Disposal of Materials

All materials shall be disposed of in a manner that does not adversely affect the environment and is consistent with local, state, and federal laws and regulations.

Response Schedule

Emergency Repair - The Contractor will make every effort to begin emergency repairs within the notification specified herein, or in accordance with a schedule approved by the City. Notification to the Contractor may be in the form of a telephone call, facsimile, or e-mail, depending on the urgency of the repair. The City reserves the rights, in its sole discretion, to require a more rapid response should it deem it to be necessary. A typical emergency repair will have a response time of four (4) hours. If repair cannot be started within this period, the City reserves the right to obtain the services of other Contractors.

Scheduled Repair - If a scheduled repair cannot be started within twenty-four (24) hours of the City's scheduled time of repair, the Contractor shall provide the City accurate estimate of when work can start. The City will work with the Contractor in regards to other commitments the Contractor may have. However, the City reserves the right to seek outside assistance from other Contractors if scheduling cannot be agreed upon and repairs are determined by the City, in its sole discretion, to be as required.

Physical Location of Underground Utilities

The City is responsible for providing all utility maps or record drawings to perform repairs.

Facilities Shown or Indicated – Unless it is otherwise expressly provided in the section below, **Protection of Existing Facilities**, the City shall not be responsible for the accuracy or completeness of information or data shown on the City's water and sewer system base maps or any other utility information, and the Contractor shall have full responsibility for reviewing and checking all such information and data, for locating all Underground Utilities for coordination of the work with the owners of such Underground Utilities during construction, for the safety and protection thereof and repairing any damage thereto resulting from the work, the cost of which will be considered as having been included in the contract price. Existing utility lines that are shown, or the locations of which are made known to the Contractor prior to excavation and that are to be retained, and all utility lines that are constructed during excavation operations shall be protected from damage during excavation and back-filling and if damaged, shall be immediately repaired by the Contractor except as the owner of the utility or other facility may otherwise direct. All repairs due to damage are subject to inspection and approval by an authorized representative of the property owner before being concealed by backfill or other work. The obligations set forth in this paragraph and other paragraphs concerning underground work shall apply to such damage as may occur after back-filling or is not discovered until after completion of the back-filling.

Facilities Not Shown or Indicated - If an Underground Utility is uncovered or revealed at or contiguous to the site which was not shown or indicated in the City's water and sewer system base maps and not otherwise made known to the Contractor prior to excavation, which the Contractor could not reasonably have been expected to be aware of based on the presence of other visible facilities, such as buildings, meter and junction boxes, on or adjacent to the site of the repair, the

Contractor shall identify the owner of such Underground Utility and give written notice thereof to the City in accordance with the requirements of the next section, Protection of Existing Facilities. In the event that the Contractor damages any existing utility lines that are not shown or the locations of which are not made known to the Contractor prior to excavation, a written report thereof shall be made immediately to the City. If directed by the City, repairs shall be made by the Contractor.

To the extent required by Government Code section 4215, all costs of locating, repairing damage to, and removing or relocating such utility facilities not shown or indicated, and for the necessary idling of equipment on the project which was actually working on that portion of the work which was interrupted or idled by removal or relocation of such utility facilities not shown or indicated, which costs were not incurred due to the failure of the Contractor to exercise reasonable care, will be paid for as time and materials.

Protection of Existing Facilities

General - The Contractor shall protect all existing utilities and improvements not designated for removal and shall restore damaged or temporarily relocated utilities and improvements to a condition equal to or better than they were prior to such damage or temporary relocation. Restoration shall be to the reasonable satisfaction of the City or to the affected utility or franchisee.

The Contractor shall verify the exact locations and depths of all utilities or improvements shown and the Contractor shall make exploratory excavations of all utilities or improvements that may interfere with the Work. The number of exploratory excavations required shall be that number which is sufficient to determine the alignment and grade of the utility or improvement. The Contractor shall notify and obtain concurrence with City staff of that number of exploratory excavations.

It shall be the Contractor's responsibility to see that all utilities or other improvements are adequately protected from damage due to such operations. The Contractor shall exercise care in all excavations to avoid damage to existing underground facilities. This shall include hand digging in those areas where underground facilities are known to exist until they have been sufficiently located to avoid damage to the facilities. No additional compensation shall be provided the Contractor for compliance with the provisions of this section or for the damage and repair of facilities due to the lack of such care.

Right-of-Way - The Contractor shall not do any work that would affect any oil, gas, sewer, or water pipeline; any telephone, telegraph, communication wire or cable, or electric transmission line; any fence; or any other structure, nor shall the Contractor enter upon the right-of-way involved until notified by the City's representative that the City has secured authority therefore from the appropriate authority. All oil and gasoline pipelines, power, and telephone or other communication cable ducts, gas and water mains, irrigation lines, sewer lines, storm drain lines, poles, and overhead power and communication wires and cables encountered along the line of the Work shall remain continuously in service during all the operations under the Contract, unless other arrangements satisfactory to the City are made with the owner of said pipelines, duct, main, irrigation line, sewer, storm drain, pole, or wire or cable.

In case it shall be necessary to move the property of any public utility or franchise holder, the Contractor shall provide written and just cause for utilities to be moved, and such utility company or franchise holder will, upon request of the Contractor, be notified in writing by the City to move such property within a specified reasonable time. When utility lines that are to be removed are encountered within the area of operations, the Contractor shall notify the City's Engineer a sufficient time in advance for the necessary measures to be taken to prevent interruption of service.

This procedure is intended to prevent the Contractor from arbitrarily deciding to cut through any other utility's or any franchisee's facilities. It allows the City to coordinate such work with those agencies and set the timeline and sequence of such work. After authorization has been obtained, the Contractor shall give said party due notice of its intention to begin work, and shall give said party convenient access and every facility for removing, shoring, supporting, or otherwise protecting such pipeline, transmission line, ditch, fence, or structure, and for replacing same. The Contractor shall provide such special protection as may be necessary to protect all known utilities and other improvements that may be impaired during construction operations and shall take all possible precautions for the protection of unforeseen utility lines or other improvements to provide for uninterrupted service.

Utilities to be Removed/Relocated - Where the proper completion of the repair work requires the temporary or permanent removal and/or relocation of an existing utility or other improvement that is shown, the Contractor shall remove and, without unnecessary delay, temporarily replace or relocate such utility or facility. In all cases of such temporary removal or relocation, restoration to the former location shall be accomplished by the Contractor in a manner that will restore or replace the utility or improvement as nearly as possible to its former location and to as good or better condition than found prior to removal.

Restoration of Pavement:

A. General. All paved areas, including asphalt concrete berms, cut or damaged during construction, shall be replaced with in accordance with the specifications of the public authority that has jurisdiction over the site of the work. The City of Morgan Hill and the County of Santa Clara own public right of ways within the City's service area. All temporary and permanent pavements shall conform to the requirements of the affected pavement owner. All pavements that are subject to partial removal shall be neatly saw cut in straight lines per specifications.

B. Temporary Resurfacing. Wherever required by the public authority with jurisdiction over the site of the work, the Contractor shall place temporary surfacing promptly after back-filling and shall maintain such surfacing for the period of time fixed by said authority before proceeding with the final restoration of improvements.

C. Permanent Resurfacing. In order to obtain a satisfactory junction with adjacent surfaces, the Contractor shall comply with the applicable City or County Specifications, at its expense. The City will pay for initial testing. Any required re-testing and correction costs will be the responsibility of the Contractor.

D. Restoration of Sidewalks or Private Driveways. Wherever sidewalks or private roads have been removed for purposes of construction, the Contractor shall place suitable temporary sidewalks or roadways promptly after back-filling and shall maintain them in satisfactory condition for the period of time fixed by the authorities having jurisdiction over the affected portions before proceeding with the final restoration or, if no such period of times is so fixed, the Contractor shall maintain said temporary sidewalks or roadways until the final restoration thereof has been made. Final restorations shall be in accordance with any applicable City and/or general construction codes.

Notification by the City - For routine repairs, the City shall notify Underground Service Alert (1-800-642-2444) forty-eight (48) hours prior to any excavation in the vicinity of any existing underground facilities, including all water, sewer, storm drain, gas, petroleum products, or other pipelines; all

buried electric power, communications, or television cables; all traffic signal and street lighting facilities; and all roadway and state highway rights-of-way.

Facility Access

Continuous access to the City's facilities shall be provided at all times during the Project. Such access shall be suitable for large vehicles, e.g. chemical delivery and sludge hauling trucks. Access routes shall be provided for each planned project.

Water Quality Protection and Stormwater Quality

The Contractor shall take all necessary steps to protect the storm drain system from discharges of construction-related wastewater, including saw cutting slurry, concrete washout, sediment-contaminated and runoff, sewage overflows, and highly-chlorinated discharges from water line testing. This will require the use of Best Management Practices (BMPs) such as providing sediment controls on downstream storm drain inlets, collecting and removing saw cutting slurry, providing an area for concrete washout, and directing highly-chlorinated discharges to the sanitary sewer or by dechlorinating this water. The Contractor is responsible for damage resulting from performing repair and clean-up of effected area.

Trench Excavation

The maximum length of trench excavation in advance of the pipe laying operation shall be 50 feet, and the maximum amount of trench remaining open without backfill shall be 50 feet. No trench in public areas shall be left open during periods when the Contractor is not at the site of work; trenches in these areas shall either be backfilled and temporarily paved, where applicable, or covered with steel trench plates as specified in the technical specifications.

Underground Facilities

The Contractor shall exercise care in all excavations to avoid damage to existing underground facilities. This shall include potholing and hand digging in those areas where underground facilities are known to exist until they have been sufficiently located to avoid damage to the facilities.

Prior to fabrication of any materials, the Contractor shall verify the locations and elevations of existing underground facilities to ensure proper connection and/or clearance.

The Contractor shall exercise care in maintaining those pipes and facilities to be abandoned and/or removed which are required for the continuing operation of the existing facilities until such time as they can be abandoned. The Contractor shall exercise extreme caution in working in any area adjacent to existing facilities. It is essential that the existing facilities be maintained in service until the new work is ready for full time operation and is placed in service.

No additional compensation shall be provided the Contractor for compliance with the provisions of this section for the damage and repair of such facilities due to the lack of care, and the Contractor shall be responsible for the direct and indirect costs resulting from the damage and repair of such facilities.

Working Hours

For Emergency Repairs working hours may be any day of the week at any time. The crews that respond to the emergency shall comply with applicable labor codes for hours worked.

For Scheduled Repairs normal City staff working hours are from 7:00 a.m. to 3:30 p.m., excluding weekends and City holidays. Unless otherwise approved in writing by the City, repair work shall be allowed only between the hours of 7:00 a.m. and 8:00 p.m. on weekdays and, when approved in writing in advance by the City, 9:00 a.m. to 6:00 p.m. on weekends and holidays. These working hours may be adjusted on a job by job basis depending on nature of the project and specific encroachment permit conditions for the project.

The Contractor shall notify the City at least 48 hours prior to any work outside the normal working hours defined above, on weekends or holidays.

Noise Abatement

All operations at the site of the repairs shall be performed so as to minimize unnecessary noise. Special measures shall be taken to suppress noise during night hours. Noise levels due to Contractor's activities shall not exceed the levels specified by local ordinance.

Internal combustion engines used on the work shall be equipped with a muffler of a type recommended by the manufacturer. No internal combustion engine shall be operated without said muffler.

Warranty and Scheduled Maintenance

The Contractor hereby agrees to make, at its own expense, all repairs or replacements necessitated by defects in materials or workmanship, in those components provided, installed, replaced and/or modified by the Contractor, and pay for any damage to other works resulting from such defects, which becomes evident within one (1) year after the date of acceptance of installation work, or within such longer period of time as may be prescribed by law or by the terms of any applicable special guarantee required by the Agreement. This warranty shall include all parts and labor and the performance of all manufacturers' recommended maintenance. This in no way shall limit, amend, or reduce any manufacturer's warranty. The Contractor further assumes responsibility for a similar guarantee for all work and materials provided by subcontractors. This warranty shall not apply to existing equipment that was not modified or significantly adjusted so as to change its operation. The Contractor also agrees to indemnify, defend and hold the City harmless from liability of any kind arising from damage due to covered defects. Prior to the final acceptance of installation work, the Contractor shall provide phone numbers for around-the-clock notification of the need for emergency service repairs, a schedule showing specific dates for routine maintenance service calls.

The Contractor shall respond within four (4) hours of City's emergency service call after receipt of notice from the City, and promptly make all repairs arising out of defective materials, workmanship, or equipment. If a service response does not occur within four (4) hours, or diligent efforts are not made to effect repairs, the City will notify the Contractor (by fax or voice mail if no representative is available) of its intent to secure another service provider. Thereafter, the City is authorized to make such repairs, and the Contractor shall be liable for the cost thereof. In case of emergency, where, in the opinion of the City, delay could cause serious loss or damage, repairs may be made without notice being sent to the Contractor, and the expense in connection t The Contractor shall direct all of its equipment suppliers and/or manufacturers to promptly provide to it and to the City any and all information concerning product defects or other problems and shall promptly forward to the City any such information received, whether before, during, or after the warranty period.

Prior to the expiration of the warranty period, the City reserves the right to hold a meeting and require the attendance of the Contractor. The purpose of the meeting is to review warranties, bonds, and maintenance requirements, and determine required repair or replacement of defective items.

COMPANY NAME: Pacific Underground Construction, Inc.

EXHIBIT B
SCHEDULE OF COMPENSATION RATES

On-Call Services for Water and Sewer Repairs

This work is subject to prevailing wage. The hourly wages to be paid laborers, workers, or mechanics shall not be less than the DIR prevailing wage rates for an hour's work in the same trade or occupation in Santa Clara County. Prevailing wage rates are available online at <http://www.dir.ca.gov/dlsr>.

<u>Description</u>	<u>Unit</u>	<u>Hourly Rate</u>
1. LABOR		
a. Project Manager	Hour	\$ <u>230.00</u>
b. Foreman/Superintendent	Hour	\$ <u>200.00</u>
c. Equipment Operator	Hour	\$ <u>175.00</u>
d. Journeyman	Hour	\$ <u>140.00</u>
e. Laborer or Equivalent	Hour	\$ <u>140.00</u>
2. EQUIPMENT		
a. Boom Truck	Hour	\$ <u>200.00</u>
b. Service Vehicle (utility body pickup) or Equivalent	Hour	\$ <u>60.00</u>
c. Backhoe (Case 580E or comparable)	Hour	\$ <u>100.00</u>
d. Welder	Hour	\$ <u>50.00</u>
e. Compressor (150 cfm)	Hour	\$ <u>45.00</u>
f. 5 yd Dump Truck	Hour	\$ <u>95.00</u>
g. 24-inch Vibratory Smooth Drum Roller	Hour	\$ <u>35.00</u>
3. MOBILIZATION AND DEMOBILIZATION		

Mobilization and Demobilization

25 % (Fill In)

4. OVERHEAD AND PROFIT

Overhead and Profit

15 % (Fill In)

5. MATERIALS MARKUP

Materials Markup - Cannot exceed 25%

25 % (Fill In)

6. SUBCONTRACTOR MARKUP

Subcontractor Markup

10 % (Fill In)

**EXHIBIT C
SCHEDULE OF PERFORMANCE**

This is an on-call as needed agreement.

For each job under this agreement, the City will request a detailed task order proposal from the Contractor. The Contractor proposal shall include an itemized breakdown of hourly labor and equipment rates as well as all materials and material markup costs. The City's project manager will issue a notice to proceed if the proposal is accepted. The Contractor will issue an invoice at the completion of each task order, and shall include a detailed breakdown of all hourly charges for labor and equipment, materials, and material mark up costs.

**FIRST AMENDMENT TO AGREEMENT
WEST VALLEY CONSTRUCTION COMPANY, INC.**

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

RECITALS

The following recitals are a substantive part of this Agreement:

1. This First Amendment to Agreement is entered into pursuant to the action of the Morgan Hill City Council taken on _____, _____, 20____.
2. The CITY and SERVICE PROVIDER entered into that "Maintenance Service Agreement" made as of September 16, 2021, for services for a maximum compensation of One Hundred Fifty Thousand Dollars (\$150,000.00) ("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 4.1 shall be amended and replaced in its entirety by the following:

"4.1. Amount. Compensation under this Agreement shall not exceed THREE HUNDRED THOUSAND DOLLARS (\$300,000.00) and shall be billed based on the rate and basis set forth in **Exhibit B.**"

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[Signatures on the Next Page]

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

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

TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS:

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

ATTEST:

CITY OF MORGAN HILL

Michelle Bigelow, City Clerk

Date: _____

Christina Turner, City Manager

Date: _____

APPROVED AS TO FORM:

**WEST VALLEY CONSTRUCTION
COMPANY, INC.**

Donald Larkin, City Attorney

Date: _____

By:

Title: _____

Print Name and Title of Signer.

If Corporate: Chairman, President,
or Vice President

Date: _____

By:

Title: _____

Print Name and Title of Signer.

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

Date: _____

EXHIBIT 1

**MAINTENANCE SERVICE AGREEMENT
WEST VALLEY CONSTRUCTION COMPANY, INC.**

THIS AGREEMENT is entered into and becomes effective on 9/16/2021 (Effective Date), by and between the CITY OF MORGAN HILL, a municipal corporation, ("CITY"), and West Valley Construction Company, Inc. a California corporation ("SERVICE PROVIDER") hereinafter referred to collectively as "Parties." In consideration of the promises and the mutual covenants contained in this Agreement, the Parties agree as follows:

1. **City Authority.** This Agreement is entered into pursuant to the action of the Morgan Hill City Council taken on September 01, 2021.
2. **Term of Agreement.** This Agreement shall cover services rendered from the Effective Date of this Agreement until August 30, 2023 at which time SERVICE PROVIDER'S services shall be completed. The City Manager is authorized to extend the term of this Agreement for a maximum of three one-year extensions. Any such extension shall be in writing and signed by both Parties to this Agreement.
3. **Scope of Service.** The services to be performed by SERVICE PROVIDER shall be Water and Sewer Repairs as further described in **Exhibit A**.
4. **Compensation.** SERVICE PROVIDER shall be compensated as follows:
 - 4.1. **Amount.** \$150,000.00. Total compensation to SERVICE PROVIDER under this Agreement during its initial term set forth in Section 2 above shall not exceed One Hundred Fifty Thousand dollars and shall be billed based on the rate and basis set forth in **Exhibit B**. If the City Manager extends the term of this Agreement pursuant to the provisions of Section 2 above, the City Manager shall have the authority to increase the maximum compensation allowed to be paid to SERVICE PROVIDER during that extended term period, so long as City Council has appropriated sufficient funds therefor, the Parties mutually agree to such amount in a writing signed by both Parties to this Agreement and provided further that in no event shall such maximum compensation allowed for each subsequent extended one-year term exceed 105% of the maximum compensation allowed to be paid to SERVICE PROVIDER for one year of service during the immediately preceding prior year of service.
 - 4.2. **Billing.** SERVICE PROVIDER shall provide CITY with an invoice containing the dated, detailed, and itemized descriptions of all services performed and expenses incurred (if such expenses are reimbursable pursuant to Exhibit B) by SERVICE PROVIDER on a monthly basis unless otherwise specified in Exhibit B. All invoices shall be sent to the CITY addressed to the department head or project manager identified below in Section 14 Notices. Payment will be made to SERVICE PROVIDER within thirty (30) days of receipt of invoice by CITY. Any rate charged shall be prorated where services are interrupted or not provided for any rate period (for example, any monthly rate charge should be prorated when services were interrupted or provided for only part of the month). For services billed on an hourly rate, the minimum unit of billed time shall not exceed one tenth of one hour. CITY shall pay for services and expenses (if so provided in Exhibit B) up to the limit of compensation set forth above, that in the CITY's judgment were necessary and reasonable. Services for work performed and expenses incurred in excess of the total compensation set forth in paragraph 4.1 above shall be at no cost to CITY.
5. **Termination.** CITY or SERVICE PROVIDER shall have the right to terminate this Agreement, without cause, by giving thirty (30) days' written notice or less under urgent circumstances. Upon such termination,

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

- 5.1. **Non-Appropriations.** Notwithstanding anything contained in this Agreement to the contrary, if insufficient funds are appropriated, or funds are otherwise unavailable in the budget for CITY for any reason whatsoever in any fiscal year, for payments due under this Agreement, CITY will immediately notify SERVICE PROVIDER of such occurrence, and this Agreement shall terminate after the last day during the fiscal year for which appropriations shall have been budgeted for CITY or are otherwise available for payments.
- 5.2. **Temporary Suspension of Services.** CITY'S need for services may be suspended due to unforeseeable or unavoidable circumstances beyond its control. Such circumstances include, but are not limited to, earthquake, fire, explosion, flood or other natural catastrophe; governmental legislation, condemnation, acts, orders, or regulation; war or acts of terrorism; strikes or labor difficulties; and quarantine, epidemic, or pandemic. CITY shall provide a 5-days' written notice or less under urgent circumstances to temporarily suspend services at specific CITY facilities. CITY reserves the right to request which CITY facilities are to be serviced or not serviced due to unforeseeable or unavoidable circumstances; and the level of service at each CITY facility. Upon suspension, SERVICE PROVIDER shall submit to CITY an itemized statement of services performed for which compensation has not been paid up to the date of the suspension. No further payments will be made for services provided after the date of the suspension. CITY shall provide 5 days' written notice when the circumstances for the suspension of specific facilities' services are removed for SERVICE PROVIDER to commence providing services.

6. **Performance of Work.** SERVICE PROVIDER represents that it is qualified by virtue of experience, training, education, and expertise to accomplish these services. Services shall be performed by SERVICE PROVIDER in accordance with professional practices in a manner consistent with a level of care, competence and skill exercised by qualified members of SERVICE PROVIDER'S profession. By delivery of completed work, SERVICE PROVIDER certifies that the work conforms to the requirements of this Agreement and all applicable federal, state and local laws. SERVICE PROVIDER 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/her delegate, to do so, and any such storage shall occur only in the manner and location allowed by such CITY official and entirely at SERVICE PROVIDER's sole risk.

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

provide the services of SERVICE PROVIDER under this Agreement, together with the reasonably anticipated quantities thereof, if requested by CITY.

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

8.1. **Insurance Types and Amounts.**

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

materials. Such coverage shall be in the minimum amount of: (i) one million dollars (\$1,000,000.00) for any one accident or occurrence, or (ii) the maximum amount of such insurance available to SERVICE PROVIDER under SERVICE PROVIDER's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

8.1.5. Professional Liability.

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

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

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

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

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

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

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

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

Certificate Holder address:

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

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

10. Compliance with Law.

- 10.1. SERVICE PROVIDER and its officers, employees, agents, and subcontractors shall comply with all applicable laws, ordinances, administrative regulations, and permitting requirements in carrying out their obligations under this Agreement. SERVICE PROVIDER and its officers, employees, agents, and subcontractors covenant there shall be no discrimination based upon 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:

West Valley Construction Company, Inc.
580 McGlinchy Lane
Campbell, CA 95008

Address of CITY is as follows:

Utilities Division	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.

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17. **Maintenance of Records.**

- 17.1. **Maintenance.** SERVICE PROVIDER shall prepare, maintain, and preserve all reports and records that may be required by federal, state, and CITY rules and ordinances related to services provided under this Agreement. SERVICE PROVIDER shall maintain records for a period of at least 3 years after receipt of final payment under this Agreement. If any litigation, claim, negotiation, audit exception, or other action relating to this Agreement is pending at the end of the 3-year period, then SERVICE PROVIDER shall retain said records until such action is resolved.
- 17.2. **Access to and Audit of Records.** CITY shall have the right to examine, monitor and audit all records, documents, conditions, and activities of SERVICE PROVIDER and its subcontractors related to services under this Agreement. Pursuant to Government Code Section 8546.7, if this Agreement involves the expenditure of public funds in excess of \$10,000, the Parties to this Agreement may be subject, at the request of CITY or as part of any audit of CITY, to the examination and audit of the State Auditor pertaining to matters connected with the performance of this Agreement for a period of three years after final payment under the Agreement.
- 17.3. **Ownership of Work Product.** All documents or other information developed or received by SERVICE PROVIDER for work performed under this Agreement shall be the property of CITY. SERVICE PROVIDER shall provide CITY with copies of these items upon demand or upon termination of this Agreement.

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

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

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

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

22. **Defense and Indemnification.**

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

contained in this Agreement by SERVICE PROVIDER, and/or its agents, officers, employees, subcontractors, or independent contractors ("CLAIM").

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

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

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

22.5. Interpretation. This Section shall constitute an agreement or contract of indemnity, incorporating the interpretations under California Civil Code Section 2778. It is expressly understood and agreed that the obligation of SERVICE PROVIDER to indemnify the INDEMNITEE shall be as broad and inclusive as permitted by the laws of the State of California and shall survive termination of this Agreement.

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

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

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

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

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

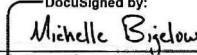
28. **Authority to Execute.** Those individuals who are signing this Agreement on behalf of entities represent and warrant that they are, respectively, duly authorized to sign on behalf of the entities and to bind the entities fully to each and all of the obligations set forth in this Agreement.

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

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

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

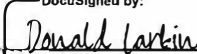
ATTEST:

DocuSigned by:

 Michelle Bigelow
 City Clerk/Deputy City Clerk

Michelle Bigelow
 Print Name

Date: 9/16/2021

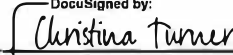
APPROVED AS TO FORM:

DocuSigned by:

 Donald A. Larkin
 City Attorney

Donald A. Larkin
 Print Name

Date: 9/7/2021

CITY OF MORGAN HILL

DocuSigned by:

 Christina J. Turner
 City Clerk

Christina J. Turner
 Print Name

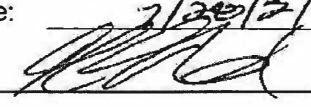
Date: 9/16/2021

West Valley Construction Company, Inc.


 By:

PATRICK MILLER
 ASSISTANT VICE PRESIDENT
 Print Name and Title of Signer.
 If Corporate: Chairman, President or
 Vice President

Date: 7/28/21


 By:

BRAD BOSOMWORTH, SECRETARY
 Print Name and Title of Signer.
 If Corporate: Secretary, Assistant
 Secretary, Chief Financial Officer or
 Assistant Treasurer

Date: 7/28/2021

174968

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

Expiration Date(s) 8/31/22

1000002493

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

Expiration Date(s) 6/30/22

Seal:

U:\Legal Forms\Consultant Agreements\City Maintenance Service Agreement.Docx

EXHIBIT A SCOPE OF SERVICES

This project is to provide water and sewer repairs on an on-call, as-needed, time-and-materials basis for a period of two (2) years with the option for three (3) additional single year extensions. Any tasking shall be initiated solely by the City. Execution of this agreement by the City does not in any way guarantee that any tasking or request for on-call services will be issued to any party. Moreover, execution of this agreement by the City shall not entitle contracted parties to any form of payment or compensation from the City without first having issued tasking or request for services from a contractor.

Typical work to be performed under this contract includes repair of water service leaks, water main leaks, hydrant repair, valve replacement, water service replacement, meter installation, sewer main repairs, sewer lateral repair, manhole repair or installation, backfill of excavations, compaction, and final paving of streets. From time to time the City may request service for a backhoe with operator and/or laborers to assist the City repair crew. The Contractor also may be requested to do patch paving work. City staff and equipment will be made available for assistance with shutdowns and some activities.

The work to be performed under this contract consists of furnishing all tools, equipment, materials, supplies, and manufactured articles to complete the services as needed. It shall also include the furnishing of all transportation and services, including fuel, power, water, and essential communications, and for the performance of all labor, work, or other operations required for the fulfillment of the contract in strict accordance with the Contract Documents and City's Standard Details for Construction Standard Details for Construction -Link currently in effect.

The Contractor may utilize the services of specialty subcontractors on those parts of the work that, under normal contracting practices, are performed by specialty subcontractor. It is understood that at least 50 percent of the work to be performed shall be performed by the successful Contractor. Any subcontractor used must adhere to the same terms and conditions as the successful contractor. The Contractor is representing to City that he/she and any subcontractor has all appropriate licenses, certifications, and registrations to perform the work hereunder. The Contractor shall be fully responsible to the City for the performance of his/her subcontractors, and of persons either directly or indirectly employed by them.

City Responsibilities

City's personnel will identify and assess specific projects or repairs. The City will notify Contractor of general locations requiring construction or repair, and a general description of the field conditions at repair locations, and materials to be provided by the City. The City's Project Manager or designated representative will direct the general process to be followed but shall not generally direct the means or methods to be used by the Contractor. The City will provide base maps or record drawings of facilities when they are requested and available. All work to be completed will be agreed upon prior to the commencement of work with a general scope of services. Drawings will be provided if applicable. The City will issue a written task order and attach the contractor's scope of work for projects that are not an emergency. Notification of residents whose service may be interrupted will be the responsibility of the City.

Contractor's Responsibilities

The Contractor will provide a scope of work for each project that is not an emergency. The scope of work will be the basis for the project and will serve as supplement to the contract documents for that particular project. The scope of work shall include a not to exceed amount for the project. The Contractor shall be responsible for providing the following to complete the services in a timely manner as outlined below:

- Qualified Labor
- Tools
- Equipment, including all necessary Safety Equipment
- Materials and Supplies
- Transportation
- Services (including fuel, power, water, and communications)
- Sheeting and shoring as required
- Traffic control devices and measures

For an emergency repair the Contractor shall make every effort to begin the repair within four (4) hours of notification that a repair is needed. Notification of the repair will be made in the form of a phone call. The City is aware that the Contractor may have other commitments. The Contractor shall notify the City if they do not have the manpower to mobilize a crew to begin the repair within the allotted time. If the Contractor cannot mobilize the City will contact the other Contractor on the list. If none of the Contractors on the short list derived this solicitation can do the work within the time frame, the City reserves the right to seek assistance from another contracting firm.

Contractor is responsible for damage resulting from performing work and clean-up of effected area. The Contractor shall incur these damage costs and not pass these charges to the City.

The Contractor shall be cautioned that the City has Asbestos Cement Pipe (ACP) in some areas of the water distribution system as well as the wastewater collection system. Some of the repairs may be on ACP lines. The Contractor and its employees shall be properly trained for working on these ACP lines. All current OSHA standards shall be followed.

As some of the infrastructure falls outside of City limits, the Contractor will have to obtain encroachment permits, if needed, in the jurisdiction where the work is taking place.

Repair Standards

The Contractor is responsible for meeting all contract conditions and City's Standard Details for Construction (link on page 9), specifications, and drawings. If the City's Inspectors determine that any repair work is substandard, the Contractor shall be advised thereof orally and in writing, and shall redo all such work at the expense of the Contractor. The City's Project Manager and Inspectors will determine a time when the re-work is to be completed and re-inspect the repair to determine if the repair has been performed satisfactorily. The Contractor shall comply with all Federal, State, and Local safety rules and regulations.

Materials and Supplies

At the time of notification, the City will provide the Contractor with a list of City supplied materials. The Contractor is responsible for having a reliable supply chain in place to obtain, in a timely manner, all additional materials and supplies needed for the required repair. All materials and supplies obtained by the Contractor for the work must be new and free from defects. There will be no mark-up or other cost charged to the City for materials and supplies used from the City's

inventory. The City will deliver small materials and fittings such as repair clamps, corp stops, etc. to the project site. Any bulk materials such as aggregate base, temporary asphalt paving, etc. provided by the City shall be picked up by the Contractor at the City's Corporation Yard.

Disposal of Materials

All materials shall be disposed of in a manner that does not adversely affect the environment and is consistent with local, state, and federal laws and regulations.

Response Schedule

Emergency Repair - The Contractor will make every effort to begin emergency repairs within the notification specified herein, or in accordance with a schedule approved by the City. Notification to the Contractor may be in the form of a telephone call, facsimile, or e-mail, depending on the urgency of the repair. The City reserves the rights, in its sole discretion, to require a more rapid response should it deem it to be necessary. A typical emergency repair will have a response time of four (4) hours. If repair cannot be started within this period, the City reserves the right to obtain the services of other Contractors.

Scheduled Repair - If a scheduled repair cannot be started within twenty-four (24) hours of the City's scheduled time of repair, the Contractor shall provide the City accurate estimate of when work can start. The City will work with the Contractor in regards to other commitments the Contractor may have. However, the City reserves the right to seek outside assistance from other Contractors if scheduling cannot be agreed upon and repairs are determined by the City, in its sole discretion, to be as required.

Physical Location of Underground Utilities

The City is responsible for providing all utility maps or record drawings to perform repairs.

Facilities Shown or Indicated – Unless it is otherwise expressly provided in the section below, **Protection of Existing Facilities**, the City shall not be responsible for the accuracy or completeness of information or data shown on the City's water and sewer system base maps or any other utility information, and the Contractor shall have full responsibility for reviewing and checking all such information and data, for locating all Underground Utilities for coordination of the work with the owners of such Underground Utilities during construction, for the safety and protection thereof and repairing any damage thereto resulting from the work, the cost of which will be considered as having been included in the contract price. Existing utility lines that are shown, or the locations of which are made known to the Contractor prior to excavation and that are to be retained, and all utility lines that are constructed during excavation operations shall be protected from damage during excavation and back-filling and if damaged, shall be immediately repaired by the Contractor except as the owner of the utility or other facility may otherwise direct. All repairs due to damage are subject to inspection and approval by an authorized representative of the property owner before being concealed by backfill or other work. The obligations set forth in this paragraph and other paragraphs concerning underground work shall apply to such damage as may occur after back-filling or is not discovered until after completion of the back-filling.

Facilities Not Shown or Indicated - If an Underground Utility is uncovered or revealed at or contiguous to the site which was not shown or indicated in the City's water and sewer system base maps and not otherwise made known to the Contractor prior to excavation, which the Contractor could not reasonably have been expected to be aware of based on the presence of other visible facilities, such as buildings, meter and junction boxes, on or adjacent to the site of the repair, the

Contractor shall identify the owner of such Underground Utility and give written notice thereof to the City in accordance with the requirements of the next section, Protection of Existing Facilities. In the event that the Contractor damages any existing utility lines that are not shown or the locations of which are not made known to the Contractor prior to excavation, a written report thereof shall be made immediately to the City. If directed by the City, repairs shall be made by the Contractor.

To the extent required by Government Code section 4215, all costs of locating, repairing damage to, and removing or relocating such utility facilities not shown or indicated, and for the necessary idling of equipment on the project which was actually working on that portion of the work which was interrupted or idled by removal or relocation of such utility facilities not shown or indicated, which costs were not incurred due to the failure of the Contractor to exercise reasonable care, will be paid for as time and materials.

Protection of Existing Facilities

General - The Contractor shall protect all existing utilities and improvements not designated for removal and shall restore damaged or temporarily relocated utilities and improvements to a condition equal to or better than they were prior to such damage or temporary relocation. Restoration shall be to the reasonable satisfaction of the City or to the affected utility or franchisee.

The Contractor shall verify the exact locations and depths of all utilities or improvements shown and the Contractor shall make exploratory excavations of all utilities or improvements that may interfere with the Work. The number of exploratory excavations required shall be that number which is sufficient to determine the alignment and grade of the utility or improvement. The Contractor shall notify and obtain concurrence with City staff of that number of exploratory excavations.

It shall be the Contractor's responsibility to see that all utilities or other improvements are adequately protected from damage due to such operations. The Contractor shall exercise care in all excavations to avoid damage to existing underground facilities. This shall include hand digging in those areas where underground facilities are known to exist until they have been sufficiently located to avoid damage to the facilities. No additional compensation shall be provided the Contractor for compliance with the provisions of this section or for the damage and repair of facilities due to the lack of such care.

Right-of-Way - The Contractor shall not do any work that would affect any oil, gas, sewer, or water pipeline; any telephone, telegraph, communication wire or cable, or electric transmission line; any fence; or any other structure, nor shall the Contractor enter upon the right-of-way involved until notified by the City's representative that the City has secured authority therefore from the appropriate authority. All oil and gasoline pipelines, power, and telephone or other communication cable ducts, gas and water mains, irrigation lines, sewer lines, storm drain lines, poles, and overhead power and communication wires and cables encountered along the line of the Work shall remain continuously in service during all the operations under the Contract, unless other arrangements satisfactory to the City are made with the owner of said pipelines, duct, main, irrigation line, sewer, storm drain, pole, or wire or cable.

In case it shall be necessary to move the property of any public utility or franchise holder, the Contractor shall provide written and just cause for utilities to be moved, and such utility company or franchise holder will, upon request of the Contractor, be notified in writing by the City to move such property within a specified reasonable time. When utility lines that are to be removed are encountered within the area of operations, the Contractor shall notify the City's Engineer a sufficient time in advance for the necessary measures to be taken to prevent interruption of service.

This procedure is intended to prevent the Contractor from arbitrarily deciding to cut through any other utility's or any franchisee's facilities. It allows the City to coordinate such work with those agencies and set the timeline and sequence of such work. After authorization has been obtained, the Contractor shall give said party due notice of its intention to begin work, and shall give said party convenient access and every facility for removing, shoring, supporting, or otherwise protecting such pipeline, transmission line, ditch, fence, or structure, and for replacing same. The Contractor shall provide such special protection as may be necessary to protect all known utilities and other improvements that may be impaired during construction operations and shall take all possible precautions for the protection of unforeseen utility lines or other improvements to provide for uninterrupted service.

Utilities to be Removed/Relocated - Where the proper completion of the repair work requires the temporary or permanent removal and/or relocation of an existing utility or other improvement that is shown, the Contractor shall remove and, without unnecessary delay, temporarily replace or relocate such utility or facility. In all cases of such temporary removal or relocation, restoration to the former location shall be accomplished by the Contractor in a manner that will restore or replace the utility or improvement as nearly as possible to its former location and to as good or better condition than found prior to removal.

Restoration of Pavement:

A. General. All paved areas, including asphalt concrete berms, cut or damaged during construction, shall be replaced with in accordance with the specifications of the public authority that has jurisdiction over the site of the work. The City of Morgan Hill and the County of Santa Clara own public right of ways within the City's service area. All temporary and permanent pavements shall conform to the requirements of the affected pavement owner. All pavements that are subject to partial removal shall be neatly saw cut in straight lines per specifications.

B. Temporary Resurfacing. Wherever required by the public authority with jurisdiction over the site of the work, the Contractor shall place temporary surfacing promptly after back-filling and shall maintain such surfacing for the period of time fixed by said authority before proceeding with the final restoration of improvements.

C. Permanent Resurfacing. In order to obtain a satisfactory junction with adjacent surfaces, the Contractor shall comply with the applicable City or County Specifications, at its expense. The City will pay for initial testing. Any required re-testing and correction costs will be the responsibility of the Contractor.

D. Restoration of Sidewalks or Private Driveways. Wherever sidewalks or private roads have been removed for purposes of construction, the Contractor shall place suitable temporary sidewalks or roadways promptly after back-filling and shall maintain them in satisfactory condition for the period of time fixed by the authorities having jurisdiction over the affected portions before proceeding with the final restoration or, if no such period of times is so fixed, the Contractor shall maintain said temporary sidewalks or roadways until the final restoration thereof has been made. Final restorations shall be in accordance with any applicable City and/or general construction codes.

Notification by the City - For routine repairs, the City shall notify Underground Service Alert (1-800-642-2444) forty-eight (48) hours prior to any excavation in the vicinity of any existing underground facilities, including all water, sewer, storm drain, gas, petroleum products, or other pipelines; all

buried electric power, communications, or television cables; all traffic signal and street lighting facilities; and all roadway and state highway rights-of-way.

Facility Access

Continuous access to the City's facilities shall be provided at all times during the Project. Such access shall be suitable for large vehicles, e.g. chemical delivery and sludge hauling trucks. Access routes shall be provided for each planned project.

Water Quality Protection and Stormwater Quality

The Contractor shall take all necessary steps to protect the storm drain system from discharges of construction-related wastewater, including saw cutting slurry, concrete washout, sediment-contaminated and runoff, sewage overflows, and highly-chlorinated discharges from water line testing. This will require the use of Best Management Practices (BMPs) such as providing sediment controls on downstream storm drain inlets, collecting and removing saw cutting slurry, providing an area for concrete washout, and directing highly-chlorinated discharges to the sanitary sewer or by dechlorinating this water. The Contractor is responsible for damage resulting from performing repair and clean-up of effected area.

Trench Excavation

The maximum length of trench excavation in advance of the pipe laying operation shall be 50 feet, and the maximum amount of trench remaining open without backfill shall be 50 feet. No trench in public areas shall be left open during periods when the Contractor is not at the site of work; trenches in these areas shall either be backfilled and temporarily paved, where applicable, or covered with steel trench plates as specified in the technical specifications.

Underground Facilities

The Contractor shall exercise care in all excavations to avoid damage to existing underground facilities. This shall include potholing and hand digging in those areas where underground facilities are known to exist until they have been sufficiently located to avoid damage to the facilities.

Prior to fabrication of any materials, the Contractor shall verify the locations and elevations of existing underground facilities to ensure proper connection and/or clearance.

The Contractor shall exercise care in maintaining those pipes and facilities to be abandoned and/or removed which are required for the continuing operation of the existing facilities until such time as they can be abandoned. The Contractor shall exercise extreme caution in working in any area adjacent to existing facilities. It is essential that the existing facilities be maintained in service until the new work is ready for full time operation and is placed in service.

No additional compensation shall be provided the Contractor for compliance with the provisions of this section for the damage and repair of such facilities due to the lack of care, and the Contractor shall be responsible for the direct and indirect costs resulting from the damage and repair of such facilities.

Working Hours

For Emergency Repairs working hours may be any day of the week at any time. The crews that respond to the emergency shall comply with applicable labor codes for hours worked.

For Scheduled Repairs normal City staff working hours are from 7:00 a.m. to 3:30 p.m., excluding weekends and City holidays. Unless otherwise approved in writing by the City, repair work shall be allowed only between the hours of 7:00 a.m. and 8:00 p.m. on weekdays and, when approved in writing in advance by the City, 9:00 a.m. to 6:00 p.m. on weekends and holidays. These working hours may be adjusted on a job by job basis depending on nature of the project and specific encroachment permit conditions for the project.

The Contractor shall notify the City at least 48 hours prior to any work outside the normal working hours defined above, on weekends or holidays.

Noise Abatement

All operations at the site of the repairs shall be performed so as to minimize unnecessary noise. Special measures shall be taken to suppress noise during night hours. Noise levels due to Contractor's activities shall not exceed the levels specified by local ordinance.

Internal combustion engines used on the work shall be equipped with a muffler of a type recommended by the manufacturer. No internal combustion engine shall be operated without said muffler.

Warranty and Scheduled Maintenance

The Contractor hereby agrees to make, at its own expense, all repairs or replacements necessitated by defects in materials or workmanship, in those components provided, installed, replaced and/or modified by the Contractor, and pay for any damage to other works resulting from such defects, which becomes evident within one (1) year after the date of acceptance of installation work, or within such longer period of time as may be prescribed by law or by the terms of any applicable special guarantee required by the Agreement. This warranty shall include all parts and labor and the performance of all manufacturers' recommended maintenance. This in no way shall limit, amend, or reduce any manufacturer's warranty. The Contractor further assumes responsibility for a similar guarantee for all work and materials provided by subcontractors. This warranty shall not apply to existing equipment that was not modified or significantly adjusted so as to change its operation. The Contractor also agrees to indemnify, defend and hold the City harmless from liability of any kind arising from damage due to covered defects. Prior to the final acceptance of installation work, the Contractor shall provide phone numbers for around-the-clock notification of the need for emergency service repairs, a schedule showing specific dates for routine maintenance service calls.

The Contractor shall respond within four (4) hours of City's emergency service call after receipt of notice from the City, and promptly make all repairs arising out of defective materials, workmanship, or equipment. If a service response does not occur within four (4) hours, or diligent efforts are not made to effect repairs, the City will notify the Contractor (by fax or voice mail if no representative is available) of its intent to secure another service provider. Thereafter, the City is authorized to make such repairs, and the Contractor shall be liable for the cost thereof. In case of emergency, where, in the opinion of the City, delay could cause serious loss or damage, repairs may be made without notice being sent to the Contractor, and the expense in connection t The Contractor shall direct all of its equipment suppliers and/or manufacturers to promptly provide to it and to the City any and all information concerning product defects or other problems and shall promptly forward to the City any such information received, whether before, during, or after the warranty period.

Prior to the expiration of the warranty period, the City reserves the right to hold a meeting and require the attendance of the Contractor. The purpose of the meeting is to review warranties, bonds, and maintenance requirements, and determine required repair or replacement of defective items.

COMPANY NAME: West Valley Construction Company Inc.

EXHIBIT B SCHEDULE OF COMPENSATION RATES

On-Call Services for Water and Sewer Repairs

This work is subject to prevailing wage. The hourly wages to be paid laborers, workers, or mechanics shall not be less than the DIR prevailing wage rates for an hour's work in the same trade or occupation in Santa Clara County. Prevailing wage rates are available on line at <http://www.dir.ca.gov/dlsr>.

<u>Description</u>	<u>Unit</u>	<u>Hourly Rate</u>
1. LABOR		
a. Project Manager	Hour	\$ <u>150.00</u>
b. Foreman/Superintendent	Hour	\$ <u>166.64</u>
c. Equipment Operator	Hour	\$ <u>182.65</u>
d. Journeyman	Hour	\$ <u>133.74</u>
e. Laborer or Equivalent	Hour	\$ <u>133.74</u>
2. EQUIPMENT		
a. Boom Truck	Hour	\$ <u>52.49</u>
b. Service Vehicle (utility body pickup) or Equivalent	Hour	\$ <u>31.87</u>
c. Backhoe (Case 580E or comparable)	Hour	\$ <u>62.23</u>
d. Welder	Hour	\$ <u>11.29</u>
e. Compressor (150 cfm)	Hour	\$ <u>34.98</u>
f. 5 yd Dump Truck	Hour	\$ <u>60.82</u>
g. 24-inch Vibratory Smooth Drum Roller	Hour	\$ <u>23.71</u>
3. MOBILIZATION AND DEMOBILIZATION		

Mobilization and Demobilization 15 % (Fill In)

4. OVERHEAD AND PROFIT

Overhead and Profit 15 % (Fill In)

5. MATERIALS MARKUP

Materials Markup - Cannot exceed 25% 15 % (Fill In)

6. SUBCONTRACTOR MARKUP

Subcontractor Markup 15 % (Fill In)



City of Morgan Hill
Request for On-call Contractor Services
 In-ground sewer and water piping repair services contract
 Contractor: West Valley Construction Company
 Date: 6/24/2021

Equipment Schedule (Time on Jobsite)		
Category	Description	Hourly Rate
AC1	Air compressor <124 CFM	\$ 29.13
AC2	Air Compressor 125-249 CFM	\$ 34.98
AP1	Asph. Milling Mach.<25.9" wide	\$ 164.56
AT1	Arrow board trailer	\$ 4.40
BB6	Beverage Body Truck, Class 6	\$ 45.84
BH3	BH/Ldr 14' to 14.9' dig depth	\$ 62.23
BH4	BH/Ldr 15' to 15.9' dig depth	\$ 72.20
BH6	BH/Ldr 17' and over dig depth	\$ 116.15
BHA	Breaker attachment	\$ 34.60
BHB	Pole Auger attachment	\$ 7.42
BHC	Compaction wheel	\$ 7.34
BN1	2" Conduit bender	\$ 11.47
CM1	Concrete mixer	\$ 8.54
CP1	Hydraulic cable puller	\$ 20.40
CP3	Electric cable puller	\$ 7.28
CR1	Crane < 8000 lbs Cap	\$ 9.43
CR6	Crane Truck, Class 6	\$ 52.49
CR7	Crane Truck, Class 6	\$ 54.84
CRA	Crane Truck Insulator	\$ 6.18
CT1	Concrete trailer <1.5 yard	\$ 24.40
DB4	Dump truck 1-2.9 yd. Class 4	\$ 66.91
DB5	Dump truck 3-4.9 yd. Class 5	\$ 60.82
DB6	Dump truck 5-6.9 yd. Class 6	\$ 70.05
DB7	Dump truck 7-9.9 yd. Class 7	\$ 94.11
DB8	Dump truck >10 yd Class 8	\$ 117.71
DBA	Side conveyor attachment	\$ 15.81

DC6	Dump trk 5-6.9 yd. cls 6 w/ KB	\$ 74.24
DR1	Service Drill	\$ 3.09
DT1	Dump Trailer, Class 1	\$ 18.45
DT2	Dump Trailer, Class 2	\$ 18.45
DZ2	Bulldozer 60-74 hp	\$ 68.41
ET1	Equipment Trailer, Class 1	\$ 5.03
Category	Description	Hourly Rate
ET2	Equipment Trailer, Class 2	\$ 6.51
ET3	Equipment Trailer, Class 3	\$ 8.70
ET4	Equipment Trailer, Class 4	\$ 9.93
ET5	Equipment Trailer, Class 5	\$ 10.91
ET6	Equipment Trailer, Class 6	\$ 11.88
ET7	Equipment Trailer, Class 7	\$ 14.61
ET8	Equipment Trailer, Class 8	\$ 26.81
EX1	Mini Excavator <4Metric Tons	\$ 14.72
EX4	Excavator 12.1-14 Metric Tons	\$ 53.25
EX5	Excavator 19.1-21 Metric Tons	\$ 57.34
EX6	Excavator 21.1-24 Metric Tons	\$ 67.68
EX7	Excavator 33.1-40 Metric Tons	\$ 97.93
EXA	Breaker attachment	\$ 36.82
EXB	Vib. sheet piling driver attch	\$ 44.68
EXC	Compaction wheel	\$ 15.90
EXD	Thumb attachment	\$ 29.22
EXE	Rock Bucket	\$ 136.25
FB1	Flatbed Truck, Class 1	\$ 13.44
FB3	Flatbed Truck, Class 3	\$ 41.57
FB4	Flatbed Truck, Class 4	\$ 43.73
FB5	Flatbed Truck, Class 5	\$ 45.84
FB6	Flatbed Truck, Class 6	\$ 52.18
FC4	Flatbed/Compressor, Class 4	\$ 56.54
FC5	Flatbed/Compressor, Class 5	\$ 62.88
FC6	Flatbed/Compressor, Class 6	\$ 69.22
FL4	Forklift, 4,000-4,999 lbs. Cap	\$ 20.26
FL5	Forklift, 5,000-5,999 lbs. Cap	\$ 24.04
FL8	Forklift, 8,000-8,999 lbs. Cap	\$ 30.15
FL9	Forklift, 9,000-9,999 lbs Cap.	\$ 30.15
FM1	Butt fusion machine	\$ 9.04
FM2	Service pipe freezer	\$ 7.28
FT4	Fuel Trailer, Class 4	\$ 23.10
GE1	Generator <5 KW	\$ 9.09

GE5	Generator-20K-50K Watts	\$ 43.77
Category	Description	Hourly Rate
HD1	Dir. Drill <7,000 lbs pullback	\$ 69.41
HD2	Dir. Drill 7,001 to 10K lbs PB	\$ 85.72
HD5	Dir. Drill 20001 to 30K lbs PB	\$ 182.53
HJ1	Hydraulic Shoring Jack	\$ 15.43
LD5	Wheel Loader 80-99 HP	\$ 62.10
LD7	Wheel Loader 110-119 HP	\$ 67.21
LD8	Wheel Loader 120-134 HP	\$ 79.75
LD9	Wheel Loader 135-149 HP	\$ 89.91
LDA	Asphalt grinder attachment	\$ 65.13
LDB	Adj. asphalt spreader box	\$ 11.50
LDE	Side dump bucket	\$ 10.63
LDF	Screen separator for backfill	\$ 7.34
LT1	Light Tower 0-6000 lbs GVWR	\$ 23.54
MI2	Measuring Instrument , Laser	\$ 7.62
OR1	All terrain vehicle	\$ 22.53
OT1	Paving oil trailer, Class 1	\$ 9.75
PB1	Hydraulic hammer	\$ 54.58
PC1	Hydraulic snap cutter	\$ 11.88
PL1	Pipe locator	\$ 17.56
PP2	Pneumatic Punch <-2"	\$ 5.49
PP4	Pneumatic Punch 2.1"-3"	\$ 7.06
PP6	Pneumatic Punch 3.1"-4"	\$ 9.75
PP7	Pneumatic Punch 4.1"-5"	\$ 9.75
PT1	Pipe trailer, Class 1	\$ 6.64
PT2	Pipe trailer, Class 2	\$ 6.64
PU1	Pickup Truck, Class 1	\$ 31.87
PU2	Pickup Truck, Class 2	\$ 28.21
PV5	Paving truck, Class 5	\$ 54.36
RF4	Forklift, R/T 8,000-9,999 lbs	\$ 58.93
RM6	Rodding Truck, Class 6	\$ 77.74
RO1	Walk behind roller<2,000 lbs	\$ 29.79
RT2	Reel Trailer, Class 2	\$ 5.61
RT3	Reel Trailer, Class 3	\$ 6.50
RT5	Reel Trailer, Class 5	\$ 49.53
Category	Description	Hourly Rate
RT6	Reel Trailer, Class 6	\$ 8.48
SD1	Service Drill	\$ 3.09
SE1	Shop Tools	\$ 17.99

SL4	Slugging truck, Class 4	\$ 58.36
SL6	Slugging truck, Class 6	\$ 67.01
SP1	Steel Crossing Plate	\$ 2.65
SS4	Skid steer ldr. Class 4	\$ 39.86
SS5	Skid steer ldr. Class 5	\$ 44.87
SS6	Skid steer ldr. Class 6	\$ 37.77
SS7	Skid steer ldr. Class 7	\$ 51.53
SSA	Hydraulic Breaker attachment	\$ 53.25
SSD	Asphalt Planer attachment	\$ 26.08
SSE	Broom attachment	\$ 8.69
SSG	Slot Mill attachment	\$ 26.08
ST1	Trailer, Pressure Washer	\$ 24.54
SV1	Storage Container	\$ 3.50
SW1	12-14" All purpose saw	\$ 6.92
SW2	Chain saw	\$ 6.28
SW3	Concr. saw, 12" max. blade cap	\$ 6.48
SW4	Con.saw, 12.1"-14" max bld cap	\$ 14.47
SW5	Con.saw, 14.1"-18" max bld cap	\$ 18.23
SW6	Con.saw, 18.1"-24" max bld cap	\$ 30.72
SW7	Concrete coring machine	\$ 46.47
TA7	Fuel and Lube Truck Class 7	\$ 111.99
TB8	Truck Tractor Class 8	\$ 103.62
TC1	Trench compactor small rammer	\$ 9.04
TC2	Trench compactor large rammer	\$ 10.13
TC3	Trench compactor vib. roller	\$ 45.58
TH7	Telehandler	\$ 79.23
TK2	Mechanics truck, Class 2	\$ 28.21
TK3	Mechanics truck, Class 3	\$ 33.12
TK4	Mechanics truck, Class 4	\$ 37.76
TK5	Mechanics truck, Class 5	\$ 46.17
TL2	Wheel loader, 40 -49 hp	\$ 38.66
Category	Description	Hourly Rate
TL3	Wheel loader, 50 -59 hp	\$ 38.08
TM1	Trenching machine <14 hp	\$ 17.23
TM5	Trenching machine >131 hp	\$ 284.89
TMA	Conveyor attch. (use with TM5)	\$ 27.78
TP1	Air motor	\$ 7.28
TP2	Tapping machine <1"	\$ 11.17
TP3	Tapping machine 1"-2"	\$ 12.59
TP4	Tapping machine 2<	\$ 23.52

TT1	Water trailer, Class 1	\$	22.34
UT1	Utility trailer, Class 1	\$	5.03
UT2	Utility trailer, Class 2	\$	5.03
VP2	Vibratory plate 17" wide	\$	7.08
VP3	Vibratory plate 21" wide	\$	12.57
VP4	Vibratory plate 25" wide	\$	23.71
VR1	Vibratory roller <3750 lbs	\$	22.79
VR2	Vibratory roller 3751-6400 lbs	\$	39.01
VT2	Vacuum Trailer, Class 2	\$	48.10
VT6	Vacuum Trailer, Class 6	\$	59.81
WM1	Welding machine	\$	11.29
WP1	Water main test pump	\$	11.50
WP3	Water pump 2"-2.9"	\$	11.50
WP4	Water pump 3"-3.9"	\$	13.17
WP5	Water pump 4"-4.9"	\$	22.17
WT6	Water Truck, Class 6	\$	50.04

EXHIBIT C SCHEDULE OF PERFORMANCE

This is an on-call as needed agreement.

For each job under this agreement, the City will request a detailed task order proposal from the Contractor. The Contractor proposal Shall include an itemized breakdown of hourly labor and equipment rates as well as all materials and material markup costs. The City's project manager will issue a notice to proceed if the proposal is accepted. The Contractor will issue an invoice at the completion of each task order, and shall include a detailed breakdown of all hourly charges for labor and equipment , materials, and material mark up costs.



City Council

Meeting Minutes

Mark Turner - Mayor
Rene Spring - Mayor Pro Tem
Gino Borgioli - Council Member
Marilyn Librers - Council Member
Yvonne Martinez Beltran - Council Member

Wednesday, April 5, 2023 7:00 PM

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

CALL TO ORDER

Mayor Turner called the City Council meeting to order at 7:00 pm.

ROLL CALL ATTENDANCE

City Clerk Michelle Bigelow called the roll.

PRESENT	Rene Spring, Gino Borgioli, Yvonne Martinez Beltran, Mark Turner, Marilyn Librers
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DECLARATION OF POSTING AGENDA

City Clerk Michelle Bigelow declared the posting of the agenda.

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

PROCLAMATIONS

The week of April 9 - 15, 2023 as Public Safety Telecommunicators Week/Dispatcher Appreciation Week

The month of April as Parkinson's Awareness Month

The month of April as American Red Cross Month

CITY COUNCIL REPORTS

Council Member Yvonne Martinez Beltran reported that Cal Cities will be holding a Cities Leader Summit from April 12, 2023, to April 14, 2023, with Legislative Day taking place on the 13th. The Annual Conference will be from September 7, 2023, through September 9, 2023. She shared that she attended the AAUW conference for young leaders and was the keynote speaker. She concluded by reporting on an ABAG meeting she attended on March 16, 2023, where they decided to support AB 84 and SB 225.

CITY MANAGER'S REPORT

City Manager Christina Turner provided an update on the drought. She announced that Sidewalk Saturdays are back and invited the community to come and support local businesses. Sidewalk Saturdays will run through June 20, 2023, from 9:00 a.m. to 1:00 p.m. on Third Street, Downtown. The City will have an information booth there this Saturday, April 7, 2023, to inform the community about Mogo. She concluded by sharing information about the Bay Area Panthers, who have decided to make Morgan Hill their home—the Panthers practice at the City's outdoor sports center. The City is excited to have a new team.

CITY ATTORNEY'S REPORT

City Attorney Don Larkin reported that at the end of the City Council meeting on March 15, 2023, the Council met in closed session on one matter regarding real estate negotiations, and there was no reportable action.

OTHER REPORTS

None.

PUBLIC COMMENT

Public comment opened at 7:18 pm.

Michael Burchfield was called to speak.

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

ADOPTION OF AGENDA

MOTION:

Adopting the agenda as posted.

RESULT:	Passed
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MOVER:	Council Member Borgioli
SECONDER:	Mayor Pro Tem Spring
AYES:	Mayor Pro Tem Spring, Council Member Borgioli, Council Member Martinez Beltran, Mayor Turner, Council Member Librers
NAYS:	None
ABSTAIN:	None
ABSENT:	None

CONSENT CALENDAR

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

Public comment opened at 7:23 pm. There being no requests to speak, public comment closed.

MOTION:

Approving items 3 through 5.

RESULT:	Passed
MOVER:	Council Member Borgioli
SECONDER:	Council Member Librers
AYES:	Mayor Pro Tem Spring, Council Member Borgioli, Council Member Martinez Beltran, Mayor Turner, Council Member Librers
NAYS:	None
ABSTAIN:	None
ABSENT:	None

3. APPROVE CONTRACT FOR BANKING SERVICES WITH WELLS FARGO BANK

Recommendation:

1. Approve contract for banking services with Wells Fargo Bank; and
2. Authorize the City Manager to execute and administer a banking services contract with Wells Fargo Bank through 2028 with subsequent renewal subject to budget appropriation.

4. **APPROVE FIFTH AMENDMENT TO AGREEMENT WITH INNOVATIVE CLAIMS SOLUTIONS, INC.**

Recommendation:

Authorize the City Manager to execute and administer a Fifth 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 \$35,755, for a new total contract amount of \$276,735 over 8 years.

5. **APPROVE THE MARCH 15, 2023 CITY COUNCIL MEETING MINUTES**

Recommendation:

Approve the March 15, 2023 City Council minutes.

ITEMS PULLED FOR DISCUSSION

1. **ADOPT ORDINANCE NO. 2344, NEW SERIES, APPROVING A ZONING MAP AMENDMENT FROM PLANNED DEVELOPMENT/GENERAL COMMERCIAL TO MIXED-USE FLEX FOR A MIXED-USE DEVELOPMENT ON A 3.82-ACRE SITE LOCATED ON THE SOUTHWEST QUADRANT OF COCHRANE ROAD AND MONTEREY ROAD (MONTEREY – CITY VENTURES (THE GATES)) (APNS 764-10-013 AND 764-10-015)**

Recommendation:

Waive the reading, adopt Ordinance No. 2344, New Series, and declare that said title, which appears on the agenda, shall be determined to have been read by title and further reading waived.

City Manager Christina Turner provided a report. City Attorney Donald Larkin answered questions.

Public comment opened at 7:31 pm. There being no requests to speak, public comment closed.

MOTION:

Adopting the ordinance.

RESULT:	Passed
MOVER:	Council Member Librers
SECONDER:	Council Member Borgioli
AYES:	Council Member Borgioli, Mayor Turner, Council Member Librers
NAYS:	Mayor Pro Tem Spring, Council Member Martinez Beltran
ABSTAIN:	None
ABSENT:	None

2. **ADOPT RESOLUTION MAKING FINDINGS IN SUPPORT OF FINANCING FOR THE PREVIOUSLY APPROVED REHABILITATION OF SKEELS AND VILLA CIOLINO APARTMENTS**

Recommendation:

Adopt a resolution to support Eden Housing's ability to apply for new Low Income Housing Tax Credit financing and tax-exempt bonds to support the re-capitalization and rehabilitation of Skeels and Villa Ciolino Affordable Apartment Communities.

Housing Director Rebecca Garcia provided a report.

Public comment opened at 7:38 pm.

Sally Casas was called to speak. (zoom)

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

MOTION:

Approving the recommended action.

RESULT:	Passed
MOVER:	Council Member Martinez Beltran
SECONDER:	Council Member Borgioli
AYES:	Mayor Pro Tem Spring, Council Member Borgioli, Council Member Martinez Beltran, Mayor Turner, Council Member Librers
NAYS:	None
ABSTAIN:	None
ABSENT:	None

PUBLIC HEARINGS

6. **ADOPT RESOLUTION ESTABLISHING CARRY CONCEALED WEAPON (CCW) LICENSE FEE, BUSINESS LICENSE RENEWAL FEE, AND UPDATING CREDIT CARD PAYMENT SERVICE FEE**

Recommendation:

1. Open/Close public hearing; and
2. Adopt resolution establishing carry concealed weapon license fee, business license renewal fee, and updating credit card service fee for development fees and transient occupancy tax payments by credit card.

Finance Director Dat Nguyen provided a report and presentation.

The public hearing opened at 8:17 pm. The following people were called to

Speak:

Matt Griffoul

Joel Nielsen

Sean O

Steve Chapell

Michael Murphy

Russ K (zoom)

Sally Casas (zoom)

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

MOTION:

Adopting resolution approving the CCW permit fee, revisiting with a target of September to re-evaluate the fee and consider a program for low-income, making the fee structure retroactive to permittees.

RESULT:	Passed
MOVER:	Council Member Martinez Beltran
SECONDER:	Mayor Pro Tem Spring
AYES:	Mayor Pro Tem Spring, Council Member Martinez Beltran, Mayor Turner, Council Member Librers
NAYS:	Council Member Borgioli
ABSTAIN:	None
ABSENT:	None

MOTION:

Adopting resolution for business license and credit card payment fees.

RESULT:	Passed
MOVER:	Council Member Martinez Beltran
SECONDER:	Mayor Pro Tem Spring
AYES:	Mayor Pro Tem Spring, Council Member Martinez Beltran, Mayor Turner, Council Member Librers, Council Member Borgioli
NAYS:	None
ABSTAIN:	None
ABSENT:	None

The meeting recessed at 8:58 pm and reconvened at 9:07 pm.

OTHER BUSINESS

7. PROVIDE DIRECTION ON NEXT STEPS FOR DOWNTOWN COMMUNITY

PARKLET AND/OR ALTERNATIVE DOWNTOWN ACTIVATION OPTION

Recommendation:

Provide direction on next steps for Downtown Community Parklet and/or Alternative Downtown Activation Option.

Economic Development Coordinator Brittney Sherman provided a report and presentation.

Public comment opened at 9:57 pm. The following people were called to speak:

Doug Muirhead

Armando Benavides (zoom)

Sally Casas (zoom)

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

The City Council provided direction to staff to pursue the alternative Downtown Activation Option.

FUTURE COUNCIL INITIATED AGENDA ITEMS

Council Member Borgioli requested a discussion on second-hand smoke bans in multi-family housing units.

Council Member Spring requested a review of the noise ordinance for roosters and chickens.

Council Member Spring requested a policy on abstaining from votes.

Council Member Spring requested a review of the waiving of credit card fees.

ADJOURNMENT

There being no further business, Mayor Turner adjourned the meeting at 10:25 pm.

Minutes Prepared by:

Michelle Bigelow, City Clerk

CITY COUNCIL STAFF REPORT

MEETING DATE: April 19, 2023

PREPARED BY:

Mariah Dabel, Public Services Administrative Manager

APPROVED BY: City Manager

APPROVE AGREEMENT WITH MONTEREY BAY OFFICE PRODUCTS INC. FOR PURCHASE AND MAINTENANCE OF THE CITY'S MULTI-FUNCTION PRINTERS

RECOMMENDATION(S)

1. Approve a Service Agreement with Monterey Bay Office Products, Inc. for \$212,005.73 for the purchase, maintenance, and repair of the City's multi-function printers (MFPs); and
2. Authorize the City Manager to execute and administer the Service Agreement with Monterey Bay Office Products, Inc. through June 30, 2028 with the option to extend five one-year periods.

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

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

2022-2023 Strategic Priorities

Fiscal Sustainability

REPORT NARRATIVE:

The purpose of this report is to provide the City Council with an opportunity to consider a Service Agreement with Monterey Bay Office Products, Inc. for the purchase, maintenance, and future repairs of the City's multi-function printers (MFPs). The proposed hardware purchase and service agreement will provide an efficient solution to the City's print, scan, copy, and fax requirements. The Service Agreement is attached to this Staff Report.

Staff recommends the City enter into a five-year Service Agreement with Monterey Bay Office Products, Inc. in the amount of \$212,005.73 with five one-year options to extend the agreement, subject to budget appropriations by the City Council. The agreement would authorize the purchase of 13 Konica Minolta MFPs in the amount of \$101,820.17 and ongoing maintenance and repair services and all supplies except paper, including 15% contingency, at an annual not-to-exceed amount of \$22,037.11 (totaling

\$110,185.56 over the initial five-year term).

Staff is recommending the purchase of the MFP equipment described in the exhibits herein from Monterey Bay Office Products, Inc. and that the purchase, maintenance, and repair services agreement be completed using the State of California Participating Addendum Number 7-19-70-46-03 to the State of Colorado National Associations of State Procurement Officials (NASPO) ValuePoint Master Agreement Number 140597. The NASPO cooperative purchasing program facilitates public procurement solicitations and agreements. By working with NASPO, state and local governments are able to leverage their spending through a single solicitation with the best value and superior contract terms. The NASPO cooperative purchasing arrangement is consistent with Section 3.04.180 of the Morgan Hill Municipal Code, which allows the purchasing officer the authority to join with other public jurisdictions in cooperative purchasing plans or programs, including, but not limited to California Communities Purchasing Program (CCPP), the California Department of General Services (CADGS), the California Multiple Award Schedule (CMAS), the National Association of Counties (NACo), or similar arrangements or plans, as determined by the purchasing officer to be in the City's best interest.

Background

In 2012, the City entered into a 60-month agreement with Monterey Office Products dba Monterey Bay Systems for the lease and maintenance of MFPs at various City facilities. In addition, the City entered into a one-year agreement with J.J.R. Enterprises, Inc. dba Caltronics Business Systems in 2017 for copier maintenance and toner supply for one MFP located at City Hall, a 60-month lease and maintenance agreement with Xerox Corporation in 2013 for one MFP at the Police Department, and a 36-month lease and maintenance agreement with Ray Morgan in 2016 for MFPs at the Aquatics Center and Council Chambers Building, with subsequent amendments. These lease and maintenance agreements have all expired and MFPs are now being maintained and serviced outside of service agreements at a higher cost.

Of note, the City's current Konica Minolta MFPs have been in active use since 2012 and are still functioning, however these and the other MFPs are reaching the end of their useful life. The MFPs recommended for purchase under this agreement will be located at City Hall (3), Police Department (5), Council Chambers Building (1), Centennial Recreation Center (1), Aquatics Center (1), Community and Cultural Center (1), and the Corporation Yard (1). Consolidating the City's MFP maintenance and repairs under one vendor and one brand device will simplify contract and billing administration, allow for interchangeable toner and supplies, and provide a consistent user experience.

To determine the City's business needs, in 2022, Public Services and Information Technology staff convened key stakeholders from various departments to assess the City's current MFPs, individual desktop printers, scanners, and faxes and evaluate current and future business needs. Two of the City's existing MFP vendors conducted assessments and prepared recommendations for purchase and maintenance of MFPs based on cooperative agreement pricing.

After assessment and evaluation, staff determined Monterey Bay Office Products, Inc. and the Konica Minolta product would provide the best value to the City. The equipment purchase is subject to the NASPO contract limited warranties and terms as specified in the contract. Ongoing maintenance is based on a price per the number of pages generated and would be billed quarterly.

The replacement of the City's MFP fleet presents a number of benefits. The proposed devices are anticipated to provide numerous eco features that reduce energy consumption and costs. The new MFPs will achieve more efficient power usage with newer energy-efficient standards and industry certifications that promote efficient energy use and power delivery. In turn, this will allow less waste heat generation, reducing the carbon footprint through decreased energy usage.

In addition, new MFPs that meet current business needs will allow City staff to eliminate a number of individual desktop printers. Individual printers are poorly maintained and rarely updated and can be a security risk. Moving to a centralized model that leverages supported and maintained devices will reduce the City's security risk. To further support the security of the City's network and data, Monterey Bay Office Products, Inc. will work with the City's Information Technology team to ensure secure network integration, data encryption, and user authentication.

Should the City Council approve this Service Agreement, Monterey Bay Office Products, Inc. is available to order and install the new MFPs and have them online as soon as June 2023.

COMMUNITY ENGAGEMENT:

Not Applicable

The subject of this staff report is entirely administrative in nature, and does not impact services directly provided to the Morgan Hill community. Given this, no community engagement was conducted prior to this meeting.

ALTERNATIVE ACTIONS:

The City Council could decline to approve the Service Agreement under NASPO agreement terms and direct staff to engage in a new competitive bid for procurement and maintenance of MFPs. This alternative is not expected to result in better value to the City. This Service Agreement with an existing vendor is based on cooperative government pricing that was determined to provide the best value to the City. A new competitive purchasing process outside of cooperative purchasing pricing is staff intensive and would require additional time and resources and would likely delay the replacement of aging MFPs that are at the end of their useful life resulting in additional costs to the City.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The City Council has not taken prior action on this agreement.

FISCAL AND RESOURCE IMPACT:

Funding to procure the MFPs is available in the FY22-23 Adopted Budget. Maintenance of the MFPs is included in all department budgets for FY23-24.

CEQA (California Environmental Quality Act):

Not a Project

The activities associated with this item are administrative activities that will not result in direct changes to the physical environment.

SERVICE AGREEMENT
Monterey Bay Office Products, Inc.

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

1. **City Authority.** This Agreement is entered into pursuant to the action of the Morgan Hill City Council taken on _____, _____, 20____.
2. **Term of Agreement.** This Agreement shall cover services rendered from the Effective Date of this Agreement until June 30, 2028 at which time SERVICE PROVIDER'S services shall be completed. The City Manager is authorized to extend the term of this Agreement for a maximum of five one-year periods. 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 the removal and disposal of designated multi-functional printers (MFPs), purchase of 13 new replacement multi-functional printers (MFPs) for City facilities, maintenance and repair services and all supplies except for paper as further described in **Exhibit A.**
4. **Compensation.** SERVICE PROVIDER shall be compensated as follows:
 - 4.1. **Amount.** \$212,005.73. Total compensation to SERVICE PROVIDER under this Agreement during its initial term set forth in Section 2 above shall not exceed Two Hundred Twelve Thousand Five dollars and Seventy-Three cents and shall be billed based on the rate and basis set forth in **Exhibit B.** If the City Manager extends the term of this Agreement pursuant to the provisions of Section 2 above, the City Manager shall have the authority to increase the maximum compensation allowed to be paid to SERVICE PROVIDER during that extended term period, so long as City Council has appropriated sufficient funds therefor, the Parties mutually agree to such amount in a writing signed by both Parties to this Agreement and provided further that in no event shall such maximum compensation allowed for each subsequent extended one-year term exceed 105% of the maximum compensation allowed to be paid to SERVICE PROVIDER for one year of service during the immediately preceding prior year of service.
 - 4.2. **Billing.** SERVICE PROVIDER shall provide CITY with an invoice containing the dated, detailed, and itemized descriptions of all services performed and expenses incurred (if such expenses are reimbursable pursuant to Exhibit B) by SERVICE PROVIDER on a quarterly 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 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. 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. CITY's City Manager is authorized on behalf of CITY to modify the timeframes set forth on the Schedule of Performance within the term of this Agreement. If 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.** If the performance of SERVICE PROVIDER's work or service under this Agreement involves hazardous materials, contaminated soil disposal, and/or a risk of accidental release of fuel oil, chemicals or other toxic gases or hazardous materials, SERVICE PROVIDER shall procure and maintain Pollution Liability covering the SERVICE PROVIDER'S liability for bodily injury, property damage and environmental damage resulting from pollution and related cleanup costs arising out of the work or services to be performed under this Agreement. Coverage shall be provided for both work performed on site, as well as during the transport of hazardous materials. Such coverage shall be in the minimum amount of: (i) one million dollars (\$1,000,000.00) for any one accident or occurrence, or (ii) the maximum amount of such insurance available to SERVICE PROVIDER under SERVICE PROVIDER's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.
- 8.1.5. **Professional Liability.**
- 8.1.5.1. If the performance of SERVICE PROVIDER's work or service under this Agreement involves professional and/or technical services (examples include, but are not limited to, architects, engineers, land surveyors, and appraisers), SERVICE PROVIDER shall procure and maintain either a claims made or occurrence Errors and Omission liability insurance in the minimum amount of: (i) one million dollars (\$1,000,000.00) each claim, or (ii) the maximum amount of such insurance available to SERVICE PROVIDER under SERVICE PROVIDER's combined insurance policies

(including any excess or “umbrella” policies), whichever is greater. Further, if SERVICE PROVIDER maintains a claims-made policy, SERVICE PROVIDER shall provide written evidence of such insurance to the CITY for at least five (5) years after the completion of work performed under this Agreement.

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

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

8.1.7. Crime/Fidelity Bond. If the performance of SERVICE PROVIDER’s work or service under this Agreement relates to or involves handling of CITY monies, SERVICE PROVIDER shall procure and maintain Crime insurance, in the minimum amount of: (i) three hundred thousand dollars (\$300,000.00) per occurrence, covering all SERVICE PROVIDERS’ officers and employees, for loss of CITY monies caused by dishonesty and/or theft.

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

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

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

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

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

8.2.2. Workers Compensation.

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

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

8.4. **Certificates.** SERVICE PROVIDER shall furnish CITY 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:

Monterey Bay Office Products, Inc.
325 Victor Street, Ste. A
Salinas, CA 93907

Attn: Adam Hughes, Strategic Account Manager

Address of CITY is as follows:

Mariah Dabel, Public Services	with a copy to:
Administrative Manager	City Clerk
City of Morgan Hill	City of Morgan Hill
17575 Peak Avenue	17575 Peak Avenue
Morgan Hill, CA 95037	Morgan Hill, CA 95037

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.

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

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[Signatures on Next Page]

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

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

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

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

ATTEST:

CITY OF MORGAN HILL

City Clerk/Deputy City Clerk

City Manager

Michelle Bigelow
Print Name

Christina J. Turner
Print Name

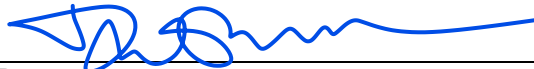
Date: _____

Date: _____

APPROVED AS TO FORM:

MONTEREY BAY OFFICE PRODUCTS, INC.

City Attorney

By: 

Donald A. Larkin
Print Name

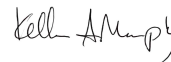
David Parara, COO

Print Name and Title of Signer.

If Corporate: Chairman, President or Vice President

Date: _____

Date: 4/6/2023



By: _____

Kellie Murphy, CEO

Print Name and Title of Signer.

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

Date: 4/6/2023

EXHIBIT A SCOPE OF SERVICES

The scope of work shall include the removal and disposal of designated Multi-Function Printers (MFPs), and the purchase, installation, maintenance and repair of the following MFPs including all supplies except for paper:

**Eight (8) C450i Konica Minolta Multi-Function Printers (MFPs) Color & Black & White (B & W)
Copy/Scan/Print devices**

**Four (4) C650i Konica Minolta Multi-Function Printers (MFPs) Color & Black & White Copy/Scan/Print
devices**

**One (1) C3350i Konica Minolta Multi-Function Printers (MFPs) Color & Black and White (B & W)
Copy/Scan/Print devices**

The locations for each of the devices and pricing are listed on the attached Exhibit A: Part 2 - Scope of Services & Pricing

Per Section 2C. of the Participating Addendum # 7-19-70-46-03, order placement and execution shall be on or before the expiration of this Participating Addendum on July 31, 2024. However, delivery of products or completion of services may be after the Participating Addendum expiration date. MONTEREY BAY OFFICE PRODUCTS, Inc. also known as MBS Business Systems shall provide preventative maintenance, on-going maintenance and repair of all copiers purchased under this agreement for an initial period of five years and up to five one-year extensions.

Contract maintenance pricing includes all parts, labor, supplies and staples. The only exclusion is paper.

Included services are training, installation, IT coordination, assigning employee codes

Removal of all existing copier devices is a complimentary e-Waste removal service.

Service Provider commits to a maximum four (4) hour response time during regular business hours: Monday through Friday, 8:00 a.m. to 5:00 p.m.

Monterey Bay Office Products, Inc. Service Agreement
Exhibit A: Part 2 - Scope of Services & Pricing

City of Morgan Hill - Purchase of Multi-Function Devices for City Facilities & 5-Year Maintenance Service

#	Site	Address	City Staff Selected Device	Purchase Price w/ 9.125 % Sales Tax	Estimated Annual Maintenance	Notes
1	Centennial Recreation Center	171 Edmundson Ave., MH	C650i	9,346.56	3,313.30	Add ons: 3-hole punch
2	Community & Cultural Center	17000 Monterey Rd., MH	C450i	7,072.39	497.17	Add ons: 3-hole punch
3	Aquatics Center	16200 Condit Rd, MH	C450i	7,072.39	455.60	Add ons: 3-hole punch
4	City Hall - Workroom #1	17575 Peak Ave., MH	C650i	9,902.00	684.03	Add ons: 3-hole, staple, tri-fold, envelope & postcards, brochures
5	City Hall -Workroom #2	17575 Peak Ave., MH	C450i	7,598.37	1,913.33	Add ons: 3-hole, staple and tri-fold
6	City Hall Northeast - by Building Dept.- in hallway	17575 Peak Ave., MH	C450i	7,598.37	1,913.33	Add ons: 3-hole, staple and tri-fold
7	Council Chamber Bldg. - Copy Room - East Side	17575 Peak Ave., MH	C450i	7,598.37	1,913.33	Add ons: 3-hole, staple
8	Police -Admin	16200 Vineyard Blvd., MH	C650i	10,427.99	1,529.67	Add ons: Fax, Staple, Email, envelope tray, USB port, Collate, Hole punch
9	Police Records	16200 Vineyard Blvd., MH	C650i	10,427.99	1,538.49	Add ons: Fax, Staple, Email, envelope tray, USB port, Collate, Hole punch
10	Police - Patrol Briefing Room	16200 Vineyard Blvd., MH	C450i	7,598.37	1,279.71	Add ons: Staple, Email, envelope tray, USB port, Collate, Hole punch
11	Police - Spec Ops/IT Space	16200 Vineyard Blvd., MH	C450i	8,124.36	1,279.71	Add ons: Fax, Staple, Email, envelope tray, USB port, Collate, Hole punch
12	Police- Dispatch	16200 Vineyard Blvd., MH	C3350i	1,980.62	2,000.04	Copy/Scan/Print/Fax Standard
13	Corporation Yard	100 Edes Ct., MH	C450i	7,072.39	844.99	Add-ons: 3-hole punch

Purchase Price	101,820.17	19,162.71	Annual Maintenance Cost
GRAND TOTAL (Purchase Price + 5 Yr. Maintenance)	197,633.70	95,813.53	5-Year Maintenance Cost
ANNUAL COST (Purchase and Maintenance)	39,526.74		

Not-to-Exceed Calculation

+ 15%

Purchase Price	101,820.17	\$ 22,037.11	Annual Maintenance Cost
GRAND TOTAL (Purchase Price + 5 Yr. Maintenance with 15% Contingency)	\$ 212,005.73	110,185.56	5-Year Maintenance Cost w/ 15% Contingency
ANNUAL COST (Purchase and Maintenance w/ 15% Contingency)	\$ 42,401.15		

EXHIBIT B
SCHEDULE OF COMPENSATION RATES

The pricing stated and included in Exhibit A: Part 2 Monterey Bay Office Products, Inc. (also known as MBS Business Systems) Scope of Services and Pricing is based upon the NASPO ValuePoint Participating Addendum #7-19-70-46-03 entered into between the State of California, Department of General Services and Konica Minolta Business Solutions U.S.A., Inc., under the lead State of Colorado NASPO ValuePoint Master Agreement #140597 (Multi-functional Product (Copier/MFP) Piggyback Contract #140597-7-19-70-46-03.)

The compensation anticipated for the initial five-year period is \$212,005.73 and includes the following costs:

1. Purchasing of Multi-Functional Printers per the attached Exhibit A-Part 2. The total amount for the purchase of the 13 MFPs is \$101,820.17

Payments for purchase of MFPs is to be invoiced upon delivery of MFPs to City Facilities.

2. Contract maintenance & repair pricing is estimated at \$22,037.11 annually for five years, which includes an annual not-to-exceed 15% contingency for the five-year period. The not-to-exceed five-year amount for contract maintenance & repairs is \$110,185.56. Maintenance & repairs includes all parts, labor, supplies and staples. The only exclusion is paper. The estimated maintenance pricing is based upon historical average maintenance volume (AMV) for several of the copiers currently leased or purchased by the City from Monterey Bay Office Products, Inc. multiplied by the Maintenance and Supply Cost per Copy listed in Exhibit B: Part 2-Multi-functional Product (Copier/MFP) Piggyback Contract #140597-7-19-70-46-03.

Training, installation, IT coordination, assigning employee codes is complimentary per Monterey Bay Office Products, Inc. There is no cost to the City of Morgan Hill.

Removal of existing devices is a complimentary e-Waste removal service. There is no cost to the City of Morgan Hill.

3. GRAND TOTAL SERVICE AGREEMENT AMOUNT:

- a. Purchase of 13 MFPs = \$101,820.17
- b. Five-Year Maintenance & Repairs = \$110,185.56
- c. Purchase + 5-Year Maintenance & Repairs = \$212,005.73

4. Also attached are:

Exhibit B: Part 2-MBS Business Systems Morgan Hill Purchasing Catalog provided to City on 12/22/2022.

Exhibit B: Part 3-State of California Participating Addendum # 7-19-70-46-03 to Colorado NASPO Value Point Master Agreement # 140597 - Konica Minolta Business Solutions U.S.A., Inc.

2023

Multi-functional Product (Copier/MFP) Program, 2023 NASPO Value Point Pricing
Contract# 140597-7-19-70-46-03

Exhibit B: Part 2-Schedule of Compensation City of
Morgan Hill & Monterey Bay Office Products, Inc.



Provided to City on 12/22/2022

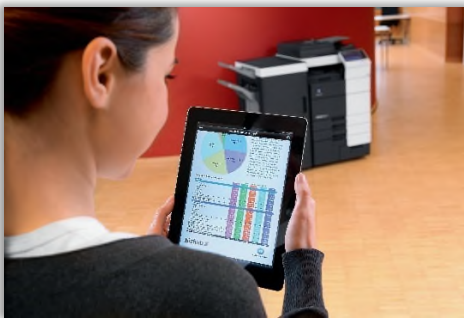


Multi-functional Product (Copier/MFP) Piggyback

Contract# 140597-7-19-70-46-03

City of Morgan Hill

**Contract maintenance pricing includes all parts, labor, supplies and staples
– only exclusion is paper.**



Contact: Adam Hughes
Cell: 831.320.8857
adam@mbsworks.com



Please complete this page and check boxes on equipment page of your choice if you request additional, optional accessories. Pricing listed is for MFP configured with all listed accessories. Please contact Patrick Maguire for revised pricing if all accessories are not needed or with any questions – Adam@mbsworks.com

MFP NEEDS ANALYSIS FORM

Department: _____ Contact: _____

Location: _____ Phone: _____

Requested Date of Delivery: _____ Email: _____

IT SupportWill MFP be connected locally to only one workstation via USB? ☐ Yes ☐ NoWill MFP be connected to the Network? ☐ Yes ☐ No

If yes, which features are requested?

☐ Printing How many workstations? _____
Is there a live network connection available? ☐ Yes ☐ No☐ Faxing Is there a live fax connection available? ☐ Yes ☐ No☐ Scanning Where do want to scan to? ☐ File/SMB ☐ Email ☐ FTP**Access Codes**Will you require user access codes programmed on the device? ☐ Yes ☐ No

If yes, how many user codes will be required? _____

Please complete User Code request form to list 4-digit codes, user names and access options requested. User Code Request form located on page 4.

Electrical ConfirmationHas correct electrical requirement been verified? ☐ Yes ☐ No

If no, date requested for new outlet installation? _____



Contact: Adam Hughes
Cell: 831.320.8857
adam@mbsworks.com



[illegible]

Contact: Adam Hughes
Cell: 831.320.8857
adam@mbsworks.com



Full Color Output Device**Recommended Monthly Usage: 3,000 – 5,000 Images Bizhub Color C300i**

Base System:	Cash Price	36 Month	48 Month	60 Month
C300i MFP COLOR Copy/Scan/Print	\$3,730	\$120	\$92	\$78

- 30 Copies Per Minute Console System
- Reversing Auto Document Feeder - 80 opm (DF632)
- *Full Color Scanning Capabilities – 80 ipm*
- Two 500 Sht. Paper Drawers, 150 Sht. Bypass
- Cabinet with Storage

Additional Options	Cash Price	36 Month	48 Month	60 Month
☐ 2 X 500 Sheet Paper Drawer	\$490	\$17	\$13	\$11
☐ 3,200 Sht. Finisher with 50 Sht. Stapling	\$638	\$22	\$17	\$14
☐ Fax Module	\$482	\$17	\$13	\$11
☐ Banner Printing Paper Guide	\$415	\$15	\$12	\$10

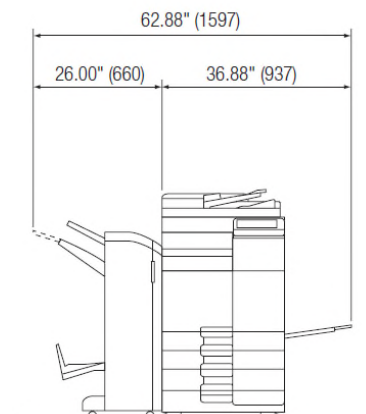
Enter total costs/payment choice in appropriate box:

☐ CASH PURCHASE☐ LEASE - \$1 buyout at end of term☐ RENTAL - Return at end of term

Maintenance & Supply CPC	Year 1	Year 2	Year 3	Year 4
MFP - Black & White Images (required)	\$.0075	\$.0075	\$.0075	\$.0075
MFP - Full Color Images (required)	\$.049	\$.049	\$.049	\$.049

Note: Applicable taxes must be added to all pricing. Monthly leasing is billed quarterly in advance; maintenance is billed quarterly in arrears. Red items are optional accessories which must be added to BASE SYSTEM price above. Please check boxes of additional options you wish to add and enter total in yellow box.

Electrical Requirements		
Line Options	Dedicated	NEMA Diagram for 5-15R 
Voltage	110 V/120 V	
Amperage	12 A	
Cycles	60 Hz	
NEMA Part No.	5-15R	
Cord Length	6.6 ft.	
Note: The main electrical outlet must be located within 6.6 feet from the right rear corner of the bizhub C360i/C300i/C250i main unit.		



Contact: Adam Hughes
 Cell: 831.320.8857
 adam@mbsworks.com



Full Color Output Device**Recommended Monthly Usage: 7,000 – 15,000 Images Bizhub Color C450i**

Base System:	Cash Price	36 Month	48 Month	60 Month
C450i MFP COLOR Copy/Scan/Print	\$6,116	\$193	\$147	\$124

- 45 Copies Per Minute Console System
- Dual Scan Auto Document Feed – 160 opm
- *Full Color Scanning Capabilities – 160 ipm*
- Two 500, One 1,500, & One 1,000 Sht. Paper Drawers & 150 Sht. Bypass
- Finisher with 50 Sheet Stapling

Additional Options	Cash Price	36 Month	48 Month	60 Month
☐ Booklet Finisher w/Folding, Saddle Stitch Tri-Fold and 50 Sheet Stapling	\$482	\$17	\$13	\$11
☐ Hole Punch Option - 2 and/or 3 Holes	\$365	\$13	\$10	\$8
☐ Fax Module	\$482	\$17	\$13	\$11
☐ Banner Printing Paper Guide	\$415	\$15	\$12	\$10

Enter total costs/payment choice in appropriate box:

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☐ **CASH PURCHASE** ☐ **LEASE** - \$1 buyout at end of term ☐ **RENTAL** - Return at end of term

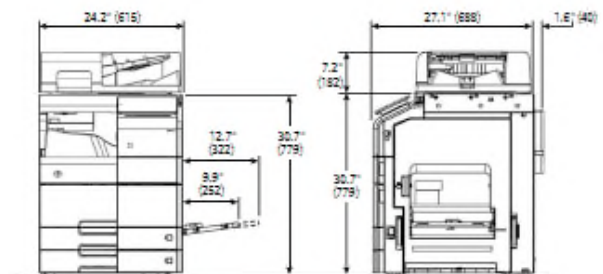
Maintenance & Supply CPC	Year 1	Year 2	Year 3	Year 4
MFP - Black & White Images (required)	\$0.0055	\$0.0055	\$0.0057	\$0.0057
MFP - Full Color Images (required)	\$0.049	\$0.049	\$0.049	\$0.049

Note: Applicable taxes must be added to all pricing. Monthly leasing is billed quarterly in advance; maintenance is billed quarterly in arrears. **Red items are optional accessories which must be added to BASE SYSTEM price above. Please check boxes of additional options you wish to add and enter total in yellow box.**

Electrical Requirements

Line Options	Dedicated	
Voltage	110 V/120 V	
Amperage	12 A	
Cycles	60 Hz	
NEMA Part No.	5-15R	
Cord Length	6.6 ft.	

Note: The main electrical outlet must be located within 5 feet from the right rear corner of the bizhub C650i/C550i/C450i main unit.



bizhub C650i/C550i/C450i



Contact: Adam Hughes
Cell: 831.320.8857
adam@mbsworks.com



Full Color Output Device**Recommended Monthly Usage: 13,000–50,000 Images Bizhub Color C650i**

Base System:	Cash Price	36 Month	48 Month	60 Month
C650i MFP COLOR Copy/Scan/Print	\$8,200	\$279	\$214	\$181
65 Copies Per Minute Console System - Dual Scan Auto Document Feed – 160 opm <i>Full Color Scanning Capabilities – 160 ipm</i> - Two 500, One 1,500, & One 1,000 Sht. Paper Drawers & 150 Sht. Bypass - Finisher with 50 Sheet Stapler (FS539)				

Additional Options	Cash Price	36 Month	48 Month	60 Month
☐ Booklet Finisher w/Folding, Saddle Stitch Tri-Fold and 50 Sheet Stapling	\$509	\$18	\$14	\$12
☐ Hole Punch Option - 2 and/or 3 Holes	\$365	\$13	\$10	\$8
☐ 3,000 Sht. Large Capacity Cassette	\$705	\$24	\$19	\$16
☐ Fax Module	\$482	\$17	\$13	\$11
☐ Banner Printing Paper Guide	\$415	\$15	\$12	\$10

Enter total costs/payment choice in appropriate box:

☐ **CASH PURCHASE** ☐ **LEASE** - \$1 buyout at end of term ☐ **RENTAL** - Return at end of term

Maintenance & Supply CPC	Year 1	Year 2	Year 3	Year 4
MFP - Black & White Images (required)	\$.0055	\$.0055	\$.0057	\$.0057
MFP - Full Color Images (required)	\$.045	\$.045	\$.045	\$.045

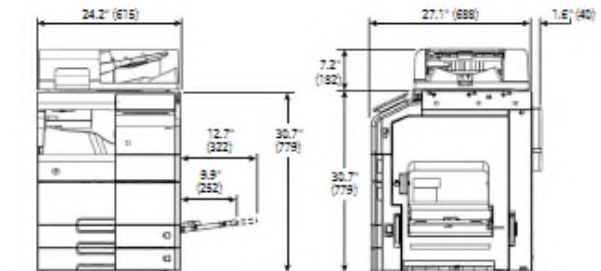
Note: Applicable taxes must be added to all pricing. Monthly leasing is billed quarterly in advance; maintenance is billed quarterly in arrears. Red items are optional accessories which must be added to BASE SYSTEM price above. Please check boxes of additional options you wish to add and enter total in yellow box.

Electrical Requirements

Line Options	Dedicated	NEMA Diagram for 5-15R
Voltage	110 V/120 V	
Amperage	12 A	
Cycles	60 Hz	
NEMA Part No.	5-15R	
Cord Length	6.6 ft.	



Note: The main electrical outlet must be located within 6.6 feet from the right rear corner of the bizhub C650i/C650/C450i main unit.



bizhub C650i/C550i/C450i



Contact: Adam Hughes
Cell: 831.320.8857
adam@mbsworks.com



Color Desktop All-In-One Device**Recommended Monthly Usage: Less than 1,000 Images****Color C3350i**

Base System: Cash Price 36 Month 48 Month 60 Month

C3350i MFP Copy/Scan/Print/Fax (COLOR)

\$1,815 \$62 \$47 \$40

- 35 Copies Per Minute Desktop System
- Letter and Legal Size Paper Capacity
- 550 Sht. Paper Drawer, 100 Sht. Bypass
- FK517 Fax Kit

Additional Options Cash Price 36 Month 48 Month 60 Month

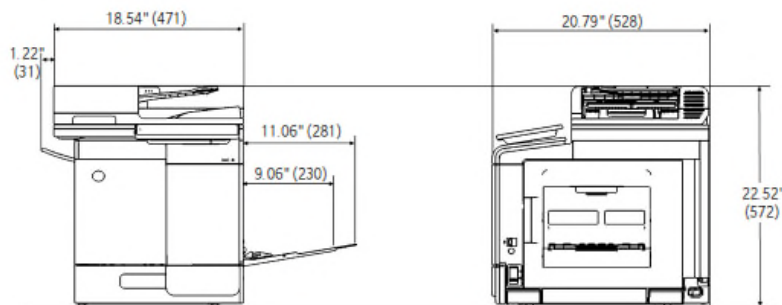
☐ Additional 500 Sht. Drawer	\$159	\$6	\$5	\$4
☐ Convenience Stapler	\$218	\$8	\$6	\$5
☐ Finisher, Inner with 20 Sht. Stapling	\$195	\$7	\$5	\$4

Enter total costs/payment choice in appropriate box:
☐ CASH PURCHASE ☐ LEASE - \$1 buyout at end of term ☐ RENTAL - Return at end of term
Maintenance & Supply CPC Year 1 ☐ Year 2 Year 3 Year 4

MFP - Everything except paper (required) \$.016 \$.016 \$.017 \$.017

MFP - Full Color Images (required) \$.06 \$.06 \$.065 \$.065

Note: Applicable taxes must be added to all pricing. Monthly leasing is billed quarterly in advance; maintenance is billed quarterly in arrears. Red items are *optional* accessories which must be added to BASE SYSTEM price above. Please check boxes of additional options you wish to add and enter total in yellow box.



bizhub C4050i/C3350i

**Electrical Requirements**

Line Options	Dedicated	NEMA Diagram for 5-15R
Voltage	110 V/120 V	
Amperage	12 A	
Cycles	60 Hz	
NEMA Part No.	5-15R	
Cord Length	6.6 ft.	

Note: The main electrical outlet must be located within 6.6 feet from the right rear corner of the bizhub C4050i/C3350i main unit.

Kip Wide Format Printer/Copier/Scanner**KIP 7171**

Base System:	Cash Price	36 Month	48 Month	60 Month
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Kip 7171 Wide Format Printer/Copier/Scanner	\$18,077	\$615	\$470	\$398
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- 6 D Size Pages Per Minute
- PDF Printing Option via Keycode
- Start-up Toner and 24"X26" Paper Roll

Additional Options	Cash Price	36 Month	48 Month	60 Month
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☐ Print Receiving Rack	\$591	\$20	\$16	\$13
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☐ Print Original & Receiving Tray	\$846	\$29	\$22	\$19
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Enter total costs/payment choice in appropriate box:

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☐ **CASH PURCHASE**
☐ **LEASE** - \$1 buyout at end of term
 ☐ **RENTAL** - Return at end of term

Maintenance & Supply CPC	Year 1	Year 2	Year 3	Year 4
MFP - Everything except paper (required)	\$0.040	\$0.042	\$0.044	\$0.046

Note: Applicable taxes must be added to all pricing. Monthly leasing is billed quarterly in advance; maintenance is billed quarterly in arrears. Red items are *optional* accessories which must be added to BASE SYSTEM price above. Please check boxes of additional options you wish to add and enter total in yellow box.



STATE OF CALIFORNIA
PARTICIPATING ADDENDUM NUMBER 7-19-70-46-03
Copiers and Managed Print Services
Colorado NASPO ValuePoint Master Agreement Number 140597
Konica Minolta Business Solutions U.S.A., Inc. (Contractor)

This Participating Addendum Number 7-19-70-46-03 is entered into between the state of California, Department of General Services (hereafter referred to as "State" or "DGS") and Konica Minolta Business Solutions U.S.A., Inc. (hereafter referred to as "Contractor") under the lead state of Colorado NASPO ValuePoint Master Agreement Number 140597.

1. SCOPE

- A. This Participating Addendum covers the purchase of Copiers and Managed Print Services under the Colorado NASPO ValuePoint Master Agreement. The Colorado NASPO ValuePoint Master Agreement Number 1140597 is hereby incorporated by reference. Product/service categories included under this Participating Addendum are identified in Section 5 (Available Products and Services).
- B. This Participating Addendum is available for use by California state agencies and local governments. A local government is defined as any city, county, city and county, district, or other local governmental body, school district or corporation empowered to expend public funds. The State Agency Listing (<https://www.ca.gov/agenciesall/>) provides a comprehensive list of state agencies.
- C. Each local government is to make its own determination whether this Participating Addendum and the Colorado NASPO ValuePoint Master Agreement are consistent with its procurement policies and regulations.

2. TERM

- A. The term of this Participating Addendum shall begin upon signature approval by the State and will end December 31, 2021, or upon termination by the State, whichever occurs first.
- B. Lead State amendments to extend the NASPO ValuePoint Master Agreement term date are not automatically incorporated into this Participating Addendum. Extension(s) to the term of this Participating Addendum will be through a written amendment upon mutual agreement between the State and the Contractor.
- C. Order placement and execution shall be on or before the expiration of this Participating Addendum. However, delivery of products or completion of services may be after the Participating Addendum expiration date.

3. TERMS AND CONDITIONS/INCORPORATION OF DOCUMENTS

- A. Terms and conditions listed below are hereby incorporated by reference and made a part of this Participating Addendum as if attached herein and shall apply to the purchase of goods or services made under this Participating Addendum.
- 1) General Provisions – Information Technology (GSPD-401IT) effective 9/5/2014. This document can be viewed on the DGS Procurement Division website (<https://www.dgs.ca.gov/PD/Resources/Page-Content/Procurement-Division-Resources-List-Folder/Model-Contract-Language>).
 - 2) Cloud Computing Software as a Service (SaaS) General Provisions effective 6/7/2019. This document can be viewed on the DGS Procurement Division website (<https://www.dgs.ca.gov/PD/Resources/Page-Content/Procurement-Division-Resources-List-Folder/Model-Contract-Language>).
 - 3) Cloud Computing Special Provisions for Software as a Service (SaaS) effective 03/15/18. This document can be viewed on the DGS Procurement Division website (<https://www.dgs.ca.gov/PD/Resources/Page-Content/Procurement-Division-Resources-List-Folder/Model-Contract-Language>).

4. ORDER OF PRECEDENCE

- A. In the event of any inconsistency between the articles, attachments, or provisions which constitute this agreement, the following descending order of precedence shall apply:
- 1) California Participating Addendum Number 7-19-70-46-03
 - 2) Colorado NASPO ValuePoint Master Agreement Number 140597
 - 3) Colorado Solicitation RFP-NP-18-001 including all Addendums
 - 4) Contractor's response to the Colorado Solicitation

5. AVAILABLE PRODUCTS AND SERVICES

- A. The following product and service offerings from the Colorado NASPO ValuePoint Master Agreement Number 140597 are allowed under this Participating Addendum:
- 1) Group A - A3 Multifunction Devices
 - 2) Group B - A4 Multifunction Devices
 - 3) Group C - Production Equipment
 - 4) Group D - Single-function Printers
 - 5) Group E - Large/Wide Format Equipment
 - 6) Group F - Scanners
 - 7) Managed Print Services may be provided on Groups A - F

6. RESTRICTIONS/DISALLOWED PRODUCTS AND SERVICES

A. The following products or services are prohibited for purchase by state agencies under this Participating Addendum. These restrictions do not apply to local governmental entities.

1) Leasing and Rental Options

2) Products:

- a) Remanufactured Equipment
- b) Imaging equipment that does not meet or exceed Electronic Product Environmental Assessment Tool (EPEAT) Silver
- c) Imaging equipment that is not Energy Star certified
- d) Software containing "Clickwrap" Agreements
- e) Not Specifically Priced (NSP) items not listed or priced in NVP Price Lists

3) Services:

- a) Mail Room Services
- b) Network and Data Security
- c) Records Management

B. Product and service categories available on mandatory California statewide contracts cannot be purchased from this Participating Addendum by State agencies without an exemption. State agencies are responsible for obtaining an exemption from DGS prior to issuing a purchase order. This restriction is not applicable to local governments.

7. PRICING

Contractor is responsible for maintaining a current Price List of available products and services on the NASPO ValuePoint Copiers and Managed Print Services website.

8. CONTRACTOR SUPPLEMENTAL DOCUMENTS

Pursuant to the terms and conditions incorporated into this Participating Addendum, Contractor Supplemental Documents attached to the Colorado NASPO ValuePoint Master Agreement as Attachment A through Attachment K, shall be negotiated to the mutual agreement of the Contractor and ordering agency and attached to the purchase/contract document.

9. AUTHORIZED RESELLERS

A. Contractor may use State-approved Authorized Resellers under this Participating Addendum for sales and service functions as defined herein.

- 1) Authorized Resellers must accept purchase orders and accept payment from ordering agencies for products offered under this Participating Addendum.

Participating Addendum 7-19-70-46-03

- 2) Authorized Resellers are responsible for sending a copy of all purchase orders and invoices to the Contractor for compliance with quarterly usage reporting and administrative fee requirements.
 - 3) All purchase documents to Authorized Resellers shall reference the Participating Addendum Number and Contractor Name.
- B. Contractor shall be responsible for successful performance and compliance with all requirements in accordance with the terms and conditions under this Participating Addendum, even if work is performed by Authorized Resellers. All State policies, guidelines, and requirements shall apply to Authorized Resellers.
 - C. Contractor will be the sole point of contact with regard to Participating Addendum contractual matters, reporting, and administrative fee requirements.
 - D. Subject to the approval of the State, Authorized Resellers may be added on a quarterly basis during the term of the contract. Contractors shall notify the State of any deleted Authorized Resellers or changes to current Authorized Resellers' contact information in writing at any time during the contract term.
 - E. Contractor will be required to submit Authorized Reseller requests, in a format specified by the State, to the State Contract Administrator for approval.
 - F. State-approved Authorized Resellers will be posted on the State's Cal eProcure website.

10. SUBCONTRACTORS

The Contractor shall perform the work contemplated with resources available within its own organization and no portion of the work shall be subcontracted.

11. ORDERING AGENCY RESPONSIBILITIES

- A. State agency and local government use of this Participating Addendum is optional.
- B. State agencies and local governments must follow the ordering procedures outlined within the User Instructions guide, administered by the State Contract Administrator, to execute orders against this Participating Addendum.

12. STATE AGENCY BUY RECYCLED CAMPAIGN (SABRC)

- A. State agencies are required to report purchases made within eleven product categories in the California Department of Resources Recycling and Recovery's SABRC per Public Contract Code Sections 12200-12217.

- B. Contractor will be required to complete and return a Recycled-Content Certification form (<https://www.calrecycle.ca.gov/contracts/forms>) upon request by the state agency.

13. DELIVERY

- A. Delivery shall occur within 30 days after receipt of order, or as negotiated between ordering agency and contractor and included in the purchase order, or as otherwise stipulated in the NASPO ValuePoint Master Agreement.
- B. F.O.B. (Free On Board) Destination

14. INVOICING AND PAYMENT

- A. Payment terms for this Participating Addendum are net forty-five (45) days. Payment will be made in accordance with IT Commodities General Provisions Paragraph 30 (Required Payment Date).
- B. Payment will be made in accordance with the provisions of the California Prompt Payment Act, Government code Section 927 et.seq. Unless expressly exempted by statute, the Act requires state agencies to pay properly submitted, undisputed invoices not more than 45 days after (i) the date of acceptance of Deliverables or performance of services; or (ii) receipt of an undisputed invoice, whichever is later.
- C. Invoices shall be sent to the address identified in the ordering agency's purchase order. The State Participating Addendum Number and ordering agency Purchase Order Number shall appear on each invoice for all purchases placed under this Participating Addendum.
- D. Contractor will accept the State of California credit card (CAL-Card) for payment of invoices.

15. USAGE REPORTING

- A. Contractor shall submit usage reports on a quarterly basis to the State Contract Administrator for all California entity purchases using the report template attached hereto as Attachment A. The report is due even when there is no activity.
- B. The DGS Contract Administrator reserves the right to modify Attachment A and require Contractor to provide additional order information during the course of this Agreement.
- C. The report shall be an Excel spreadsheet transmitted electronically to the DGS Cooperatives mailbox (PDCooperatives@dgs.ca.gov).

Participating Addendum 7-19-70-46-03

- D. Any report that does not follow the required format or that excludes information will be deemed incomplete. Contractor will be responsible for submitting corrected reports within five business days of the date of written notification from the State.
- E. Tax must not be included in the report, even if it is on the purchase order.
- F. Reports are due for each quarter as follows:

Reporting Period	Due Date
January 1 to March 31	April 30
April 1 to June 30	July 31
July 1 to September 30	October 31
October 1 to December 31	January 31

- G. Failure to meet reporting requirements and submit the reports on a timely basis shall constitute grounds for suspension of this contract.
- H. Time extensions may be approved only if all due reports have been submitted to the State.

16. ADMINISTRATIVE FEE

- A. Contractor shall submit a check, payable to the State of California, remitted to the Cooperative Agreement Unit for the calculated amount equal to 1.25% of the sales for the quarterly period.
- B. Contractor must include the Participating Addendum Number on the check. Those checks submitted to the State without the Participating Addendum Number will be returned to Contractor for additional identifying information.
- C. Administrative fee checks shall be submitted to:

State of California
Department of General Services, Procurement Division
Attention: Cooperative Agreement Program
707 3rd Street, 2nd Floor, MS 2-202
West Sacramento, CA 95605

- D. The administrative fee shall not be included as an adjustment to Contractor's NASPO ValuePoint Master Agreement pricing.
- E. The administrative fee shall not be invoiced or charged to the ordering agency.
- F. Payment of the administrative fee is due irrespective of payment status on orders or service contracts from a purchasing entity.

Participating Addendum 7-19-70-46-03

G. Administrative fee checks are due for each quarter as follows:

Reporting Period	Due Date
January 1 to March 31	April 30
April 1 to June 30	July 31
July 1 to September 30	October 31
October 1 to December 31	January 31

H. Failure to meet administrative fee requirements and submit fees on a timely basis shall constitute grounds for suspension of this contract.

17. CONTRACT MANAGEMENT

A. The primary Contractor Contract Manager for this Participating Addendum shall be as follows:

Contractor	Contract Manager
Name:	Ann Marie Burns
Phone:	(703) 637-1516
Fax:	(703) 506-1257
Email	annmarie.burns@kmbs.konicaminolta.us
Address:	Konica Minolta Business Solutions U.S.A., Inc. 1595 Spring Hill Road., Suite 410 Vienna, VA 22182

B. The State Contract Administrator for this Participating Addendum shall be as follows:

State	Contract Administrator
Name:	Yolanda Tutt
Phone:	(916) 375-4408
Email	Yolanda.Tutt@dgs.ca.gov
Address:	State of California Department of General Services Procurement Division 707 Third Street, 2nd Floor, MS 2-202 West Sacramento, CA 95605

- C. Should the contact information for either party change, the party will provide written notice with updated information no later than ten business days after the change.

18. TERMINATION OF AGREEMENT

The State may terminate this Participating Addendum at any time upon 30 days prior written notice to the Contractor. Upon termination or other expiration of this Participating Addendum, each party will assist the other party in orderly termination of the Participating Addendum and the transfer of all assets, tangible and intangible, as may facilitate the orderly, non-disrupted business continuation of each party. This provision shall not relieve the Contractor of the obligation to perform under any purchase order or other similar ordering document executed prior to the termination becoming effective.

19. AMENDMENT

No amendment or variation of the terms of this Participating Addendum shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or agreement not incorporated in the Participating Addendum is binding on any of the parties.

20. AGREEMENT

- A. This Participating Addendum and the Master Agreement together with its exhibits and/or amendments, set forth the entire agreement between the parties with respect to the subject matter of all previous communications, representations or agreements, whether oral or written, with respect to the subject matter hereof. Terms and conditions inconsistent with, contrary or in addition to the terms and conditions of this Participating Addendum and the Master Agreement, together with its exhibits and/or amendments, shall not be added to or incorporated into this Participating Addendum or the Master Agreement and its exhibits and/or amendments, by any subsequent purchase order or otherwise, and any such attempts to add or incorporate such terms and conditions are hereby rejected. The terms and conditions of this Participating Addendum and the Master Agreement and its exhibits and/or amendments shall prevail and govern in the case of any such inconsistent or additional terms.
- B. By signing below Contractor agrees to offer the same products/and or services as on the Colorado NASPO ValuePoint Master Agreement Number 140597, at prices equal to or lower than the prices on that contract.

Participating Addendum 7-19-70-46-03

IN WITNESS WHEREOF, the parties have executed this Participating Addendum as of the date of execution by both parties below.

STATE OF CALIFORNIA

Department of General Services

Agency Name

 12-20-19

Authorized Signature Date Signed

Patrick B. Mullen Manager M&S

Printed Name/Title of Person Signing

707 Third Street
West Sacramento, CA 95605

Address

CONTRACTOR

Konica Minolta Business Solutions
U.S.A., Inc.

Contractor Name

 12/16/19

Authorized Signature Date Signed

Jack Dixon

Printed Name/Title of Person Signing

100 Williams Drive
Ramsey, NJ 07446

Address

Usage Report (Template Key)

Contract Number: _____
Contractor: _____
Reporting Period: _____
Report Value: _____
Administrative Fee: _____

Column Number	Column A	Column B	Column C	Column D	Column E	Column F	Column G	Column H	Column I	Column J	Column K	Column L	Column M	Column N
Column Name	Ordering Agency Name	State/Local Spend	Purchase Order / Service Contract Number	Order Date	Category/ Group	Manufacturer Part Number (OEM #)	Item Description	Unit of Measure	Quantity	List Price/MSRP	Contract Unit Price	Extended Contract Price Paid	Index Date / Catalog Version	
Description	State Agency or Local Government name as described on the purchase document	Identify ordering agency as a "State" or "Local Government" entity, as applicable.	Ordering agency's unique purchase order or service contract number associated with item(s) purchased.	Date the ordering agency placed the order.	Category/Group for each line item (commodity/ service) that includes Contractor's respective Percent discount off MSRP. This identifier should match the identifier provided in the Contractor's specific Control Set	Manufacturer's unique identifier for the line item.	Information about commodity/service purchased. Narrative should be descriptive enough to validate consistency with the Category/ Group ID stated in Column E	Packaging unit descriptor (i.e. each, box, dozen, case, lbs, pallet etc.).	Quantity purchased for each line item. All returned items are reported as a negative number. For service contracts, identify term in months.	An independently verifiable public price (MSRP) available to the general public. When providing usage reports, this information should reflect list prices at time of order.	This is the price paid for given line item	Total Price (Quantity X Contract Unit Price); (Column J x Column L)	Price or catalog effective date. Helps DGS track index price changes (historical frame of reference)	
Format	Text	Text	Variable Characters	Date	Variable Characters	Variable Character	Variable Character	Variable Character	Number	Currency	Currency	Currency	Date / Variable Character	
Example	Department of General Services	State	2832820	4/30/2013	5.2.1	ISINK34	Application Services	EA	1	\$55.00	\$48.95	\$48.95	7/19/2012	
Example	Department of General Services	State	2832820	4/30/2013	5.3.1	Annual Maintenance	3-year Maintenance	EA	1	\$300	\$270.00	\$810.00	7/19/2012	
Example	Department of General Services	State	2832820	4/30/2013	5.3.1	IS330A1 + SP10	1-year Maintenance	EA	1	\$48.00	\$24.96	\$898.56	7/19/2012	

**EXHIBIT C
SCHEDULE OF PERFORMANCE**

- a. The installation, maintenance and repair of the new MFPs will be coordinated with the City of Morgan Hill's Public Services Administrative Manager or other designated City staff at the various City facilities.**
- b. Also attached is Exhibit C-Part 2-NASPO website extending term of Contract #140597 to 7/31/24.**

Home

Exhibit C- Part 2 - Schedule of Performance Monterey Bay Office Products, Inc.

Welcome to the Konica Minolta/NASPO ValuePoint Website

Home

Alabama

Alaska

California

Colorado

Connecticut

Florida

Hawaii

Illinois

Iowa

Kentucky

Maryland

Massachusetts

Michigan

Missouri

Montana

Nebraska

Nevada

New Jersey

New Mexico

North Dakota

Ohio

Oklahoma

Oregon

Rhode Island

South Carolina

Texas

Utah

Vermont

Washington



NASPO

ValuePoint

Contract #140597

Effective Dates: August 1, 2019 - July 31st, 2024

What is the NASPO ValuePoint Cooperative Purchasing Organization?

NASPO ValuePoint is a unified, nationally focused cooperative alliance aggregating the demand of all 50 states, the District of Columbia and the organized US territories, their political subdivisions and other eligible entities, spurring best, innovation and competition in the marketplace. The NASPO ValuePoint Cooperative Purchasing Organization provides the highest standard of excellence in public cooperative contracting. By leveraging the leadership and expertise of all states with the purchasing power of their public entities, NASPO ValuePoint delivers best value, reliable, competitively sourced contracts that offer public entities outstanding pricing. Since 1993 WSCA-NASPO has been the cooperative purchasing arm of NASPO (the National Association of State Procurement Officials) encouraging, fostering and guiding the nation's most significant public contract cooperative.

The NASPO ValuePoint Cooperative Purchasing Organization LLC, is a nonprofit, wholly owned subsidiary of the National Association of State Procurement Officials (NASPO).

What is NASPO?

NASPO, the National Association of State Procurement Officials, is a non-profit association dedicated to strengthening the procurement community through education, research, and communication. It is made up of the directors of the central purchasing offices of the 50 states, District of Columbia and territories of the United States. NASPO is an organization through which the member purchasing officials provide leadership in professional public purchasing, improve the quality of purchasing and procurement, exchange information, and cooperate to attain greater efficiency and economy. Please visit www.naspo.org for additional information.

Master Pricing Catalogs

[Master Catalog](#)

[Master Pricing Schedule: Solutions](#)

[Sales & Service Locations](#)

[West Virginia](#)

[Lease Rate](#)

[Wisconsin](#)

Please contact your local authorized Konica Minolta branch or dealer for ordering instructions.

Konica Minolta Business Solutions U.S.A., Inc.

Konica Minolta Business Solutions U.S.A., Inc. is reshaping and revolutionizing the [Workplace Solutions](#)™. The company guides and supports its customers' digital transformation through its expansive office technology portfolio, including IT Services ([All Covered](#)), content services, managed print services and industrial and commercial print solutions. Konica Minolta has been included on CRN's MSP 500 list nine times and The World Technology Awards recently named the company a finalist in the IT Software category. Konica Minolta has been recognized as the [#1 Brand for Customer Loyalty](#) in the MFP Office Copier Market by Brand Keys for fourteen consecutive years, and received Keypoint Intelligence's BLI 2021 A3 Line of The Year Award and BLI 2021-2023 Most Color Consistent A3 Brand Award for its [bizhub i-Series](#). Konica Minolta, Inc. has been named to the Dow Jones Sustainability World Index for nine consecutive years and has spent four years on the Global 100 Most Sustainable Corporations in the World [list](#). Konica Minolta partners with its clients to give shape to ideas and works to bring value to our society. For more information, please visit us [online](#) and follow Konica Minolta on [Facebook](#), [YouTube](#), [LinkedIn](#) and [Twitter](#).

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CITY COUNCIL STAFF REPORT

MEETING DATE: April 19, 2023

PREPARED BY:

Edgard Rizo

APPROVED BY: City Manager

AWARD 2023 INFLOW AND INFILTRATION SANITARY SEWER PROJECT

RECOMMENDATION(S)

1. Approve 2023 Inflow and Infiltration Sewer Repair Project plans and specifications;
2. Award contract to Pacific Underground Construction for the 2023 Inflow and Infiltration Sewer Repair Project in the amount of \$2,387,620;
3. Authorize expenditure of construction contingency funds not to exceed \$250,000; and
4. Authorize the City Manager to execute and administer the construction contract with Pacific Underground Construction.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Maintaining and Enhancing Infrastructure

Enhancing Public Safety

2022-2023 Strategic Priorities

Fiscal Sustainability

REPORT NARRATIVE:

The City's current Sewer System Master Plan identifies inflow and infiltration (I & I) as a major infrastructure issue faced by the City. The City's Capital Improvement Program allocates funding for significant repairs to the system over the next five years. The recent sewer condition assessment analysis performed by Schaaf and Wheeler identified numerous locations where sewer lines will need to be repaired in order to reduce the amount of groundwater and stormwater I & I into the City's sewer system. Engineering and Maintenance staff worked together to assemble this year's I & I project, which will address critical I & I locations within the City's sewer system.

The plans and specifications were completed in November 2022 and include sewer main repairs at 19 locations within the City (See attached Vicinity Map for locations). The scope of work for this project includes the cleaning and videoing of the identified

sewer mains to be repaired/replaced, repairing and/or replacement of sewer main using pipe bursting, pipe lining or open trench method, manhole replacement or rehabilitation, and sewer videoing of pipe after repairs are completed.

The project was publicly advertised in the Morgan Hill Times on January 20 and 27, 2023.

The bid submission was made at the City of Morgan Hill Development Services Center before March 16, 2023, at 2:00 pm.

The bid opening for this project was held on March 16, 2023, and two (2) bids were received:

Pacific Underground Construction	\$2,387,620
Precision Engineering, Inc.	\$2,412,025

Pacific Underground Construction, Inc.'s bid of \$2,387,620 is approximately 1% less than the engineer's estimate of \$2,410,025. 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 awarding the contract to Pacific Underground Construction, Inc. in the amount of \$2,387,620. Due to possible unforeseen conditions for underground utility work, staff is requesting a \$250,000 contingency for this project. The project is scheduled to start in May 2023 and be completed by December 2023.

The project plans and specifications can be found on the [City's webpage in the Community Project link](https://morganhill.ca.gov/1436/Project-Plans-Specifications-and-Bid-Res) at:
<https://morganhill.ca.gov/1436/Project-Plans-Specifications-and-Bid-Res>

COMMUNITY ENGAGEMENT:

The 2023 Inflow and Infiltration Sewer Repair Project is located within residential neighborhoods. While there may be inconveniences to residents, staff will work with the contractor to minimize these inconveniences to residents and provide email and door notifications prior to any construction activities. Staff will also provide regular updated construction information weekly through Next-door and on the City's website.

ALTERNATIVE ACTIONS:

City Council may elect to not award 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.

June 17, 2020 - City Council adopted the 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.

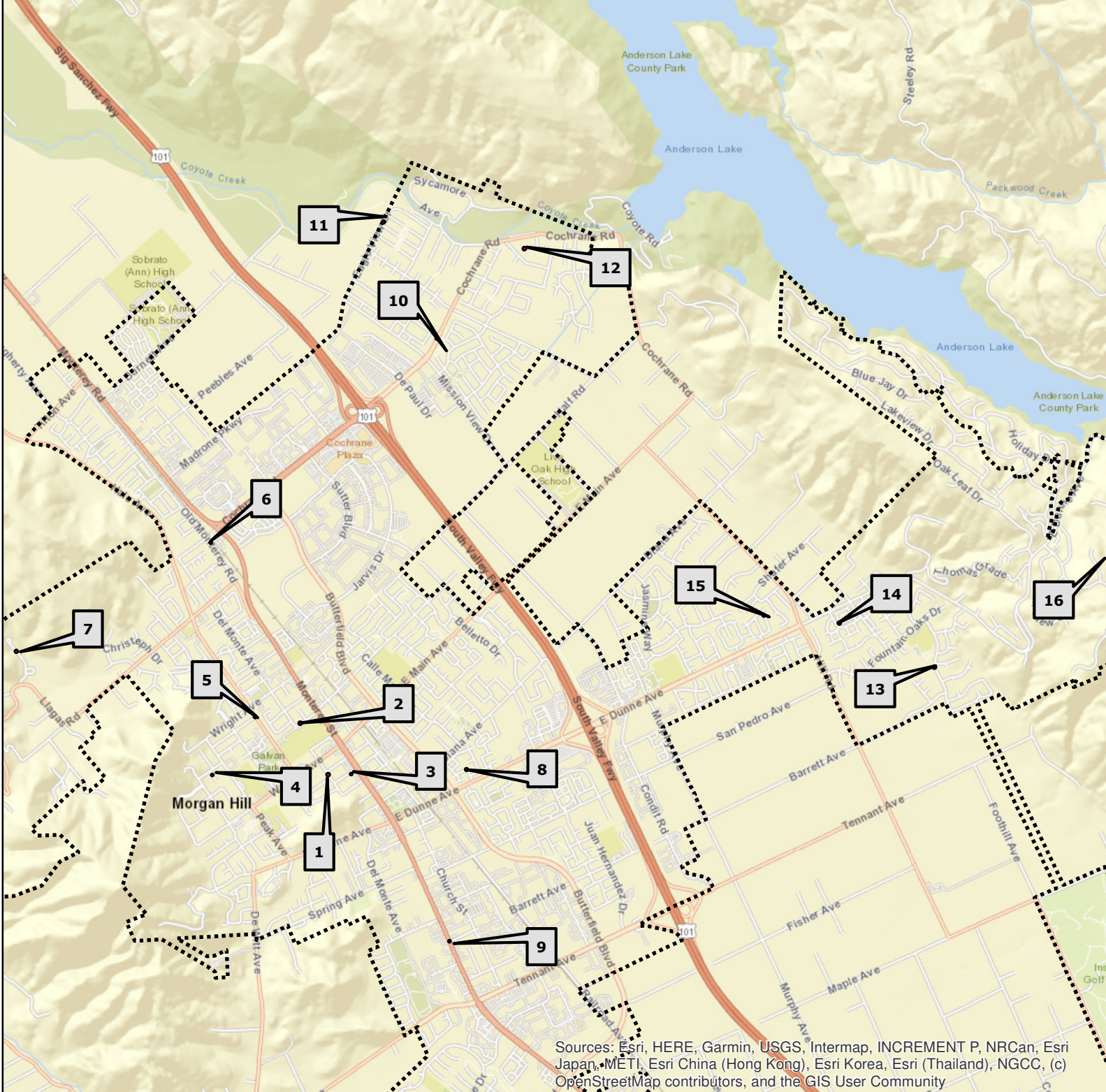
FISCAL AND RESOURCE IMPACT:

The total authorization for the project would be \$2,387,620, with a contingency of \$250,000. The project is sufficiently funded in the Fiscal Year 2022-23 Capital Improvement Program (CIP) budget under CIP Project 302018, Sanitary Sewer Rehabilitation, utilizing Sewer CIP Funds (643).

CEQA (California Environmental Quality Act):

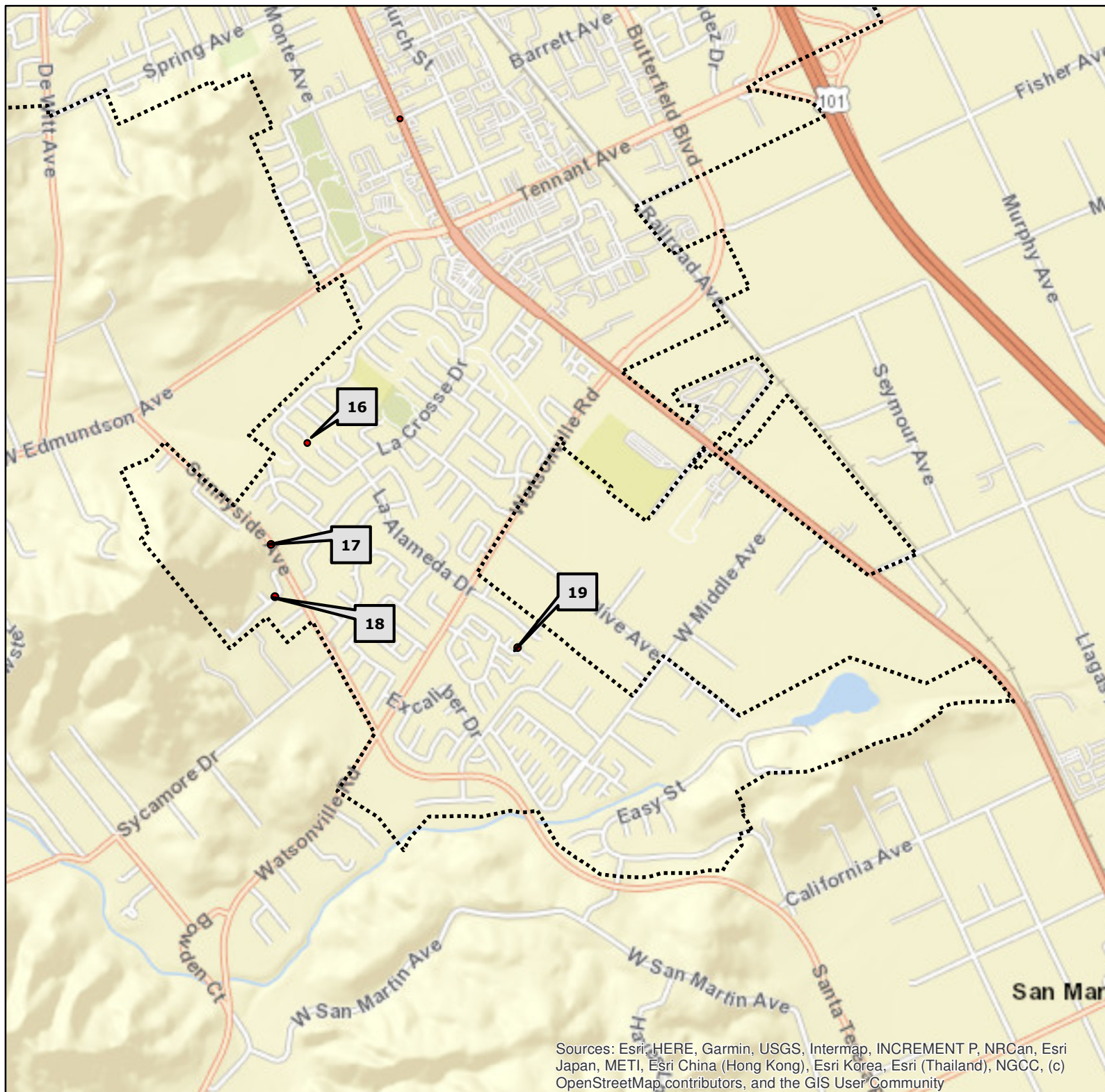
Categorical Exemption

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.



Sources: Esri, HERE, Garmin, USGS, Intermap, INCREMENT P, NRCan, Esri Japan, METI, Esri China (Hong Kong), Esri Korea, Esri (Thailand), NGCC, (c) OpenStreetMap contributors, and the GIS User Community

- | | | |
|-------------------------|---------------------------|-------------------------|
| 1. 17519 Del Monte Ave. | 6. 18525 Old Monterey Rd. | 11. Eagle View Dr. |
| 2. 80 W. Central Ave | 7. 18663 Castle Lake Dr. | 12. 18790 Alicante Cir. |
| 3. 13 W 2nd St. | 8. 17065 Creekside Cir. | 13. 16650 Trail Dr. |
| 4. 17799 Florence Ct. | 9. 16310 Monterey Rd. | 14. 2245 Brega Lane. |
| 5. Hale Ave | 10. Cochrane Road. | 15. Tassajara Cir. |
| | | 16. Jackson Oaks Ct. |



Sources: Esri, HERE, Garmin, USGS, Intermap, INCREMENT P, NRCan, Esri Japan, METI, Esri China (Hong Kong), Esri Korea, Esri (Thailand), NGCC, (c) OpenStreetMap contributors, and the GIS User Community

- 16. El Pajaro Ct. @ Trail.
- 17. 15800 Sunnyside Ave.
- 18. 1140 Appian Way.
- 19. 8090 Tahoe Way.



CITY OF MORGAN HILL

**Engineering and Utilities Department
CIP Engineering Division**

G:\R-14\Proj\GIS\Agustin\l1.mxd

2023 Inflow and Infiltration Sewer Project



4,500 2,250 0 4,500 9,000 13,500
Feet

CITY COUNCIL STAFF REPORT

MEETING DATE: April 19, 2023

PREPARED BY:

Cynthia Iwanaga, Management Analyst

APPROVED BY: City Manager

AWARD 2023 SIDEWALK REPAIR PROJECT TO VILLALOBOS & ASSOCIATES

RECOMMENDATION(S)

1. Award contract to Villalobos & Associates in the amount of \$123,760.50; and authorize the expenditure of 40% construction contingency funds not to exceed \$49,504.20 for a total authorization of \$173,264.70; and
2. Authorize the City Manager to execute and administer that certain construction contract with Villalobos & Associates.

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Enhancing Public Safety

Maintaining and Enhancing Infrastructure

2022-2023 Strategic Priorities

Fiscal Sustainability

Guiding Documents

Morgan Hill 2035 General Plan

REPORT NARRATIVE:

The purpose of this item is to present the City Council with an opportunity to review and consider the contract prepared to complete the City's 2023 Sidewalk Repair Project. The scope of work for the 2023 Sidewalk Repair Project will include the removal and replacement of concrete sidewalks at various locations within the City limits from April to June 2023. Over 6,347 square feet of sidewalks will be repaired with this project. The exact locations and City bid documents are attached.

In soliciting bids for this sidewalk repair project, the City advertised in the Morgan Hill Times on January 27, 2023. Bids were posted on the City website and on two online plan room services, Public Purchase and the Builders Exchange of Santa Clara County, whose subscribers include hundreds of contractors as well as Northern California Builders Exchanges. General Engineering (A) and Concrete (C-8) contractors registered

on the City's bidders' list were also informed of the bid opportunity via email.

A non-mandatory pre-bid meeting was held on February 9, 2023, via a virtual Zoom meeting. The bid opening was held on March 2, 2023, via a virtual Zoom meeting, and 11 bids were received, as listed below:

Bidder's Name	Bid Amount
Villalobos & Associates	\$123,760.50
NOECON, Inc.	\$132,929.50
SAE Consulting Engineering	\$135,163.00
ASG Builders, Inc.	\$154,962.09
Duran Construction	\$159,868.00
JJR Construction	\$173,410.99
Bianchi Concrete	\$188,996.00
Concentric Concrete	\$204,273.00
FBD Vanguard Construction	\$285,845.76
Golden Bay Construction	\$294,771.00
Burch Engineering & Construction	Non-responsive: No pricing provided

The responsible bidder with the lowest responsive bid, Villalobos & Associates, has over seven years of experience and has completed similar projects for the City of Saratoga and the City of Santa Cruz, including sidewalk replacement, curb, and gutter replacement, and installation of Americans with Disabilities Act (ADA) ramps.

Staff recommends a 40% contingency of \$49,504.20, which will yield a total construction authorization of \$173,264.70 for the sidewalk repair and replacement project. Due to the competitive pricing received, staff recommends the 40% contingency to allow for additional sidewalk repairs this year. Staff recommends that the City Council award the contract to Villalobos & Associates for \$123,760.50 and authorize the City Manager to execute and administer the agreement.

COMMUNITY ENGAGEMENT:

Inform

Contractor will post signs at the sidewalk repair sites to inform pedestrians and cars of the construction underway. Notification will also be posted on the City's website, Twitter, and Nextdoor Morgan Hill to inform residents that sidewalk repairs will be underway throughout the City beginning in late April 2023.

ALTERNATIVE ACTIONS:

An alternate action would be to not approve the contract and delay the repair of citywide sidewalks.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

While the City Council has not previously taken action on this particular item, conducting

sidewalk repairs is an ongoing public safety activity, and the Council has approved numerous contracts for sidewalk repairs in the past.

FISCAL AND RESOURCE IMPACT:

The total authorized amount for this contract is \$123,760.50. A 40% contingency of \$49,504.20 is approved outside the contract, with the authority granted to the City Manager to access the 40% contingency and change order the contract up to the \$173,264.70 amount. Funding for this agreement is allocated in the FY 2022/2023 Budget in Fund 346: Public Facilities.

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

SPECIFICATIONS AND CONTRACT DOCUMENTS
for

2023
SIDEWALK REPAIR PROJECT



MORGAN HILL, CALIFORNIA
COMMUNITY SERVICES DEPARTMENT

January 30, 2023

NOTICE INVITING INFORMAL BIDS

1. **Bid Acceptance.** The City of Morgan Hill ("City"), will accept electronic PDF format bids for its 2023 Sidewalk Repair Project ("Project"), by or before **Thursday, March 2, 2023, at 10:30 a .m.** via e-mail to cynthia.iwanaga@morganhill.ca.gov , at which time the bids will be publicly opened and read aloud via a Zoom meeting at <https://bit.ly/2023SidewalkRepairOpening>

2. **Project Information.**

2.1 Location and Description. The Project is located at various locations throughout Morgan Hill, and the Scope of Work is described as follows:

Removal and replacement of damaged concrete sidewalks, curb/gutter/driveway approach and tree root removal.

2.2 Time for Completion. The planned timeframe for commencement and completion of construction of the Project is Spring 2023 with anticipated start in April 2023.

3. **License and Registration Requirements.**

3.1 License. This Project requires a valid California contractor's license for the following classification(s): **A (General Engineering) or C-8 (Concrete).**

3.2 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.

4. **Contract Documents.** The plans, specifications, bid and contract documents for the Project ("Contract Documents") may be obtained from the City of Morgan Hill website at <http://www.morgan-hill.ca.gov/bids.aspx> or the RFP may be downloaded from the Public Purchase online service at <https://www.publicpurchase.com> Registration is free.

5. **Bid Proposal and Security.**

5.1 Bid Proposal Form. Each Bid must be submitted using the Bid Proposal form provided with the Contract Documents.

5.2 Bid Security. The Bid Proposal must be accompanied by bid security of ten percent (10%) of the maximum bid amount, in the form of a cashier's

or certified check made payable to City, or a bid bond executed by a surety licensed to do business in the State of California on the Bid Bond form included with the Contract Documents. The bid security must guarantee that upon award of the bid, the bidder will execute the Contract and submit payment and performance bonds and insurance certificates as required by the Contract Documents within ten (10) days after issuance of the notice of award.

6. Prevailing Wage Requirements.

6.1 General. 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.

6.2 Rates. These prevailing rates are available online at <http://www.dir.ca.gov/DLSR>. Each Contractor and Subcontractor must pay no less than the specified rates to all workers employed to work on the Project. The schedule of per diem wages is based upon a working day of eight (8) hours. The rate for holiday and overtime work must be at least time and one-half (1/2).

6.3 Compliance. The Contract will be subject to compliance monitoring and enforcement by the California Department of Industrial Relations, under Labor Code Section 1771.4.

- 7. Performance and Payment Bonds.** The successful bidder will be required to provide performance and payment bonds for one hundred percent (100%) of the Contract Price.
- 8. Substitution of Securities.** Substitution of appropriate securities in lieu of retention amounts from progress payments is permitted under Public Contract Code Section 22300.
- 9. Subcontractor List.** Each bidder must submit the name, location of the place of business, and California contractor license number and DIR registration number for each Subcontractor who will perform work or service or fabricate or install work for the prime contractor in excess of one half (1/2) of one percent (1%) of the bid price, using the Subcontractor List form included with the Contract Documents.
- 10. Instructions to Bidders.** Additional and more detailed information is provided in the Instructions for Bidders, which should be carefully reviewed by all bidders before submitting a Bid Proposal.

11. Non-Mandatory Bidders' Conference. A non-mandatory bidders' conference will be held on Thursday, February 9, 2023 at 9:30 a.m., via a Zoom meeting. The following is the Zoom link to the meeting: <https://bit.ly/2023SidewalkPreBidMtg> The purpose of the conference is to acquaint all prospective bidders with the Contract Documents and the Work. The bidders' conference is not mandatory.

12. Estimated Cost. The estimated construction cost is \$ 103,000.

By: Michelle Bigelow, City Clerk

Date: January 18, 2023

Publication Date: 1) January 27 2023

END OF NOTICE INVITING INFORMAL BIDS

INSTRUCTIONS TO BIDDERS

Each Bid Proposal submitted to the City of Morgan Hill ("City") for its 2023 Sidewalk Repair Project ("Project") must be submitted in accordance with the following instructions and requirements:

1. Bid Submission.

1.1 General. Each bid ("Bid Proposal") must be signed, sealed and submitted to City, using the form provided in the Contract Documents, by or before the date and time set forth in the Notice Inviting Informal Bids, or as amended by subsequent addendum. Faxed or emailed Bid Proposals will not be accepted, unless otherwise specified. Late submissions will be returned unopened. City reserves the right to postpone the date and time for receiving or opening bids. Each bidder is solely responsible for all of its costs to prepare and submit its bid and by submitting a bid waives any right to recover those costs from City. The bid price(s) must include all costs to perform the Work as specified, including all indirect costs such as applicable taxes, insurance and field offices.

1.2 E-mail Bid Submittal. The City of Morgan Hill ("City") will accept bids via e-mail to cynthia.iwanaga@morganhill.ca.gov for its 2023 Sidewalk Repair Project ("Project"), by or before Thursday, March 2, 2023 at 10:30 a.m., at which time the bids will be publicly opened and read aloud via a Zoom meeting at <https://bit.ly/2023SidewalkRepairOpening>

Bids must be received by the City staff's e-mail inbox no later than 10:30 a.m. on March 2, 2023. No late bids will be accepted.

Please note: If City is unable to confirm that the bidder's DIR registration is current, City must disqualify the bidder and return its bid unopened (Labor Code section 1725.5).

2. Examination of Contract Documents and Project Site. Each bidder is solely responsible for diligent and thorough review of the Contract Documents (as defined in the General Conditions), examination of Project site, and reasonable and prudent inquiry concerning known and potential site conditions prior to submitting a Bid Proposal. However, bidders should not enter onto City's property or the Project site without prior written authorization from City. Bidders are responsible for reporting any errors or omissions in the Contract Documents to City prior to submitting a Bid Proposal, subject to the limitations of Public Contract Code Section 1104. City expressly disclaims responsibility for assumptions the bidder might draw from the presence or absence of information provided by City.

3. **Requests for Information.** Questions regarding the Project, the bid procedures or any of the Contract Documents must be submitted in writing to Cynthia Iwanaga at cynthia.iwanaga@morganhill.ca.gov **no later than Friday, February 17, 2023 at 5:00 p.m.**
4. **Addenda.** The City will issue an addendum responding to all questions submitted by the February 17, 2023 deadline. The addendum will be issued no later than Thursday, February 23, 2023. Any addenda issued prior to the bid opening are part of the Contract Documents. Subject to the limitations of Public Contract Code section 4104.5, City reserves the right to issue addenda prior to bid time.
5. **Brand Designations and “Or Equal” Substitutions.** Any specification designating a material, product, thing, or service by specific brand or trade name, followed by the words “or equal,” is intended only to indicate quality and type of item desired, and bidders may request use of any equal material, product, thing, or service. All data substantiating the proposed substitute as an “equal” item must be submitted with the written request for substitution. This provision does not apply to materials, products, things, or services that may lawfully be designated by a specific brand or trade name under Public Contract Code Section 3400(c).
 - 5.1 **Pre-Bid Requests.** Any request for submission made before the Contract is awarded must be submitted to the Management Analyst at least ten (10) days before the opening of bids so that all interested bidders may be notified of any approved alternative. Please e-mail requests to cynthia.iwanaga@morganhill.ca.gov
 - 5.2 **Post-Award Requests.** After the Contract is awarded, Contractor may submit a substitution within fourteen (14) days after the date of award of the Contract, or as specified in the Special Conditions.
6. **Bidders Interested in More Than One Bid.** No person, firm, or corporation may submit or be a party to more than one (1) Bid Proposal unless alternate bids are specifically called for. However, a person, firm, or corporation that has submitted a subcontract proposal or quote to a bidder may submit subcontract proposals or quotes to other bidders.
7. **Bid Proposal Form and Enclosures.** Each Bid Proposal must be completed in ink using the Bid Proposal form included in the Contract Documents. The Bid Proposal form should be fully completed without interlineations, alterations, or erasures. Any necessary corrections must be clear and legible, and must be initialed by the bidder’s authorized representative. A Bid Proposal submitted with terms such as “negotiable,” “will negotiate,” or similar, will be considered non-responsive. Each Bid Proposal must be accompanied by bid security, as set forth in Section 9

below, and by the completed Subcontractor List, and Non-Collusion Declaration using the forms included in the Contract Documents.

8. **Authorization and Execution.** Each Bid Proposal must be signed by the bidder's authorized representative. A Bid Proposal submitted by a partnership must be signed in the partnership name by a general partner with authority to bind the partnership. A Bid Proposal submitted by a corporation must be signed with the legal name of the corporation, followed by the signature and title of two officers of the corporation with full authority to bind the corporation to the terms of the Bid Proposal, under California Corporation Code section 313.
9. **Bid Security.** Each Bid Proposal must be accompanied by bid security of ten percent (10%) of the maximum bid amount, in the form of a PDF of the cashier's check, a certified check, or a PDF of the bid bond, using the form included in the Contract Documents, executed by a surety licensed to do business in the State of California, made payable to City. The bid security must guarantee that upon award of the bid, the bidder will execute and submit the Contract on the form included in the Contract Documents, will submit payment and performance bonds for one hundred percent (100%) of the maximum Contract Price, and will submit the insurance certificates and endorsements as required by the Contract Documents within ten (10) days after issuance of the notice of award. **Submitted packages that do not include a PDF copy of the bid security documents will be deemed non-responsive.**
10. **Withdrawal of Bid Proposals.** A Bid Proposal may not be withdrawn for a period of ninety (90) days after the bid opening without forfeiture of the bid security, except as authorized for material error under Public Contract Code Section 5100 et seq.
11. **Bid Protest.** Any bid protest must be in writing and received by City at the City Attorney's Office via an e-mail to Cynthia Hasson, Assistant City Attorney at Cynthia.Hasson@morganhill.ca.gov, before 5:00 p.m. no later than two (2) working days following bid opening (the "Bid Protest Deadline") and must comply with the following requirements:
 - 11.1 **General.** Only a bidder who has actually submitted a Bid Proposal is eligible to submit a bid protest against another bidder. Subcontractors are not eligible to submit bid protests. A bidder may not rely on the bid protest submitted by another bidder, but must timely pursue its own protest. If required by City, the protesting bidder must submit a non-refundable fee in the amount specified by City, based upon City's reasonable costs to administer the bid protest. Any such fee must be submitted to City no later than the Bid Protest Deadline, unless otherwise specified. For purposes of

this Section 11, a “working day” means a day that City is open for normal business, and excludes weekends and holidays observed by City.

11.2 Protest Contents. The bid protest must contain a complete statement of the basis for the protest and all supporting documentation. Material submitted after the Bid Protest Deadline will not be considered. The protest must refer to the specific portion or portions of the Contract Documents upon which the protest is based. The protest must include the name, address, email address, and telephone number of the person representing the protesting bidder if different from the protesting bidder.

11.3 Copy to Protested Bidder. A copy of the protest and all supporting documents must be concurrently transmitted by fax or by email, by or before the Bid Protest Deadline, to the protested bidder and any other bidder who has a reasonable prospect of receiving an award depending upon the outcome of the protest.

11.4 Response to Protest. The protested bidder may submit a written response to the protest, provided the response is received by City before 5:00 p.m., within two (2) working days after the Bid Protest Deadline or after actual receipt of the bid protest, whichever is sooner (the “Response Deadline”). The response must include all supporting documentation. Material submitted after the Response Deadline will not be considered. The response must include the name, address, email address, and telephone number of the person representing the protested bidder if different from the protested bidder.

11.5 Copy to Protesting Bidder. A copy of the response and all supporting documents must be concurrently transmitted by fax or by email, by or before the Response Deadline, to the protesting bidder and any other bidder who has a reasonable prospect of receiving an award depending upon the outcome of the protest.

11.6 Exclusive Remedy. The procedure and time limits set forth in this section are mandatory and are the bidder’s sole and exclusive remedy in the event of bid protest. A bidder’s failure to comply with these procedures will constitute a waiver of any right to further pursue a bid protest, including filing a Government Code Claim or initiation of legal proceedings.

11.7 Right to Award. City reserves the right to award the Contract to the bidder it has determined to be the responsible bidder submitting the lowest responsive bid, and to issue a notice to proceed with the Work notwithstanding any pending or continuing challenge to its determination.

12. Rejection of Bids; Award of Contract. City reserves the right, acting in its sole discretion, to waive immaterial bid irregularities, the right to accept or

reject any and all bids, or to abandon the Project entirely. The Contract will be awarded, if at all, within ninety (90) days after opening of bids or as otherwise specified in the Special Conditions, to the responsible bidder that submitted the lowest responsive bid.

- 13. Bonds.** The successful bidder is required to submit payment and performance bonds as specified in the Contract Documents using the bond forms included in the Contract Documents. All required bonds must be calculated on the maximum total Contract price as awarded, including additive alternates, if applicable.
- 14. Evidence of Responsibility.** Within twenty four (24) hours following a request by City, a bidder must submit to City satisfactory evidence showing the bidder's financial resources, the bidder's experience in the type of work being required by City, the bidder's organization available for the performance of the Contract and any other required evidence of the bidder's qualifications to perform the proposed Contract. City may consider such evidence before making its decision awarding the proposed Contract.
- 15. License(s).** The successful bidder and its Subcontractor(s) must possess the California contractor's license(s) in the classification(s) required by law to perform the Work. This project requires a valid California contractor's license for the following classification(s): **A (General Engineering) or C-8 (Concrete).**
- 16. Taxes.** The bid price must include all applicable federal, state, and local taxes.
- 17. Ineligible Subcontractor.** Any Subcontractor who is ineligible to perform work on a public works project under Labor Code Sections 1777.1 or 1777.7 is prohibited from performing work on this Project.
- 18. 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 DIR to perform public work under Labor Code Section 1725.5, subject to limited legal exceptions.
- 19. Bid Schedule.** Bidders are required to fully complete the Bid Schedule form accompanying the Bid Proposal form with unit prices as indicated, and to submit the completed Bid Schedule with their Bid Proposal.

19.1 Incorrect Totals. In the event of a computational error for any bid item (base bid or alternate) resulting in an incorrect extended total for that item, the submitted base bid or bid alternate total will be adjusted to reflect the corrected amount (estimated quantity X unit cost), unless the cumulative amount of correction changes the total amount of the base bid or bid

alternate by more than five percent (5%). In the event of a discrepancy between the actual total of the itemized or unit prices shown on the Bid Schedule for the base bid, and the amount entered as the base bid on the Bid Proposal form, the actual total of the itemized or unit prices shown on the Bid Schedule for the base bid will be deemed the base bid price. Likewise, in the event of a discrepancy between the actual total of the itemized or unit prices shown on the Bid Schedule for any bid alternate, and the amount entered for the alternate on the Bid Proposal form, the actual total of the itemized prices shown on the Bid Schedule for that alternate will be deemed the alternate price. Nothing in this provision is intended to prevent a bidder from requesting to withdraw its bid for material error under Public Contract Code Section 5100 et seq.

19.2 Estimated Quantities. The quantities shown on the Bid Schedule are estimated and the actual quantities required to perform the Work may be greater or less than the estimated amount. The Contract Price will be adjusted to reflect the actual quantities required for the Work based on the itemized or unit prices provided in the Bid Schedule, with no allowance for anticipated profit for quantities that are deleted or decreased.

19.3. Local Preference. Submittals will be evaluated based upon a local preference, which allows local businesses to reduce their bid amounts up to five (5%) percent in order to become the lowest bidder. The local businesses must also affirmatively mark on their bid submittal that they are a local business and that they willing to reduce their bid amount by up to 5% in order to make their bid the lowest. If the lowest price submitted for services is from a non-local business, local businesses who have affirmatively marked their willingness to reduce their bid amount by up to 5%, shall be given the opportunity to lower their bid prices by up to 5% to become the lowest bidder. This reduction in the bid amount will be allowed if their bid is otherwise equally responsive and responsible in meeting the requirements of the City's Notice Inviting Informal Bids.

19.4. Bidder's Questionnaire. A completed, signed Bidder's Questionnaire using the form provided with the Contract Documents and including all required attachments must be submitted within forty-eight (48) hours following a request by City. A bid that does not fully comply with this requirement may be rejected as nonresponsive. A bidder who submits a Bidder's Questionnaire which is subsequently determined to contain false or misleading information, or material omissions, may be disqualified as non-responsible.

BID PROPOSAL

2023 Sidewalk Repair Project

_____ (“Bidder”) hereby submits this Bid Proposal to the City of Morgan Hill (“City”) for the above-referenced project (“Project”) in response to the Notice Inviting Informal Bids and in accordance with the Contract Documents referenced therein.

1. **Base Bid.** Bidder proposes to perform and fully complete the Work for the Project as specified in the Contract Documents, within the time required for full completion of the Work, for the following price (“Base Bid”):
\$ _____.

2. **Addenda.** Bidder acknowledges receipt of the following addenda:

Addendum:	Date Received:	Addendum:	Date Received:
#01	_____	#05	_____
#02	_____	#06	_____
#03	_____	#07	_____
#04	_____	#08	_____

3. **Bidder’s Warranties.** By signing and submitting this Bid Proposal, Bidder warrants the following:

- 3.1 **Examination of Contract Documents.** Bidder has thoroughly examined the Contract Documents, and represents that, to the best of Bidder’s knowledge there are no errors, omissions, or discrepancies in the Contract Documents subject to the limitations of Public Contract Code Section 1104.

- 3.2 **Examination of Worksite.** Bidder has had the opportunity to examine the Worksite and local conditions at the Project location.

- 3.3 **Bidder is Qualified.** Bidder is fully qualified to perform the Work.

- 3.4 **Responsibility for Bid.** Bidder has carefully reviewed this Bid Proposal and is solely responsible for any errors or omissions contained in its completed Bid.

4. **Award of Contract .** By signing and submitting this Bid Proposal, Bidder agrees that if Bidder is awarded the Contract for the Project, that within ten (10) days following issuance of the notice of award to Bidder, Bidder will do all of the following:

4.1 Execute Contract. Enter into the Contract with City in accordance with the terms of this Bid Proposal, by signing and submitting to City the Contract prepared by City using the form included with the Contract Documents;

4.2 Submit Required Bonds. Submit to City a payment bond and a performance bond, each for one hundred percent (100%) of the Contract Price, using the bond forms provided and in accordance with the requirements of the Contract Documents; and

4.3 Insurance Requirements. Submit to City the insurance certificate(s) and endorsement(s) as required by the Contract Documents.

- 5. Wage Theft Prevention.** All Bidders are expected to have read and understand the "Wage Theft Prevention Policy" adopted by the City Council on July 26, 2017.

The undersigned Bidder certifies that neither Bidder nor its principals have been found by a final court judgement or final administrative action of an investigatory agency to have violated federal, state or local wage and hour laws within the past five years from the date of the submitted bid. Bidder or its principals who are unable to so certify, must disclose wage and hour violations, and shall provide a copy of (i) the court order and judgment and/or final administrative decision; and (ii) documents demonstrating either that the order/judgment has been satisfied, or if the order/judgment has not been fully satisfied, a written and signed description of Bidder's efforts to date to satisfy the order/judgment. Signing this bid shall constitute signature of this Certification.

The City, at its sole discretion, may disqualify a bidder based on one or more disclosed judgments consistent with the criteria set forth in the Policy.

- 6. Bid Security.** As a guarantee that if awarded the Contract, it will perform its obligations under Section 4, above, Bidder is enclosing bid security in the amount of ten percent (10%) of its maximum bid amount in the following form:

_____ A cashier's check or certified check payable to City of Morgan Hill and issued by _____ Bank in the amount of \$_____.

_____ A bid bond, using the Bid Bond form included with the Contract Documents, payable to City of Morgan Hill and executed by a surety licensed to do business in the State of California.

7. Local Preference.

☐ Check this box if you are a local business as defined by the Morgan Hill Municipal Code Section 3.04.030 and would like to apply the local business quotation preference by reducing the bid or proposal price submitted by up to five percent (5%) in order to be the low bidder

This Bid Proposal is hereby submitted on _____, 20__:

s/ _____

Name and Title [print]

Company Name

CSLB License # & Classification

DIR Registration #

Address

Phone

City, State, Zip

E-mail

END OF BID PROPOSAL

BID SCHEDULE

2023 SIDEWALK REPAIR PROJECT

This Bid Schedule must be completed and included with the Bid Proposal. The unit cost for each item must be inclusive of all costs, whether direct or indirect, including profit and overhead. The sum of all amounts entered in the "Extended Total" column must be identical to the Base Bid price entered in Section 1 of the Bid Proposal Form. Quantities shown are required for bid purposes and may or may not be final pay quantities. Actual quantities, if different, must be substantiated during the Project by Contractor (either by field measurement, trucking tags, or other means acceptable to the City's Project Manager).

Bid Item	Description of Bid Item	Approximate Quantity/Unit of Measure	Unit Price	Extended Total
1	Remove and replace concrete sidewalks and driveway at locations indicated on attached list	6,347 sq. ft.		

Bid Schedule Total	
--------------------	--

END OF BID SCHEDULE

SUBCONTRACTOR LIST

2023 SIDEWALK REPAIR PROJECT

For each Subcontractor who will perform a portion of the Work in an amount in excess of one-half of 1% of the Bidder's total Contract Price,¹ the bidder must list a description of the work, the name of the Subcontractor, its California contractor license number, the location of its place of business, and DIR registration number. **Bidders: Please print legibly. Illegible forms may be rejected. If no subcontractors will be used, check the "Not Applicable-No Subcontractors," box below.**

☐ NOT APPLICABLE-NO SUBCONTRACTORS

DESCRIPTION OF WORK	SUBCONTRACTOR NAME	CALIFORNIA CONTRACTOR LICENSE NUMBER	DIR REGISTRATION. NO.	LOCATION OF BUSINESS	LOCAL VENDOR ² YES/NO

END OF SUBCONTRACTOR LIST

¹ For street or highway construction this requirement applies to any subcontract of \$10,000 or more.

² A Subcontractor is considered local if its principle place of business is within the city limits of Morgan Hill.

NONCOLLUSION DECLARATION

(To be executed by bidder and submitted with bid)

State of California	)	SS.
	)	
County of _____	)	

The undersigned declares:

I am the _____ [title] of
_____ [business name], the party
making the foregoing bid.

The bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation. The bid is genuine and not collusive or sham. The bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid. The bidder has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or to refrain from bidding. The bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder. All statements contained in the bid are true. The bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof, to effectuate a collusive or sham bid, and has no paid and will not pay, any person or entity for such purpose.

This declaration is intended to comply with California Public Contract Code Section 7106 and Title 23 U.S.C Section 112.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on _____ [date], at _____ [city],
_____ [state].

s/ _____

Name [print]

CIVIL CODE '

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BID BOND

_____ (“Bidder”) has submitted a bid, dated _____, 20____ (“Bid”), to the City of Morgan Hill (“City”) for work on the 2023 Sidewalk Repair Project (“Project”). Under this duly executed bid bond (“Bid Bond”), Bidder as Principal and _____, its surety (“Surety”), are bound to City as obligee in the penal sum of ten percent (10%) of the maximum amount of the Bid (the “Bond Sum”). Bidder and Surety bind themselves and their respective heirs, executors, administrators, successors and assigns, jointly and severally, as follows:

1. **General.** If Bidder is awarded the Contract for the Project, Bidder will enter into the Contract with City in accordance with the terms of the Bid.
2. **Submittals.** Within ten (10) days following issuance of the notice of award to Bidder, Bidder must submit to City the following:
 - 2.1 **Contract.** The executed Contract, using the form provided by City in the Project contract documents (“Contract Documents”);
 - 2.2 **Payment Bond.** A payment bond for one hundred percent (100%) of the maximum Contract Price, executed by a surety licensed to do business in the State of California using the Payment Bond form included with the Contract Documents;
 - 2.3 **Performance Bond.** A performance bond for one hundred percent (100%) of the maximum Contract Price, executed by a surety licensed to do business in the State of California using the Performance Bond form included with the Contract Documents; and
 - 2.4 **Insurance.** The insurance certificate(s) and endorsement(s) required by the Contract Documents, and any other documents required under the Instructions for Bidders.
3. **Enforcement.** If Bidder fails to execute the Contract and to submit the bonds and insurance certificates as required by the Contract Documents, Surety guarantees that Bidder forfeits the Bond Sum to City. Any notice to Surety may be given in the manner specified in the Contract and delivered or transmitted to Surety as follows:

Attn: _____
Address: _____
City/State/Zip: _____
Phone: _____
Fax: _____

Email: _____

- 4. Duration; Waiver.** If Bidder fulfills its obligations under Section 2, above, then this obligation will be null and void; otherwise it will remain in full force and effect for ninety (90) days following award of the Contract or until this Bid Bond is returned to Bidder, whichever occurs first. Surety waives the provisions of Civil Code Sections 2819 and 2845.

This Bid Bond is entered into and is effective on _____,
20____.

SURETY:

s/ _____

Name: _____

Title: _____

(Attach Acknowledgement, Notary Seal, and Attorney-In-Fact Certificate)

CONTRACTOR:

s/ _____

Name: _____

Title: _____

APPROVED AS TO FORM:

By: _____
Donald A. Larkin, City Attorney

Date: _____

BIDDER'S QUESTIONNAIRE

2023 SIDEWALK REPAIR PROJECT

Within forty eight (48) hours following a request by City, a bidder must submit to City a completed, signed Bidder's Questionnaire using this form and including all required attachments. City may request the Questionnaire from one (1) or more of the apparent low bidders following the bid opening, and may use the completed Questionnaire to evaluate a bidder's qualifications for this Project. The Questionnaire must be filled out completely, accurately, and legibly. Any errors, omissions, or misrepresentations in completion of the Questionnaire may be grounds for rejection of the bid or termination of a Contract awarded pursuant to the bid.

Part 1: General Information

Bidder Business Name: _____ ("Bidder")

Check One: ☐ Corporation
☐ Partnership
☐ Sole Proprietorship
☐ Joint Venture of: _____
☐ Other: _____

Address: _____

Phone: _____

Fax: _____

Owner of Company: _____

Contact Person: _____

Email: _____

Bidder's California Contractor's License Number(s):

Part 2: Bidder Experience

1. How many years has bidder been in business under its present business name? _____

2. Has bidder completed projects similar in type and size to this Project as a general contractor? _____

3. Has bidder ever been disqualified on grounds that it is not responsible? If yes, provide additional information on a separate sheet of paper regarding the disqualification, including the name and address of the agency or owner of the subject project, the type and size of the project, the reasons that bidder was disqualified as not responsible, and the month and year in which the disqualification occurred.

4. Has bidder ever been terminated from a construction project, either as a general contractor or as a subcontractor? If yes, provide additional information on a separate sheet of paper regarding the termination, including the name and address of the agency or owner of the subject project, the type and size of the project, whether bidder was under contract as a general contractor or a subcontractor, the reasons that bidder was terminated, and the month and year in which the termination occurred.

5. Provide information about bidder's past projects performed as general contractor as follows:

5.1 Six (6) most recently completed public works projects within the last three (3) years;

5.2 Three (3) largest completed projects within the last three (3) years; and

5.3 Any project which is similar to this Project.

6. Use separate sheets of paper provide all of the following information for each project identified in response to the above three (3) categories:

6.1 Project name

6.2 Location

6.3 Owner

6.4 Owner contact (name and current phone number)

6.5 Architect or engineer name

6.6 Architect or engineer contact (name and current phone number)

6.7 Project manager (name and current phone number)

6.8 Description of project, scope of work performed

6.9 Initial contract value (at time of bid award)

6.10 Final cost of construction (including change orders)

6.11 Original scheduled completion date

6.12 Time extensions granted (number of days)

6.13 Actual date of completion

6.14 Number and amount of stop notices or mechanic's liens filed

- 6.15 Amount of liquidated damages assessed against Bidder
- 6.16 Nature and resolution of any claim, lawsuit, and/or arbitration between Bidder and the owner.

Part 3: Verification

In signing this document, I, the undersigned, declare that I am duly authorized to sign and submit this Bidder's Questionnaire on behalf of the named bidder, and that all responses and information set forth in this Bidder's Questionnaire and accompanying attachments are, to the best of my knowledge, true, accurate and complete as of the date of submission. **I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.**

Signature: _____ Date: _____

By [name, title]: _____

END OF BIDDER'S QUESTIONNAIRE

CONTRACT

This public works contract ("Contract") is entered into by and between the City of Morgan Hill ("City") and [REDACTED], a [REDACTED], a [REDACTED] ("Contractor") for work on the 2023 Sidewalk Repair 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:
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 [Click or tap here to enter text.](#) Dollars (\$[Click or tap here to enter text.](#)) (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 [forty-five \(45\)](#) 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:keri.russell@morganhill.ca.gov

Contractor:

Name: Click or tap here to enter text.
Address: Click or tap here to enter text.
City/State/Zip: Click or tap here to enter text.
Phone: Click or tap here to enter text.
Attn: Click or tap here to enter text.
Email: Click or tap here to enter text.
Copy to: Click or tap here to enter text.

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

[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:

[NAME OF CONTRACTOR]

Signature

Name/Title [print]

Date: _____

Corporate entities must provide a second signature:

Signature

Name/Title [print]

Date: _____

Contractor's License Number(s)

Expiration Date(s)

Seal:

Contractor's DIR Registration Number(s)

Expiration Date

END OF CONTRACT

PAYMENT BOND

The City of Morgan Hill ("City") and _____ ("Contractor") have entered into a contract, dated _____, 20____ ("Contract") for work on the 2023 Sidewalk Repair Project ("Project"). The Contract is incorporated by reference into this Payment Bond ("Bond").

1. **General.** Under this Bond, Contractor as principal and _____, its surety ("Surety"), are bound to City as obligee in an amount not less than _____ Dollars (\$_____) ("Bond Sum"), under California Civil Code Sections 9550, et seq.
2. **Surety's Obligation.** If Contractor or any of its Subcontractors fails to pay any of the persons named in California Civil Code Section 9100 amounts due under the Unemployment Insurance Code with respect to work or labor performed under the Contract, or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of Contractor and its Subcontractors, under California Unemployment Insurance Code Section 13020, with respect to the work and labor, then Surety will pay for the same.
3. **Beneficiaries.** This Bond inures to the benefit of any of the persons named in California Civil Code Section 9100, so as to give a right of action to those persons or their assigns in any suit brought upon this Bond. Contractor must promptly provide a copy of this Bond upon request by any person with legal rights under this Bond.
4. **Duration.** If Contractor promptly makes payment of all sums for all labor, materials, and equipment furnished for use in the performance of the Work required by the Contract, in conformance with the time requirements set forth in the Contract and as required by California law, Surety's obligations under this Bond will be null and void. Otherwise, Surety's obligations will remain in full force and effect.
5. **Waivers.** Surety waives any requirement to be notified of alterations to the Contract or extensions of time for performance of the Work under the Contract. Surety waives the provisions of Civil Code Sections 2819 and 2845. City waives requirement of a new bond for any supplemental contract under Civil Code Section 9550. Any notice to Surety may be given in the manner specified in the Contract and delivered or transmitted to Surety as follows:

Attn: _____
Address: _____
City/State/Zip: _____
Phone: _____
Fax: _____
Email: _____

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

7. Effective Date; Execution. This Bond is entered into and is effective on _____, 20____.

SURETY:

s/ _____

Name: _____

Title: _____

CONTRACTOR:

s/ _____

Name: _____

Title: _____

(Attach Acknowledgment with Notary
Seal and Power of Attorney)

APPROVED AS TO FORM:

By: _____
Donald A. Larkin, City Attorney

Date: _____

END OF PAYMENT BOND

PERFORMANCE BOND

The City of Morgan Hill ("City") and _____ ("Contractor") have entered into a contract, dated _____, 20____ ("Contract") for work on the 2023 Sidewalk Repair Project ("Project"). The Contract is incorporated by reference into this Performance Bond ("Bond").

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

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

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

5. Surety Default. If Surety defaults on its obligations under the Bond, City will be entitled to recover all costs it incurs due to Surety's default, including legal, design professional, or delay costs.

6. Notice. Any notice to Surety may be given in the manner specified in the Contract and delivered or transmitted to Surety as follows:

Attn: _____
Address: _____
City/State/Zip: _____
Phone: _____
Fax: _____
Email: _____

7. Law and Venue. This Bond will be governed by California law, and any dispute pursuant to this Bond will be venued 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.

8. Effective Date; Execution. This Bond is entered into and is effective on _____, 20____.

[Signatures are on the following page.]

SURETY:

s/ _____

Name: _____

Title: _____

(Attach Acknowledgment with Notary
Seal and Power of Attorney)

CONTRACTOR:

s/ _____

Name: _____

Title: _____

APPROVED AS TO FORM:

By: _____
Donald A. Larkin, City Attorney

Date: _____

END OF PERFORMANCE BOND

WARRANTY BOND

The City of Morgan Hill ("City") and _____ ("Contractor") have entered into a contract, dated _____, 20____ ("Contract") for work on the 2023 Sidewalk Project ("Project"). The Contract is incorporated by reference into this Warranty Bond ("Bond").

1. **General.** Under this Bond, Contractor as principal and _____, its surety ("Surety"), are bound to City as obligee in the maximum amount of _____ Dollars (\$_____) or 50% of the final Contract Price, whichever is greater ("Bond Sum").
2. **Warranty Period.** The Contract requires Contractor to guarantee its work and that of its Subcontractors on the Project, against defects in materials or workmanship which are discovered during the one (1) year period commencing with recordation of the Notice of Completion (the "Warranty Period").
3. **Surety's Obligations.** If Contractor faithfully carries out and performs its guarantee under the Contract, 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 Contractor promptly reimburses City for all loss and damage that City sustains because of Contractor's failure to makes such repairs in accordance with the Contract requirements, then Surety's obligations under this Bond will be null and void. Otherwise, Surety's obligations will remain in full force and effect.
4. **Waiver.** Surety waives the provisions of Civil Code Sections 2819 and 2845.
5. **Notice.** Any notice to Surety may be given in the manner specified in the Contract and delivered or transmitted to Surety as follows:

Attn: _____
Address: _____
City/State/Zip: _____
Phone: _____
Fax: _____
Email: _____
6. **Law and Venue.** This Bond will be governed by California law, and any dispute pursuant to this Bond will be venued in the Superior Court of Santa Clara County, and no other place. Surety will be responsible for City's

attorneys' fees and costs in any action to enforce the provisions of this Bond.

7. Effective Date; Execution. This Bond is entered into and is effective on _____, 20_____.

SURETY:

s/ _____

Name: _____

Title: _____

CONTRACTOR:

s/ _____

Name: _____

Title: _____

(Attach Acknowledgment with Notary
Seal and Power of Attorney)

APPROVED AS TO FORM:

By: _____
Donald A. Larkin, City Attorney

Date: _____

END OF WARRANTY BOND

GENERAL CONDITIONS

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Article 1 Definitions

1.1 Definitions. The following definitions apply to all of the Contract Documents unless otherwise indicated. Defined terms and titles of documents are capitalized in the Contract Documents, with the exception of the words “day,” “furnish,” “including,” “install,” “work day” or “working day.”

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

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

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

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

City Engineer means the City Engineer for the City and his or her authorized delegate(s) designated to oversee and manage the Project on City’s behalf.

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

Contract means the signed agreement between City and Contractor.

Contract Documents means, collectively, all of the documents listed as such in Section 2 of the Contract, including the Notice Inviting Informal Bids; the Instructions to Bidders; addenda, if any; the Bid Proposal, and attachments thereto; the Contract; the notice of award and notice to proceed; the payment and performance bonds; the General Conditions; the Special Conditions; the Project Drawings and Specifications; any Change Orders; and any other documents expressly made part of the Contract Documents.

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

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

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

Day means a calendar day unless otherwise specified.

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

Drawings means City-provided plans and graphical depictions of the Project requirements, and does not include Shop Drawings.

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

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

Final Payment means payment to Contractor of the unpaid Contract Price, including release of undisputed retention, less amounts withheld pursuant to the Contract Documents, including liquidated damages, up to one hundred twenty five percent (125%) of the amount of any unreleased stop notice, amounts subject to setoff, up to one hundred fifty percent (150%) of any unresolved third-party claim for which Contractor is required to indemnify City, and up to one hundred fifty percent (150%) of any amount in dispute as authorized by Public Contract Code Section 7107.

Furnish means to purchase and deliver to the Worksite designated for installation.

Hazardous Materials means any substance or material identified now or in the future as hazardous under any federal, state, or local law or regulation, or any other substance or material that may be considered hazardous or otherwise subject to statutory or regulatory requirements governing handling, disposal, or cleanup.

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

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

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

Project means the public works project referenced in the Contract.

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

RFI means a written request from Contractor for information from City or Design Professional.

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

Shop Drawings means drawings, plan details or other graphical depictions prepared by or on behalf of Contractor, and subject to City approval, which are

intended to provide details for fabrication, installation, and the like, of items required by or shown in the Drawings and Specifications.

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

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

Technical Specifications means Specifications.

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

Work Day or Working Day, whether or not capitalized, means a weekday which is not a holiday observed by City.

Worksite means the place or places where the Work is performed.

Article 2 Roles and Responsibilities

2.1 Design Professional.

(A) **General.** Design Professional, as City's representative, is responsible for the overall design of the Project, and to the extent authorized by City, may act on City's behalf to ensure performance of the Work in compliance with the Contract Documents.

(B) **Interpretation.** Design Professional will decide all questions pertaining to interpretation of the Drawings or Specifications. Design Professional's decision regarding interpretation of the Drawings or Specifications is final and conclusive.

2.2 Contractor.

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

(B) **Responsibility for the Work.** Contractor is responsible for supervising and directing all aspects of the Work to facilitate the efficient and timely completion of the Work. Contractor is solely responsible for, and required to exercise full control over, construction means, methods, techniques, sequences, procedures, and coordination of all portions of the Work with that of all other Contractors and Subcontractors, except to the extent that the Contract Documents provide other specific instructions.

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

(D) **On-Site Superintendent.** Contractor must, at all times during performance of the Work, provide a qualified and competent full-time superintendent, acceptable to City, and assistants, as necessary, who must be physically present at the Project site while any aspect of the Work is being performed. Failure to comply may result in temporary suspension of the Work, at Contractor's sole expense and with no extension of

Contract Time, until the superintendent is physically present to supervise the Work. Contractor must provide written notice to City, as soon as practicable, before replacing the superintendent.

(E) **Standards; Compliance.** Contractor must, at all times, ensure that the Work is performed in a good workmanlike manner following best practices and in full compliance with the Contract Documents and all applicable laws, regulations, codes, standards, and permits.

(F) **Responsible Party.** Contractor is solely responsible to City for the acts or omissions of any party or parties performing portions of the Work or providing equipment, materials or services for or on behalf of Contractor or its Subcontractors. If any person employed by Contractor fails or refuses to comply with the Engineer's directions regarding the performance of the Work, or is determined by the Engineer to be incompetent to perform the Work, or acts in a disorderly or improper manner at the Worksite, that person may be permanently dismissed from the Project at the request of the Engineer.

(G) **Correction of Defects.** Contractor must promptly correct, at Contractor's sole expense, any Work that is determined by City, Project Manager, or the Inspector to be deficient or defective in workmanship, materials, and equipment.

(H) **Contractor's Records.** Contractor must maintain all of its records relating to the Project in any form, including paper documents, photos, videos and electronic records. Project records subject to this provision include, but are not limited to, Project cost records and records relating to preparation of Contractor's bid.

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

(2) Contractor must continue to maintain its Project records in an organized manner for a period of four (4) years after City's

acceptance of the Project or following termination, whichever occurs first. Subject to prior notice to Contractor, City is entitled to inspect or audit any of Contractor's Project records relating to the Project or to investigate Contractor's plant or equipment during Contractor's normal business hours.

2.3 Subcontractors.

(A) **General.** All Work which is not performed by Contractor with its own forces must be performed by Subcontractors, subject to any limitations set forth in the Instructions to Bidders. City reserves the right to approve or reject any and all Subcontractors proposed to perform the Work.

(B) **Contractual Obligations.** Contractor must require every Subcontractor to be bound to the provisions of the Contract Documents as they apply to the Subcontractor's portion(s) of the Work, and to likewise bind their subcontractors or suppliers. Nothing in these Contract Documents creates a contractual relationship between a Subcontractor and City, but City is deemed to be a third-party beneficiary of the contract between Contractor and each Subcontractor.

Copies of subcontracts must be available to the Engineer upon request. Before a Subcontractor commences Work on the Project, Contractor must provide the Engineer a written statement with the name of the Subcontractor, a description of each portion of the Work performed by the Subcontractor, and the percentage of the overall Work to be performed by the Subcontractor.

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

(D) **Substitution of Subcontractor.** If Contractor requests substitution of a listed Subcontractor under Public Contract Code Section 4107, Contractor is solely responsible for all costs City incurs in responding to the request, including legal fees and costs to conduct a hearing.

2.4 Coordination of Work.

(A) **Concurrent Work.** City reserves the right to perform or to have performed other work on or adjacent to the Project site while the Work is being performed. Contractor is responsible for coordinating its Work with other work being performed on or adjacent to the Project site, and must

avoid hindering, delaying, or interfering with the work of other contractors and subcontractors. To the full extent permitted by law, Contractor must hold harmless and indemnify City, Design Professional, and Project Manager against any and all claims arising from or related to Contractor's avoidable, negligent, or willful hindrance of, delay to, or interference with the work of another contractor or subcontractor.

(B) **Defects.** Before proceeding with any portion of the Work affected by the construction or operations of others, Contractor must give Project Manager prompt written notification of any defects Contractor discovers which will prevent the proper execution of the Work. Failure to give notice of any such known defects will be deemed acknowledgement by Contractor that the work of others is not defective and will not prevent the proper execution of the Work.

2.5 Submittals. Unless otherwise specified, Contractor must submit to Project Manager for review and approval, all schedules, Shop Drawings, samples, product data and similar submittals required by the Contract Documents, or upon request by Project Manager. Unless otherwise specified, all submittals, including Requests for Information ("RFIs") are subject to the provisions of this Section.

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

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

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

(D) **Required Corrections.** If corrections are required, Contractor must promptly make and submit any required corrections in full conformance with the requirements of this Section.

(E) **Effect of Review and Approval.** Review and approval of a submittal by City will not relieve Contractor from complying with the requirements of the Contract Documents. Contractor is responsible for

any errors in any submittal, and review or approval of a submittal by City is not an assumption of risk or liability by City.

(F) **Enforcement.** Any Work performed or material used without prior approval of a required submittal will be performed at Contractor's risk, and Contractor may be required to bear the costs incident thereto, including the cost of removing and replacing such Work, repairs to other affected portions of the Work, and the cost of additional time or services required of the Design Professional, Project Manager, or Inspector.

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

Article 3 Contract Documents

3.1 Interpretation of Contract Documents.

(A) **Drawings and Specifications.** The Drawings and Specifications included in the Contract Documents are complementary. If Work is shown on one but not on the other, Contractor must perform the Work as though fully described on both, consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results. The Drawings and Specifications are deemed to include and require everything necessary and reasonably incidental to completion of the Work, whether or not particularly mentioned or shown. Contractor must perform all work and services and supply all things reasonably related to and inferable from the Contract Documents. In the event of a conflict between the Drawings and Specifications, the Specifications will control.

(B) **Duty to Notify.** If Contractor becomes aware of any ambiguity, discrepancy, omission, or error in the Drawings or Specifications, Contractor must immediately notify the Design Professional and request clarification of such, by submitting a written request for information (RFI) in the manner specified by City. The Design Professional's clarifications or interpretations will be final and binding.

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

(D) **Technical or Trade Terms.** Any terms that have well-known technical or trade meanings will be interpreted in accordance with those

meanings, unless otherwise specifically defined in the Contract Documents.

(E) **Measurements.** Contractor must verify all relevant measurements at the Worksite before ordering any material or performing any Work, and will be responsible for the correctness of those measurements.

3.2 Order of Precedence. Information included in one Contract Document but not in another will not be considered a conflict or inconsistency. Unless otherwise specified in the Special Conditions, in case of any conflict or inconsistency among the Contract Documents, the following order of precedence will apply, beginning from highest to lowest:

- (A) Change Orders;
- (B) Addenda;
- (C) Contract;
- (D) Notice to Proceed;
- (E) Notice of Award;
- (F) Special Conditions;
- (G) General Conditions;
- (H) Payment and Performance Bonds;
- (I) Specifications;
- (J) Drawings;
- (K) Contractor's Bid Proposal and attachments;
- (L) Notice Inviting Informal Bids;
- (M) Instructions to Bidders; and
- (N) Any documents prepared by and on behalf of a third party, that were not prepared specifically for this Project, e.g., Caltrans Standard Specifications or Caltrans Special Provisions.

3.3 Caltrans Standard Specifications. Any reference to or incorporation of the Standard Specifications of the State of California, Department of Transportation ("Caltrans"), including "Standard Specifications," "Caltrans Specifications," "State Specifications," or "CSS," means the most current edition of Caltrans' Standard Specifications, unless otherwise specified ("Standard Specifications"), including the most current amendments as of the date that Contractor's bid was submitted for this Project. The following provisions apply to use of or reference to the Standard Specifications:

(A) **Limitations.** None of the "General Provisions" of the Standard Specifications, i.e., Sections 1 through 9, applies to these Contract Documents with the exception of any specific provisions, if any, which are expressly stated to apply to these Contract Documents.

(B) **Conflicts or Inconsistencies.** If there is a conflict or inconsistency between any provision in the Standard Specifications and a provision of

these Contract Documents, as determined by City, the provision in the Contract Documents will govern.

(C) **Meanings.** Terms used in the Standard Specifications are to be interpreted as follows:

(1) Any reference to the "Engineer" is deemed to mean the City Engineer.

(2) Any reference to the "Special Provisions" is deemed to mean the Special Conditions.

(3) Any reference to the "Department" or "State" is deemed to mean City.

3.4 For Reference Only. Contractor is responsible for the careful review of any document, study, or report appended to the Contract Documents solely for informational purposes and identified as "For Reference Only." Nothing in any document, study, or report so appended and identified is intended to supplement, alter, or void any provision of the Contract Documents. However, Contractor is advised that City or its representatives may be guided by information or recommendations included in such reference documents, particularly when making determinations as to the acceptability of proposed materials, methods, or changes in the Work. Contractor must promptly notify City of any perceived or actual conflict between the Contract Documents and any document provided "For Reference Only."

Article 4

Bonds, Indemnity, and Insurance

4.1 Payment and Performance Bonds. Within ten (10) days following issuance of the notice of award, Contractor is required to provide a payment bond and a performance bond, each in the penal sum of not less than one hundred percent (100%) of the Contract Price, using the bond forms included with the Contract Documents. Each bond must be issued by a surety admitted in California. If an issuing surety cancels the bond or becomes insolvent, within seven (7) days following written notice from City, Contractor must substitute a surety acceptable to City. If Contractor fails to substitute an acceptable surety within the specified time, City may, at its sole discretion, withhold payment from Contractor until the surety is replaced to City's satisfaction, or terminate the Contract for default.

4.2 Indemnity. To the fullest extent permitted by law, Contractor must indemnify, defend, and hold harmless City, its agents and consultants, and Design Professional (individually, an "Indemnatee," and collectively the

“Indemnitees”) from and against any and all liability, loss, damage, claims, expenses (including, without limitation, attorney fees, expert witness fees, paralegal fees, and fees and costs of litigation or arbitration) (collectively, “Liability”) of every nature arising out of or in connection with the acts or omissions of Contractor, its employees, Subcontractors, representatives, or agents, in bidding or performing the Work or its failure to comply with any of its obligations under the Contract, except such Liability caused by the active negligence, sole negligence, or willful misconduct of an Indemnatee. This indemnity requirement applies to any Liability arising from alleged defects in the content or manner of submission of Contractor’s bid for the Contract. Contractor’s failure or refusal to timely accept a tender of defense pursuant to this provision will be deemed a material breach of this Contract. City will timely notify Contractor upon receipt of any third-party claim relating to the Contract, as required by Public Contract Code Section 9201.

4.3 Insurance. No later than ten (10) days following issuance of the notice of award, Contractor 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 Contractor and its Subcontractors relating to or arising from the performance of the Work, and must remain in full force and effect at all times during the period covered by the Contract until the date of recordation of the notice of completion. 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. All required insurance must be issued by a company licensed to do business in the State of California, and each such insurer must have an A.M. Best’s financial strength rating of “A” or better and a financial size rating of “VIII” or better. If Contractor fails to provide any of the required coverage in full compliance with the requirements of the Contract Documents, City may, at its sole discretion, purchase such coverage at Contractor’s expense and deduct the cost from payments due to Contractor, or terminate the Contract for default. Contractor further understands that City reserves the right to modify the insurance requirements set forth herein, with thirty (30) days’ notice provided to Contractor, at any time as deemed necessary to protect the interests of City.

(A) **Policies and Limits.** The following insurance policies and limits are required for this Contract unless otherwise specified in the Special Conditions:

- (1) **Commercial General Liability Insurance (“CGL”).** Contractor shall maintain CGL and shall include coverage for liability arising from Contractor’s or its Subcontractor’s acts or omissions in the performance of the Work against claims and liabilities for personal injury, death, or property damage providing protection in the minimum amount of: (i) two million dollars (\$2,000,000.00) combined single limit each occurrence and either a general aggregate limit of four million dollars (\$4,000,000.00) or a general aggregate limit of two million dollars (\$2,000,000.00) as applied on a “per project” or “per location” basis, or (ii) the maximum amount of such insurance available to Contractor under Contractor’s combined insurance policies (including any excess or “umbrella” policies), whichever is greater.
- a. CGL policy may not exclude explosion, collapse, underground excavation hazard, or removal of lateral support.
 - b. CGL policy must include contractor’s protected coverage, blanket contractual, and completed operations.
- (2) **Builder’s Risk Insurance:** The Builder’s Risk Insurance policy must be issued on occurrence basis, for all-risk coverage (including Flood and Earthquake) on a one hundred percent (100%) completed value basis on the insurable portion of the Project for the benefit of City.
- (3) **Workers’ Compensation Insurance and Employer’s Liability:** Contractor shall maintain Workers Compensation coverage, as required by law. The policy must comply with the requirements of the California Workers’ Compensation Insurance and Safety Act and provide protection in the minimum amount of: (i) One Million Dollars (\$1,000,000.00) for any one accident or occurrence, or (ii) the maximum amount of such insurance available to Contractor under Contractor’s combined insurance policies (including any excess or “umbrella” policies), whichever is greater. If Contractor is self-insured, Contractor must provide its Certificate of Permission to Self-Insure, duly authorized by the Department of Industrial Relations.
- (4) **Automobile Liability:** Contractor shall maintain Automobile Liability covering all owned, non-owned and hired automobiles (if Contractor does not own automobiles, then Contractor shall maintain Hired/Non-owned Automobile Liability) against claims

and liabilities for personal injury, death, or property damage providing protection in the minimum amount of: (i) One Million Dollars (\$1,000,000.00) combined single limit, or (ii) the maximum amount of such insurance available to Contractor under Contractor's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

- (5) **Pollution (Environmental) Liability:** If the performance of Contractor's work or service under this Contract involves hazardous materials, contaminated soil disposal, and/or a risk of accidental release of fuel oil, chemicals or other toxic gases or hazardous materials, Contractor shall procure and maintain Pollution Liability covering Contractor's liability for bodily injury, property damage and environmental damage resulting from pollution and related cleanup costs arising out of the work or services to be performed under this 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 Contractor under Contractor's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

(6) **Professional Liability:**

- a. If the performance of Contractor's work or service under this Contract involves professional and/or technical services (examples include, but are not limited to, architects, engineers, land surveyors, legal services, and appraisers), Contractor shall procure and maintain either a claims made or occurrence Errors and Omission liability insurance in the minimum amount of: (i) One Million Dollars (\$1,000,000.00) each claim, or (ii) the maximum amount of such insurance available to Contractor under Contractor's combined insurance policies (including any excess or "umbrella" policies), whichever is greater. Further, if Contractor maintains a claims-made policy, Contractor shall provide written evidence of such insurance to City for at least five (5) years after the completion of work performed under this Contract.
- b. If the performance of Contractor's work or service under this Contract relates to Information Technology or related services (examples include, but are not limited to computer programmers, hardware engineers, or other systems

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

(B) **Required Endorsements.** Contractor must provide proof of the following endorsements, listed for each policy for which endorsements are required, as outlined below:

- (1) For all Policies except Builder's Risk and Professional Liability:
 - a. "Waiver of Subrogation" endorsements providing that the carrier agrees to waive any right of subrogation it may have against the City of Morgan Hill and City's elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers.
- (2) General Liability, Automobile, and Pollution Liability:
 - a. "Additionally Insured" - The City of Morgan Hill, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers are named as additional insureds on a form at least as broad as ISO Form CG 20 10 for ongoing operations and at least as broad as ISO Form CG 20 37 for completed operations.
 - b. "Primary and Non-Contributing" - Insurance shall be endorsed to be primary and non-contributory and will not seek contribution from the City's insurance or self-insurance and shall be at least as broad as ISO Form CG 20 01;
- (3) General Liability:
 - a. "Separation of Insureds" endorsements stating that the inclusion of more than one insured will not operate to impair the rights of one insured against another, and the coverages afforded will apply as though separate policies have been issued to each insured.

(C) **Subcontractors.** Contractor must ensure that each Subcontractor is required to maintain the same insurance coverage required under this Section 4.3, with respect to its performance of Work on the Project,

including those requirements related to the additional insureds and waiver of subrogation.

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

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

- 4.4 Warranty Bond.** As a condition precedent to Final Completion, Contractor must submit a warranty bond, using the form provided by City, to guarantee its Work as specified in Article 11, Completion and Warranty Procedures. The warranty bond must be issued by a surety admitted in California for fifty percent (50%) of the final Contract Price or as otherwise specified in the Contract Documents. If an issuing surety cancels the bond or becomes insolvent, within seven (7) days following written notice from City, Contractor must substitute a surety acceptable to City.

Article 5 Contract Time

- 5.1 Time is of the Essence.** Time is of the essence in Contractor's performance and completion of the Work, and Contractor must diligently prosecute the Work and complete it within the Contract Time.

(A) **General.** Contractor must commence the Work on the date indicated in the notice to proceed, and must fully complete the Work, in strict compliance with all requirements of the Contract Documents, and within the Contract Time.

(B) **Rate of Progress.** Contractor and its Subcontractors must, at all times, provide workers, materials, and equipment sufficient to maintain the rate of progress necessary to ensure full completion of the Work within the Contract Time. If City determines that Contractor is failing to prosecute the Work at a sufficient rate of progress, City may, in its sole discretion, direct

Contractor to provide additional workers, materials, or equipment, or to work additional hours or days without additional cost to City, in order to achieve a rate of progress satisfactory to City. If Contractor fails to comply with City's directive in this regard, City may, at Contractor's expense, separately contract for additional workers, materials, or equipment or use City's own forces to achieve the necessary rate of progress. Alternatively, City may terminate the Contract based on Contractor's default.

5.2 Schedule Requirements. All schedules must be prepared using standard scheduling software acceptable to City, and must provide schedules in electronic and paper form as requested.

(A) ***As-Planned (Baseline) Schedule.*** Within fifteen (15) calendar days following issuance of the notice of award (or as otherwise specified in the Special Conditions), Contractor must submit to City for review and approval an as-planned (baseline) schedule showing in detail how Contractor plans to perform and fully complete the Work within the Contract Time using critical path methodology. The as-planned schedule must include the work of all trades required for the Work, and must be sufficiently comprehensive and detailed to enable progress to be monitored on a day-by-day basis. For each activity, the as-planned schedule must be dated, provided in the format specified in the Contract Documents or as required by City, and must include, at a minimum, a description of the activity, the start and completion dates, and the duration.

(B) ***Progress Schedules.*** Contractor must submit an updated progress schedule and three (3) week look-ahead schedule, in the format specified by City, for review and approval with each application for a progress payment. The progress schedule must show how the actual progress of the Work to date compared to the as-planned schedule, and must identify any actual or potential impacts to the critical path.

(C) ***Recovery Schedule.*** If City determines that the Work is more than one (1) week behind schedule, within seven (7) days following written notice of such determination, Contractor must submit a recovery schedule, showing how Contractor intends to perform and complete the Work within the Contract Time, based on actual progress to date.

(D) ***Effect of Approval.*** Contractor and its Subcontractors must perform the Work in accordance with the most current approved schedule unless otherwise directed by City. City approval of a schedule does not operate to extend the time for completion of the Work or any component of the Work, and will not affect City's right to assess liquidated damages for Contractor's unexcused delay in completing the Work within the Contract Time.

(E) **Posting.** Contractor must at all times maintain a copy of the most current approved progress or recovery schedule posted prominently in its on-site office.

(F) **Reservation of Rights.** City reserves the right to direct the sequence in which the Work must be performed or to make changes in the sequence of the Work in order to facilitate the performance of work by City or others, or to facilitate City's use of its property. The Contract Time or Contract Price may be adjusted to the extent such changes in sequence actually increase or decrease Contractor's time or cost to perform the Work.

(G) **Authorized Working Days and Times.** Contractor is limited to working Monday through Friday, excluding City of Morgan Hill-observed holidays, during City's normal business hours, except as expressly provided in the Special Conditions, or as authorized in writing by City. City reserves the right to charge Contractor for additional costs incurred by City due to Work performed on days or during hours not expressly authorized in these Contract Documents, including reimbursement of costs incurred for inspection, testing, and construction management services.

5.3 Delay and Extensions of Contract Time.

(A) **Excusable Delay.** The Contract Time may be extended if Contractor encounters an unavoidable delay in completing the Work within the Contract Time due to causes completely beyond Contractor's control, and which Contractor could not have avoided or mitigated through planning, foresight, and diligence ("Excusable Delay"). Grounds for Excusable Delay may include fire, earthquake, acts of terror or vandalism, epidemic, unforeseeable adverse government actions, unforeseeable actions of third parties, encountering unforeseeable hazardous materials, unforeseeable site conditions, suspension for convenience under Article 13, or unusually severe weather.

(B) **Non-Excusable Delay.** Excusable Delay does not include delay that is concurrent with non-Excusable Delay, and does not include delay caused by:

(1) weather conditions which are normal for the location of the Project, as determined by reliable records, including monthly rainfall averages, for the preceding ten (10) years;

(2) Contractor's failure to order equipment and materials sufficiently in advance of the time needed for timely completion of the Work;

(3) Contractor's failure to provide adequate notification to utility companies for connections or services necessary for the timely performance and completion of the Work;

(4) foreseeable conditions Contractor could have ascertained from reasonably diligent inspection of the Worksite or review of the Contract Documents; or

(5) Contractor's financial inability to perform the Work, including insufficient funds to pay its Subcontractors or suppliers.

(C) ***Request for Extension of Contract Time.*** A request for an extension of time and associated delay costs must be submitted in writing to City within ten (10) calendar days of the date the delay is first encountered, even if the duration of the delay is not yet known at that time, or will be deemed waived. In addition to complying with the requirements of this Article 5, the request must be submitted in compliance with the Change Order request procedures in Article 6, below. Strict compliance with these requirements is necessary to ensure that any delay or delay costs may be mitigated as soon as possible, and to facilitate cost-efficient administration of the Project and timely performance of the Work. Any request for an extension of time or delay costs that does not strictly comply with the requirements of Article 5 and Article 6 will be deemed waived.

(1) ***Required Contents.*** The request must include a detailed description of the cause(s) of the delay, and must also describe the measures that Contractor has taken to mitigate the delay and/or its effects, including efforts to mitigate the cost impact of the delay, e.g., by workforce management, change in sequencing, etc. If the delay is still ongoing at the time the request is submitted, the request should also include Contractor's plan for continued mitigation of the delay or its effects.

(2) ***Delay Days and Costs.*** The request must specify the number of days of Excusable Delay claimed, or provide a realistic estimate if the duration of the delay is not yet known. The request must specify the amount of any delay-related costs that are claimed, or provide a realistic estimate if the amount is not yet known. Any estimate of delay duration or cost must be updated in writing and submitted with all required supporting documentation as soon as the actual time and cost is known.

(3) ***Supporting Documentation.*** The request must also include any and all supporting documentation necessary to evidence the delay and its actual impacts, including schedule and cost impacts,

including a time impact analysis using critical path methodology, and demonstrating unavoidable delay to Final Completion. The time impact analysis must be submitted in a form or format acceptable to City.

(4) *Burden of Proof.* Contractor has the burden of proving 1) that the delay was an Excusable Delay, as defined above, 2) that Contractor has made reasonable efforts to mitigate the delay and its schedule and cost impacts, 3) that the delay will unavoidably result in delaying Final Completion, and 4) that any delay costs claimed by Contractor were actually incurred and were reasonable under the circumstances.

(5) *Recoverable Costs.* If Contractor is granted an extension of time for Excusable Delay, recompense for delay costs will be limited to actual, direct, reasonable, and substantiated costs, and will not include home office overhead, or markup for overhead and profit.

(6) *Legal Compliance.* Nothing in this provision is intended to require the waiver, alteration, or limitation of the applicability of Public Contract Code Section 7102.

(7) *No Waiver.* Any grant of an extension of time or delay costs due to an Excusable Delay will not operate as a waiver of City's right to assess liquidated damages for unexcused delay.

(8) *Dispute Resolution.* In the event of a dispute over entitlement to an extension of time or delay costs, Contractor may not stop working pending resolution of the dispute, but must continue to comply with its duty to diligently prosecute the performance and timely completion of the Work. Contractor's sole recourse for an unresolved dispute based on City's rejection of a Change Order request for an extension of time or delay costs is to comply with the Dispute Resolution provisions set forth in Article 12, below.

5.4 Liquidated Damages. It is expressly understood that if Final Completion is not achieved within the Contract Time, City will suffer damages which are difficult to determine and accurately specify. Pursuant to Public Contract Code section 7203, if Contractor fails to achieve Final Completion within the Contract Time, City may charge Contractor in the amount specified in the Contract for each day that Final Completion is delayed beyond the Contract Time, as liquidated damages and not as a penalty.

(A) **Liquidated Damages.** Liquidated damages will not be assessed for any Excusable Delay, as set forth above.

(B) **Milestones.** Liquidated damages will also be separately assessed for failure to meet milestones specified elsewhere in the Contract Documents.

(C) **Setoff.** City is entitled to set off the amount of liquidated damages assessed against any payments otherwise due to Contractor, including setoff against release of retention. If there are insufficient Contract funds remaining to cover the full amount of liquidated damages assessed, City is entitled to recover the balance from Contractor or its performance bond surety.

(D) **Occupancy or Use.** Occupancy or use of the Project in whole or in part prior to Final Completion does not constitute City's acceptance of the Project and will not operate as a waiver of City's right to assess liquidated damages for Contractor's unexcused delay in achieving Final Completion.

Article 6

Contract Modification

6.1 Changes in Work. City reserves the right to make changes in the Work without invalidating the Contract. City may direct or Contractor may request changes in the Work, and any such changes will be formalized in a Change Order, which may include commensurate changes in the Contract Price or Contract Time as applicable. Contractor must promptly comply with City-directed changes in the Work in accordance with the intent of the original Contract Documents, even if Contractor and City have not yet reached agreement as to adjustments to the Contract Price or Contract Time.

(A) **City-Directed Change.** In the event of a dispute over entitlement to or the amount of a change in Contract Time or a change in Contract Price related to a City-directed change, Contractor must perform the Work as directed and may not delay its work or cease work pending resolution of the dispute, but must continue to comply with its duty to diligently prosecute the performance and timely completion of the Work, including the Work in dispute.

(B) **Contractor's Obligations.** In the event that City and Contractor dispute whether a portion or portions of the Work are already required by the Contract Documents as opposed to changed or extra Work, Contractor must perform the Work as directed and may not delay its Work or cease Work pending resolution of the dispute, but must continue to comply with

its duty to diligently prosecute the performance and timely completion of the Work, including the Work in dispute.

(C) **Remedy for Non-Compliance.** Contractor's failure to promptly comply with an City-directed change is deemed a material breach of the Contract, and in addition to all other remedies available to it, City may, at its sole discretion, hire another contractor or use its own forces to complete the disputed Work at Contractor's sole expense, and may deduct the cost from the Contract Price.

(D) **Dispute Resolution.** Contractor's sole recourse for an unresolved dispute related to changes in the Work is to comply with the dispute resolution provisions set forth in Article 12, below.

6.2 Contractor Change Order Requests. Contractor must submit a request or proposal for a change in the Work or a change in the Contract Price or Contract Time as a written Change Order request or proposal.

(A) **Time for Submission.** Any request for a change in the Contract Price must be submitted in writing to Project Manager within ten (10) calendar days of the date that Contractor first encounters the circumstances, information or conditions giving rise to the Change Order request, even if the total amount of the requested change in the Contract Price or impact on the Contract Time is not yet known at that time.

(B) **Required Contents.** Any Change Order request or proposal submitted by Contractor must include a complete breakdown of actual or estimated costs and credits, and must itemize labor, materials, equipment, taxes, insurance, and subcontract amounts. Any estimated cost must be updated in writing as soon as the actual amount is known.

(C) **Required Documentation.** All claimed costs must be fully documented, and any related request for an extension of time or delay-related costs must be included at that time and in compliance with the requirements of Article 5 of the General Conditions.

(D) **Required Form.** Contractor must use City's form(s) for submitting all Change Order requests or proposals, unless otherwise specified by City.

(E) **Certification.** All Change Order requests must be signed by Contractor and must include the following certification:

"The undersigned Contractor certifies under penalty of perjury that its statements and representations in this Change Order request are true and correct. Contractor warrants that this Change Order

request is comprehensive and complete, and agrees that any costs, expenses, or time extension request not included herein is deemed waived. Contractor understands that submission of claims which have no basis in fact or which Contractor knows to be false may violate the False Claims Act, as set forth in Government Code Sections 12650 et seq.”

6.3 Adjustments to Contract Price. The amount of any increase or decrease to the Contract Price will be determined based on one (1) of the following methods in the order provided:

(A) **Unit Pricing.** Amounts previously provided by Contractor in the form of unit prices, either in a bid schedule or schedule of values, will apply if unit pricing has previously been provided in Contractor’s accepted bid schedule or schedule of values for the affected Work;

(B) **Lump Sum.** A mutually agreed upon lump sum;

(C) **Time and Materials.** On a time and materials basis, which may include a not-to-exceed limit, calculated as the total of the following sums:

- (1) All direct labor costs plus fifteen percent (15%) for overhead and profit;
- (2) All direct material costs, including sales tax, plus fifteen percent (15%) for overhead and profit;
- (3) All direct plant and equipment rental costs, plus fifteen percent (15%) for overhead and profit;
- (4) All direct subcontract costs plus ten percent (10%) for overhead and profit; and
- (5) Increased bond or insurance premium costs computed at one and one half percent (1½%) of total of the previous four (4) sums.

6.4 Unilateral Change Order. If City disagrees with the amount of compensation or extension of time that Contractor has requested, City may elect to issue a unilateral Change Order, directing performance of the Work, and authorizing a change in the Contract Price or Contract Time in the amount City believes is merited. Contractor’s sole recourse to dispute the terms of a unilateral Change Order is to submit a timely Claim pursuant to Article 12, below.

- 6.5 Non-Compliance Deemed Waiver.** Contractor waives its entitlement to any increase in the Contract Price or Contract Time if Contractor fails to full comply with the provisions of this Article. Contractor will not be paid for unauthorized extra work.

Article 7

General Construction Provisions

7.1 Permits and Taxes.

(A) **General.** Contractor must obtain and pay for any and all permits, fees, or licenses required to perform the Work, unless otherwise indicated in the Contract Documents. Contractor must cooperate with and provide notifications to government agencies with jurisdiction over the Project, as may be required. Contractor must provide City with copies of all notices, permits, licenses, and renewals required for the Work.

(B) **Federal Excise Tax.** Contractor must pay for all taxes on labor, material and equipment, except Federal Excise Tax to the extent that City is exempt from Federal Excise Tax.

7.2 Temporary Facilities. Contractor must provide, at Contractor's sole expense, any and all temporary facilities, including onsite office, sanitary facilities, storage, scaffolds, barricades, walkways, and any other temporary structure required to safely perform the Work along with any utility services incidental thereto.

(A) **Standards.** Such structures must be safe and adequate for the intended use, and installed and maintained in accordance with all applicable federal, state, and local laws, codes, and regulations.

(B) **Removal and Repair.** Contractor must promptly remove all such temporary facilities when they are no longer needed or upon completion of the Work, whichever comes first. Contractor must promptly repair any damage to City's property caused by the installation, use, or removal of the temporary facilities, and must promptly restore the property to its original or intended condition.

(C) **Additional Requirements.** Additional provisions pertaining to temporary facilities may be included in the Specifications or Special Conditions.

7.3 Signs. No signs may be displayed on or about City's property, except signage which is required by law or by the Contract Documents, without City's prior written approval as to content, size, design, and location.

7.4 Protection of Work and Property.

(A) **General.** Contractor is responsible at all times for protecting the Work and materials and equipment to be incorporated into the Work from damage until the Notice of Completion has been recorded. Except as specifically authorized by City, Contractor must confine its operations to the area of the Project site indicated in the Drawings. Contractor is liable for any damage caused to City's real or personal property, the real or personal property of adjacent property owners, or the work or personal property of other contractors working for City.

(B) **Unforeseen Conditions.** If Contractor encounters facilities, utilities, or other unknown conditions not shown on or reasonably inferable from the Drawings or apparent from inspection of the Project site, Contractor must promptly notify Project Manager, and must avoid taking any action which could cause damage to the facilities or utilities pending further direction from Project Manager. If Project Manager's subsequent direction to Contractor affects Contractor's cost or time to perform the Work, Contractor may submit a Change Order request as set forth in Article 6, above.

(C) **Support; Adjacent Properties.** Contractor must provide, install, and maintain all shoring, bracing, underpinning, etc., necessary to provide support to City's property and adjacent properties and improvements thereon. Contractor must provide notifications to adjacent property owners as may be required by law.

7.5 Noninterference. Contractor must take reasonable measures to avoid interfering with City's use of its property at or adjacent to the Project site, including use of roadways, entrances, parking areas, walkways, and structures.

7.6 Materials and Equipment.

(A) **General.** Unless otherwise specified, all materials and equipment required for the Work must be new and of the best grade for the intended purpose, and furnished in sufficient quantities to ensure the proper and expeditious performance of the Work. Unless otherwise specified, all materials and equipment required for the Work are deemed to include all components required for complete installation and intended operation, and must be installed in accordance with the manufacturer's recommendation. Contractor is responsible for all shipping, handling, and storage costs associated with the materials and equipment required for the Work, and is responsible for protecting the Work and all of the required materials, supplies, tools and equipment at Contractor's sole cost until City accepts the Project.

(B) **City-Provided.** If the Work includes installation of materials or equipment to be provided by City, Contractor is solely responsible for the proper examination, handling, storage, and installation of such items in accordance with the Contract Documents. Contractor must promptly notify City of any defects discovered in City-provided materials or equipment. Contractor is solely responsible for any loss of or damage to such items which occurs while the items are in Contractor's custody and control, the cost of which may be offset from the Contract Price and deducted from any payment(s) due to Contractor.

(C) **Intellectual Property Rights.** Contractor must, at its sole expense, obtain any authorization required for use of patented or copyright protected materials, equipment, devices or processes that are incorporated into the Work. Contractor's indemnity obligation in Article 4, applies to any claimed violation of intellectual property rights in violation of this provision.

7.7 Substitutions.

(A) **"Or Equal."** Any specification designating a material, product, thing, or service by specific brand or trade name, followed by the words "or equal," is intended only to indicate quality and type of item desired, and Contractor may request use of any equal material, product, thing, or service.

(B) **Request for Substitution.** A request for substitution must be submitted to Project Manager for approval within the applicable time period provided in the Contract Documents. If no time period is specified, the substitution request may be submitted any time within thirty five (35) days after the date of award of the Contract, or sufficiently in advance of the time needed to avoid delay of the Work, whichever is earlier.

(C) **Substantiation.** All data substantiating the proposed substitute as an "equal" item must be submitted with the written request for substitution. Contractor's failure to timely provide necessary substantiation is ground for rejection of the proposed substitution, without further review.

(D) **Burden of Proving Equality.** Contractor has the burden of proving the equality of the proposed substitution. City has sole discretion to determine whether a proposed substitution is "equal," and City's determination is final.

(E) **Approval or Rejection.** If the proposed substitution is approved, Contractor is solely responsible for any additional costs associated with the substituted item(s). If the proposed substitution is rejected, Contractor must, without delay, install the item specified.

(F) **Contractor's Obligations.** City's review of a proposed substitution will not relieve Contractor from any of its obligations under the Contract Documents. In the event Contractor makes an unauthorized substitution, Contractor will be solely responsible for all resulting cost impacts, including the cost of removal and replacement and the impact to other design elements.

7.8 Testing and Inspection.

(A) **General.** All materials, equipment, and workmanship used in the Work are subject to inspection by Inspector at all times and locations during construction and/or fabrication. All manufacturers' application or installation instructions must be provided to the Inspector at least ten (10) days prior to the first such application or installation. Contractor must, at all times, make the Work available for inspection.

(B) **Scheduling and Notification.** Contractor must schedule all tests required by the Contract Documents in time to avoid any delay to the progress of the Work. Contractor must provide timely notice to all necessary parties as specified in the Contract Documents.

(C) **Responsibility for Costs.** City will bear the initial cost of testing to be performed by independent testing consultants retained by City, subject to the following exceptions:

(1) Contractor will be responsible for the costs of any subsequent tests which are required to substantiate compliance with the Contract Documents, and any associated remediation costs.

(2) Contractor will be responsible for inspection costs, at City's established rates, for inspection time lost because the Work is not ready or Contractor fails to appear for a scheduled inspection.

(3) In addition, if any portion of the Work which is subject to testing is covered or concealed by Contractor prior to testing, Contractor will bear the cost of making that portion of the Work available for the testing required by the Contract Documents, and any associated repair or remediation costs.

(D) **Contractor's Obligations.** Any Work that fails to comply with the requirements of the Contract Documents must be promptly repaired, replaced, or corrected by Contractor, at Contractor's sole expense, even if that Work was previously inspected or included in a progress payment. Contractor is solely responsible for any delay occasioned by remediation

of noncompliant Work. Inspection of the Work does not in any way relieve Contractor of its obligations to perform the Work as specified.

(E) ***Distant Locations.*** If required off-site testing or inspection must be conducted at a location more than 100 miles from the Project site, Contractor is solely responsible for the additional travel costs required for testing and/or inspection at such locations.

(F) ***Final Inspection.*** The provisions of this Section 7.8 apply to final inspection under Article 11, Completion and Warranty Provisions.

7.9 Clean up. Contractor must regularly remove debris and waste materials and maintain the Worksite in clean and neat condition.

(A) ***General.*** Prior to discontinuing work in an area, Contractor must clean the area and remove all rubbish along with its construction equipment, tools, machinery, waste and surplus materials. Contractor must, at all times, minimize and confine dust and debris resulting from construction activities.

(B) ***Completion.*** At the completion of the Work, Contractor must remove from the Worksite all of its equipment, tools, surplus materials, waste materials and debris. Before demobilizing from the Worksite, Contractor must ensure that all surfaces are cleaned, sealed, waxed, or finished as applicable, and that all marks, stains, paint splatters, and the like have been properly removed from the completed Work and the surrounding areas.

(C) ***Non-Compliance.*** If Contractor fails to commence compliance with its cleanup obligations within two (2) business days following written notification from City or its representative, City may undertake appropriate cleanup measures without further notice and the cost will be deducted from any amounts due or to become due Contractor.

7.10 Instructions and Manuals. Contractor must provide three (3) copies each of all instructions and manuals required by the Contract Documents, unless otherwise specified. These must be complete as to drawings, details, parts lists, performance data, and other information that may be required for City to easily maintain and service the materials and equipment installed for this Project.

(A) ***Submittal Requirements.*** All manufacturers' application or installation instructions must be provided to the Inspector at least ten (10) days prior to the first such application. The instructions and manuals, along with any required guarantees, must be delivered to City for review.

(B) **Instruction of Personnel.** Contractor or its Subcontractors must instruct City's personnel in the operation and maintenance of any complex equipment as a condition precedent to Final Completion, if required in the Contract Documents.

7.11 As-built Drawings. Contractor and its Subcontractors must maintain on the Worksite a separate complete set of the Drawings which will be used solely for the purpose of recording changes made in any portion of the Work in order to create accurate record drawings at the end of the Project.

(A) **Duty to Update.** The as-built drawings must be updated as changes occur, on a daily basis if necessary. Progress payments may be delayed, in whole or in part, until the as-built drawings are brought up to date to the satisfaction of City. Actual locations to scale must be identified on the as-built drawings for all runs of mechanical and electrical work, including all site utilities, etc., installed underground, in walls, floors, or otherwise concealed. Deviations from the original Drawings must be shown in detail. The location of all main runs, whether piping, conduit, ductwork, drain lines, etc., must be shown by dimension and elevation.

(B) **Final Completion.** Contractor must verify that all changes in the Work are depicted in the as-built drawings and must deliver the complete set of as-built drawings to City for review and approval as a condition precedent to Final Completion.

7.12 Existing Utilities. As required by Government Code Section 4215, if, during the performance of the Work, Contractor discovers utility facilities not identified by City in the Contract Documents, Contractor must immediately provide written notice to City and the utility. City assumes responsibility for the timely removal, relocation, or protection of existing main or trunkline utility facilities located on the Project site, if those utilities are not identified in the Contract Documents. Contractor will be compensated in accordance with the provisions of the Contract Documents for the costs of locating, repairing damage not due to Contractor's failure to exercise reasonable care, and removing or relocating such utility facilities not indicated in the Drawings or Specifications with reasonable accuracy, and for equipment on the Project necessarily idled during such work. Contractor will not be assessed liquidated damages for delay in completion of the Work, to the extent such delay was caused by City's failure to provide for removal or relocation of the utility facilities.

7.13 Notice of Excavation. Government Code Section 4216.2, requires that except in an emergency, Contractor must contact the appropriate regional notification center, or Underground Services Alert at 800-642-2444 (for Northern California), at least two (2) working days, but not more than

fourteen (14) calendar days before starting any excavation if the excavation will be conducted in an area that is known, or reasonably should be known, to contain subsurface installations, and if practical, Contractor must delineate with white paint or other suitable markings the area to be excavated.

7.14 Trenching and Excavations.

(A) ***Duty to Notify.*** Contractor must promptly, and before the following conditions are disturbed, provide written notice to City if Contractor finds any of the following conditions:

(1) Material that Contractor believes may be a hazardous waste, as defined in Section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with the provisions of existing law;

(2) Subsurface or latent physical conditions at the Worksite differing from those indicated by information about the Worksite made available to bidders prior to the deadline for submitting bids; or

(3) Unknown physical conditions at the Worksite of any unusual nature, materially different from those ordinarily encountered and generally recognized as inherent in work of the character required by the Contract Documents.

(B) ***City Investigation.*** City will promptly investigate the conditions and if City finds that the conditions do materially differ or do involve hazardous waste, and cause a decrease or increase in Contractor's cost of, or the time required for, performance of any part of the Work, City will issue a Change Order.

(C) ***Disputes.*** In the event that a dispute arises between City and Contractor regarding any of the conditions specified in subsection (A) above, Contractor will not be excused from any scheduled completion date provided for in the Contract Documents, but must proceed with all Work to be performed under the Contract. Contractor will retain any and all rights provided either by the Contract or by law which pertain to the resolution of disputes between Contractor and City.

7.15 Trenching of Five Feet or More. As required by Labor Code Section 6705, if the Contract Price exceeds Twenty Five Thousand Dollars (\$25,000.00) and the Work includes the excavation of any trench or trenches of five (5) feet or more in depth, a detailed plan must be submitted to City or its civil or structural engineer, for acceptance in

advance of the excavation. The detailed plan must show the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during the excavation. If the plan varies from the shoring system standards, it must be prepared by a registered civil or structural engineer. Use of a shoring, sloping, or protective system less effective than that required by the Construction Safety Orders is prohibited.

7.16 New Utility Connections. City will pay connection charges and meter costs for new permanent utilities required by the Contract Documents, if any. Contractor must notify City sufficiently in advance of the time needed to request service from each utility provider so that connections and services are initiated in accordance with the Project schedule.

7.17 Lines and Grades. Contractor is required to use any benchmark provided by the Engineer. Unless otherwise specified in the Contract Documents, Contractor must provide all lines and grades required to execute the Work.

7.18 Historic or Archeological Items.

(A) **Contractor's Obligations.** Contractor must ensure that all persons performing Work at the Project site are required to immediately notify Project Manager, upon discovery of any potential historic or archeological items, including historic or prehistoric ruins, burial grounds, archaeological or vertebrate paleontological site, including fossilized footprints or other archeological, paleontological or historical feature on the Project site (collectively, "Historic or Archeological Items").

(B) **Discovery; Cessation of Work.** Upon discovery of any potential Historic or Archeological Items, Work must be stopped within an eighty five (85) foot radius of the find and may not resume until authorized in writing by City. If required by City, Contractor must assist in protecting or recovering the Historic or Archeological Items, any such assistance to be compensated as extra work on a time and materials basis under Article 6, Contract Modification. Any suspension of Work required due to discovery of Historic or Archeological Items will be treated as a suspension for convenience under Article 13.

7.19 Environmental Control. Contractor must not pollute any drainage course or its tributary inlets with fuels, oils, bitumens, acids, insecticides, herbicides or other harmful materials. Contractor and its Subcontractors must at all times in the performance of the Work comply with all applicable federal, state, and local laws and regulations concerning pollution of waterways.

(A) **Stormwater Permit.** Contractor must comply with all applicable conditions of the State Water Resources Control Board National Pollutant Discharge Elimination System General Permit for Waste Discharge Requirements for Discharges of Stormwater Runoff Associated with Construction Activity ("Stormwater Permit").

(B) **Contractor's Obligations.** If required for the Work, a copy of the Stormwater Permit is on file in City's principal administrative offices, and Contractor must comply with the same without adjustment of the Contract Price or the Contract Time. Contractor must timely and completely submit required reports and monitoring information required by the conditions of the Stormwater Permit, Contractor must comply with all other applicable state, municipal or regional laws, ordinances, rules or regulations governing discharge of stormwater, including applicable municipal stormwater management programs.

Article 8 Payment

8.1 Schedule of Values. Prior to submitting its first application for payment, Contractor must prepare and submit to Project Manager a schedule of values apportioned to the various divisions and phases of the Work. Each line item contained in the schedule of values must be assigned a value such that the total of all items equals the Contract Price. The items must be sufficiently detailed to enable accurate evaluation of the percentage of completion claimed in each application for payment, and the assigned value consistent with any itemized or unit pricing submitted with Contractor's bid.

8.2 Progress Payments. Following the last day of each month, or as otherwise required by the Special Conditions or Specifications, Contractor will submit to Project Manager a monthly application for payment for Work performed during the preceding month based on the estimated value of the Work performed during that preceding month.

(A) **Application for Payment.** Each application for payment must be itemized to include labor, materials, and equipment incorporated into the Work, and materials and equipment delivered to the Worksite, as well as authorized and approved Change Orders. Each pay application must be supported by Contractor's schedule of values and any other substantiating data required by the Contract Documents.

Each application for payment shall be accompanied by completed "Contract Balance Form," a copy of which is provided at the end of Article 8.

(B) **Payment of Undisputed Amounts.** City will pay the undisputed amount due, as certified the Design Professional, within thirty (30) days after Contractor has submitted a complete and accurate payment application, subject to Public Contract Code Section 20104.50. City will deduct a percentage from each progress payment as retention, as set forth in Section 8.5, below, and may deduct additional amounts as set forth in Section 8.3, below.

8.3 Adjustment of Payment Application. City may adjust or reject a payment application, including application for Final Payment, in whole or in part, based upon any of the circumstances listed below. Contractor will be notified in writing of the basis for the adjustment, and will be promptly paid once the basis for that adjustment has been remedied and no longer exists.

(A) Contractor's unexcused failure to perform the Work as required by the Contract Documents, including correction or completion of punch list items;

(B) Loss or damage caused by Contractor or its Subcontractor(s) arising out of or relating to performance of the Work;

(C) Contractor's failure to pay its Subcontractors and suppliers when payment is due;

(D) Failure to timely correct rejected, nonconforming, or defective Work;

(E) Unexcused delay in performance of the Work;

(F) Any unreleased stop notice, retained as one hundred twenty five percent (125%) of the amount claimed;

(G) Failure to submit any required schedule or schedule update in the manner and within the time specified in the Contract Documents:

(H) Failure to maintain or submit as-built documents in the manner and within the time specified in the Contract Documents;

(I) Work performed without approved Shop Drawings, when approved Shop Drawings are required before proceeding with the Work;

(J) Contractor's payroll records are delinquent or inadequate; and

(K) Any other costs or charges that may be offset against payments due, as provided in the Contract Documents, including liquidated damages.

8.4 Acceptance of Work. Neither City's payment of progress payments nor its partial or full use or occupancy of the Project constitutes acceptance of any part of the Work.

8.5 Retention. City will retain five percent (5%) of the amount due on each progress payment, or the percentage stated in the Notice Inviting Informal Bids, whichever is greater, as retention to ensure full and satisfactory performance of the Work.

(A) ***Substitution of Securities.*** As provided by Public Contract Code Section 22300, Contractor may request in writing that it be allowed, at its sole expense, to substitute securities for the retention withheld by City. Any escrow agreement entered into pursuant to this provision must fully comply with Public Contract Code Section 22300, and will be subject to approval as to form by City's legal counsel.

(B) ***Release of Undisputed Retention.*** All undisputed retention, less any amounts that may be assessed as liquidated damages, retained for stop notices, or otherwise withheld under Section 8.3 or 8.6 will be released as Final Payment to Contractor no sooner than thirty five (35) days following recordation of the notice of completion, and no later than sixty (60) days following acceptance of the Project by City's governing body or authorized designee, or, if the Project has not been accepted, no later than sixty (60) days after the Project is otherwise considered complete under Public Contract Code Section 7107(c).

8.6 Setoff. City is entitled to set off any amounts due from Contractor against any payments due to Contractor. City's entitlement to setoff includes progress payments as well as Final Payment and release of retention.

8.7 Payment to Subcontractors and Suppliers. Each month, Contractor must promptly pay each Subcontractor and supplier the value of the portion of labor, materials, and equipment incorporated into the Work or delivered to the Worksite by the Subcontractor or supplier during the preceding month. Such payments must be made in accordance with the requirements of the law, and those of the Contract Documents and applicable subcontract or supplier contract.

(A) ***Withholding for Stop Notice.*** City will withhold one hundred twenty five percent (125%) of the amount claimed by an unreleased stop notice, a portion of which may be retained by City for the costs incurred in

handling the stop notice claim, including attorneys' fees and costs, as authorized by law.

(B) **Joint Checks.** City reserves the right to issue joint checks made payable to Contractor and its Subcontractors or suppliers. As a condition to release of payment by a joint check, the joint check payees may be required to execute a joint check agreement in a form provided or approved by City. The joint check payees will be jointly and severally responsible for the allocation and disbursement of funds paid by joint check. Payment by joint check will not be construed to create a contractual relationship between City and a Subcontractor or supplier of any tier beyond the scope of the joint check agreement.

8.8 Final Payment. Final Completion, acceptance of the Work by City, and recordation of the Notice of Completion, and any release required by the Contract Documents are conditions precedent to Final Payment and release of undisputed retention, as set forth above. Contractor's application for Final Payment must comply with the requirements for submitting an application for a progress payment as stated in Section 8.2, above. Corrections to previous progress payments, including adjustments to estimated quantities for unit priced items, may be included in the Final Payment. The date of Final Payment is deemed to be effective on the date that City acts to release retention as final payment to Contractor, or otherwise provides written notice to Contractor of Final Payment. If the amount due from Contractor to City exceeds the amount of Final Payment, City retains the right to recover the balance from Contractor or its sureties.

8.9 Release of Claims. City may, at any time, require that payment of the undisputed portion of any progress payment or Final Payment be contingent upon Contractor furnishing City with a written release of all claims against City arising from or related to the portion of Work covered by those undisputed amounts. Any disputed amounts may be specifically excluded from the release.

8.10 Warranty of Title. Contractor warrants that title to all work, materials, or equipment incorporated into the Work and included in a request for payment will pass over to City free of any claims, liens, or encumbrances upon payment to Contractor.

CONTRACT BALANCE FORM

Project Name: _____

Note: A detailed invoice MUST be attached to this Contract Balance Form.

CONTRACTOR NAME: _____	DATE: _____
MAILING ADDRESS: _____	TELEPHONE NO.: _____
_____	FAX NO.: _____
_____	PROJECT NO.: _____
	INVOICE NO.: _____

- | | | |
|--|-------------|----------------|
| 1. ORIGINAL CONTRACT AMOUNT: | \$ _____ | |
| 2. APPROVED CHANGE ORDERS TOTAL: | \$ _____ | |
| 3. REVISED CONTRACT AMOUNT: | | (1+2) \$ _____ |
| 4. PREVIOUS BALANCE PAID: | \$ _____ | |
| 5. REMAINING BALANCE: | | (3-4) \$ _____ |
| 6. CURRENT PROGRESS PAYMENT DUE:
(before retention) | \$ _____ | |
| 7. 5% RETENTION FROM WORK DONE: | (-)\$ _____ | |
| 8. CURRENT BALANCE DUE: | | (6-7) \$ _____ |
| 9. REMAINING BALANCE OF REVISED
CONTRACT AMOUNT:
(including retention) | | (5-8) \$ _____ |

Article 9

Labor Provisions

9.1 Discrimination Prohibited. Discrimination against any prospective or present employee engaged in the Work on grounds of race, color, ancestry, national origin, ethnicity, religion, sex, sexual orientation, age, disability, or marital status is strictly prohibited. Contractor and its Subcontractors are required to comply with all applicable Federal and California laws including the California Fair Employment and Housing Act (Government Code Sections 12900 et seq.), Government Code Section 11135, and Labor Code Sections 1735, 1777.5, 1777.6, and 3077.5.

9.2 Labor Code Requirements.

(A) ***Eight Hour Day.*** Under Labor Code Section 1810, eight (8) hours of labor constitute a legal day's work under this Contract.

(B) ***Penalty.*** Under Labor Code Section 1813, Contractor will forfeit to City as a penalty, the sum of Twenty Five Dollars (\$25.00) for each day during which a worker employed by Contractor or any Subcontractor is required or permitted to work more than eight (8) hours in any one (1) calendar day or more than forty (40) hours per calendar week, except if such workers are paid overtime under Labor Code Section 1815.

(C) ***Apprentices.*** Contractor is responsible for compliance with the requirements governing employment and payment of apprentices, as set forth in Labor Code Section 1777.5, which is fully incorporated by reference.

(D) ***Notices.*** Under Labor Code Section 1771.4, Contractor is required to post all job site notices prescribed by law or regulation.

9.3 Prevailing Wages. Each worker performing Work under this Contract that is covered under Labor Code Section 1720, including cleanup at the Project site, must be paid at a rate not less than the prevailing wage as defined in Sections 1771 and 1774 of the Labor Code. The prevailing wage rates are available online at <http://www.dir.ca.gov/dlsr>. Contractor must post a copy of the applicable prevailing rates at the Worksite.

(A) ***Penalties.*** Under Labor Code Section 1775, Contractor and any Subcontractor will forfeit to City as a penalty up to Two Hundred Dollars (\$200.00) for each calendar day, or portion a day, for each worker paid less than the applicable prevailing wage rate. Contractor must also pay each worker the difference between the applicable prevailing wage rate and the amount actually paid to that worker.

(B) **Federal Requirements.** If this Project is subject to Federal prevailing wage requirements in addition to California prevailing wage requirements, Contractor and its Subcontractors are required to pay the higher of the current applicable prevailing wage rates under federal law, available online at <http://www.access.gpo.gov/davisbacon/ca.html>.

9.4 Payroll Records. Contractor must comply with the provisions of Labor Code Sections 1776 and 1812 and all implementing regulations, which are fully incorporated by this reference, including requirements for electronic submission of payroll records.

(A) **Contractor and Subcontractor Obligations.** Contractor and each Subcontractor must keep accurate payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed in connection with the Work. Each payroll record must contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:

- (1) The information contained in the payroll record is true and correct.
- (2) Contractor or Subcontractor has complied with the requirements of Labor Code Sections 1771, 1811, and 1815 for any Work performed by its employees on the Project.

(B) **Certified Record.** A certified copy of an employee's payroll record must be made available for inspection or furnished to the employee or his or her authorized representative on request, to City, or to the Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards of the Department of Industrial Relations, and as further provided by the Labor Code.

(C) **Enforcement.** Upon notice of noncompliance with Labor Code Section 1776, Contractor or Subcontractor has ten (10) days in which to comply with requirements of this section. If Contractor or Subcontractor fails to do so within the ten (10) day period, Contractor or Subcontractor will forfeit a penalty of One Hundred Dollars (\$100.00) per day, or portion a day, for each worker for whom compliance is required, until strict compliance is achieved. Upon request by the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement, these penalties will be withheld from progress payments then due.

9.5 Labor Compliance. Under Labor Code section 1771.4, the Contract for this Project is subject to compliance monitoring and enforcement by the California Department of Industrial Relations.

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

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

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

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

City’s Right to Withhold Payment: Where Contractor or any subcontractor it employs to perform work under this Agreement has been found in violation of any

applicable wage and hour law by a final judgment, decision or order of a court or government agency, the City reserves the right to withhold payment to Contractor until such judgment, decision or order has been satisfied in full.

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

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

Article 10 Safety Provisions

10.1 Safety Precautions and Programs. Contractor and its Subcontractors are fully responsible for safety precautions and programs, and for the safety of persons and property in the performance of the Work. Contractor and its Subcontractors must comply with all applicable safety laws, rules and regulations and seek to avoid injury, loss, or damage to persons or property by taking reasonable steps to protect its employees and other persons at the Worksite, materials and equipment stored on or off site, and property at or adjacent to the Worksite.

(A) **Reporting Requirements.** Contractor must immediately provide a written report to City of all recordable accidents and injuries occurring at the Worksite. If Contractor is required to file an accident report with a government agency, Contractor will provide a copy of the report to City.

(B) **Legal Compliance.** Contractor's safety program must comply with the applicable legal and regulatory requirements. Contractor must provide City with copies of all notices required by law or regulation.

(C) **Contractor's Obligations.** Any damage or loss caused by Contractor arising from the Work which is not insured under property insurance must be promptly remedied by Contractor.

(D) **Remedies.** If City determines, in its sole discretion, that any part of the Work or Worksite is unsafe, City may, without assuming responsibility for Contractor's safety program, require Contractor or its Subcontractor to cease performance of the Work or to take corrective measures to City's satisfaction. If Contractor fails to promptly take the required corrective

measures, City may perform them and deduct the cost from the Contract Price. Contractor agrees it is not entitled to submit a Claim for damages, for an increase in Contract Price, or for a change in Contract Time based on Contractor's compliance with City's request for corrective measures pursuant to this provision.

10.2 Hazardous Materials. Unless otherwise specified, this Contract does not include the removal, handling, or disturbance of any asbestos or other Hazardous Materials. If Contractor encounters materials on the Worksite that Contractor reasonably believes to be asbestos or other Hazardous Materials, and the asbestos or other Hazardous Materials have not been rendered harmless, Contractor may continue Work in unaffected areas reasonably believed to be safe, but must immediately cease work on the area affected and report the condition to City. No asbestos, asbestos-containing products or other Hazardous Materials may be used in performance of the Work.

10.3 Material Safety. Contractor must maintain Material Safety Data Sheets ("MSDS") at the Worksite, as required by law, for materials or substances used or consumed in the performance of the Work. The MSDS will be accessible and available to Contractor's employees, Subcontractors, and City.

(A) **Contractor Obligations.** Contractor is solely responsible for the proper delivery, handling, use, storage, removal, and disposal of all materials brought to the Worksite and/or used in the performance of the Work.

(B) **Labeling.** Contractor must ensure proper labeling on any material brought onto the Worksite so that any persons working with or in the vicinity of the material may be informed as to the identity of the material, any potential hazards, and requirements for proper handling, protections, and disposal.

Article 11

Completion and Warranty Provisions

11.1 Final Completion.

(A) **Final Inspection.** When the Work required by this Contract is fully performed, Contractor must provide written notification to Project Manager requesting final inspection. Based on this inspection, the Design Professional will prepare a punch list of items that are incomplete, incorrectly installed, or not operating as required by the Contract Documents. The omission of any such item from this punch list will not

relieve Contractor from fulfilling all requirements of the Contract Documents.

(B) **Punch List.** City will promptly deliver the punch list to Contractor and will specify the time by which all of the punch list items must be completed or corrected. The punch list may include City's estimated cost to complete each punch list item if Contractor fails to do so within the specified time.

(C) **Requirements for Final Completion.** Final Completion will be achieved upon completion or correction of all punch list items, as verified by inspection, and upon satisfaction of all other Contract requirements, including any commissioning required under the Contract Documents, and submission of all final submittals, including a warranty bond as required under Section 4.4, instructions and manuals as required under Section 7.10, and as-built drawings as required under Section 7.11, all to City's satisfaction. Once Final Completion is achieved, and the Project has been formally accepted by City, City will file a notice of completion with the County Recorder.

(D) **Final Payment.** Final Payment and release of retention, less any sums withheld pursuant to the provisions of the Contract Documents, will not be made sooner than thirty five (35) days after recordation of the notice of completion. If Contractor fails to complete all of the punch list items within the specified time, City may elect to accept the Project and record the notice of completion, and withhold up to one hundred fifty percent (150%) of City's estimated cost to complete the remaining items from Final Payment.

11.2 Warranty.

(A) **General.** Contractor warrants that all materials and equipment will be new unless otherwise specified, of good quality, in conformance with the Contract Documents, and free from defective workmanship and materials. Contractor further warrants that the Work will be free from material defects not intrinsic in the design or materials required in the Contract Documents. At City's request, Contractor must furnish satisfactory evidence of the quality and type of materials and equipment furnished. Contractor's warranty does not extend to damage caused by normal wear and tear, or improper use or maintenance.

(B) **Warranty Period.** Contractor's warranty must guarantee its Work for a period of one (1) year from the date of recordation of the notice of completion (the "Warranty Period"), except when a longer guarantee is provided by a supplier or manufacturer or is required by the Specifications or Special Conditions. Contractor must obtain from its Subcontractors,

suppliers and manufacturers any special or extended warranties required by the Contract Documents.

(C) **Warranty Documents.** As a condition precedent to acceptance, Contractor must supply City with all warranty and guarantee documents relevant to equipment and materials incorporated into the Work and guaranteed by their suppliers or manufacturers.

(D) **Subcontractors.** The warranty obligations in the Contract Documents apply to Work performed by Contractor and its Subcontractors, and Contractor expressly agrees to act as co-guarantor of such Work.

(E) **Contractor's Obligations.** Upon written notice from City to Contractor of any defect in the Work discovered during the Warranty Period, Contractor or its responsible Subcontractor must promptly correct the defective Work at its own cost. Contractor's obligation to correct defects discovered during the Warranty Period will continue past the expiration of the Warranty Period as to any defects in Work for which Contractor was notified prior to expiration of the Warranty Period.

(F) **City's Remedies.** If Contractor and/or its responsible Subcontractor fails to correct defective Work within ten (10) days following notice by City, or sooner, if required by the circumstances, Contractor expressly agrees that City may correct the defects to conform with Contract Documents at Contractor's sole expense, and Contractor agrees to reimburse City for its costs within thirty (30) days following City's submission of a demand for payment pursuant to this provision. If City is required to initiate legal action to compel Contractor's compliance with this provision, and City is the prevailing party in such action, Contractor is solely responsible for all of City's attorney's fees and legal costs expended to enforce Contractor's warranty obligations herein in addition to any and all costs incurred by City to correct the defective Work.

11.3 Use Prior to Final Completion. City reserves the right to occupy or make use of the Project, or any portions of the Project, prior to Final Completion if City has determined that the Project or portion of it is in a condition suitable for the proposed occupation or use, and that it is in its best interest to occupy or make use of the Project, or any portions of it, prior to Final Completion. City will notify Contractor in writing of its intent to occupy or make use of the Project or any portions of the Project, pursuant to this provision.

(A) **Non-Waiver.** Occupation or use prior to Final Completion will not operate as acceptance of the Work or any portion of it, nor will it operate as a waiver of any of City's rights or Contractor's duties pursuant to these

Contract Documents, and will not affect nor bear on the determination of the time of substantial completion with respect to any statute of repose pertaining to the time for filing an action for construction defect.

(B) **City's Responsibility.** City will be responsible for the cost of maintenance and repairs due to normal wear and tear with respect to those portions of the Project that are being occupied or used before final completion. The Contract Price or the Contract Time may be adjusted pursuant to the applicable provisions of these Contract Documents if, and only to the extent that, any occupation or use under this Section actually adds to Contractor's cost or time to perform the Work.

11.4 Substantial Completion. For purposes of determining "substantial completion" with respect to any statute of repose pertaining to the time for filing an action for construction defect, "substantial completion" is deemed to mean the last date that Contractor or any Subcontractor performs Work on the Project prior to recordation of the Notice of Completion, except for warranty work performed under this Article.

Article 12

Dispute Resolution

12.1 Claims. This Article applies to and provides the exclusive procedures for any Claim arising from or related to the Contract or performance of the Work.

(A) **Definition.** "Claim" means a separate demand by Contractor, submitted in writing, for change in the Contract Time or Contract Price that has previously been submitted to City in accordance with the requirements of the Contract Documents, and which has been rejected by City, in whole or in part.

(B) **Limitations.** A Claim may only include the portion of a previously rejected demand that remains in dispute between Contractor and City. With the exception of any dispute regarding the amount of money actually paid to Contractor as Final Payment, Contractor is not entitled to submit a Claim demanding a change in the Contract Time or the Contract Price, which has not previously been submitted to City in full compliance with Article 5 and Article 6, and subsequently rejected in whole or in part by City.

(C) **Scope of Article.** This Article is intended to provide the exclusive procedures for submission and resolution of Claims of any amount, and applies in addition to the provisions of Public Contract Code Section 9204 and Sections 20104, et seq.

(D) **No Work Delay.** Notwithstanding the submission of a Claim or any other dispute between the parties related to the Project or the Contract Documents, Contractor must perform the Work and may not delay or cease Work pending resolution of the Claim or other dispute, but must continue to diligently prosecute the performance and timely completion of the Work, including the Work pertaining to the Claim or other dispute.

12.2 Claims Submission. The following requirements apply to any Claim subject to this Article:

(A) **Substantiation.** The Claim must be submitted to City in writing, clearly identified as a “Claim” submitted pursuant to this Article 12, and must include all of the documents necessary to substantiate the Claim including the Change Order request that was rejected in whole or in part, and a copy of City’s written rejection that is in dispute. The Claim must clearly identify and describe the dispute, including relevant references to applicable portions of the Contract Documents, and a chronology of the relevant events. Any Claim for additional payment must include a complete, itemized breakdown of all labor, materials, taxes, insurance, and subcontract, or other costs. Substantiating documentation such as payroll records, receipts, invoices, or the like, must be submitted in support of each claimed cost. Any Claim for an extension of time or delay costs must be substantiated with schedule analysis and narrative depicting and explaining claimed time impacts.

(B) **Claim Format.** A Claim must be submitted in the following format:

- (1) General introduction, specifically identifying the submission as a “Claim” submitted under this Article 12.
- (2) Relevant background information, including identification of the specific demand at issue, and the date of City’s rejection of that demand.
- (3) Detailed explanation of the issue(s) in dispute. For multiple issues, separately number and identify each issue and include the following for each separate issue:
 - (a) The background of the issue, including references to relevant provisions of the Contract Documents;
 - (b) A succinct statement of the matter in dispute, including Contractor’s position and the basis for that position;
 - (c) A chronology of relevant events;

(d) The identification and attachment of all supporting documents (see subsection (A), above, on Substantiation); and

(e) Use of a separate page for each issue.

(4) Summary of issues and damages.

(5) The following certification, executed by Contractor's authorized representative:

"The undersigned Contractor certifies under penalty of perjury that its statements and representations in this Claim are true and correct. Contractor warrants that this Claim is comprehensive and complete as to the matters in dispute, and agrees that any costs, expenses, or delay claim not included herein are deemed waived. Contractor understands that submission of a Claim which has no basis in fact or which Contractor knows to be false may violate the False Claims Act (Government Code Section 12650 et seq.)."

(C) ***Submission Deadlines.***

(1) A Claim must be submitted within fifteen (15) days following the date that City notified Contractor in writing that a request for a change in the Contract Time or Contract Price, duly submitted in compliance with Article 5 and Article 6, has been rejected in whole or in part.

(2) With the exception of any dispute regarding the amount of Final Payment, any Claim must be filed on or before the date of Final Payment, or will be deemed waived.

(3) A Claim disputing the amount of Final Payment must be submitted within fifteen (15) days of the effective date of Final Payment, under Section 8.8, above.

(4) Strict compliance with these Claim submission deadlines is necessary to ensure that any dispute may be mitigated as soon as possible, and to facilitate cost-efficient administration of the Project. Any Claim that is not submitted within the specified deadlines will be deemed waived by Contractor.

12.3 City's Response. City will respond within forty-five (45) days of receipt of the Claim with a written statement identifying which portion(s) of the Claim are disputed, unless the forty-five (45) day period is extended by mutual agreement of City and Contractor. However, the City may first request, in

writing, within thirty (30) days of receipt of the Claim, any additional documentation supporting the Claim or relating to defenses to the Claim that City may have against Contractor. If Contractor fails to submit the additional documentation to City within fifteen (15) days of receipt of City's request, the Claim will be deemed waived.

(A) **Additional Information.** If additional information is thereafter required, it may be requested and provided upon mutual agreement of City and Contractor.

(B) **City's Response.** City's written response to the Claim, as further documented, will be submitted to Contractor within fifteen (15) days after receipt of the further documentation or within a period of time no greater than that taken by Contractor in producing the additional information, whichever is greater.

(C) **Non-Waiver.** Any failure by City to respond within the times specified above may not be construed as acceptance of the Claim in whole or in part, or as a waiver of any provision of these Contract Documents.

12.4 Meet and Confer. If Contractor disputes City's written response, or City fails to respond within the specified time, Contractor must notify City in writing, either within fifteen (15) days of receipt of City's response, or within fifteen (15) days of City's failure to respond within the specified time, respectively, and demand an informal conference to meet and confer for settlement of the issues in dispute. If Contractor fails to dispute City's response, in writing, within the specified times, Contractor's Claim will be deemed waived.

(A) **Schedule Meet and Confer.** Upon receipt of the demand to meet and confer, City will schedule the meet and confer conference to be held within thirty (30) days, or later if needed to ensure the mutual availability of all of the individuals that each party requires to represent its interests at the meet and confer conference.

(B) **Location for Meet and Confer.** The meet and confer conference will be scheduled at a location at or near City's principal office.

(C) **Written Statement After Meet and Confer.** Within ten (10) working days after the meet and confer has concluded, City will issue a written statement identifying which portion(s) of the Claim remain in dispute, if any.

(D) **Submission to Mediation.** If the Claim or any portion remains in dispute following the meet and confer conference, within ten working days

after the City issues the written statement identifying any portion(s) of the Claim remaining in dispute, the disputed portion(s) will be submitted for mediation as set forth below.

12.5 Mediation and Government Code Claims.

(A) **Mediation.** Mediation under this Article will be scheduled within sixty (60) days following conclusion of the meet and confer process, with a mediator that the parties mutually agreed upon. The mediation itself may take place more than sixty (60) days following conclusion of the meet and confer process to ensure the mutual availability of the selected mediator and all of the individuals that each party requires to represent its interests. The parties must share the costs of mediation equally, except costs incurred by each party for representation by legal counsel or any other consultant.

(B) Government Code Claims.

(1) Timely presentment of a Government Code Claim is a condition precedent to filing any legal action based on or arising from the Contract.

(2) The time for filing a Government Code Claim will be tolled from the time Contractor submits its written Claim pursuant to Section 12.2, above, until the time that Claim is denied as a result of the meet and confer process, including any period of time used by the meet and confer process. If the parties agree to mediation, the time for filing a Government Code Claim will be tolled until conclusion of the mediation if the Claim is not fully resolved by mutual agreement of the parties during the mediation or any continuation of the mediation.

12.6 Tort Claims. This Article does not apply to tort claims and nothing in this Article is intended nor will be construed to change the time periods for filing tort-based Government Code Claims.

12.7 Arbitration. It is expressly agreed, under California Code of Civil Procedure Section 1296, that in any arbitration to resolve a dispute relating to this Contract, the arbitrator's award must be supported by law and substantial evidence.

12.8 Damages. Contractor bears the burden of proving entitlement to and the amount of any claimed damages. Contractor is not entitled to damages calculated on a total cost basis, but must prove actual damages. Contractor is not entitled to recovery of any alleged home office overhead. The Eichleay Formula or similar formula may not be used for any recovery

under the Contract. Contractor is not entitled to consequential damages, including home office overhead or any form of overhead not directly incurred at the Worksite; lost profits; loss of productivity; lost opportunity to work on other projects; diminished bonding capacity; increased cost of financing for the Project; extended capital costs; non-availability of labor, material or equipment due to delays; or any other indirect loss arising from the Contract.

- 12.9 Other Disputes.** The procedures in this Article 12 will apply to any and all disputes or legal actions, in addition to Claims, arising from or related to this Contract, unless and only to the extent that compliance with a procedural requirement is expressly and specifically waived by City. Nothing in this Article is intended to delay suspension or termination under Article 13.

Article 13 **Suspension and Termination**

- 13.1 Suspension for Cause.** In addition to all other remedies available to City, if Contractor fails to perform or correct work in accordance with the Contract Documents, City may immediately order the Work, or any portion of it, suspended until the cause for the suspension has been eliminated to City's satisfaction.

(A) ***Failure to Comply.*** Contractor will not be entitled to an increase in Contract Time or Contract Price for a suspension occasioned by Contractor's failure to comply with the Contract Documents.

(B) ***No Duty to Suspend.*** City's right to suspend the Work will not give rise to a duty to suspend the Work, and City's failure to suspend the Work will not constitute a defense to Contractor's failure to comply with the requirements of the Contract Documents.

- 13.2 Suspension for Convenience.** City reserves the right to suspend, delay, or interrupt the performance of the Work in whole or in part, for a period of time determined to be appropriate for City's convenience, and not due to any act or omission by Contractor or its Subcontractors. Upon notice by City pursuant to this provision, Contractor must immediately suspend, delay, or interrupt the Work as directed by City. The Contract Price and the Contract Time will be equitably adjusted by Change Order to reflect the cost and delay impact occasioned by such suspension for convenience.

- 13.3 Termination for Default.** Contractor may be deemed in default for a material breach of or inability to perform the Contract, including Contractor's refusal or failure to supply sufficient skilled workers, proper

materials, or equipment to perform the Work within the Contract Time; refusal or failure to make prompt payment to its employees, Subcontractors, or suppliers or to correct rejected work; disregard of laws, regulations, ordinances, rules, or orders of any public agency with jurisdiction over the Project; or if Contractor lacks financial capacity to complete the Work within the Contract Time; or is otherwise responsible for a material breach of the Contract requirements.

(A) **Notice.** Upon City's determination that Contractor is in default, City may provide Contractor and its surety written notice of default and intent to terminate the Contract.

(B) **Termination.** Within seven (7) calendar days after notice of intent to terminate for default has been given, unless the default is cured or arrangements to cure the default have been made and memorialized in writing, to City's satisfaction, City may terminate the Contract by written notice to Contractor with a copy to Contractor's surety.

(C) **Waiver.** Time being of the essence in the performance of the Work, if Contractor's surety fails to arrange for completion of the Work in accordance with the Performance Bond, within seven (7) calendar days from the date of the notice of termination, Contractor's surety will be deemed to have waived its right to complete the Work under the Contract, and City may immediately make arrangements for the completion of the Work through use of its own forces, by hiring a replacement contractor, or by any other means that City determines advisable under the circumstances. Contractor and its surety will be jointly and severally liable for any additional cost incurred by City to complete the Work following termination. In addition, City will have the right to use any materials, supplies, and equipment belonging to Contractor and located at the Worksite for the purposes of completing the remaining Work.

(D) **Wrongful Termination.** If a court of competent jurisdiction or an arbitrator later determines that the termination for default was wrongful, the termination will be deemed to be a termination for convenience, and Contractor's damages will be strictly limited to the compensation provided for termination for convenience, in Section 13.4, below. Contractor waives any claim for any other damages for wrongful termination including consequential damages, lost opportunity costs or lost profits.

13.4 Termination for Convenience. City reserves the right to terminate all or part of the Contract for convenience upon written notice to Contractor. Upon receipt of such notice, Contractor must immediately stop the Work, comply with City's instructions to protect the completed Work and materials, and use its best efforts to minimize further costs. In the event of termination for convenience, the parties agree that the following will

constitute full and fair compensation to Contractor, and that Contractor will not be entitled to any additional compensation:

- (A) **Completed Work.** The value of its Work satisfactorily performed to date, including Project overhead and profit based on Contractor's schedule of values;
- (B) **Demobilization.** Actual and substantiated demobilization costs; and
- (C) **Markup.** Five percent (5%) of the total value of the Work performed as of the date of notice of termination or five percent (5%) of the value of the Work yet to be completed, whichever is less.

13.5 Provisions Remaining in Effect. Upon termination pursuant to this Article, the provisions of the Contract Documents remain in effect as to any claim, indemnity obligation, warranties, guarantees, submittals of as-built drawings, instructions, or manuals, or other such rights and obligations arising prior to the termination date.

Article 14

Miscellaneous Provisions

- 14.1 Assignment of Unfair Business Practice Claims.** Under Public Contract Code Section 7103.5, Contractor and its Subcontractors agree to assign to City all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Section 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the Contract or subcontract. This assignment will be effective at the time City tenders Final Payment to Contractor, without further acknowledgement by the parties.
- 14.2 Provisions Deemed Inserted.** Every provision of law required to be inserted in the Contract Documents is deemed to be inserted, and the Contract Documents will be construed and enforced as though such provision has been included. If it is discovered that through mistake or otherwise that any required provision was not inserted, or not correctly inserted, the Contract Documents will be amended accordingly.
- 14.3 Waiver.** No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of the Contract Documents will be effective unless it is in writing and signed by the party

waiving the breach, failure, right, or remedy. No waiver of any breach, failure, right, or remedy will be deemed a waiver of any other breach, failure, right, or remedy, whether or not similar, nor will any waiver constitute a continuing waiver unless specified in writing by the waiving party.

14.4 Titles, Headings, and Groupings. The titles and headings used and the groupings of provisions in the Contract Documents are for convenience only and may not be used in the construction or interpretation of the Contract Documents or relied upon for any other purpose.

14.5 Statutory and Regulatory References. With respect to any amendments to any statutes or regulations referenced in these Contract Documents, the reference is deemed to be the version in effect on the date that that bids were due.

END OF GENERAL CONDITIONS

SPECIAL CONDITIONS

Not Applicable

TECHNICAL SPECIFICATIONS
2023 SIDEWALK REPAIR PROJECT

SPECIFICATIONS AND CONTRACT DOCUMENTS
for

2023
SIDEWALK REPAIR PROJECT



MORGAN HILL, CALIFORNIA
COMMUNITY SERVICES DEPARTMENT

January 30, 2023

NOTICE INVITING INFORMAL BIDS

1. **Bid Acceptance.** The City of Morgan Hill ("City"), will accept electronic PDF format bids for its 2023 Sidewalk Repair Project ("Project"), by or before **Thursday, March 2, 2023, at 10:30 a .m.** via e-mail to cynthia.iwanaga@morganhill.ca.gov , at which time the bids will be publicly opened and read aloud via a Zoom meeting at <https://bit.ly/2023SidewalkRepairOpening>

2. **Project Information.**

2.1 Location and Description. The Project is located at various locations throughout Morgan Hill, and the Scope of Work is described as follows:

Removal and replacement of damaged concrete sidewalks, curb/gutter/driveway approach and tree root removal.

2.2 Time for Completion. The planned timeframe for commencement and completion of construction of the Project is Spring 2023 with anticipated start in April 2023.

3. **License and Registration Requirements.**

3.1 License. This Project requires a valid California contractor's license for the following classification(s): **A (General Engineering) or C-8 (Concrete).**

3.2 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.

4. **Contract Documents.** The plans, specifications, bid and contract documents for the Project ("Contract Documents") may be obtained from the City of Morgan Hill website at <http://www.morgan-hill.ca.gov/bids.aspx> or the RFP may be downloaded from the Public Purchase online service at <https://www.publicpurchase.com> Registration is free.

5. **Bid Proposal and Security.**

5.1 Bid Proposal Form. Each Bid must be submitted using the Bid Proposal form provided with the Contract Documents.

5.2 Bid Security. The Bid Proposal must be accompanied by bid security of ten percent (10%) of the maximum bid amount, in the form of a cashier's

or certified check made payable to City, or a bid bond executed by a surety licensed to do business in the State of California on the Bid Bond form included with the Contract Documents. The bid security must guarantee that upon award of the bid, the bidder will execute the Contract and submit payment and performance bonds and insurance certificates as required by the Contract Documents within ten (10) days after issuance of the notice of award.

6. Prevailing Wage Requirements.

6.1 General. 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.

6.2 Rates. These prevailing rates are available online at <http://www.dir.ca.gov/DLSR>. Each Contractor and Subcontractor must pay no less than the specified rates to all workers employed to work on the Project. The schedule of per diem wages is based upon a working day of eight (8) hours. The rate for holiday and overtime work must be at least time and one-half (1/2).

6.3 Compliance. The Contract will be subject to compliance monitoring and enforcement by the California Department of Industrial Relations, under Labor Code Section 1771.4.

- 7. Performance and Payment Bonds.** The successful bidder will be required to provide performance and payment bonds for one hundred percent (100%) of the Contract Price.
- 8. Substitution of Securities.** Substitution of appropriate securities in lieu of retention amounts from progress payments is permitted under Public Contract Code Section 22300.
- 9. Subcontractor List.** Each bidder must submit the name, location of the place of business, and California contractor license number and DIR registration number for each Subcontractor who will perform work or service or fabricate or install work for the prime contractor in excess of one half (1/2) of one percent (1%) of the bid price, using the Subcontractor List form included with the Contract Documents.
- 10. Instructions to Bidders.** Additional and more detailed information is provided in the Instructions for Bidders, which should be carefully reviewed by all bidders before submitting a Bid Proposal.

11. Non-Mandatory Bidders' Conference. A non-mandatory bidders' conference will be held on Thursday, February 9, 2023 at 9:30 a.m., via a Zoom meeting. The following is the Zoom link to the meeting: <https://bit.ly/2023SidewalkPreBidMtg> The purpose of the conference is to acquaint all prospective bidders with the Contract Documents and the Work. The bidders' conference is not mandatory.

12. Estimated Cost. The estimated construction cost is \$ 103,000.

By: Michelle Bigelow, City Clerk

Date: January 18, 2023

Publication Date: 1) January 27 2023

END OF NOTICE INVITING INFORMAL BIDS

INSTRUCTIONS TO BIDDERS

Each Bid Proposal submitted to the City of Morgan Hill ("City") for its 2023 Sidewalk Repair Project ("Project") must be submitted in accordance with the following instructions and requirements:

1. Bid Submission.

1.1 General. Each bid ("Bid Proposal") must be signed, sealed and submitted to City, using the form provided in the Contract Documents, by or before the date and time set forth in the Notice Inviting Informal Bids, or as amended by subsequent addendum. Faxed or emailed Bid Proposals will not be accepted, unless otherwise specified. Late submissions will be returned unopened. City reserves the right to postpone the date and time for receiving or opening bids. Each bidder is solely responsible for all of its costs to prepare and submit its bid and by submitting a bid waives any right to recover those costs from City. The bid price(s) must include all costs to perform the Work as specified, including all indirect costs such as applicable taxes, insurance and field offices.

1.2 E-mail Bid Submittal. The City of Morgan Hill ("City") will accept bids via e-mail to cynthia.iwanaga@morganhill.ca.gov for its 2023 Sidewalk Repair Project ("Project"), by or before Thursday, March 2, 2023 at 10:30 a.m., at which time the bids will be publicly opened and read aloud via a Zoom meeting at <https://bit.ly/2023SidewalkRepairOpening>

Bids must be received by the City staff's e-mail inbox no later than 10:30 a.m. on March 2, 2023. No late bids will be accepted.

Please note: If City is unable to confirm that the bidder's DIR registration is current, City must disqualify the bidder and return its bid unopened (Labor Code section 1725.5).

2. Examination of Contract Documents and Project Site. Each bidder is solely responsible for diligent and thorough review of the Contract Documents (as defined in the General Conditions), examination of Project site, and reasonable and prudent inquiry concerning known and potential site conditions prior to submitting a Bid Proposal. However, bidders should not enter onto City's property or the Project site without prior written authorization from City. Bidders are responsible for reporting any errors or omissions in the Contract Documents to City prior to submitting a Bid Proposal, subject to the limitations of Public Contract Code Section 1104. City expressly disclaims responsibility for assumptions the bidder might draw from the presence or absence of information provided by City.

3. **Requests for Information.** Questions regarding the Project, the bid procedures or any of the Contract Documents must be submitted in writing to Cynthia Iwanaga at cynthia.iwanaga@morganhill.ca.gov **no later than Friday, February 17, 2023 at 5:00 p.m.**
4. **Addenda.** The City will issue an addendum responding to all questions submitted by the February 17, 2023 deadline. The addendum will be issued no later than Thursday, February 23, 2023. Any addenda issued prior to the bid opening are part of the Contract Documents. Subject to the limitations of Public Contract Code section 4104.5, City reserves the right to issue addenda prior to bid time.
5. **Brand Designations and “Or Equal” Substitutions.** Any specification designating a material, product, thing, or service by specific brand or trade name, followed by the words “or equal,” is intended only to indicate quality and type of item desired, and bidders may request use of any equal material, product, thing, or service. All data substantiating the proposed substitute as an “equal” item must be submitted with the written request for substitution. This provision does not apply to materials, products, things, or services that may lawfully be designated by a specific brand or trade name under Public Contract Code Section 3400(c).
 - 5.1 **Pre-Bid Requests.** Any request for submission made before the Contract is awarded must be submitted to the Management Analyst at least ten (10) days before the opening of bids so that all interested bidders may be notified of any approved alternative. Please e-mail requests to cynthia.iwanaga@morganhill.ca.gov
 - 5.2 **Post-Award Requests.** After the Contract is awarded, Contractor may submit a substitution within fourteen (14) days after the date of award of the Contract, or as specified in the Special Conditions.
6. **Bidders Interested in More Than One Bid.** No person, firm, or corporation may submit or be a party to more than one (1) Bid Proposal unless alternate bids are specifically called for. However, a person, firm, or corporation that has submitted a subcontract proposal or quote to a bidder may submit subcontract proposals or quotes to other bidders.
7. **Bid Proposal Form and Enclosures.** Each Bid Proposal must be completed in ink using the Bid Proposal form included in the Contract Documents. The Bid Proposal form should be fully completed without interlineations, alterations, or erasures. Any necessary corrections must be clear and legible, and must be initialed by the bidder’s authorized representative. A Bid Proposal submitted with terms such as “negotiable,” “will negotiate,” or similar, will be considered non-responsive. Each Bid Proposal must be accompanied by bid security, as set forth in Section 9

below, and by the completed Subcontractor List, and Non-Collusion Declaration using the forms included in the Contract Documents.

8. **Authorization and Execution.** Each Bid Proposal must be signed by the bidder's authorized representative. A Bid Proposal submitted by a partnership must be signed in the partnership name by a general partner with authority to bind the partnership. A Bid Proposal submitted by a corporation must be signed with the legal name of the corporation, followed by the signature and title of two officers of the corporation with full authority to bind the corporation to the terms of the Bid Proposal, under California Corporation Code section 313.
9. **Bid Security.** Each Bid Proposal must be accompanied by bid security of ten percent (10%) of the maximum bid amount, in the form of a PDF of the cashier's check, a certified check, or a PDF of the bid bond, using the form included in the Contract Documents, executed by a surety licensed to do business in the State of California, made payable to City. The bid security must guarantee that upon award of the bid, the bidder will execute and submit the Contract on the form included in the Contract Documents, will submit payment and performance bonds for one hundred percent (100%) of the maximum Contract Price, and will submit the insurance certificates and endorsements as required by the Contract Documents within ten (10) days after issuance of the notice of award. **Submitted packages that do not include a PDF copy of the bid security documents will be deemed non-responsive.**
10. **Withdrawal of Bid Proposals.** A Bid Proposal may not be withdrawn for a period of ninety (90) days after the bid opening without forfeiture of the bid security, except as authorized for material error under Public Contract Code Section 5100 et seq.
11. **Bid Protest.** Any bid protest must be in writing and received by City at the City Attorney's Office via an e-mail to Cynthia Hasson, Assistant City Attorney at Cynthia.Hasson@morganhill.ca.gov, before 5:00 p.m. no later than two (2) working days following bid opening (the "Bid Protest Deadline") and must comply with the following requirements:
 - 11.1 **General.** Only a bidder who has actually submitted a Bid Proposal is eligible to submit a bid protest against another bidder. Subcontractors are not eligible to submit bid protests. A bidder may not rely on the bid protest submitted by another bidder, but must timely pursue its own protest. If required by City, the protesting bidder must submit a non-refundable fee in the amount specified by City, based upon City's reasonable costs to administer the bid protest. Any such fee must be submitted to City no later than the Bid Protest Deadline, unless otherwise specified. For purposes of

this Section 11, a “working day” means a day that City is open for normal business, and excludes weekends and holidays observed by City.

11.2 Protest Contents. The bid protest must contain a complete statement of the basis for the protest and all supporting documentation. Material submitted after the Bid Protest Deadline will not be considered. The protest must refer to the specific portion or portions of the Contract Documents upon which the protest is based. The protest must include the name, address, email address, and telephone number of the person representing the protesting bidder if different from the protesting bidder.

11.3 Copy to Protested Bidder. A copy of the protest and all supporting documents must be concurrently transmitted by fax or by email, by or before the Bid Protest Deadline, to the protested bidder and any other bidder who has a reasonable prospect of receiving an award depending upon the outcome of the protest.

11.4 Response to Protest. The protested bidder may submit a written response to the protest, provided the response is received by City before 5:00 p.m., within two (2) working days after the Bid Protest Deadline or after actual receipt of the bid protest, whichever is sooner (the “Response Deadline”). The response must include all supporting documentation. Material submitted after the Response Deadline will not be considered. The response must include the name, address, email address, and telephone number of the person representing the protested bidder if different from the protested bidder.

11.5 Copy to Protesting Bidder. A copy of the response and all supporting documents must be concurrently transmitted by fax or by email, by or before the Response Deadline, to the protesting bidder and any other bidder who has a reasonable prospect of receiving an award depending upon the outcome of the protest.

11.6 Exclusive Remedy. The procedure and time limits set forth in this section are mandatory and are the bidder’s sole and exclusive remedy in the event of bid protest. A bidder’s failure to comply with these procedures will constitute a waiver of any right to further pursue a bid protest, including filing a Government Code Claim or initiation of legal proceedings.

11.7 Right to Award. City reserves the right to award the Contract to the bidder it has determined to be the responsible bidder submitting the lowest responsive bid, and to issue a notice to proceed with the Work notwithstanding any pending or continuing challenge to its determination.

12. Rejection of Bids; Award of Contract. City reserves the right, acting in its sole discretion, to waive immaterial bid irregularities, the right to accept or

reject any and all bids, or to abandon the Project entirely. The Contract will be awarded, if at all, within ninety (90) days after opening of bids or as otherwise specified in the Special Conditions, to the responsible bidder that submitted the lowest responsive bid.

- 13. Bonds.** The successful bidder is required to submit payment and performance bonds as specified in the Contract Documents using the bond forms included in the Contract Documents. All required bonds must be calculated on the maximum total Contract price as awarded, including additive alternates, if applicable.
- 14. Evidence of Responsibility.** Within twenty four (24) hours following a request by City, a bidder must submit to City satisfactory evidence showing the bidder's financial resources, the bidder's experience in the type of work being required by City, the bidder's organization available for the performance of the Contract and any other required evidence of the bidder's qualifications to perform the proposed Contract. City may consider such evidence before making its decision awarding the proposed Contract.
- 15. License(s).** The successful bidder and its Subcontractor(s) must possess the California contractor's license(s) in the classification(s) required by law to perform the Work. This project requires a valid California contractor's license for the following classification(s): **A (General Engineering) or C-8 (Concrete).**
- 16. Taxes.** The bid price must include all applicable federal, state, and local taxes.
- 17. Ineligible Subcontractor.** Any Subcontractor who is ineligible to perform work on a public works project under Labor Code Sections 1777.1 or 1777.7 is prohibited from performing work on this Project.
- 18. 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 DIR to perform public work under Labor Code Section 1725.5, subject to limited legal exceptions.
- 19. Bid Schedule.** Bidders are required to fully complete the Bid Schedule form accompanying the Bid Proposal form with unit prices as indicated, and to submit the completed Bid Schedule with their Bid Proposal.

19.1 Incorrect Totals. In the event of a computational error for any bid item (base bid or alternate) resulting in an incorrect extended total for that item, the submitted base bid or bid alternate total will be adjusted to reflect the corrected amount (estimated quantity X unit cost), unless the cumulative amount of correction changes the total amount of the base bid or bid

alternate by more than five percent (5%). In the event of a discrepancy between the actual total of the itemized or unit prices shown on the Bid Schedule for the base bid, and the amount entered as the base bid on the Bid Proposal form, the actual total of the itemized or unit prices shown on the Bid Schedule for the base bid will be deemed the base bid price. Likewise, in the event of a discrepancy between the actual total of the itemized or unit prices shown on the Bid Schedule for any bid alternate, and the amount entered for the alternate on the Bid Proposal form, the actual total of the itemized prices shown on the Bid Schedule for that alternate will be deemed the alternate price. Nothing in this provision is intended to prevent a bidder from requesting to withdraw its bid for material error under Public Contract Code Section 5100 et seq.

19.2 Estimated Quantities. The quantities shown on the Bid Schedule are estimated and the actual quantities required to perform the Work may be greater or less than the estimated amount. The Contract Price will be adjusted to reflect the actual quantities required for the Work based on the itemized or unit prices provided in the Bid Schedule, with no allowance for anticipated profit for quantities that are deleted or decreased.

19.3. Local Preference. Submittals will be evaluated based upon a local preference, which allows local businesses to reduce their bid amounts up to five (5%) percent in order to become the lowest bidder. The local businesses must also affirmatively mark on their bid submittal that they are a local business and that they willing to reduce their bid amount by up to 5% in order to make their bid the lowest. If the lowest price submitted for services is from a non-local business, local businesses who have affirmatively marked their willingness to reduce their bid amount by up to 5%, shall be given the opportunity to lower their bid prices by up to 5% to become the lowest bidder. This reduction in the bid amount will be allowed if their bid is otherwise equally responsive and responsible in meeting the requirements of the City's Notice Inviting Informal Bids.

19.4. Bidder's Questionnaire. A completed, signed Bidder's Questionnaire using the form provided with the Contract Documents and including all required attachments must be submitted within forty-eight (48) hours following a request by City. A bid that does not fully comply with this requirement may be rejected as nonresponsive. A bidder who submits a Bidder's Questionnaire which is subsequently determined to contain false or misleading information, or material omissions, may be disqualified as non-responsible.

BID PROPOSAL

2023 Sidewalk Repair Project

_____ (“Bidder”) hereby submits this Bid Proposal to the City of Morgan Hill (“City”) for the above-referenced project (“Project”) in response to the Notice Inviting Informal Bids and in accordance with the Contract Documents referenced therein.

1. **Base Bid.** Bidder proposes to perform and fully complete the Work for the Project as specified in the Contract Documents, within the time required for full completion of the Work, for the following price (“Base Bid”):
\$ _____.

2. **Addenda.** Bidder acknowledges receipt of the following addenda:

Addendum:	Date Received:	Addendum:	Date Received:
#01	_____	#05	_____
#02	_____	#06	_____
#03	_____	#07	_____
#04	_____	#08	_____

3. **Bidder’s Warranties.** By signing and submitting this Bid Proposal, Bidder warrants the following:

- 3.1 **Examination of Contract Documents.** Bidder has thoroughly examined the Contract Documents, and represents that, to the best of Bidder’s knowledge there are no errors, omissions, or discrepancies in the Contract Documents subject to the limitations of Public Contract Code Section 1104.

- 3.2 **Examination of Worksite.** Bidder has had the opportunity to examine the Worksite and local conditions at the Project location.

- 3.3 **Bidder is Qualified.** Bidder is fully qualified to perform the Work.

- 3.4 **Responsibility for Bid.** Bidder has carefully reviewed this Bid Proposal and is solely responsible for any errors or omissions contained in its completed Bid.

4. **Award of Contract .** By signing and submitting this Bid Proposal, Bidder agrees that if Bidder is awarded the Contract for the Project, that within ten (10) days following issuance of the notice of award to Bidder, Bidder will do all of the following:

4.1 Execute Contract. Enter into the Contract with City in accordance with the terms of this Bid Proposal, by signing and submitting to City the Contract prepared by City using the form included with the Contract Documents;

4.2 Submit Required Bonds. Submit to City a payment bond and a performance bond, each for one hundred percent (100%) of the Contract Price, using the bond forms provided and in accordance with the requirements of the Contract Documents; and

4.3 Insurance Requirements. Submit to City the insurance certificate(s) and endorsement(s) as required by the Contract Documents.

- 5. Wage Theft Prevention.** All Bidders are expected to have read and understand the "Wage Theft Prevention Policy" adopted by the City Council on July 26, 2017.

The undersigned Bidder certifies that neither Bidder nor its principals have been found by a final court judgement or final administrative action of an investigatory agency to have violated federal, state or local wage and hour laws within the past five years from the date of the submitted bid. Bidder or its principals who are unable to so certify, must disclose wage and hour violations, and shall provide a copy of (i) the court order and judgment and/or final administrative decision; and (ii) documents demonstrating either that the order/judgment has been satisfied, or if the order/judgment has not been fully satisfied, a written and signed description of Bidder's efforts to date to satisfy the order/judgment. Signing this bid shall constitute signature of this Certification.

The City, at its sole discretion, may disqualify a bidder based on one or more disclosed judgments consistent with the criteria set forth in the Policy.

- 6. Bid Security.** As a guarantee that if awarded the Contract, it will perform its obligations under Section 4, above, Bidder is enclosing bid security in the amount of ten percent (10%) of its maximum bid amount in the following form:

_____ A cashier's check or certified check payable to City of Morgan Hill and issued by _____ Bank in the amount of \$_____.

_____ A bid bond, using the Bid Bond form included with the Contract Documents, payable to City of Morgan Hill and executed by a surety licensed to do business in the State of California.

7. Local Preference.

☐ Check this box if you are a local business as defined by the Morgan Hill Municipal Code Section 3.04.030 and would like to apply the local business quotation preference by reducing the bid or proposal price submitted by up to five percent (5%) in order to be the low bidder

This Bid Proposal is hereby submitted on _____, 20__:

s/ _____

Name and Title [print]

Company Name

CSLB License # & Classification

DIR Registration #

Address

Phone

City, State, Zip

E-mail

END OF BID PROPOSAL

BID SCHEDULE

2023 SIDEWALK REPAIR PROJECT

This Bid Schedule must be completed and included with the Bid Proposal. The unit cost for each item must be inclusive of all costs, whether direct or indirect, including profit and overhead. The sum of all amounts entered in the "Extended Total" column must be identical to the Base Bid price entered in Section 1 of the Bid Proposal Form. Quantities shown are required for bid purposes and may or may not be final pay quantities. Actual quantities, if different, must be substantiated during the Project by Contractor (either by field measurement, trucking tags, or other means acceptable to the City's Project Manager).

Bid Item	Description of Bid Item	Approximate Quantity/Unit of Measure	Unit Price	Extended Total
1	Remove and replace concrete sidewalks and driveway at locations indicated on attached list	6,347 sq. ft.		

Bid Schedule Total	
--------------------	--

END OF BID SCHEDULE

SUBCONTRACTOR LIST

2023 SIDEWALK REPAIR PROJECT

For each Subcontractor who will perform a portion of the Work in an amount in excess of one-half of 1% of the Bidder's total Contract Price,¹ the bidder must list a description of the work, the name of the Subcontractor, its California contractor license number, the location of its place of business, and DIR registration number. **Bidders: Please print legibly. Illegible forms may be rejected. If no subcontractors will be used, check the "Not Applicable-No Subcontractors," box below.**

☐ NOT APPLICABLE-NO SUBCONTRACTORS

DESCRIPTION OF WORK	SUBCONTRACTOR NAME	CALIFORNIA CONTRACTOR LICENSE NUMBER	DIR REGISTRATION. NO.	LOCATION OF BUSINESS	LOCAL VENDOR ² YES/NO

END OF SUBCONTRACTOR LIST

¹ For street or highway construction this requirement applies to any subcontract of \$10,000 or more.

² A Subcontractor is considered local if its principle place of business is within the city limits of Morgan Hill.

NONCOLLUSION DECLARATION

(To be executed by bidder and submitted with bid)

State of California	)	SS.
	)	
County of _____	)	

The undersigned declares:

I am the _____ [title] of
_____ [business name], the party
making the foregoing bid.

The bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation. The bid is genuine and not collusive or sham. The bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid. The bidder has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or to refrain from bidding. The bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder. All statements contained in the bid are true. The bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof, to effectuate a collusive or sham bid, and has no paid and will not pay, any person or entity for such purpose.

This declaration is intended to comply with California Public Contract Code Section 7106 and Title 23 U.S.C Section 112.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on
_____ [date], at _____ [city],
_____ [state].

s/ _____

Name [print]

CIVIL CODE '

BID BOND

_____ (“Bidder”) has submitted a bid, dated _____, 20____ (“Bid”), to the City of Morgan Hill (“City”) for work on the 2023 Sidewalk Repair Project (“Project”). Under this duly executed bid bond (“Bid Bond”), Bidder as Principal and _____, its surety (“Surety”), are bound to City as obligee in the penal sum of ten percent (10%) of the maximum amount of the Bid (the “Bond Sum”). Bidder and Surety bind themselves and their respective heirs, executors, administrators, successors and assigns, jointly and severally, as follows:

1. **General.** If Bidder is awarded the Contract for the Project, Bidder will enter into the Contract with City in accordance with the terms of the Bid.
2. **Submittals.** Within ten (10) days following issuance of the notice of award to Bidder, Bidder must submit to City the following:
 - 2.1 **Contract.** The executed Contract, using the form provided by City in the Project contract documents (“Contract Documents”);
 - 2.2 **Payment Bond.** A payment bond for one hundred percent (100%) of the maximum Contract Price, executed by a surety licensed to do business in the State of California using the Payment Bond form included with the Contract Documents;
 - 2.3 **Performance Bond.** A performance bond for one hundred percent (100%) of the maximum Contract Price, executed by a surety licensed to do business in the State of California using the Performance Bond form included with the Contract Documents; and
 - 2.4 **Insurance.** The insurance certificate(s) and endorsement(s) required by the Contract Documents, and any other documents required under the Instructions for Bidders.
3. **Enforcement.** If Bidder fails to execute the Contract and to submit the bonds and insurance certificates as required by the Contract Documents, Surety guarantees that Bidder forfeits the Bond Sum to City. Any notice to Surety may be given in the manner specified in the Contract and delivered or transmitted to Surety as follows:

Attn: _____
Address: _____
City/State/Zip: _____
Phone: _____
Fax: _____

Email: _____

- 4. Duration; Waiver.** If Bidder fulfills its obligations under Section 2, above, then this obligation will be null and void; otherwise it will remain in full force and effect for ninety (90) days following award of the Contract or until this Bid Bond is returned to Bidder, whichever occurs first. Surety waives the provisions of Civil Code Sections 2819 and 2845.

This Bid Bond is entered into and is effective on _____,
20____.

SURETY:

s/ _____

Name: _____

Title: _____

(Attach Acknowledgement, Notary Seal, and Attorney-In-Fact Certificate)

CONTRACTOR:

s/ _____

Name: _____

Title: _____

APPROVED AS TO FORM:

By: _____
Donald A. Larkin, City Attorney

Date: _____

BIDDER'S QUESTIONNAIRE

2023 SIDEWALK REPAIR PROJECT

Within forty eight (48) hours following a request by City, a bidder must submit to City a completed, signed Bidder's Questionnaire using this form and including all required attachments. City may request the Questionnaire from one (1) or more of the apparent low bidders following the bid opening, and may use the completed Questionnaire to evaluate a bidder's qualifications for this Project. The Questionnaire must be filled out completely, accurately, and legibly. Any errors, omissions, or misrepresentations in completion of the Questionnaire may be grounds for rejection of the bid or termination of a Contract awarded pursuant to the bid.

Part 1: General Information

Bidder Business Name: _____ ("Bidder")

Check One: ☐ Corporation
☐ Partnership
☐ Sole Proprietorship
☐ Joint Venture of: _____
☐ Other: _____

Address: _____

Phone: _____

Fax: _____

Owner of Company: _____

Contact Person: _____

Email: _____

Bidder's California Contractor's License Number(s):

Part 2: Bidder Experience

1. How many years has bidder been in business under its present business name? _____

2. Has bidder completed projects similar in type and size to this Project as a general contractor? _____

3. Has bidder ever been disqualified on grounds that it is not responsible? If yes, provide additional information on a separate sheet of paper regarding the disqualification, including the name and address of the agency or owner of the subject project, the type and size of the project, the reasons that bidder was disqualified as not responsible, and the month and year in which the disqualification occurred.

4. Has bidder ever been terminated from a construction project, either as a general contractor or as a subcontractor? If yes, provide additional information on a separate sheet of paper regarding the termination, including the name and address of the agency or owner of the subject project, the type and size of the project, whether bidder was under contract as a general contractor or a subcontractor, the reasons that bidder was terminated, and the month and year in which the termination occurred.

5. Provide information about bidder's past projects performed as general contractor as follows:

5.1 Six (6) most recently completed public works projects within the last three (3) years;

5.2 Three (3) largest completed projects within the last three (3) years; and

5.3 Any project which is similar to this Project.

6. Use separate sheets of paper provide all of the following information for each project identified in response to the above three (3) categories:

6.1 Project name

6.2 Location

6.3 Owner

6.4 Owner contact (name and current phone number)

6.5 Architect or engineer name

6.6 Architect or engineer contact (name and current phone number)

6.7 Project manager (name and current phone number)

6.8 Description of project, scope of work performed

6.9 Initial contract value (at time of bid award)

6.10 Final cost of construction (including change orders)

6.11 Original scheduled completion date

6.12 Time extensions granted (number of days)

6.13 Actual date of completion

6.14 Number and amount of stop notices or mechanic's liens filed

- 6.15 Amount of liquidated damages assessed against Bidder
- 6.16 Nature and resolution of any claim, lawsuit, and/or arbitration between Bidder and the owner.

Part 3: Verification

In signing this document, I, the undersigned, declare that I am duly authorized to sign and submit this Bidder's Questionnaire on behalf of the named bidder, and that all responses and information set forth in this Bidder's Questionnaire and accompanying attachments are, to the best of my knowledge, true, accurate and complete as of the date of submission. **I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.**

Signature: _____ Date: _____

By [name, title]: _____

END OF BIDDER'S QUESTIONNAIRE

CONTRACT

This public works contract ("Contract") is entered into by and between the City of Morgan Hill ("City") and [REDACTED], a [REDACTED], a [REDACTED] ("Contractor") for work on the 2023 Sidewalk Repair 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:
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 [Click or tap here to enter text.](#) Dollars (\$[Click or tap here to enter text.](#)) (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 [forty-five \(45\)](#) 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:keri.russell@morganhill.ca.gov

Contractor:

Name: Click or tap here to enter text.
Address: Click or tap here to enter text.
City/State/Zip: Click or tap here to enter text.
Phone: Click or tap here to enter text.
Attn: Click or tap here to enter text.
Email: Click or tap here to enter text.
Copy to: Click or tap here to enter text.

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

[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:

[NAME OF CONTRACTOR]

Signature

Name/Title [print]

Date: _____

Corporate entities must provide a second signature:

Signature

Name/Title [print]

Date: _____

Contractor's License Number(s)

Expiration Date(s)

Seal:

Contractor's DIR Registration Number(s)

Expiration Date

END OF CONTRACT

PAYMENT BOND

The City of Morgan Hill ("City") and _____ ("Contractor") have entered into a contract, dated _____, 20__ ("Contract") for work on the 2023 Sidewalk Repair Project ("Project"). The Contract is incorporated by reference into this Payment Bond ("Bond").

1. **General.** Under this Bond, Contractor as principal and _____, its surety ("Surety"), are bound to City as obligee in an amount not less than _____ Dollars (\$_____) ("Bond Sum"), under California Civil Code Sections 9550, et seq.
2. **Surety's Obligation.** If Contractor or any of its Subcontractors fails to pay any of the persons named in California Civil Code Section 9100 amounts due under the Unemployment Insurance Code with respect to work or labor performed under the Contract, or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of Contractor and its Subcontractors, under California Unemployment Insurance Code Section 13020, with respect to the work and labor, then Surety will pay for the same.
3. **Beneficiaries.** This Bond inures to the benefit of any of the persons named in California Civil Code Section 9100, so as to give a right of action to those persons or their assigns in any suit brought upon this Bond. Contractor must promptly provide a copy of this Bond upon request by any person with legal rights under this Bond.
4. **Duration.** If Contractor promptly makes payment of all sums for all labor, materials, and equipment furnished for use in the performance of the Work required by the Contract, in conformance with the time requirements set forth in the Contract and as required by California law, Surety's obligations under this Bond will be null and void. Otherwise, Surety's obligations will remain in full force and effect.
5. **Waivers.** Surety waives any requirement to be notified of alterations to the Contract or extensions of time for performance of the Work under the Contract. Surety waives the provisions of Civil Code Sections 2819 and 2845. City waives requirement of a new bond for any supplemental contract under Civil Code Section 9550. Any notice to Surety may be given in the manner specified in the Contract and delivered or transmitted to Surety as follows:

Attn: _____
Address: _____
City/State/Zip: _____
Phone: _____
Fax: _____
Email: _____

6. **Law and Venue.** This Bond will be governed by California law, and any dispute pursuant to this Bond will be venued in the Superior Court of Santa Clara County, and no other place. Surety will be responsible for City's attorneys' fees and costs in any action to enforce the provisions of this Bond.
7. **Effective Date; Execution.** This Bond is entered into and is effective on _____, 20____.

SURETY:

s/ _____

Name: _____

Title: _____

CONTRACTOR:

s/ _____

Name: _____

Title: _____

(Attach Acknowledgment with Notary
Seal and Power of Attorney)

APPROVED AS TO FORM:

By: _____
Donald A. Larkin, City Attorney

Date: _____

END OF PAYMENT BOND

PERFORMANCE BOND

The City of Morgan Hill ("City") and _____ ("Contractor") have entered into a contract, dated _____, 20____ ("Contract") for work on the 2023 Sidewalk Repair Project ("Project"). The Contract is incorporated by reference into this Performance Bond ("Bond").

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

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

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

5. Surety Default. If Surety defaults on its obligations under the Bond, City will be entitled to recover all costs it incurs due to Surety's default, including legal, design professional, or delay costs.

6. Notice. Any notice to Surety may be given in the manner specified in the Contract and delivered or transmitted to Surety as follows:

Attn: _____
Address: _____
City/State/Zip: _____
Phone: _____
Fax: _____
Email: _____

7. Law and Venue. This Bond will be governed by California law, and any dispute pursuant to this Bond will be venued 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.

8. Effective Date; Execution. This Bond is entered into and is effective on _____, 20____.

[Signatures are on the following page.]

SURETY:

s/ _____

Name: _____

Title: _____

(Attach Acknowledgment with Notary
Seal and Power of Attorney)

CONTRACTOR:

s/ _____

Name: _____

Title: _____

APPROVED AS TO FORM:

By: _____
Donald A. Larkin, City Attorney

Date: _____

END OF PERFORMANCE BOND

WARRANTY BOND

The City of Morgan Hill ("City") and _____ ("Contractor") have entered into a contract, dated _____, 20____ ("Contract") for work on the 2023 Sidewalk Project ("Project"). The Contract is incorporated by reference into this Warranty Bond ("Bond").

1. **General.** Under this Bond, Contractor as principal and _____, its surety ("Surety"), are bound to City as obligee in the maximum amount of _____ Dollars (\$_____) or 50% of the final Contract Price, whichever is greater ("Bond Sum").
2. **Warranty Period.** The Contract requires Contractor to guarantee its work and that of its Subcontractors on the Project, against defects in materials or workmanship which are discovered during the one (1) year period commencing with recordation of the Notice of Completion (the "Warranty Period").
3. **Surety's Obligations.** If Contractor faithfully carries out and performs its guarantee under the Contract, 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 Contractor promptly reimburses City for all loss and damage that City sustains because of Contractor's failure to makes such repairs in accordance with the Contract requirements, then Surety's obligations under this Bond will be null and void. Otherwise, Surety's obligations will remain in full force and effect.
4. **Waiver.** Surety waives the provisions of Civil Code Sections 2819 and 2845.
5. **Notice.** Any notice to Surety may be given in the manner specified in the Contract and delivered or transmitted to Surety as follows:

Attn: _____
Address: _____
City/State/Zip: _____
Phone: _____
Fax: _____
Email: _____
6. **Law and Venue.** This Bond will be governed by California law, and any dispute pursuant to this Bond will be venued in the Superior Court of Santa Clara County, and no other place. Surety will be responsible for City's

attorneys' fees and costs in any action to enforce the provisions of this Bond.

7. Effective Date; Execution. This Bond is entered into and is effective on _____, 20_____.

SURETY:

s/ _____

Name: _____

Title: _____

CONTRACTOR:

s/ _____

Name: _____

Title: _____

(Attach Acknowledgment with Notary
Seal and Power of Attorney)

APPROVED AS TO FORM:

By: _____
Donald A. Larkin, City Attorney

Date: _____

END OF WARRANTY BOND

GENERAL CONDITIONS

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Article 1 Definitions

1.1 Definitions. The following definitions apply to all of the Contract Documents unless otherwise indicated. Defined terms and titles of documents are capitalized in the Contract Documents, with the exception of the words “day,” “furnish,” “including,” “install,” “work day” or “working day.”

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

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

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

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

City Engineer means the City Engineer for the City and his or her authorized delegate(s) designated to oversee and manage the Project on City’s behalf.

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

Contract means the signed agreement between City and Contractor.

Contract Documents means, collectively, all of the documents listed as such in Section 2 of the Contract, including the Notice Inviting Informal Bids; the Instructions to Bidders; addenda, if any; the Bid Proposal, and attachments thereto; the Contract; the notice of award and notice to proceed; the payment and performance bonds; the General Conditions; the Special Conditions; the Project Drawings and Specifications; any Change Orders; and any other documents expressly made part of the Contract Documents.

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

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

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

Day means a calendar day unless otherwise specified.

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

Drawings means City-provided plans and graphical depictions of the Project requirements, and does not include Shop Drawings.

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

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

Final Payment means payment to Contractor of the unpaid Contract Price, including release of undisputed retention, less amounts withheld pursuant to the Contract Documents, including liquidated damages, up to one hundred twenty five percent (125%) of the amount of any unreleased stop notice, amounts subject to setoff, up to one hundred fifty percent (150%) of any unresolved third-party claim for which Contractor is required to indemnify City, and up to one hundred fifty percent (150%) of any amount in dispute as authorized by Public Contract Code Section 7107.

Furnish means to purchase and deliver to the Worksite designated for installation.

Hazardous Materials means any substance or material identified now or in the future as hazardous under any federal, state, or local law or regulation, or any other substance or material that may be considered hazardous or otherwise subject to statutory or regulatory requirements governing handling, disposal, or cleanup.

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

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

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

Project means the public works project referenced in the Contract.

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

RFI means a written request from Contractor for information from City or Design Professional.

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

Shop Drawings means drawings, plan details or other graphical depictions prepared by or on behalf of Contractor, and subject to City approval, which are

intended to provide details for fabrication, installation, and the like, of items required by or shown in the Drawings and Specifications.

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

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

Technical Specifications means Specifications.

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

Work Day or Working Day, whether or not capitalized, means a weekday which is not a holiday observed by City.

Worksite means the place or places where the Work is performed.

Article 2 Roles and Responsibilities

2.1 Design Professional.

(A) **General.** Design Professional, as City's representative, is responsible for the overall design of the Project, and to the extent authorized by City, may act on City's behalf to ensure performance of the Work in compliance with the Contract Documents.

(B) **Interpretation.** Design Professional will decide all questions pertaining to interpretation of the Drawings or Specifications. Design Professional's decision regarding interpretation of the Drawings or Specifications is final and conclusive.

2.2 Contractor.

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

(B) **Responsibility for the Work.** Contractor is responsible for supervising and directing all aspects of the Work to facilitate the efficient and timely completion of the Work. Contractor is solely responsible for, and required to exercise full control over, construction means, methods, techniques, sequences, procedures, and coordination of all portions of the Work with that of all other Contractors and Subcontractors, except to the extent that the Contract Documents provide other specific instructions.

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

(D) **On-Site Superintendent.** Contractor must, at all times during performance of the Work, provide a qualified and competent full-time superintendent, acceptable to City, and assistants, as necessary, who must be physically present at the Project site while any aspect of the Work is being performed. Failure to comply may result in temporary suspension of the Work, at Contractor's sole expense and with no extension of

Contract Time, until the superintendent is physically present to supervise the Work. Contractor must provide written notice to City, as soon as practicable, before replacing the superintendent.

(E) **Standards; Compliance.** Contractor must, at all times, ensure that the Work is performed in a good workmanlike manner following best practices and in full compliance with the Contract Documents and all applicable laws, regulations, codes, standards, and permits.

(F) **Responsible Party.** Contractor is solely responsible to City for the acts or omissions of any party or parties performing portions of the Work or providing equipment, materials or services for or on behalf of Contractor or its Subcontractors. If any person employed by Contractor fails or refuses to comply with the Engineer's directions regarding the performance of the Work, or is determined by the Engineer to be incompetent to perform the Work, or acts in a disorderly or improper manner at the Worksite, that person may be permanently dismissed from the Project at the request of the Engineer.

(G) **Correction of Defects.** Contractor must promptly correct, at Contractor's sole expense, any Work that is determined by City, Project Manager, or the Inspector to be deficient or defective in workmanship, materials, and equipment.

(H) **Contractor's Records.** Contractor must maintain all of its records relating to the Project in any form, including paper documents, photos, videos and electronic records. Project records subject to this provision include, but are not limited to, Project cost records and records relating to preparation of Contractor's bid.

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

(2) Contractor must continue to maintain its Project records in an organized manner for a period of four (4) years after City's

acceptance of the Project or following termination, whichever occurs first. Subject to prior notice to Contractor, City is entitled to inspect or audit any of Contractor's Project records relating to the Project or to investigate Contractor's plant or equipment during Contractor's normal business hours.

2.3 Subcontractors.

(A) **General.** All Work which is not performed by Contractor with its own forces must be performed by Subcontractors, subject to any limitations set forth in the Instructions to Bidders. City reserves the right to approve or reject any and all Subcontractors proposed to perform the Work.

(B) **Contractual Obligations.** Contractor must require every Subcontractor to be bound to the provisions of the Contract Documents as they apply to the Subcontractor's portion(s) of the Work, and to likewise bind their subcontractors or suppliers. Nothing in these Contract Documents creates a contractual relationship between a Subcontractor and City, but City is deemed to be a third-party beneficiary of the contract between Contractor and each Subcontractor.

Copies of subcontracts must be available to the Engineer upon request. Before a Subcontractor commences Work on the Project, Contractor must provide the Engineer a written statement with the name of the Subcontractor, a description of each portion of the Work performed by the Subcontractor, and the percentage of the overall Work to be performed by the Subcontractor.

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

(D) **Substitution of Subcontractor.** If Contractor requests substitution of a listed Subcontractor under Public Contract Code Section 4107, Contractor is solely responsible for all costs City incurs in responding to the request, including legal fees and costs to conduct a hearing.

2.4 Coordination of Work.

(A) **Concurrent Work.** City reserves the right to perform or to have performed other work on or adjacent to the Project site while the Work is being performed. Contractor is responsible for coordinating its Work with other work being performed on or adjacent to the Project site, and must

avoid hindering, delaying, or interfering with the work of other contractors and subcontractors. To the full extent permitted by law, Contractor must hold harmless and indemnify City, Design Professional, and Project Manager against any and all claims arising from or related to Contractor's avoidable, negligent, or willful hindrance of, delay to, or interference with the work of another contractor or subcontractor.

(B) **Defects.** Before proceeding with any portion of the Work affected by the construction or operations of others, Contractor must give Project Manager prompt written notification of any defects Contractor discovers which will prevent the proper execution of the Work. Failure to give notice of any such known defects will be deemed acknowledgement by Contractor that the work of others is not defective and will not prevent the proper execution of the Work.

2.5 Submittals. Unless otherwise specified, Contractor must submit to Project Manager for review and approval, all schedules, Shop Drawings, samples, product data and similar submittals required by the Contract Documents, or upon request by Project Manager. Unless otherwise specified, all submittals, including Requests for Information ("RFIs") are subject to the provisions of this Section.

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

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

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

(D) **Required Corrections.** If corrections are required, Contractor must promptly make and submit any required corrections in full conformance with the requirements of this Section.

(E) **Effect of Review and Approval.** Review and approval of a submittal by City will not relieve Contractor from complying with the requirements of the Contract Documents. Contractor is responsible for

any errors in any submittal, and review or approval of a submittal by City is not an assumption of risk or liability by City.

(F) **Enforcement.** Any Work performed or material used without prior approval of a required submittal will be performed at Contractor's risk, and Contractor may be required to bear the costs incident thereto, including the cost of removing and replacing such Work, repairs to other affected portions of the Work, and the cost of additional time or services required of the Design Professional, Project Manager, or Inspector.

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

Article 3 Contract Documents

3.1 Interpretation of Contract Documents.

(A) **Drawings and Specifications.** The Drawings and Specifications included in the Contract Documents are complementary. If Work is shown on one but not on the other, Contractor must perform the Work as though fully described on both, consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results. The Drawings and Specifications are deemed to include and require everything necessary and reasonably incidental to completion of the Work, whether or not particularly mentioned or shown. Contractor must perform all work and services and supply all things reasonably related to and inferable from the Contract Documents. In the event of a conflict between the Drawings and Specifications, the Specifications will control.

(B) **Duty to Notify.** If Contractor becomes aware of any ambiguity, discrepancy, omission, or error in the Drawings or Specifications, Contractor must immediately notify the Design Professional and request clarification of such, by submitting a written request for information (RFI) in the manner specified by City. The Design Professional's clarifications or interpretations will be final and binding.

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

(D) **Technical or Trade Terms.** Any terms that have well-known technical or trade meanings will be interpreted in accordance with those

meanings, unless otherwise specifically defined in the Contract Documents.

(E) **Measurements.** Contractor must verify all relevant measurements at the Worksite before ordering any material or performing any Work, and will be responsible for the correctness of those measurements.

3.2 Order of Precedence. Information included in one Contract Document but not in another will not be considered a conflict or inconsistency. Unless otherwise specified in the Special Conditions, in case of any conflict or inconsistency among the Contract Documents, the following order of precedence will apply, beginning from highest to lowest:

- (A) Change Orders;
- (B) Addenda;
- (C) Contract;
- (D) Notice to Proceed;
- (E) Notice of Award;
- (F) Special Conditions;
- (G) General Conditions;
- (H) Payment and Performance Bonds;
- (I) Specifications;
- (J) Drawings;
- (K) Contractor's Bid Proposal and attachments;
- (L) Notice Inviting Informal Bids;
- (M) Instructions to Bidders; and
- (N) Any documents prepared by and on behalf of a third party, that were not prepared specifically for this Project, e.g., Caltrans Standard Specifications or Caltrans Special Provisions.

3.3 Caltrans Standard Specifications. Any reference to or incorporation of the Standard Specifications of the State of California, Department of Transportation ("Caltrans"), including "Standard Specifications," "Caltrans Specifications," "State Specifications," or "CSS," means the most current edition of Caltrans' Standard Specifications, unless otherwise specified ("Standard Specifications"), including the most current amendments as of the date that Contractor's bid was submitted for this Project. The following provisions apply to use of or reference to the Standard Specifications:

(A) **Limitations.** None of the "General Provisions" of the Standard Specifications, i.e., Sections 1 through 9, applies to these Contract Documents with the exception of any specific provisions, if any, which are expressly stated to apply to these Contract Documents.

(B) **Conflicts or Inconsistencies.** If there is a conflict or inconsistency between any provision in the Standard Specifications and a provision of

these Contract Documents, as determined by City, the provision in the Contract Documents will govern.

(C) **Meanings.** Terms used in the Standard Specifications are to be interpreted as follows:

(1) Any reference to the "Engineer" is deemed to mean the City Engineer.

(2) Any reference to the "Special Provisions" is deemed to mean the Special Conditions.

(3) Any reference to the "Department" or "State" is deemed to mean City.

3.4 For Reference Only. Contractor is responsible for the careful review of any document, study, or report appended to the Contract Documents solely for informational purposes and identified as "For Reference Only." Nothing in any document, study, or report so appended and identified is intended to supplement, alter, or void any provision of the Contract Documents. However, Contractor is advised that City or its representatives may be guided by information or recommendations included in such reference documents, particularly when making determinations as to the acceptability of proposed materials, methods, or changes in the Work. Contractor must promptly notify City of any perceived or actual conflict between the Contract Documents and any document provided "For Reference Only."

Article 4

Bonds, Indemnity, and Insurance

4.1 Payment and Performance Bonds. Within ten (10) days following issuance of the notice of award, Contractor is required to provide a payment bond and a performance bond, each in the penal sum of not less than one hundred percent (100%) of the Contract Price, using the bond forms included with the Contract Documents. Each bond must be issued by a surety admitted in California. If an issuing surety cancels the bond or becomes insolvent, within seven (7) days following written notice from City, Contractor must substitute a surety acceptable to City. If Contractor fails to substitute an acceptable surety within the specified time, City may, at its sole discretion, withhold payment from Contractor until the surety is replaced to City's satisfaction, or terminate the Contract for default.

4.2 Indemnity. To the fullest extent permitted by law, Contractor must indemnify, defend, and hold harmless City, its agents and consultants, and Design Professional (individually, an "Indemnatee," and collectively the

“Indemnitees”) from and against any and all liability, loss, damage, claims, expenses (including, without limitation, attorney fees, expert witness fees, paralegal fees, and fees and costs of litigation or arbitration) (collectively, “Liability”) of every nature arising out of or in connection with the acts or omissions of Contractor, its employees, Subcontractors, representatives, or agents, in bidding or performing the Work or its failure to comply with any of its obligations under the Contract, except such Liability caused by the active negligence, sole negligence, or willful misconduct of an Indemnatee. This indemnity requirement applies to any Liability arising from alleged defects in the content or manner of submission of Contractor’s bid for the Contract. Contractor’s failure or refusal to timely accept a tender of defense pursuant to this provision will be deemed a material breach of this Contract. City will timely notify Contractor upon receipt of any third-party claim relating to the Contract, as required by Public Contract Code Section 9201.

4.3 Insurance. No later than ten (10) days following issuance of the notice of award, Contractor 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 Contractor and its Subcontractors relating to or arising from the performance of the Work, and must remain in full force and effect at all times during the period covered by the Contract until the date of recordation of the notice of completion. 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. All required insurance must be issued by a company licensed to do business in the State of California, and each such insurer must have an A.M. Best’s financial strength rating of “A” or better and a financial size rating of “VIII” or better. If Contractor fails to provide any of the required coverage in full compliance with the requirements of the Contract Documents, City may, at its sole discretion, purchase such coverage at Contractor’s expense and deduct the cost from payments due to Contractor, or terminate the Contract for default. Contractor further understands that City reserves the right to modify the insurance requirements set forth herein, with thirty (30) days’ notice provided to Contractor, at any time as deemed necessary to protect the interests of City.

(A) **Policies and Limits.** The following insurance policies and limits are required for this Contract unless otherwise specified in the Special Conditions:

- (1) **Commercial General Liability Insurance (“CGL”).** Contractor shall maintain CGL and shall include coverage for liability arising from Contractor’s or its Subcontractor’s acts or omissions in the performance of the Work against claims and liabilities for personal injury, death, or property damage providing protection in the minimum amount of: (i) two million dollars (\$2,000,000.00) combined single limit each occurrence and either a general aggregate limit of four million dollars (\$4,000,000.00) or a general aggregate limit of two million dollars (\$2,000,000.00) as applied on a “per project” or “per location” basis, or (ii) the maximum amount of such insurance available to Contractor under Contractor’s combined insurance policies (including any excess or “umbrella” policies), whichever is greater.
- a. CGL policy may not exclude explosion, collapse, underground excavation hazard, or removal of lateral support.
 - b. CGL policy must include contractor’s protected coverage, blanket contractual, and completed operations.
- (2) **Builder’s Risk Insurance:** The Builder’s Risk Insurance policy must be issued on occurrence basis, for all-risk coverage (including Flood and Earthquake) on a one hundred percent (100%) completed value basis on the insurable portion of the Project for the benefit of City.
- (3) **Workers’ Compensation Insurance and Employer’s Liability:** Contractor shall maintain Workers Compensation coverage, as required by law. The policy must comply with the requirements of the California Workers’ Compensation Insurance and Safety Act and provide protection in the minimum amount of: (i) One Million Dollars (\$1,000,000.00) for any one accident or occurrence, or (ii) the maximum amount of such insurance available to Contractor under Contractor’s combined insurance policies (including any excess or “umbrella” policies), whichever is greater. If Contractor is self-insured, Contractor must provide its Certificate of Permission to Self-Insure, duly authorized by the Department of Industrial Relations.
- (4) **Automobile Liability:** Contractor shall maintain Automobile Liability covering all owned, non-owned and hired automobiles (if Contractor does not own automobiles, then Contractor shall maintain Hired/Non-owned Automobile Liability) against claims

and liabilities for personal injury, death, or property damage providing protection in the minimum amount of: (i) One Million Dollars (\$1,000,000.00) combined single limit, or (ii) the maximum amount of such insurance available to Contractor under Contractor's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

- (5) **Pollution (Environmental) Liability:** If the performance of Contractor's work or service under this Contract involves hazardous materials, contaminated soil disposal, and/or a risk of accidental release of fuel oil, chemicals or other toxic gases or hazardous materials, Contractor shall procure and maintain Pollution Liability covering Contractor's liability for bodily injury, property damage and environmental damage resulting from pollution and related cleanup costs arising out of the work or services to be performed under this 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 Contractor under Contractor's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

(6) **Professional Liability:**

- a. If the performance of Contractor's work or service under this Contract involves professional and/or technical services (examples include, but are not limited to, architects, engineers, land surveyors, legal services, and appraisers), Contractor shall procure and maintain either a claims made or occurrence Errors and Omission liability insurance in the minimum amount of: (i) One Million Dollars (\$1,000,000.00) each claim, or (ii) the maximum amount of such insurance available to Contractor under Contractor's combined insurance policies (including any excess or "umbrella" policies), whichever is greater. Further, if Contractor maintains a claims-made policy, Contractor shall provide written evidence of such insurance to City for at least five (5) years after the completion of work performed under this Contract.
- b. If the performance of Contractor's work or service under this Contract relates to Information Technology or related services (examples include, but are not limited to computer programmers, hardware engineers, or other systems

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

(B) **Required Endorsements.** Contractor must provide proof of the following endorsements, listed for each policy for which endorsements are required, as outlined below:

- (1) For all Policies except Builder's Risk and Professional Liability:
 - a. "Waiver of Subrogation" endorsements providing that the carrier agrees to waive any right of subrogation it may have against the City of Morgan Hill and City's elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers.
- (2) General Liability, Automobile, and Pollution Liability:
 - a. "Additionally Insured" - The City of Morgan Hill, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers are named as additional insureds on a form at least as broad as ISO Form CG 20 10 for ongoing operations and at least as broad as ISO Form CG 20 37 for completed operations.
 - b. "Primary and Non-Contributing" - Insurance shall be endorsed to be primary and non-contributory and will not seek contribution from the City's insurance or self-insurance and shall be at least as broad as ISO Form CG 20 01;
- (3) General Liability:
 - a. "Separation of Insureds" endorsements stating that the inclusion of more than one insured will not operate to impair the rights of one insured against another, and the coverages afforded will apply as though separate policies have been issued to each insured.

(C) **Subcontractors.** Contractor must ensure that each Subcontractor is required to maintain the same insurance coverage required under this Section 4.3, with respect to its performance of Work on the Project,

including those requirements related to the additional insureds and waiver of subrogation.

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

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

- 4.4 Warranty Bond.** As a condition precedent to Final Completion, Contractor must submit a warranty bond, using the form provided by City, to guarantee its Work as specified in Article 11, Completion and Warranty Procedures. The warranty bond must be issued by a surety admitted in California for fifty percent (50%) of the final Contract Price or as otherwise specified in the Contract Documents. If an issuing surety cancels the bond or becomes insolvent, within seven (7) days following written notice from City, Contractor must substitute a surety acceptable to City.

Article 5

Contract Time

- 5.1 Time is of the Essence.** Time is of the essence in Contractor's performance and completion of the Work, and Contractor must diligently prosecute the Work and complete it within the Contract Time.

(A) **General.** Contractor must commence the Work on the date indicated in the notice to proceed, and must fully complete the Work, in strict compliance with all requirements of the Contract Documents, and within the Contract Time.

(B) **Rate of Progress.** Contractor and its Subcontractors must, at all times, provide workers, materials, and equipment sufficient to maintain the rate of progress necessary to ensure full completion of the Work within the Contract Time. If City determines that Contractor is failing to prosecute the Work at a sufficient rate of progress, City may, in its sole discretion, direct

Contractor to provide additional workers, materials, or equipment, or to work additional hours or days without additional cost to City, in order to achieve a rate of progress satisfactory to City. If Contractor fails to comply with City's directive in this regard, City may, at Contractor's expense, separately contract for additional workers, materials, or equipment or use City's own forces to achieve the necessary rate of progress. Alternatively, City may terminate the Contract based on Contractor's default.

5.2 Schedule Requirements. All schedules must be prepared using standard scheduling software acceptable to City, and must provide schedules in electronic and paper form as requested.

(A) ***As-Planned (Baseline) Schedule.*** Within fifteen (15) calendar days following issuance of the notice of award (or as otherwise specified in the Special Conditions), Contractor must submit to City for review and approval an as-planned (baseline) schedule showing in detail how Contractor plans to perform and fully complete the Work within the Contract Time using critical path methodology. The as-planned schedule must include the work of all trades required for the Work, and must be sufficiently comprehensive and detailed to enable progress to be monitored on a day-by-day basis. For each activity, the as-planned schedule must be dated, provided in the format specified in the Contract Documents or as required by City, and must include, at a minimum, a description of the activity, the start and completion dates, and the duration.

(B) ***Progress Schedules.*** Contractor must submit an updated progress schedule and three (3) week look-ahead schedule, in the format specified by City, for review and approval with each application for a progress payment. The progress schedule must show how the actual progress of the Work to date compared to the as-planned schedule, and must identify any actual or potential impacts to the critical path.

(C) ***Recovery Schedule.*** If City determines that the Work is more than one (1) week behind schedule, within seven (7) days following written notice of such determination, Contractor must submit a recovery schedule, showing how Contractor intends to perform and complete the Work within the Contract Time, based on actual progress to date.

(D) ***Effect of Approval.*** Contractor and its Subcontractors must perform the Work in accordance with the most current approved schedule unless otherwise directed by City. City approval of a schedule does not operate to extend the time for completion of the Work or any component of the Work, and will not affect City's right to assess liquidated damages for Contractor's unexcused delay in completing the Work within the Contract Time.

(E) **Posting.** Contractor must at all times maintain a copy of the most current approved progress or recovery schedule posted prominently in its on-site office.

(F) **Reservation of Rights.** City reserves the right to direct the sequence in which the Work must be performed or to make changes in the sequence of the Work in order to facilitate the performance of work by City or others, or to facilitate City's use of its property. The Contract Time or Contract Price may be adjusted to the extent such changes in sequence actually increase or decrease Contractor's time or cost to perform the Work.

(G) **Authorized Working Days and Times.** Contractor is limited to working Monday through Friday, excluding City of Morgan Hill-observed holidays, during City's normal business hours, except as expressly provided in the Special Conditions, or as authorized in writing by City. City reserves the right to charge Contractor for additional costs incurred by City due to Work performed on days or during hours not expressly authorized in these Contract Documents, including reimbursement of costs incurred for inspection, testing, and construction management services.

5.3 Delay and Extensions of Contract Time.

(A) **Excusable Delay.** The Contract Time may be extended if Contractor encounters an unavoidable delay in completing the Work within the Contract Time due to causes completely beyond Contractor's control, and which Contractor could not have avoided or mitigated through planning, foresight, and diligence ("Excusable Delay"). Grounds for Excusable Delay may include fire, earthquake, acts of terror or vandalism, epidemic, unforeseeable adverse government actions, unforeseeable actions of third parties, encountering unforeseeable hazardous materials, unforeseeable site conditions, suspension for convenience under Article 13, or unusually severe weather.

(B) **Non-Excusable Delay.** Excusable Delay does not include delay that is concurrent with non-Excusable Delay, and does not include delay caused by:

(1) weather conditions which are normal for the location of the Project, as determined by reliable records, including monthly rainfall averages, for the preceding ten (10) years;

(2) Contractor's failure to order equipment and materials sufficiently in advance of the time needed for timely completion of the Work;

(3) Contractor's failure to provide adequate notification to utility companies for connections or services necessary for the timely performance and completion of the Work;

(4) foreseeable conditions Contractor could have ascertained from reasonably diligent inspection of the Worksite or review of the Contract Documents; or

(5) Contractor's financial inability to perform the Work, including insufficient funds to pay its Subcontractors or suppliers.

(C) ***Request for Extension of Contract Time.*** A request for an extension of time and associated delay costs must be submitted in writing to City within ten (10) calendar days of the date the delay is first encountered, even if the duration of the delay is not yet known at that time, or will be deemed waived. In addition to complying with the requirements of this Article 5, the request must be submitted in compliance with the Change Order request procedures in Article 6, below. Strict compliance with these requirements is necessary to ensure that any delay or delay costs may be mitigated as soon as possible, and to facilitate cost-efficient administration of the Project and timely performance of the Work. Any request for an extension of time or delay costs that does not strictly comply with the requirements of Article 5 and Article 6 will be deemed waived.

(1) ***Required Contents.*** The request must include a detailed description of the cause(s) of the delay, and must also describe the measures that Contractor has taken to mitigate the delay and/or its effects, including efforts to mitigate the cost impact of the delay, e.g., by workforce management, change in sequencing, etc. If the delay is still ongoing at the time the request is submitted, the request should also include Contractor's plan for continued mitigation of the delay or its effects.

(2) ***Delay Days and Costs.*** The request must specify the number of days of Excusable Delay claimed, or provide a realistic estimate if the duration of the delay is not yet known. The request must specify the amount of any delay-related costs that are claimed, or provide a realistic estimate if the amount is not yet known. Any estimate of delay duration or cost must be updated in writing and submitted with all required supporting documentation as soon as the actual time and cost is known.

(3) ***Supporting Documentation.*** The request must also include any and all supporting documentation necessary to evidence the delay and its actual impacts, including schedule and cost impacts,

including a time impact analysis using critical path methodology, and demonstrating unavoidable delay to Final Completion. The time impact analysis must be submitted in a form or format acceptable to City.

(4) *Burden of Proof.* Contractor has the burden of proving 1) that the delay was an Excusable Delay, as defined above, 2) that Contractor has made reasonable efforts to mitigate the delay and its schedule and cost impacts, 3) that the delay will unavoidably result in delaying Final Completion, and 4) that any delay costs claimed by Contractor were actually incurred and were reasonable under the circumstances.

(5) *Recoverable Costs.* If Contractor is granted an extension of time for Excusable Delay, recompense for delay costs will be limited to actual, direct, reasonable, and substantiated costs, and will not include home office overhead, or markup for overhead and profit.

(6) *Legal Compliance.* Nothing in this provision is intended to require the waiver, alteration, or limitation of the applicability of Public Contract Code Section 7102.

(7) *No Waiver.* Any grant of an extension of time or delay costs due to an Excusable Delay will not operate as a waiver of City's right to assess liquidated damages for unexcused delay.

(8) *Dispute Resolution.* In the event of a dispute over entitlement to an extension of time or delay costs, Contractor may not stop working pending resolution of the dispute, but must continue to comply with its duty to diligently prosecute the performance and timely completion of the Work. Contractor's sole recourse for an unresolved dispute based on City's rejection of a Change Order request for an extension of time or delay costs is to comply with the Dispute Resolution provisions set forth in Article 12, below.

5.4 Liquidated Damages. It is expressly understood that if Final Completion is not achieved within the Contract Time, City will suffer damages which are difficult to determine and accurately specify. Pursuant to Public Contract Code section 7203, if Contractor fails to achieve Final Completion within the Contract Time, City may charge Contractor in the amount specified in the Contract for each day that Final Completion is delayed beyond the Contract Time, as liquidated damages and not as a penalty.

(A) **Liquidated Damages.** Liquidated damages will not be assessed for any Excusable Delay, as set forth above.

(B) **Milestones.** Liquidated damages will also be separately assessed for failure to meet milestones specified elsewhere in the Contract Documents.

(C) **Setoff.** City is entitled to set off the amount of liquidated damages assessed against any payments otherwise due to Contractor, including setoff against release of retention. If there are insufficient Contract funds remaining to cover the full amount of liquidated damages assessed, City is entitled to recover the balance from Contractor or its performance bond surety.

(D) **Occupancy or Use.** Occupancy or use of the Project in whole or in part prior to Final Completion does not constitute City's acceptance of the Project and will not operate as a waiver of City's right to assess liquidated damages for Contractor's unexcused delay in achieving Final Completion.

Article 6

Contract Modification

6.1 Changes in Work. City reserves the right to make changes in the Work without invalidating the Contract. City may direct or Contractor may request changes in the Work, and any such changes will be formalized in a Change Order, which may include commensurate changes in the Contract Price or Contract Time as applicable. Contractor must promptly comply with City-directed changes in the Work in accordance with the intent of the original Contract Documents, even if Contractor and City have not yet reached agreement as to adjustments to the Contract Price or Contract Time.

(A) **City-Directed Change.** In the event of a dispute over entitlement to or the amount of a change in Contract Time or a change in Contract Price related to a City-directed change, Contractor must perform the Work as directed and may not delay its work or cease work pending resolution of the dispute, but must continue to comply with its duty to diligently prosecute the performance and timely completion of the Work, including the Work in dispute.

(B) **Contractor's Obligations.** In the event that City and Contractor dispute whether a portion or portions of the Work are already required by the Contract Documents as opposed to changed or extra Work, Contractor must perform the Work as directed and may not delay its Work or cease Work pending resolution of the dispute, but must continue to comply with

its duty to diligently prosecute the performance and timely completion of the Work, including the Work in dispute.

(C) **Remedy for Non-Compliance.** Contractor's failure to promptly comply with an City-directed change is deemed a material breach of the Contract, and in addition to all other remedies available to it, City may, at its sole discretion, hire another contractor or use its own forces to complete the disputed Work at Contractor's sole expense, and may deduct the cost from the Contract Price.

(D) **Dispute Resolution.** Contractor's sole recourse for an unresolved dispute related to changes in the Work is to comply with the dispute resolution provisions set forth in Article 12, below.

6.2 Contractor Change Order Requests. Contractor must submit a request or proposal for a change in the Work or a change in the Contract Price or Contract Time as a written Change Order request or proposal.

(A) **Time for Submission.** Any request for a change in the Contract Price must be submitted in writing to Project Manager within ten (10) calendar days of the date that Contractor first encounters the circumstances, information or conditions giving rise to the Change Order request, even if the total amount of the requested change in the Contract Price or impact on the Contract Time is not yet known at that time.

(B) **Required Contents.** Any Change Order request or proposal submitted by Contractor must include a complete breakdown of actual or estimated costs and credits, and must itemize labor, materials, equipment, taxes, insurance, and subcontract amounts. Any estimated cost must be updated in writing as soon as the actual amount is known.

(C) **Required Documentation.** All claimed costs must be fully documented, and any related request for an extension of time or delay-related costs must be included at that time and in compliance with the requirements of Article 5 of the General Conditions.

(D) **Required Form.** Contractor must use City's form(s) for submitting all Change Order requests or proposals, unless otherwise specified by City.

(E) **Certification.** All Change Order requests must be signed by Contractor and must include the following certification:

"The undersigned Contractor certifies under penalty of perjury that its statements and representations in this Change Order request are true and correct. Contractor warrants that this Change Order

request is comprehensive and complete, and agrees that any costs, expenses, or time extension request not included herein is deemed waived. Contractor understands that submission of claims which have no basis in fact or which Contractor knows to be false may violate the False Claims Act, as set forth in Government Code Sections 12650 et seq.”

6.3 Adjustments to Contract Price. The amount of any increase or decrease to the Contract Price will be determined based on one (1) of the following methods in the order provided:

(A) **Unit Pricing.** Amounts previously provided by Contractor in the form of unit prices, either in a bid schedule or schedule of values, will apply if unit pricing has previously been provided in Contractor’s accepted bid schedule or schedule of values for the affected Work;

(B) **Lump Sum.** A mutually agreed upon lump sum;

(C) **Time and Materials.** On a time and materials basis, which may include a not-to-exceed limit, calculated as the total of the following sums:

- (1) All direct labor costs plus fifteen percent (15%) for overhead and profit;
- (2) All direct material costs, including sales tax, plus fifteen percent (15%) for overhead and profit;
- (3) All direct plant and equipment rental costs, plus fifteen percent (15%) for overhead and profit;
- (4) All direct subcontract costs plus ten percent (10%) for overhead and profit; and
- (5) Increased bond or insurance premium costs computed at one and one half percent (1½%) of total of the previous four (4) sums.

6.4 Unilateral Change Order. If City disagrees with the amount of compensation or extension of time that Contractor has requested, City may elect to issue a unilateral Change Order, directing performance of the Work, and authorizing a change in the Contract Price or Contract Time in the amount City believes is merited. Contractor’s sole recourse to dispute the terms of a unilateral Change Order is to submit a timely Claim pursuant to Article 12, below.

- 6.5 Non-Compliance Deemed Waiver.** Contractor waives its entitlement to any increase in the Contract Price or Contract Time if Contractor fails to full comply with the provisions of this Article. Contractor will not be paid for unauthorized extra work.

Article 7

General Construction Provisions

7.1 Permits and Taxes.

(A) **General.** Contractor must obtain and pay for any and all permits, fees, or licenses required to perform the Work, unless otherwise indicated in the Contract Documents. Contractor must cooperate with and provide notifications to government agencies with jurisdiction over the Project, as may be required. Contractor must provide City with copies of all notices, permits, licenses, and renewals required for the Work.

(B) **Federal Excise Tax.** Contractor must pay for all taxes on labor, material and equipment, except Federal Excise Tax to the extent that City is exempt from Federal Excise Tax.

7.2 Temporary Facilities. Contractor must provide, at Contractor's sole expense, any and all temporary facilities, including onsite office, sanitary facilities, storage, scaffolds, barricades, walkways, and any other temporary structure required to safely perform the Work along with any utility services incidental thereto.

(A) **Standards.** Such structures must be safe and adequate for the intended use, and installed and maintained in accordance with all applicable federal, state, and local laws, codes, and regulations.

(B) **Removal and Repair.** Contractor must promptly remove all such temporary facilities when they are no longer needed or upon completion of the Work, whichever comes first. Contractor must promptly repair any damage to City's property caused by the installation, use, or removal of the temporary facilities, and must promptly restore the property to its original or intended condition.

(C) **Additional Requirements.** Additional provisions pertaining to temporary facilities may be included in the Specifications or Special Conditions.

7.3 Signs. No signs may be displayed on or about City's property, except signage which is required by law or by the Contract Documents, without City's prior written approval as to content, size, design, and location.

7.4 Protection of Work and Property.

(A) **General.** Contractor is responsible at all times for protecting the Work and materials and equipment to be incorporated into the Work from damage until the Notice of Completion has been recorded. Except as specifically authorized by City, Contractor must confine its operations to the area of the Project site indicated in the Drawings. Contractor is liable for any damage caused to City's real or personal property, the real or personal property of adjacent property owners, or the work or personal property of other contractors working for City.

(B) **Unforeseen Conditions.** If Contractor encounters facilities, utilities, or other unknown conditions not shown on or reasonably inferable from the Drawings or apparent from inspection of the Project site, Contractor must promptly notify Project Manager, and must avoid taking any action which could cause damage to the facilities or utilities pending further direction from Project Manager. If Project Manager's subsequent direction to Contractor affects Contractor's cost or time to perform the Work, Contractor may submit a Change Order request as set forth in Article 6, above.

(C) **Support; Adjacent Properties.** Contractor must provide, install, and maintain all shoring, bracing, underpinning, etc., necessary to provide support to City's property and adjacent properties and improvements thereon. Contractor must provide notifications to adjacent property owners as may be required by law.

7.5 Noninterference. Contractor must take reasonable measures to avoid interfering with City's use of its property at or adjacent to the Project site, including use of roadways, entrances, parking areas, walkways, and structures.

7.6 Materials and Equipment.

(A) **General.** Unless otherwise specified, all materials and equipment required for the Work must be new and of the best grade for the intended purpose, and furnished in sufficient quantities to ensure the proper and expeditious performance of the Work. Unless otherwise specified, all materials and equipment required for the Work are deemed to include all components required for complete installation and intended operation, and must be installed in accordance with the manufacturer's recommendation. Contractor is responsible for all shipping, handling, and storage costs associated with the materials and equipment required for the Work, and is responsible for protecting the Work and all of the required materials, supplies, tools and equipment at Contractor's sole cost until City accepts the Project.

(B) **City-Provided.** If the Work includes installation of materials or equipment to be provided by City, Contractor is solely responsible for the proper examination, handling, storage, and installation of such items in accordance with the Contract Documents. Contractor must promptly notify City of any defects discovered in City-provided materials or equipment. Contractor is solely responsible for any loss of or damage to such items which occurs while the items are in Contractor's custody and control, the cost of which may be offset from the Contract Price and deducted from any payment(s) due to Contractor.

(C) **Intellectual Property Rights.** Contractor must, at its sole expense, obtain any authorization required for use of patented or copyright protected materials, equipment, devices or processes that are incorporated into the Work. Contractor's indemnity obligation in Article 4, applies to any claimed violation of intellectual property rights in violation of this provision.

7.7 Substitutions.

(A) **"Or Equal."** Any specification designating a material, product, thing, or service by specific brand or trade name, followed by the words "or equal," is intended only to indicate quality and type of item desired, and Contractor may request use of any equal material, product, thing, or service.

(B) **Request for Substitution.** A request for substitution must be submitted to Project Manager for approval within the applicable time period provided in the Contract Documents. If no time period is specified, the substitution request may be submitted any time within thirty five (35) days after the date of award of the Contract, or sufficiently in advance of the time needed to avoid delay of the Work, whichever is earlier.

(C) **Substantiation.** All data substantiating the proposed substitute as an "equal" item must be submitted with the written request for substitution. Contractor's failure to timely provide necessary substantiation is ground for rejection of the proposed substitution, without further review.

(D) **Burden of Proving Equality.** Contractor has the burden of proving the equality of the proposed substitution. City has sole discretion to determine whether a proposed substitution is "equal," and City's determination is final.

(E) **Approval or Rejection.** If the proposed substitution is approved, Contractor is solely responsible for any additional costs associated with the substituted item(s). If the proposed substitution is rejected, Contractor must, without delay, install the item specified.

(F) **Contractor's Obligations.** City's review of a proposed substitution will not relieve Contractor from any of its obligations under the Contract Documents. In the event Contractor makes an unauthorized substitution, Contractor will be solely responsible for all resulting cost impacts, including the cost of removal and replacement and the impact to other design elements.

7.8 Testing and Inspection.

(A) **General.** All materials, equipment, and workmanship used in the Work are subject to inspection by Inspector at all times and locations during construction and/or fabrication. All manufacturers' application or installation instructions must be provided to the Inspector at least ten (10) days prior to the first such application or installation. Contractor must, at all times, make the Work available for inspection.

(B) **Scheduling and Notification.** Contractor must schedule all tests required by the Contract Documents in time to avoid any delay to the progress of the Work. Contractor must provide timely notice to all necessary parties as specified in the Contract Documents.

(C) **Responsibility for Costs.** City will bear the initial cost of testing to be performed by independent testing consultants retained by City, subject to the following exceptions:

(1) Contractor will be responsible for the costs of any subsequent tests which are required to substantiate compliance with the Contract Documents, and any associated remediation costs.

(2) Contractor will be responsible for inspection costs, at City's established rates, for inspection time lost because the Work is not ready or Contractor fails to appear for a scheduled inspection.

(3) In addition, if any portion of the Work which is subject to testing is covered or concealed by Contractor prior to testing, Contractor will bear the cost of making that portion of the Work available for the testing required by the Contract Documents, and any associated repair or remediation costs.

(D) **Contractor's Obligations.** Any Work that fails to comply with the requirements of the Contract Documents must be promptly repaired, replaced, or corrected by Contractor, at Contractor's sole expense, even if that Work was previously inspected or included in a progress payment. Contractor is solely responsible for any delay occasioned by remediation

of noncompliant Work. Inspection of the Work does not in any way relieve Contractor of its obligations to perform the Work as specified.

(E) ***Distant Locations.*** If required off-site testing or inspection must be conducted at a location more than 100 miles from the Project site, Contractor is solely responsible for the additional travel costs required for testing and/or inspection at such locations.

(F) ***Final Inspection.*** The provisions of this Section 7.8 apply to final inspection under Article 11, Completion and Warranty Provisions.

7.9 Clean up. Contractor must regularly remove debris and waste materials and maintain the Worksite in clean and neat condition.

(A) ***General.*** Prior to discontinuing work in an area, Contractor must clean the area and remove all rubbish along with its construction equipment, tools, machinery, waste and surplus materials. Contractor must, at all times, minimize and confine dust and debris resulting from construction activities.

(B) ***Completion.*** At the completion of the Work, Contractor must remove from the Worksite all of its equipment, tools, surplus materials, waste materials and debris. Before demobilizing from the Worksite, Contractor must ensure that all surfaces are cleaned, sealed, waxed, or finished as applicable, and that all marks, stains, paint splatters, and the like have been properly removed from the completed Work and the surrounding areas.

(C) ***Non-Compliance.*** If Contractor fails to commence compliance with its cleanup obligations within two (2) business days following written notification from City or its representative, City may undertake appropriate cleanup measures without further notice and the cost will be deducted from any amounts due or to become due Contractor.

7.10 Instructions and Manuals. Contractor must provide three (3) copies each of all instructions and manuals required by the Contract Documents, unless otherwise specified. These must be complete as to drawings, details, parts lists, performance data, and other information that may be required for City to easily maintain and service the materials and equipment installed for this Project.

(A) ***Submittal Requirements.*** All manufacturers' application or installation instructions must be provided to the Inspector at least ten (10) days prior to the first such application. The instructions and manuals, along with any required guarantees, must be delivered to City for review.

(B) **Instruction of Personnel.** Contractor or its Subcontractors must instruct City's personnel in the operation and maintenance of any complex equipment as a condition precedent to Final Completion, if required in the Contract Documents.

7.11 As-built Drawings. Contractor and its Subcontractors must maintain on the Worksite a separate complete set of the Drawings which will be used solely for the purpose of recording changes made in any portion of the Work in order to create accurate record drawings at the end of the Project.

(A) **Duty to Update.** The as-built drawings must be updated as changes occur, on a daily basis if necessary. Progress payments may be delayed, in whole or in part, until the as-built drawings are brought up to date to the satisfaction of City. Actual locations to scale must be identified on the as-built drawings for all runs of mechanical and electrical work, including all site utilities, etc., installed underground, in walls, floors, or otherwise concealed. Deviations from the original Drawings must be shown in detail. The location of all main runs, whether piping, conduit, ductwork, drain lines, etc., must be shown by dimension and elevation.

(B) **Final Completion.** Contractor must verify that all changes in the Work are depicted in the as-built drawings and must deliver the complete set of as-built drawings to City for review and approval as a condition precedent to Final Completion.

7.12 Existing Utilities. As required by Government Code Section 4215, if, during the performance of the Work, Contractor discovers utility facilities not identified by City in the Contract Documents, Contractor must immediately provide written notice to City and the utility. City assumes responsibility for the timely removal, relocation, or protection of existing main or trunkline utility facilities located on the Project site, if those utilities are not identified in the Contract Documents. Contractor will be compensated in accordance with the provisions of the Contract Documents for the costs of locating, repairing damage not due to Contractor's failure to exercise reasonable care, and removing or relocating such utility facilities not indicated in the Drawings or Specifications with reasonable accuracy, and for equipment on the Project necessarily idled during such work. Contractor will not be assessed liquidated damages for delay in completion of the Work, to the extent such delay was caused by City's failure to provide for removal or relocation of the utility facilities.

7.13 Notice of Excavation. Government Code Section 4216.2, requires that except in an emergency, Contractor must contact the appropriate regional notification center, or Underground Services Alert at 800-642-2444 (for Northern California), at least two (2) working days, but not more than

fourteen (14) calendar days before starting any excavation if the excavation will be conducted in an area that is known, or reasonably should be known, to contain subsurface installations, and if practical, Contractor must delineate with white paint or other suitable markings the area to be excavated.

7.14 Trenching and Excavations.

(A) ***Duty to Notify.*** Contractor must promptly, and before the following conditions are disturbed, provide written notice to City if Contractor finds any of the following conditions:

(1) Material that Contractor believes may be a hazardous waste, as defined in Section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with the provisions of existing law;

(2) Subsurface or latent physical conditions at the Worksite differing from those indicated by information about the Worksite made available to bidders prior to the deadline for submitting bids; or

(3) Unknown physical conditions at the Worksite of any unusual nature, materially different from those ordinarily encountered and generally recognized as inherent in work of the character required by the Contract Documents.

(B) ***City Investigation.*** City will promptly investigate the conditions and if City finds that the conditions do materially differ or do involve hazardous waste, and cause a decrease or increase in Contractor's cost of, or the time required for, performance of any part of the Work, City will issue a Change Order.

(C) ***Disputes.*** In the event that a dispute arises between City and Contractor regarding any of the conditions specified in subsection (A) above, Contractor will not be excused from any scheduled completion date provided for in the Contract Documents, but must proceed with all Work to be performed under the Contract. Contractor will retain any and all rights provided either by the Contract or by law which pertain to the resolution of disputes between Contractor and City.

7.15 Trenching of Five Feet or More. As required by Labor Code Section 6705, if the Contract Price exceeds Twenty Five Thousand Dollars (\$25,000.00) and the Work includes the excavation of any trench or trenches of five (5) feet or more in depth, a detailed plan must be submitted to City or its civil or structural engineer, for acceptance in

advance of the excavation. The detailed plan must show the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during the excavation. If the plan varies from the shoring system standards, it must be prepared by a registered civil or structural engineer. Use of a shoring, sloping, or protective system less effective than that required by the Construction Safety Orders is prohibited.

7.16 New Utility Connections. City will pay connection charges and meter costs for new permanent utilities required by the Contract Documents, if any. Contractor must notify City sufficiently in advance of the time needed to request service from each utility provider so that connections and services are initiated in accordance with the Project schedule.

7.17 Lines and Grades. Contractor is required to use any benchmark provided by the Engineer. Unless otherwise specified in the Contract Documents, Contractor must provide all lines and grades required to execute the Work.

7.18 Historic or Archeological Items.

(A) **Contractor's Obligations.** Contractor must ensure that all persons performing Work at the Project site are required to immediately notify Project Manager, upon discovery of any potential historic or archeological items, including historic or prehistoric ruins, burial grounds, archaeological or vertebrate paleontological site, including fossilized footprints or other archeological, paleontological or historical feature on the Project site (collectively, "Historic or Archeological Items").

(B) **Discovery; Cessation of Work.** Upon discovery of any potential Historic or Archeological Items, Work must be stopped within an eighty five (85) foot radius of the find and may not resume until authorized in writing by City. If required by City, Contractor must assist in protecting or recovering the Historic or Archeological Items, any such assistance to be compensated as extra work on a time and materials basis under Article 6, Contract Modification. Any suspension of Work required due to discovery of Historic or Archeological Items will be treated as a suspension for convenience under Article 13.

7.19 Environmental Control. Contractor must not pollute any drainage course or its tributary inlets with fuels, oils, bitumens, acids, insecticides, herbicides or other harmful materials. Contractor and its Subcontractors must at all times in the performance of the Work comply with all applicable federal, state, and local laws and regulations concerning pollution of waterways.

(A) **Stormwater Permit.** Contractor must comply with all applicable conditions of the State Water Resources Control Board National Pollutant Discharge Elimination System General Permit for Waste Discharge Requirements for Discharges of Stormwater Runoff Associated with Construction Activity (“Stormwater Permit”).

(B) **Contractor’s Obligations.** If required for the Work, a copy of the Stormwater Permit is on file in City’s principal administrative offices, and Contractor must comply with the same without adjustment of the Contract Price or the Contract Time. Contractor must timely and completely submit required reports and monitoring information required by the conditions of the Stormwater Permit, Contractor must comply with all other applicable state, municipal or regional laws, ordinances, rules or regulations governing discharge of stormwater, including applicable municipal stormwater management programs.

Article 8 Payment

8.1 Schedule of Values. Prior to submitting its first application for payment, Contractor must prepare and submit to Project Manager a schedule of values apportioned to the various divisions and phases of the Work. Each line item contained in the schedule of values must be assigned a value such that the total of all items equals the Contract Price. The items must be sufficiently detailed to enable accurate evaluation of the percentage of completion claimed in each application for payment, and the assigned value consistent with any itemized or unit pricing submitted with Contractor’s bid.

8.2 Progress Payments. Following the last day of each month, or as otherwise required by the Special Conditions or Specifications, Contractor will submit to Project Manager a monthly application for payment for Work performed during the preceding month based on the estimated value of the Work performed during that preceding month.

(A) **Application for Payment.** Each application for payment must be itemized to include labor, materials, and equipment incorporated into the Work, and materials and equipment delivered to the Worksite, as well as authorized and approved Change Orders. Each pay application must be supported by Contractor’s schedule of values and any other substantiating data required by the Contract Documents.

Each application for payment shall be accompanied by completed “Contract Balance Form,” a copy of which is provided at the end of Article 8.

(B) **Payment of Undisputed Amounts.** City will pay the undisputed amount due, as certified the Design Professional, within thirty (30) days after Contractor has submitted a complete and accurate payment application, subject to Public Contract Code Section 20104.50. City will deduct a percentage from each progress payment as retention, as set forth in Section 8.5, below, and may deduct additional amounts as set forth in Section 8.3, below.

8.3 Adjustment of Payment Application. City may adjust or reject a payment application, including application for Final Payment, in whole or in part, based upon any of the circumstances listed below. Contractor will be notified in writing of the basis for the adjustment, and will be promptly paid once the basis for that adjustment has been remedied and no longer exists.

(A) Contractor's unexcused failure to perform the Work as required by the Contract Documents, including correction or completion of punch list items;

(B) Loss or damage caused by Contractor or its Subcontractor(s) arising out of or relating to performance of the Work;

(C) Contractor's failure to pay its Subcontractors and suppliers when payment is due;

(D) Failure to timely correct rejected, nonconforming, or defective Work;

(E) Unexcused delay in performance of the Work;

(F) Any unreleased stop notice, retained as one hundred twenty five percent (125%) of the amount claimed;

(G) Failure to submit any required schedule or schedule update in the manner and within the time specified in the Contract Documents:

(H) Failure to maintain or submit as-built documents in the manner and within the time specified in the Contract Documents;

(I) Work performed without approved Shop Drawings, when approved Shop Drawings are required before proceeding with the Work;

(J) Contractor's payroll records are delinquent or inadequate; and

(K) Any other costs or charges that may be offset against payments due, as provided in the Contract Documents, including liquidated damages.

8.4 Acceptance of Work. Neither City's payment of progress payments nor its partial or full use or occupancy of the Project constitutes acceptance of any part of the Work.

8.5 Retention. City will retain five percent (5%) of the amount due on each progress payment, or the percentage stated in the Notice Inviting Informal Bids, whichever is greater, as retention to ensure full and satisfactory performance of the Work.

(A) **Substitution of Securities.** As provided by Public Contract Code Section 22300, Contractor may request in writing that it be allowed, at its sole expense, to substitute securities for the retention withheld by City. Any escrow agreement entered into pursuant to this provision must fully comply with Public Contract Code Section 22300, and will be subject to approval as to form by City's legal counsel.

(B) **Release of Undisputed Retention.** All undisputed retention, less any amounts that may be assessed as liquidated damages, retained for stop notices, or otherwise withheld under Section 8.3 or 8.6 will be released as Final Payment to Contractor no sooner than thirty five (35) days following recordation of the notice of completion, and no later than sixty (60) days following acceptance of the Project by City's governing body or authorized designee, or, if the Project has not been accepted, no later than sixty (60) days after the Project is otherwise considered complete under Public Contract Code Section 7107(c).

8.6 Setoff. City is entitled to set off any amounts due from Contractor against any payments due to Contractor. City's entitlement to setoff includes progress payments as well as Final Payment and release of retention.

8.7 Payment to Subcontractors and Suppliers. Each month, Contractor must promptly pay each Subcontractor and supplier the value of the portion of labor, materials, and equipment incorporated into the Work or delivered to the Worksite by the Subcontractor or supplier during the preceding month. Such payments must be made in accordance with the requirements of the law, and those of the Contract Documents and applicable subcontract or supplier contract.

(A) **Withholding for Stop Notice.** City will withhold one hundred twenty five percent (125%) of the amount claimed by an unreleased stop notice, a portion of which may be retained by City for the costs incurred in

handling the stop notice claim, including attorneys' fees and costs, as authorized by law.

(B) **Joint Checks.** City reserves the right to issue joint checks made payable to Contractor and its Subcontractors or suppliers. As a condition to release of payment by a joint check, the joint check payees may be required to execute a joint check agreement in a form provided or approved by City. The joint check payees will be jointly and severally responsible for the allocation and disbursement of funds paid by joint check. Payment by joint check will not be construed to create a contractual relationship between City and a Subcontractor or supplier of any tier beyond the scope of the joint check agreement.

8.8 Final Payment. Final Completion, acceptance of the Work by City, and recordation of the Notice of Completion, and any release required by the Contract Documents are conditions precedent to Final Payment and release of undisputed retention, as set forth above. Contractor's application for Final Payment must comply with the requirements for submitting an application for a progress payment as stated in Section 8.2, above. Corrections to previous progress payments, including adjustments to estimated quantities for unit priced items, may be included in the Final Payment. The date of Final Payment is deemed to be effective on the date that City acts to release retention as final payment to Contractor, or otherwise provides written notice to Contractor of Final Payment. If the amount due from Contractor to City exceeds the amount of Final Payment, City retains the right to recover the balance from Contractor or its sureties.

8.9 Release of Claims. City may, at any time, require that payment of the undisputed portion of any progress payment or Final Payment be contingent upon Contractor furnishing City with a written release of all claims against City arising from or related to the portion of Work covered by those undisputed amounts. Any disputed amounts may be specifically excluded from the release.

8.10 Warranty of Title. Contractor warrants that title to all work, materials, or equipment incorporated into the Work and included in a request for payment will pass over to City free of any claims, liens, or encumbrances upon payment to Contractor.

CONTRACT BALANCE FORM

Project Name: _____

Note: A detailed invoice MUST be attached to this Contract Balance Form.

CONTRACTOR NAME: _____	DATE: _____
MAILING ADDRESS: _____	TELEPHONE NO.: _____
_____	FAX NO.: _____
_____	PROJECT NO.: _____
	INVOICE NO.: _____

- | | | |
|--|-------------|----------------|
| 1. ORIGINAL CONTRACT AMOUNT: | \$ _____ | |
| 2. APPROVED CHANGE ORDERS TOTAL: | \$ _____ | |
| 3. REVISED CONTRACT AMOUNT: | | (1+2) \$ _____ |
| 4. PREVIOUS BALANCE PAID: | \$ _____ | |
| 5. REMAINING BALANCE: | | (3-4) \$ _____ |
| 6. CURRENT PROGRESS PAYMENT DUE:
(before retention) | \$ _____ | |
| 7. 5% RETENTION FROM WORK DONE: | (-)\$ _____ | |
| 8. CURRENT BALANCE DUE: | | (6-7) \$ _____ |
| 9. REMAINING BALANCE OF REVISED
CONTRACT AMOUNT:
(including retention) | | (5-8) \$ _____ |

Article 9 Labor Provisions

9.1 Discrimination Prohibited. Discrimination against any prospective or present employee engaged in the Work on grounds of race, color, ancestry, national origin, ethnicity, religion, sex, sexual orientation, age, disability, or marital status is strictly prohibited. Contractor and its Subcontractors are required to comply with all applicable Federal and California laws including the California Fair Employment and Housing Act (Government Code Sections 12900 et seq.), Government Code Section 11135, and Labor Code Sections 1735, 1777.5, 1777.6, and 3077.5.

9.2 Labor Code Requirements.

(A) ***Eight Hour Day.*** Under Labor Code Section 1810, eight (8) hours of labor constitute a legal day's work under this Contract.

(B) ***Penalty.*** Under Labor Code Section 1813, Contractor will forfeit to City as a penalty, the sum of Twenty Five Dollars (\$25.00) for each day during which a worker employed by Contractor or any Subcontractor is required or permitted to work more than eight (8) hours in any one (1) calendar day or more than forty (40) hours per calendar week, except if such workers are paid overtime under Labor Code Section 1815.

(C) ***Apprentices.*** Contractor is responsible for compliance with the requirements governing employment and payment of apprentices, as set forth in Labor Code Section 1777.5, which is fully incorporated by reference.

(D) ***Notices.*** Under Labor Code Section 1771.4, Contractor is required to post all job site notices prescribed by law or regulation.

9.3 Prevailing Wages. Each worker performing Work under this Contract that is covered under Labor Code Section 1720, including cleanup at the Project site, must be paid at a rate not less than the prevailing wage as defined in Sections 1771 and 1774 of the Labor Code. The prevailing wage rates are available online at <http://www.dir.ca.gov/dlsr>. Contractor must post a copy of the applicable prevailing rates at the Worksite.

(A) ***Penalties.*** Under Labor Code Section 1775, Contractor and any Subcontractor will forfeit to City as a penalty up to Two Hundred Dollars (\$200.00) for each calendar day, or portion a day, for each worker paid less than the applicable prevailing wage rate. Contractor must also pay each worker the difference between the applicable prevailing wage rate and the amount actually paid to that worker.

(B) **Federal Requirements.** If this Project is subject to Federal prevailing wage requirements in addition to California prevailing wage requirements, Contractor and its Subcontractors are required to pay the higher of the current applicable prevailing wage rates under federal law, available online at <http://www.access.gpo.gov/davisbacon/ca.html>.

9.4 Payroll Records. Contractor must comply with the provisions of Labor Code Sections 1776 and 1812 and all implementing regulations, which are fully incorporated by this reference, including requirements for electronic submission of payroll records.

(A) **Contractor and Subcontractor Obligations.** Contractor and each Subcontractor must keep accurate payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed in connection with the Work. Each payroll record must contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:

- (1) The information contained in the payroll record is true and correct.
- (2) Contractor or Subcontractor has complied with the requirements of Labor Code Sections 1771, 1811, and 1815 for any Work performed by its employees on the Project.

(B) **Certified Record.** A certified copy of an employee's payroll record must be made available for inspection or furnished to the employee or his or her authorized representative on request, to City, or to the Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards of the Department of Industrial Relations, and as further provided by the Labor Code.

(C) **Enforcement.** Upon notice of noncompliance with Labor Code Section 1776, Contractor or Subcontractor has ten (10) days in which to comply with requirements of this section. If Contractor or Subcontractor fails to do so within the ten (10) day period, Contractor or Subcontractor will forfeit a penalty of One Hundred Dollars (\$100.00) per day, or portion a day, for each worker for whom compliance is required, until strict compliance is achieved. Upon request by the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement, these penalties will be withheld from progress payments then due.

9.5 Labor Compliance. Under Labor Code section 1771.4, the Contract for this Project is subject to compliance monitoring and enforcement by the California Department of Industrial Relations.

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

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

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

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

City’s Right to Withhold Payment: Where Contractor or any subcontractor it employs to perform work under this Agreement has been found in violation of any

applicable wage and hour law by a final judgment, decision or order of a court or government agency, the City reserves the right to withhold payment to Contractor until such judgment, decision or order has been satisfied in full.

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

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

Article 10 Safety Provisions

10.1 Safety Precautions and Programs. Contractor and its Subcontractors are fully responsible for safety precautions and programs, and for the safety of persons and property in the performance of the Work. Contractor and its Subcontractors must comply with all applicable safety laws, rules and regulations and seek to avoid injury, loss, or damage to persons or property by taking reasonable steps to protect its employees and other persons at the Worksite, materials and equipment stored on or off site, and property at or adjacent to the Worksite.

(A) **Reporting Requirements.** Contractor must immediately provide a written report to City of all recordable accidents and injuries occurring at the Worksite. If Contractor is required to file an accident report with a government agency, Contractor will provide a copy of the report to City.

(B) **Legal Compliance.** Contractor's safety program must comply with the applicable legal and regulatory requirements. Contractor must provide City with copies of all notices required by law or regulation.

(C) **Contractor's Obligations.** Any damage or loss caused by Contractor arising from the Work which is not insured under property insurance must be promptly remedied by Contractor.

(D) **Remedies.** If City determines, in its sole discretion, that any part of the Work or Worksite is unsafe, City may, without assuming responsibility for Contractor's safety program, require Contractor or its Subcontractor to cease performance of the Work or to take corrective measures to City's satisfaction. If Contractor fails to promptly take the required corrective

measures, City may perform them and deduct the cost from the Contract Price. Contractor agrees it is not entitled to submit a Claim for damages, for an increase in Contract Price, or for a change in Contract Time based on Contractor's compliance with City's request for corrective measures pursuant to this provision.

10.2 Hazardous Materials. Unless otherwise specified, this Contract does not include the removal, handling, or disturbance of any asbestos or other Hazardous Materials. If Contractor encounters materials on the Worksite that Contractor reasonably believes to be asbestos or other Hazardous Materials, and the asbestos or other Hazardous Materials have not been rendered harmless, Contractor may continue Work in unaffected areas reasonably believed to be safe, but must immediately cease work on the area affected and report the condition to City. No asbestos, asbestos-containing products or other Hazardous Materials may be used in performance of the Work.

10.3 Material Safety. Contractor must maintain Material Safety Data Sheets ("MSDS") at the Worksite, as required by law, for materials or substances used or consumed in the performance of the Work. The MSDS will be accessible and available to Contractor's employees, Subcontractors, and City.

(A) **Contractor Obligations.** Contractor is solely responsible for the proper delivery, handling, use, storage, removal, and disposal of all materials brought to the Worksite and/or used in the performance of the Work.

(B) **Labeling.** Contractor must ensure proper labeling on any material brought onto the Worksite so that any persons working with or in the vicinity of the material may be informed as to the identity of the material, any potential hazards, and requirements for proper handling, protections, and disposal.

Article 11

Completion and Warranty Provisions

11.1 Final Completion.

(A) **Final Inspection.** When the Work required by this Contract is fully performed, Contractor must provide written notification to Project Manager requesting final inspection. Based on this inspection, the Design Professional will prepare a punch list of items that are incomplete, incorrectly installed, or not operating as required by the Contract Documents. The omission of any such item from this punch list will not

relieve Contractor from fulfilling all requirements of the Contract Documents.

(B) **Punch List.** City will promptly deliver the punch list to Contractor and will specify the time by which all of the punch list items must be completed or corrected. The punch list may include City's estimated cost to complete each punch list item if Contractor fails to do so within the specified time.

(C) **Requirements for Final Completion.** Final Completion will be achieved upon completion or correction of all punch list items, as verified by inspection, and upon satisfaction of all other Contract requirements, including any commissioning required under the Contract Documents, and submission of all final submittals, including a warranty bond as required under Section 4.4, instructions and manuals as required under Section 7.10, and as-built drawings as required under Section 7.11, all to City's satisfaction. Once Final Completion is achieved, and the Project has been formally accepted by City, City will file a notice of completion with the County Recorder.

(D) **Final Payment.** Final Payment and release of retention, less any sums withheld pursuant to the provisions of the Contract Documents, will not be made sooner than thirty five (35) days after recordation of the notice of completion. If Contractor fails to complete all of the punch list items within the specified time, City may elect to accept the Project and record the notice of completion, and withhold up to one hundred fifty percent (150%) of City's estimated cost to complete the remaining items from Final Payment.

11.2 Warranty.

(A) **General.** Contractor warrants that all materials and equipment will be new unless otherwise specified, of good quality, in conformance with the Contract Documents, and free from defective workmanship and materials. Contractor further warrants that the Work will be free from material defects not intrinsic in the design or materials required in the Contract Documents. At City's request, Contractor must furnish satisfactory evidence of the quality and type of materials and equipment furnished. Contractor's warranty does not extend to damage caused by normal wear and tear, or improper use or maintenance.

(B) **Warranty Period.** Contractor's warranty must guarantee its Work for a period of one (1) year from the date of recordation of the notice of completion (the "Warranty Period"), except when a longer guarantee is provided by a supplier or manufacturer or is required by the Specifications or Special Conditions. Contractor must obtain from its Subcontractors,

suppliers and manufacturers any special or extended warranties required by the Contract Documents.

(C) **Warranty Documents.** As a condition precedent to acceptance, Contractor must supply City with all warranty and guarantee documents relevant to equipment and materials incorporated into the Work and guaranteed by their suppliers or manufacturers.

(D) **Subcontractors.** The warranty obligations in the Contract Documents apply to Work performed by Contractor and its Subcontractors, and Contractor expressly agrees to act as co-guarantor of such Work.

(E) **Contractor's Obligations.** Upon written notice from City to Contractor of any defect in the Work discovered during the Warranty Period, Contractor or its responsible Subcontractor must promptly correct the defective Work at its own cost. Contractor's obligation to correct defects discovered during the Warranty Period will continue past the expiration of the Warranty Period as to any defects in Work for which Contractor was notified prior to expiration of the Warranty Period.

(F) **City's Remedies.** If Contractor and/or its responsible Subcontractor fails to correct defective Work within ten (10) days following notice by City, or sooner, if required by the circumstances, Contractor expressly agrees that City may correct the defects to conform with Contract Documents at Contractor's sole expense, and Contractor agrees to reimburse City for its costs within thirty (30) days following City's submission of a demand for payment pursuant to this provision. If City is required to initiate legal action to compel Contractor's compliance with this provision, and City is the prevailing party in such action, Contractor is solely responsible for all of City's attorney's fees and legal costs expended to enforce Contractor's warranty obligations herein in addition to any and all costs incurred by City to correct the defective Work.

11.3 Use Prior to Final Completion. City reserves the right to occupy or make use of the Project, or any portions of the Project, prior to Final Completion if City has determined that the Project or portion of it is in a condition suitable for the proposed occupation or use, and that it is in its best interest to occupy or make use of the Project, or any portions of it, prior to Final Completion. City will notify Contractor in writing of its intent to occupy or make use of the Project or any portions of the Project, pursuant to this provision.

(A) **Non-Waiver.** Occupation or use prior to Final Completion will not operate as acceptance of the Work or any portion of it, nor will it operate as a waiver of any of City's rights or Contractor's duties pursuant to these

Contract Documents, and will not affect nor bear on the determination of the time of substantial completion with respect to any statute of repose pertaining to the time for filing an action for construction defect.

(B) **City's Responsibility.** City will be responsible for the cost of maintenance and repairs due to normal wear and tear with respect to those portions of the Project that are being occupied or used before final completion. The Contract Price or the Contract Time may be adjusted pursuant to the applicable provisions of these Contract Documents if, and only to the extent that, any occupation or use under this Section actually adds to Contractor's cost or time to perform the Work.

11.4 Substantial Completion. For purposes of determining "substantial completion" with respect to any statute of repose pertaining to the time for filing an action for construction defect, "substantial completion" is deemed to mean the last date that Contractor or any Subcontractor performs Work on the Project prior to recordation of the Notice of Completion, except for warranty work performed under this Article.

Article 12 Dispute Resolution

12.1 Claims. This Article applies to and provides the exclusive procedures for any Claim arising from or related to the Contract or performance of the Work.

(A) **Definition.** "Claim" means a separate demand by Contractor, submitted in writing, for change in the Contract Time or Contract Price that has previously been submitted to City in accordance with the requirements of the Contract Documents, and which has been rejected by City, in whole or in part.

(B) **Limitations.** A Claim may only include the portion of a previously rejected demand that remains in dispute between Contractor and City. With the exception of any dispute regarding the amount of money actually paid to Contractor as Final Payment, Contractor is not entitled to submit a Claim demanding a change in the Contract Time or the Contract Price, which has not previously been submitted to City in full compliance with Article 5 and Article 6, and subsequently rejected in whole or in part by City.

(C) **Scope of Article.** This Article is intended to provide the exclusive procedures for submission and resolution of Claims of any amount, and applies in addition to the provisions of Public Contract Code Section 9204 and Sections 20104, et seq.

(D) **No Work Delay.** Notwithstanding the submission of a Claim or any other dispute between the parties related to the Project or the Contract Documents, Contractor must perform the Work and may not delay or cease Work pending resolution of the Claim or other dispute, but must continue to diligently prosecute the performance and timely completion of the Work, including the Work pertaining to the Claim or other dispute.

12.2 Claims Submission. The following requirements apply to any Claim subject to this Article:

(A) **Substantiation.** The Claim must be submitted to City in writing, clearly identified as a “Claim” submitted pursuant to this Article 12, and must include all of the documents necessary to substantiate the Claim including the Change Order request that was rejected in whole or in part, and a copy of City’s written rejection that is in dispute. The Claim must clearly identify and describe the dispute, including relevant references to applicable portions of the Contract Documents, and a chronology of the relevant events. Any Claim for additional payment must include a complete, itemized breakdown of all labor, materials, taxes, insurance, and subcontract, or other costs. Substantiating documentation such as payroll records, receipts, invoices, or the like, must be submitted in support of each claimed cost. Any Claim for an extension of time or delay costs must be substantiated with schedule analysis and narrative depicting and explaining claimed time impacts.

(B) **Claim Format.** A Claim must be submitted in the following format:

- (1) General introduction, specifically identifying the submission as a “Claim” submitted under this Article 12.
- (2) Relevant background information, including identification of the specific demand at issue, and the date of City’s rejection of that demand.
- (3) Detailed explanation of the issue(s) in dispute. For multiple issues, separately number and identify each issue and include the following for each separate issue:
 - (a) The background of the issue, including references to relevant provisions of the Contract Documents;
 - (b) A succinct statement of the matter in dispute, including Contractor’s position and the basis for that position;
 - (c) A chronology of relevant events;

(d) The identification and attachment of all supporting documents (see subsection (A), above, on Substantiation); and

(e) Use of a separate page for each issue.

(4) Summary of issues and damages.

(5) The following certification, executed by Contractor's authorized representative:

"The undersigned Contractor certifies under penalty of perjury that its statements and representations in this Claim are true and correct. Contractor warrants that this Claim is comprehensive and complete as to the matters in dispute, and agrees that any costs, expenses, or delay claim not included herein are deemed waived. Contractor understands that submission of a Claim which has no basis in fact or which Contractor knows to be false may violate the False Claims Act (Government Code Section 12650 et seq.)."

(C) ***Submission Deadlines.***

(1) A Claim must be submitted within fifteen (15) days following the date that City notified Contractor in writing that a request for a change in the Contract Time or Contract Price, duly submitted in compliance with Article 5 and Article 6, has been rejected in whole or in part.

(2) With the exception of any dispute regarding the amount of Final Payment, any Claim must be filed on or before the date of Final Payment, or will be deemed waived.

(3) A Claim disputing the amount of Final Payment must be submitted within fifteen (15) days of the effective date of Final Payment, under Section 8.8, above.

(4) Strict compliance with these Claim submission deadlines is necessary to ensure that any dispute may be mitigated as soon as possible, and to facilitate cost-efficient administration of the Project. Any Claim that is not submitted within the specified deadlines will be deemed waived by Contractor.

12.3 City's Response. City will respond within forty-five (45) days of receipt of the Claim with a written statement identifying which portion(s) of the Claim are disputed, unless the forty-five (45) day period is extended by mutual agreement of City and Contractor. However, the City may first request, in

writing, within thirty (30) days of receipt of the Claim, any additional documentation supporting the Claim or relating to defenses to the Claim that City may have against Contractor. If Contractor fails to submit the additional documentation to City within fifteen (15) days of receipt of City's request, the Claim will be deemed waived.

(A) **Additional Information.** If additional information is thereafter required, it may be requested and provided upon mutual agreement of City and Contractor.

(B) **City's Response.** City's written response to the Claim, as further documented, will be submitted to Contractor within fifteen (15) days after receipt of the further documentation or within a period of time no greater than that taken by Contractor in producing the additional information, whichever is greater.

(C) **Non-Waiver.** Any failure by City to respond within the times specified above may not be construed as acceptance of the Claim in whole or in part, or as a waiver of any provision of these Contract Documents.

12.4 Meet and Confer. If Contractor disputes City's written response, or City fails to respond within the specified time, Contractor must notify City in writing, either within fifteen (15) days of receipt of City's response, or within fifteen (15) days of City's failure to respond within the specified time, respectively, and demand an informal conference to meet and confer for settlement of the issues in dispute. If Contractor fails to dispute City's response, in writing, within the specified times, Contractor's Claim will be deemed waived.

(A) **Schedule Meet and Confer.** Upon receipt of the demand to meet and confer, City will schedule the meet and confer conference to be held within thirty (30) days, or later if needed to ensure the mutual availability of all of the individuals that each party requires to represent its interests at the meet and confer conference.

(B) **Location for Meet and Confer.** The meet and confer conference will be scheduled at a location at or near City's principal office.

(C) **Written Statement After Meet and Confer.** Within ten (10) working days after the meet and confer has concluded, City will issue a written statement identifying which portion(s) of the Claim remain in dispute, if any.

(D) **Submission to Mediation.** If the Claim or any portion remains in dispute following the meet and confer conference, within ten working days

after the City issues the written statement identifying any portion(s) of the Claim remaining in dispute, the disputed portion(s) will be submitted for mediation as set forth below.

12.5 Mediation and Government Code Claims.

(A) **Mediation.** Mediation under this Article will be scheduled within sixty (60) days following conclusion of the meet and confer process, with a mediator that the parties mutually agreed upon. The mediation itself may take place more than sixty (60) days following conclusion of the meet and confer process to ensure the mutual availability of the selected mediator and all of the individuals that each party requires to represent its interests. The parties must share the costs of mediation equally, except costs incurred by each party for representation by legal counsel or any other consultant.

(B) Government Code Claims.

(1) Timely presentment of a Government Code Claim is a condition precedent to filing any legal action based on or arising from the Contract.

(2) The time for filing a Government Code Claim will be tolled from the time Contractor submits its written Claim pursuant to Section 12.2, above, until the time that Claim is denied as a result of the meet and confer process, including any period of time used by the meet and confer process. If the parties agree to mediation, the time for filing a Government Code Claim will be tolled until conclusion of the mediation if the Claim is not fully resolved by mutual agreement of the parties during the mediation or any continuation of the mediation.

12.6 Tort Claims. This Article does not apply to tort claims and nothing in this Article is intended nor will be construed to change the time periods for filing tort-based Government Code Claims.

12.7 Arbitration. It is expressly agreed, under California Code of Civil Procedure Section 1296, that in any arbitration to resolve a dispute relating to this Contract, the arbitrator's award must be supported by law and substantial evidence.

12.8 Damages. Contractor bears the burden of proving entitlement to and the amount of any claimed damages. Contractor is not entitled to damages calculated on a total cost basis, but must prove actual damages. Contractor is not entitled to recovery of any alleged home office overhead. The Eichleay Formula or similar formula may not be used for any recovery

under the Contract. Contractor is not entitled to consequential damages, including home office overhead or any form of overhead not directly incurred at the Worksite; lost profits; loss of productivity; lost opportunity to work on other projects; diminished bonding capacity; increased cost of financing for the Project; extended capital costs; non-availability of labor, material or equipment due to delays; or any other indirect loss arising from the Contract.

- 12.9 Other Disputes.** The procedures in this Article 12 will apply to any and all disputes or legal actions, in addition to Claims, arising from or related to this Contract, unless and only to the extent that compliance with a procedural requirement is expressly and specifically waived by City. Nothing in this Article is intended to delay suspension or termination under Article 13.

Article 13 **Suspension and Termination**

- 13.1 Suspension for Cause.** In addition to all other remedies available to City, if Contractor fails to perform or correct work in accordance with the Contract Documents, City may immediately order the Work, or any portion of it, suspended until the cause for the suspension has been eliminated to City's satisfaction.

(A) ***Failure to Comply.*** Contractor will not be entitled to an increase in Contract Time or Contract Price for a suspension occasioned by Contractor's failure to comply with the Contract Documents.

(B) ***No Duty to Suspend.*** City's right to suspend the Work will not give rise to a duty to suspend the Work, and City's failure to suspend the Work will not constitute a defense to Contractor's failure to comply with the requirements of the Contract Documents.

- 13.2 Suspension for Convenience.** City reserves the right to suspend, delay, or interrupt the performance of the Work in whole or in part, for a period of time determined to be appropriate for City's convenience, and not due to any act or omission by Contractor or its Subcontractors. Upon notice by City pursuant to this provision, Contractor must immediately suspend, delay, or interrupt the Work as directed by City. The Contract Price and the Contract Time will be equitably adjusted by Change Order to reflect the cost and delay impact occasioned by such suspension for convenience.

- 13.3 Termination for Default.** Contractor may be deemed in default for a material breach of or inability to perform the Contract, including Contractor's refusal or failure to supply sufficient skilled workers, proper

materials, or equipment to perform the Work within the Contract Time; refusal or failure to make prompt payment to its employees, Subcontractors, or suppliers or to correct rejected work; disregard of laws, regulations, ordinances, rules, or orders of any public agency with jurisdiction over the Project; or if Contractor lacks financial capacity to complete the Work within the Contract Time; or is otherwise responsible for a material breach of the Contract requirements.

(A) **Notice.** Upon City's determination that Contractor is in default, City may provide Contractor and its surety written notice of default and intent to terminate the Contract.

(B) **Termination.** Within seven (7) calendar days after notice of intent to terminate for default has been given, unless the default is cured or arrangements to cure the default have been made and memorialized in writing, to City's satisfaction, City may terminate the Contract by written notice to Contractor with a copy to Contractor's surety.

(C) **Waiver.** Time being of the essence in the performance of the Work, if Contractor's surety fails to arrange for completion of the Work in accordance with the Performance Bond, within seven (7) calendar days from the date of the notice of termination, Contractor's surety will be deemed to have waived its right to complete the Work under the Contract, and City may immediately make arrangements for the completion of the Work through use of its own forces, by hiring a replacement contractor, or by any other means that City determines advisable under the circumstances. Contractor and its surety will be jointly and severally liable for any additional cost incurred by City to complete the Work following termination. In addition, City will have the right to use any materials, supplies, and equipment belonging to Contractor and located at the Worksite for the purposes of completing the remaining Work.

(D) **Wrongful Termination.** If a court of competent jurisdiction or an arbitrator later determines that the termination for default was wrongful, the termination will be deemed to be a termination for convenience, and Contractor's damages will be strictly limited to the compensation provided for termination for convenience, in Section 13.4, below. Contractor waives any claim for any other damages for wrongful termination including consequential damages, lost opportunity costs or lost profits.

13.4 Termination for Convenience. City reserves the right to terminate all or part of the Contract for convenience upon written notice to Contractor. Upon receipt of such notice, Contractor must immediately stop the Work, comply with City's instructions to protect the completed Work and materials, and use its best efforts to minimize further costs. In the event of termination for convenience, the parties agree that the following will

constitute full and fair compensation to Contractor, and that Contractor will not be entitled to any additional compensation:

- (A) **Completed Work.** The value of its Work satisfactorily performed to date, including Project overhead and profit based on Contractor's schedule of values;
- (B) **Demobilization.** Actual and substantiated demobilization costs; and
- (C) **Markup.** Five percent (5%) of the total value of the Work performed as of the date of notice of termination or five percent (5%) of the value of the Work yet to be completed, whichever is less.

13.5 Provisions Remaining in Effect. Upon termination pursuant to this Article, the provisions of the Contract Documents remain in effect as to any claim, indemnity obligation, warranties, guarantees, submittals of as-built drawings, instructions, or manuals, or other such rights and obligations arising prior to the termination date.

Article 14

Miscellaneous Provisions

- 14.1 Assignment of Unfair Business Practice Claims.** Under Public Contract Code Section 7103.5, Contractor and its Subcontractors agree to assign to City all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Section 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the Contract or subcontract. This assignment will be effective at the time City tenders Final Payment to Contractor, without further acknowledgement by the parties.
- 14.2 Provisions Deemed Inserted.** Every provision of law required to be inserted in the Contract Documents is deemed to be inserted, and the Contract Documents will be construed and enforced as though such provision has been included. If it is discovered that through mistake or otherwise that any required provision was not inserted, or not correctly inserted, the Contract Documents will be amended accordingly.
- 14.3 Waiver.** No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of the Contract Documents will be effective unless it is in writing and signed by the party

waiving the breach, failure, right, or remedy. No waiver of any breach, failure, right, or remedy will be deemed a waiver of any other breach, failure, right, or remedy, whether or not similar, nor will any waiver constitute a continuing waiver unless specified in writing by the waiving party.

14.4 Titles, Headings, and Groupings. The titles and headings used and the groupings of provisions in the Contract Documents are for convenience only and may not be used in the construction or interpretation of the Contract Documents or relied upon for any other purpose.

14.5 Statutory and Regulatory References. With respect to any amendments to any statutes or regulations referenced in these Contract Documents, the reference is deemed to be the version in effect on the date that that bids were due.

END OF GENERAL CONDITIONS

SPECIAL CONDITIONS

Not Applicable

TECHNICAL SPECIFICATIONS
2023 SIDEWALK REPAIR PROJECT

City of Morgan Hill
2023 Sidewalk Repair Project - Location List

Map #	Address	Sidewalk Ft	Curb & Gutter / Driveway	Total Square Feet	# of Trees	Notes
1	85 E 5th ST	45.0		225.0	2	Currently bricks
2	E 5th St near Monterey	25.0		125.0	0	
3	W 1st St	20.0		100.0	Stump	cold mix and stump removal
4	83 W 1st St	10.0		50.0	1	ramped with cold mix
5	630 Alkire Ave	15.0		75.0	1	grinded 6 areas
6	17850 Crest Ave	10.0		50.0	1	2 locations 5' each
7	35 Wright Ave	18.0		90.0	1	3 hazards 1 ramped and 2 grinded
8	270 Wright Ave	10.0		50.0	1	2 areas
9	Magical Bridge			100.0	0	need to extend cement to right as you enter sand box
10-11	90 E Edmundson	70.0		350.0	6	6 locations - 10', 20', 15', 5', 5', 15'
12	15640 La Jolla Dr / La Crosse	15.0		75.0	Private	2 locations 10', 5'
13	670 Roble Dr	25.0		125.0	2	3 areas grinded and 1 ramped; 5', 5', 15'
14-15	La Alameda/Alamo	30.0	14.0	220.0	1	2 spots on Alamo side and 2 on La Alameda side by apart complex; 3 locations 10' + driveway approach
16	735 Via Del Castille	15.0		75.0	1	damaged sidewalk
17	775 Cordoba Ct	15.0	10.0	125.0	1	ramped with cold mix; 15' sidewalk; 10' driveway approach
18	Oak Creek Park	7.0		42.0	0	Big playground off White cloud Dr to the left if parked on street
19	E Main; East of Montoya Circle	70.0		350.0	6	6 locations - 10', 10', 15', 10', 10', 15'
20	560 Main Ave	5.0		25.0	1	
21	570 Main Ave	20.0		100.0	2	2 locations - 15', 5'
22	Montoya Circle	100.0		500.0	10	9 locations - 20', 5', 10', 5', 10', 5', 10', 10', 25'
23	Main Ave between 570 and Montoya Circle	30.0		150.0	3	3 locations - 10', 15', 5'
24	Main Ave btw Carriage Lamp and Belletto	20.0		100.0	2	2 locations - 10', 10'
25	Main btw Serene and Belletto	30.0		150.0	0	4 locations - 10', 10', 5', 5'
26	Main btw Serene and 101 Over pass	45.0		225.0	0	5 locations - 10', 5', 10', 10', 10'
27	17429 Serene Dr	25.0		125.0	2	3 locations - 10', 10', 5'
28	Bell Estates (off Calle Caballeria)	22.0		110.0	2	Park pathway - 2 locations - 10', 12'
29	211-251 Jarivs Dr	90.0		450.0	6	9 locations - 5', 10', 5', 10', 10', 5', 15', 20', 10'
30	19500 Monterey	26.0		130.0	2	2 locations - 9', 17'
31	200 Burnett Ave	205.0	70.0	1375.0	11	15 locations - 15', 20', 5', 10', 30', 5', 5', 5', 15', 15', 20', 20', 5', 15', 20'; curb and gutter - 20', 30', 20'
32	Hale before Tilton	20.0		100.0	0	Cold mix; 2 locations - 15', 5'
33	18332 Solano Ct	15.0		75.0	1	2 locations - 5', 10'
34	Cochrane/Cochrane Circle	10.0		30.0		Cold mix for ada
35	1790 E Dunne	35.0		175.0	3	3 locations - 15', 10', 10'

City of Morgan Hill						
2023 Sidewalk Repair Project - Location List						
Map #	Address	Sidewalk Ft	Curb & Gutter / Driveway	Total Square Feet	# of Trees	Notes
36	E Dunne (1729 E Dunne)	20.0		100.0	1	1 location btw Peppertree and Pine
37	16925 Peppertree / Seville	20.0		100.0	2	2 locations - 15', 5'
38	16750 Ponderosa Ct	20.0		100.0	1	2 locations - 15', 5'
			Total Square Feet	6,347.00	73	trees



COMMUNITY SERVICES DEPARTMENT

17575 PEAK AVENUE
MORGAN HILL, CA 95037

GENERAL: (408) 779-7271
FAX: (408) 779-3117

WWW.MORGANHILL.CA.GOV

ADDENDUM NO. 1
CSD-2023-021

DATE: FEBRUARY 21, 2023

TO: ALL RESPONDING PARTIES TO THE INVITATION TO BID FOR
THE 2023 SIDEWALK REPAIR PROJECT

FROM: Keri Russell, Maintenance Manager
Cynthia Iwanaga, Management Analyst

SUBJECT: Responses to Questions and Clarifications for the 2023 Sidewalk Repair Project
Added: Technical Specifications, Link to Map and Revised Bid Schedule

1. Attached please find the technical specifications and City's Sidewalk, Curb and Gutter Details, which were accidentally not attached to the bid documents.
2. Please provide the link to the map with the sidewalk repair locations.

Please see the Technical Specifications Section 2.01 Mobilization or the link below.

[2023 Sidewalk Project - Google My Maps](#)

3. Does the City of Morgan Hill have a list of approved concrete mix designs from Readymix Suppliers within the area?

The City standard specifications for sidewalks is 6sack, which is 3000PSI concrete.

4. Regarding inspections and materials testing, will the compaction and materials testing be done by the City of Morgan Hill staff? Or do we need to provide 3rd party testing?

The City will review and approve submittals. Third party testing will not be required.

5. Does the City of Morgan Hill have property available to use to temporarily stockpile basic materials like base rock, debris and a conex box?

Yes, the City can find a staging area for the awarded contractor to temporarily stockpile basic materials.

6. 85 East 5th Street has a note for brick sidewalk. Will this be a new brick sidewalk or concrete sidewalk?

We wanted to make contractors aware that it is currently brick, but it should be fully replaced with a concrete sidewalk.



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- 7. Can a more detailed Bid Schedule be provided? One that includes Curb and Gutter that will be removed and replaced, and asphalt plugs with their square footage?**

Please see attached revised Bid Schedule.

The amounts to be bid are:

Curb and Gutter: 470 sq ft

Sidewalk: 5,877 sq. ft.

Asphalt Plugs: Estimated by Contractor in the Field

- 8. At what locations will the asphalt plugs need to be removed and replaced? What about the curb and gutter?**

The following details are provided on the 2023 Sidewalk Project List/Spreadsheet.

1. La Alameda/Alamo: 70 sq ft. driveway approach
2. 775 Cordoba Court: 50 sq. ft. driveway approach
3. 200 Burnett Avenue: Three (3) areas – 20 sq ft, 30 sq ft and 20 sq ft, curb and gutter

- 9. I understand that the City inspector can randomly stop by at any time to inspect work, but if he's not onsite at the time of the compaction, do we proceed with work or should we make sure he inspects the compaction work?**

Work can continue as normal if the inspector is not onsite at the time of compaction.

- 10. The due date and time for this bid remain the same, Thursday, March 2, 2023, at 10:30 a.m. via e-mail to cynthia.iwanaga@morganhill.ca.gov Late proposals will not be accepted.**

THIS DOCUMENT AND THE ATTACHMENTS SHALL BECOME PART OF THE PROJECTS SPECIFICATION

Bidder must acknowledge receipt of this Addendum in the Bid Proposal (Section 2. Addenda) that is submitted to the City.

CITY OF MORGAN HILL

2023 SIDEWALK REPAIR AND REPLACEMENT PROJECT TECHNICAL SPECIFICATIONS

SCOPE OF WORK:

The 2023 Sidewalk Replacement Project will occur at multiple locations within Morgan Hill, CA 95037, and the Scope of Work is described as follows:

- **Remove and replace damaged sidewalk totaling approximately 6,347 square feet and remove roots of trees that have been removed prior to the sidewalks being opened up, that is, root removal will be required by the sidewalk contractor.**

GENERAL REQUIREMENTS:

1.01 ORDER OF WORK

a. Description: Order of work shall conform to the provisions in the Caltrans "Standard Specifications" (CSS) and these special provisions.

Upon scheduled date of the preconstruction meeting, contractor shall prepare and submit a detailed schedule to the City Project Manager for review and approval. In addition, contractor shall provide and deliver a notice (minimum of 48 hours prior to construction) to all affected residents.

b. Measurement and Payment: Full compensation for conforming to the provisions in this section "Order of Work" shall be considered as included in the contract prices paid for the various items of work involved and no additional compensation will be allowed therefore.

1.02 MAINTAINING TRAFFIC

a. Description: Attention is directed to Sections 7-1.03, "Public Convenience", 7-1.04, "Public Safety", and 12, "Construction Area Traffic Control Devices", of the Standard Specifications and to the provisions in "Public Safety" of these special provisions and these special provisions. Nothing in these special

provisions shall be construed as relieving the Contractor from the responsibilities specified in Section 7-1.04.

The Contractor may detour traffic in a route approved by the City Project Manager. Flaggers shall be provided at non-signalized intersections when traffic conditions warrant as determined by the City Project Manager. At least one lane of traffic shall be provided through the construction area during construction. Two lanes of traffic shall be provided through the project area during non-construction time.

Vehicular and pedestrian access to all properties shall be maintained at all times. Contractor shall place "no parking" signs as required in order to prevent the public from blocking the work. Contractor shall provide trench plates where necessary to accommodate access or provide other means of access.

b. Measurement and Payment: Full compensation for conforming to the provisions in this section "Maintaining Traffic" shall be considered as included in the contract prices paid for the various items of work involved and no additional compensation will be allowed therefore.

1.03 PUBLIC SAFETY

a. Description: The Contractor shall provide for the safety of traffic and the public in conformance with the provisions in Section 7-1.04, "Public Safety", of the Standard Specifications and these special provisions.

The Contractor shall install temporary railing (Type K) between a lane open to public traffic and an excavation, obstacle or storage area when the following conditions exist:

A. Excavations.—The near edge of the excavation is 12 feet or less from the edge of the lane, except:

1. Excavations covered with sheet steel or concrete covers of adequate thickness to prevent accidental entry by traffic or the public.
2. Excavations less than one foot deep.
3. Trenches less than one foot wide for irrigation pipe or electrical conduit, or excavations less than one foot in diameter.
4. Excavations parallel to the lane for the purpose of pavement widening or reconstruction.
5. Excavations in side slopes, where the slope is steeper than 1:4 (vertical:horizontal).
6. Excavations protected by existing barrier or railing.

B. Temporarily Unprotected Permanent Obstacles.—The work includes the installation of a fixed obstacle together with a protective system, such as a sign structure together with protective railing, and the Contractor elects to install the obstacle prior to installing the protective system; or the Contractor, for the Contractor's convenience and with permission of the City Project Manager,

removes a portion of an existing protective railing at an obstacle and does not replace such railing complete in place during the same day.

C. Storage Areas.—Material or equipment is stored within 12 feet of the lane and the storage is not otherwise prohibited by the provisions of the Standard Specifications and these special provisions.

The approach end of temporary railing (Type K), installed in conformance with the provisions in this section "Public Safety" and in Section 7-1.04, "Public Safety," of the Standard Specifications, shall be offset a minimum of 15 feet from the edge of the traffic lane open to public traffic. The temporary railing shall be installed on a skew toward the edge of the traffic lane of not more than one foot transversely to 10 feet longitudinally with respect to the edge of the traffic lane. If the 15 feet minimum offset cannot be achieved, the temporary railing shall be installed on the 10 to 1 skew to obtain the maximum available offset between the approach end of the railing and the edge of the traffic lane, and an array of temporary crash cushion modules shall be installed at the approach end of the temporary railing.

Temporary railing (Type K) shall conform to the provisions in Section 12-3.08, "Temporary Railing (Type K)," of the Standard Specifications. Temporary railing (Type K), conforming to the details shown on 1999 Standard Plan T3, may be used. Temporary railing (Type K) fabricated prior to January 1, 1993, and conforming to 1988 Standard Plan B11-30 may be used, provided the fabrication date is printed on the required Certificate of Compliance. Temporary crash cushion modules shall conform to the provisions in "Temporary Crash Cushion Module" of these special provisions.

Except for installing, maintaining and removing traffic control devices, whenever work is performed or equipment is operated in the following work areas, the Contractor shall close the adjacent traffic lane unless otherwise provided in the Standard Specifications and these special provisions:

Approach Speed of Public Traffic (Posted Limit)	Work Areas
45 Miles Per Hour	Within 6 feet of a traffic lane but not on a traffic lane
35 to 45 Miles Per Hour	Within 3 feet of a traffic lane but not on a traffic lane

The lane closure provisions of this section shall not apply if the work area is protected by permanent or temporary railing or barrier.

When traffic cones or delineators are used to delineate a temporary edge of a traffic lane, the line of cones or delineators shall be considered to be the edge of the traffic lane, however, the Contractor shall not reduce the width of an existing lane to less than 10 feet without written approval from the City Project Manager.

When work is not in progress on a trench or other excavation that required closure of an adjacent lane, the traffic cones or portable delineators used for the lane closure shall be placed off of and adjacent to the edge of the traveled way. The spacing of the cones or delineators shall be not more than the spacing used for the lane closure. Suspended loads or equipment shall not be moved nor positioned over public traffic or pedestrians.

b. Measurement and Payment: Full compensation for conforming to the provisions in this section "Public Safety," including furnishing and installing temporary railing (Type K) and temporary crash cushion modules, shall be considered as included in the contract prices paid for the various items of work involved and no additional compensation will be allowed therefore.

1.04 DUST CONTROL

a. Description: Dust control shall conform to the provisions in Section 10, "Dust Control", of the Standard Specifications and these Special Provisions.

b. Measurement and Payment: Full compensation for conforming to the provisions in this section "Dust Control" shall be considered as included in the contract prices paid for the various items of work involved and no additional compensation will be allowed therefore.

1.05 WATER POLLUTION CONTROL

a. General: *Water pollution control work shall conform to the provisions in Section 7-1.01G, "Water Pollution," of the Standard Specifications and these special provisions.*

Water pollution control work shall conform to the requirements in the "Storm Water Pollution Prevention Plan (SWPPP) and Water Pollution Control Program (WPCP) Preparation Manual" and the "Construction Site Best Management Practices (BMPs) Manual," and addenda thereto issued up to, and including, the date of advertisement of the project, hereafter referred to respectively as the "Preparation Manual" and the "Construction Site BMP Manual" and collectively as the "Manuals." Copies of the Manuals may be obtained from the Department of Transportation, Material Operations Branch, Publication Distribution Unit, 1900 Royal Oaks Drive, Sacramento, California 95815, Telephone: (916) 445-3520. Copies of the Manuals may also be obtained from the Department's Internet Web Site at: <http://www.dot.ca.gov/hq/construc/stormwater.html>.

The Contractor shall know and fully comply with the applicable provisions of the Manuals and Federal, State, and local regulations that govern the Contractor's operations and storm water discharges from both the project site and areas of disturbance outside the project limits during construction.

Under no circumstances, shall concrete wash water, water from saw-cutting operations or any other contaminated water be allowed to enter the storm drain system or other drainage courses.

Unless arrangements for disturbance of areas outside the project limits are made by the City of Morgan Hill and made part of the contract, it is expressly agreed that the City assumes no responsibility whatsoever to the Contractor or property owner with respect to any arrangements made between the Contractor and property owner to allow disturbance of areas outside the project limits.

The Contractor shall be responsible for the costs and for liabilities imposed by law as a result of the Contractor's failure to comply with the requirements set forth in this section "Water Pollution Control" including, but not limited to, compliance with the applicable provisions of the Manuals and Federal, State, and local regulations. For the purposes of this paragraph, costs and liabilities include, but are not limited to, fines, penalties, and damages whether assessed against the State or the Contractor, including those levied under the Federal Clean Water Act and the State Porter Cologne Water Quality Act.

In addition to the remedies authorized by law, an amount of the money due the Contractor under the contract, as determined by the City of Morgan Hill, may be retained by the State of California until disposition has been made of the costs and liabilities.

The retention of money due the Contractor shall be subject to the following:

- A. The City give the Contractor 30-days notice of the City's intention to retain funds from partial payments, which may become due to the Contractor prior to acceptance of the contract. Retention of funds from payments made after acceptance of the contract, may be made without prior notice to the Contractor.
- B. No retention of additional amounts out of partial payments will be made if the amount to be retained does not exceed the amount being withheld from partial payments pursuant to Section 9-1.06, "Partial Payments," of the Standard Specifications.
- C. If the City has retained funds and it is subsequently determined that the State is not subject to the costs and liabilities in connection with the matter for which the retention was made, the City shall be liable for interest on the amount retained at the legal rate of interest for the period of the retention.

Conformance with the provisions in this section "Water Pollution Control" shall not relieve the Contractor from the Contractor's responsibilities as provided in Section 7, "Legal Relations and Responsibilities," of the Standard Specifications.

Measurement and Payment: Full compensation for conforming to the provisions in this section "Water Pollution Control" shall be considered

as included in the contract prices paid for the various items of work involved and no additional compensation will be allowed therefore.

1.06 DAMAGE REPAIR

a. Description: Attention is directed to Section 7-1.16, "Contractor's Responsibility for the Work and Materials", and Section 7-1.11, "Preservation of Property", of the Standard Specifications and these Special Provisions.

Any damage to existing facilities or properties during the period of the work shall be returned to the original condition.

b. Measurement and Payment: All damage to existing facilities shall be repaired and or replaced at the Contractor's expense.

1.07 RESPONSIBILITY FOR DAMAGE

a. General: Responsibility for damage shall conform to the provisions in Section 7-1.12, "Responsibility for Damage", of the Standard Specifications.

1.08 PROGRESS SCHEDULE

a. General: The progress schedule shall be in accordance with Section 8-1.04 of the CSS. Furthermore, on a weekly basis, the schedule shall be updated and submitted to the City Project Manager. This update shall show the progress on salient features, mark the dates of completion and incorporate changes in construction sequencing or in items of construction.

b. Format: The construction schedule shall be a CPM format. The schedule shall be submitted in the following formats: Time-scaled Logic Diagram showing the name of the activity, the logical relationships, the duration, and the actual or scheduled start dates in a bar chart format; and an Activity Report showing the name of the activity, the actual and scheduled finish and start dates, the scheduled and actual durations, the logical relationships and other pertinent data. The schedule shall be subject to review, correction and acceptance by the City Project Manager.

c. Periodically Scheduled Meetings: Periodically scheduled meetings will be required, in which the project teams of the Contractor and his agents and the City can meet to discuss the schedule and progress of project.

d. Measurement and Payment: Full compensation for conforming to the provisions in this section "Progress Schedule" shall be considered as included in the contract prices paid for the various items of work involved and no additional compensation will be allowed therefore.

1.09 COORDINATION OF WORK

a. Description: The Contractor shall give specified notifications to the

property owners effected by the work. All properties affected by the work shall be notified in writing, 48 hours prior to the interruption. In addition, the Contractor shall attempt to notify the affected occupants or residents, in person, on the same day of the work.

Failure to notify property owners with written notification shall result in stopping the project progress.

b. Measurement and Payment: Full compensation for conforming to the provisions in this section "Coordination of Work" shall be considered as included in the contract prices paid for the various items of work involved and no additional compensation will be allowed therefore.

1.10 DAILY AND FINAL CLEAN UP

a. Description: The Contractor shall clean up all rubbish and excess materials from the work site on a daily basis, the material storage site, and all ground occupied by Contractor in connection with this work. All tree, roots, wood chips, branches, soil and concrete debris shall be removed from each repair location on a daily basis. The Contractor shall leave all parts of the work in a neat and presentable condition on a daily basis and prior to final inspection of the work by the Project Manager.

b. Measurement and Payment: Full compensation for conforming to the provisions in this section "Daily and Final Clean Up" shall be considered as included in the contract prices paid for the various items of work involved and no additional compensation will be allowed therefore.

SIDEWALK REPAIR, CURB & GUTTER REMOVAL AND REPLACEMENT

2.01 MOBILIZATION

Description: Mobilization shall conform to the provisions in Section 11, "Mobilization", of the Standard Specifications. Mobilization shall include mobilizing labor and equipment and all necessary incidentals to complete the work at the various addresses listed in the **Appendix 1**. The locations can also be viewed on a map via the following link:

<https://www.google.com/maps/d/u/0/edit?mid=1y8RXZMLVKw-Cmrt3NE-8FzZR7J-6Amo&usp=sharing>

Underground Service Alert-Northern California (USA) shall be contacted prior to removal of sidewalks, curb and gutters, and trees in order to prevent possible utility damage.

a. Measurement and Payment: Full compensation for conforming to the provisions in this section "Mobilization" shall be considered as included in the contract unit prices paid for the various items of work involved and no additional compensation will be allowed therefore.

2.02 SCHEDULING

a. Description: The Contractor shall submit a complete, tentative project schedule at the time of the preconstruction meeting. A minimum of five (5) working days prior to beginning work on any of the streets, the Contractor shall submit to the City Project Manager for approval a detailed written schedule of work listing the dates on which individual streets shall be surfaced. Following approval, the Contractor shall adhere diligently to the approved written schedule in the prosecution of the work.

The contractor shall post No Parking signs on affected streets indicating the date of work at least 48 hours prior to the actual work. As previously noted in Section 1.09-Coordination of Work, the Contractor shall also notify individual residents who will be adversely affected by the work in writing via fliers or door hangers at least 48 hours prior to work. The Contractor shall submit for approval by the City Project Manager a sample of the written notification to be supplied to residents. This sample shall be submitted at the time of the preconstruction meeting. Any expenses incurred by delays caused by the failure of the Contractor to adhere to the approved schedule or to properly notify residents shall be borne solely by the Contractor.

b. Measurement and Payment: Full compensation for conforming to the provisions in this section "Scheduling" shall be considered as included in the contract prices paid for the various items of work involved and no additional compensation will be allowed therefore.

2.03 PROJECT APPEARANCE

a. Description: The Contractor shall maintain a neat appearance at the work site in all areas visible to the public. Broken concrete, asphalt concrete, soil, tree branches and roots and other debris developed during construction shall be disposed of concurrently with its removal on a daily basis. Stockpiling of new materials shall be permitted only with the approval of the City Project Manager and only in approved locations.

The Contractor shall sweep the streets daily within the project area as directed by the City Project Manager for the duration of the project. The Contractor shall not sweep construction materials or other debris onto private properties.

The Contractor shall be responsible for any and all damage to public and private property (including driveways, trees, plants, shrubs, fences, etc...) and shall replace with new material or correct any damaged property to the satisfaction of the City Project Manager.

b. Measurement and Payment: Full compensation for conforming to the provisions in this section "Project Appearance" shall be considered as included in the contract prices paid for the various items of work involved and no additional compensation will be allowed therefore.

2.04 CONSTRUCTION AREA SIGNS

a. Description: Construction area signs shall be furnished, installed, maintained, and removed when no longer required in conformance with the provisions in Section 12, "Construction Area Traffic Control Devices", of the Standard Specifications and these special provisions.

Attention is directed to the provisions in "Prequalified and Tested Signing and Delineation Materials" of these special provisions. Type II retro reflective sheeting shall not be used on construction area sign panels.

The Contractor shall notify the appropriate regional notification center for operators of subsurface installations at least 2 working days, but not more than 14 calendar days, prior to commencing excavation for construction area sign posts. The regional notification centers include, but are not limited to, the following:

Notification Center	Telephone Number
Underground Service Alert-Northern California (USA)	1-800-642-2444 1-800-227-2600
Underground Service Alert-Southern California (USA)	1-800-422-4133 1-800-227-2600

Excavations required to install construction area signs shall be performed by hand methods without the use of power equipment, except that power equipment may be used if it is determined there are no utility facilities in the area of the proposed post holes.

Sign substrates for stationary mounted construction area signs may be fabricated from fiberglass reinforced plastic as specified under "Prequalified and Tested Signing

and Delineation Materials" of these special provisions.

The Contractor may be required to cover certain signs during the progress of the work. Signs that are no longer required or that convey inaccurate information to the public shall be immediately covered or removed, or the information shall be corrected. Covers for construction area signs shall be of sufficient size and density to completely block out the complete face of the signs. The retro-reflective face of the covered signs shall not be visible either during the day or at night. Covers shall be fastened securely so that the signs remain covered during inclement weather. Covers shall be replaced when they no longer cover the signs properly.

b. Measurement and Payment: Full compensation for conforming to the provisions in this section "Construction Area Signs" shall be considered as included in the contract prices paid for the various items of work involved and no additional compensation will be allowed therefore.

2.05 TRAFFIC & PEDESTRIAN CONTROL

a. Description: The Contractor shall comply with all of the requirements of the current edition of the State of California "Manual of Traffic Controls for Construction and Maintenance and Work Zones" for traffic control, pedestrian control and all construction area signs. Attention is also directed to Sections 7-1.03, "Public Convenience", and 7-1.04, "Public Safety", of the CSS and these Special Provisions. Nothing in these Special Provisions shall be construed as relieving the Contractor from his responsibility as provided in said Section 7-1.04.

Construction area signs shall be furnished, installed, maintained, and removed when no longer required in accordance with the provisions in Section 12, "Construction Area Traffic Control Devices", of the CSS, the Manual of Traffic Controls and these Special Provisions. **Sidewalk closure signs shall be placed at each sidewalk replacement location.**

When traffic control is not performed in compliance with the submitted Traffic Control Plan, the project shall be suspended until the Contractor conforms to the approved plan. During the period of suspension, all construction expenses incurred shall be the sole responsibility of the Contractor.

b. Measurement and Payment: Full compensation for conforming to the provisions in this section "Traffic Control" shall be considered as included in the contract prices paid for the various items of work involved and no additional compensation will be allowed therefore.

2.06 REMOVE AND REPLACE CONCRETE SIDEWALK

a. Description: This work consists of the removal and replacement of damaged concrete sidewalk and the removal and replacement of concrete curb and gutter. Root removal may be necessary at each location. City Project Manager should be consulted prior to root removal. Exact locations of sidewalk

replacement and root removals are to be determined by the City Project Manager. It is anticipated that at least 4,120 SF of concrete sidewalk will be removed and replaced.

Sidewalk replacement Work includes removal and disposal of existing sidewalk, saw-cutting, root removal, expansion joints if required, score joints, removal/replacement & compaction of base material, formwork, curing compound, and rebar doweling per 2007 City Standard Details, to the dimensions at the locations listed in these special provisions (if the sidewalk is attached to curb and gutter it must be doweled every three (3) feet and if it is attached to a park strip, the contractor will need to dowel on both ends) or as directed by the City Project Manager and in conformance with Section 73 Concrete Curbs and Sidewalks, Section 15 Existing Highway Facilities of the CSS and the City's Standard Details for Construction. If truncated domes are needed the City requires 3' X 4', gray color, cast-in-place truncated domes. If curb and gutter or driveway approach work is necessary the City Standard for AC plugs is 2' minimum from edge of gutter pan at a minimum depth/thickness of 6". The City's Standard Details for Construction are attached to these technical specifications.

b. Submittals: Concrete mix design, concrete curing compound, asphalt mix design, and aggregate baserock mix design

c. Order of Work: Contractor shall demo concrete sidewalk or curb & gutter to expose roots. Roots in conflict with the replacement sidewalk shall be **hand cut** and not torn-out using force or equipment. Work shall be performed by an ISA certified arborist. Roots shall be trimmed approximately 3 inches below the aggregate base. Contractor shall perform demo and replacement of sidewalk and all incidentals at each location within 5 working days, including root removals in coordination with current City Tree Contractor/Arborist.

d. Materials: Portland Cement Concrete: Portland cement concrete shall be in conformance with Section 90 "Portland Cement Concrete" of the CSS for Class B Concrete. Curing Compound: shall be in conformance with Section 90 "Portland Cement Concrete" of the CSS. Asphalt Concrete: Asphalt concrete used shall be Type A, 2" medium in accordance with Section 39 of the CSS. Aggregate base: AB shall be Class 2, 3/4" maximum grading, and shall conform to the provisions in Section 26, "Aggregate Bases", of the Standard Specifications and these special provisions.

e. Measurement and Payment: The contract unit price paid, as shown in the Bid Schedule, for "Remove and Replace Concrete Sidewalk" shall include full compensation for performing all of the work listed above, complete in place, including traffic/pedestrian control/signage, and all incidentals as specified in these Standard Specifications and these Special Provisions, 2007 City Design Standards, and as directed by the City Project Manager.

2.07 TREE REMOVAL

The Sidewalk Repair Contractor will coordinate with the City's Tree Contractor to open the sidewalk, so that the Tree Contractor can remove any trees necessary.

However, if the tree has been removed prior to the sidewalk being opened up, the Sidewalk Repair Contractor would be responsible for removing any remaining tree root.

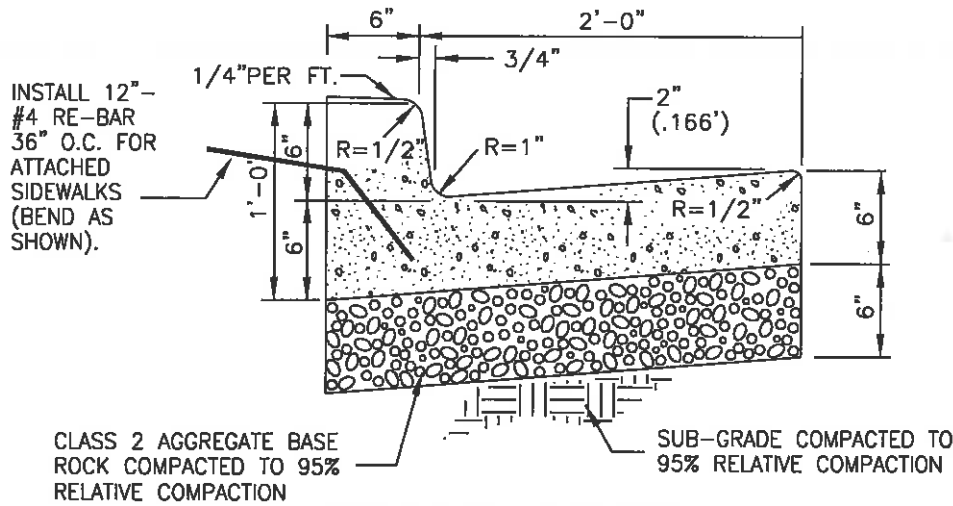
For existing trees, the Sidewalk Repair Contractor would open up the sidewalk, and the City's Tree Contractor will remove both the tree and the tree roots.

Coordination of tree removals will be discussed at the pre-construction meeting.

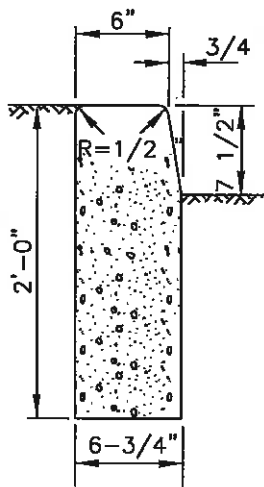
2.08 ONE-YEAR WARRANTY BOND

The City requires a one-year warranty bond in the amount of 50% of the final contract price. The warranty bond is included in the bid documents along with the Payment and Performance Bond. The contract requires the Contractor to guarantee its work and that of its subcontractors against defects in materials or workmanship, which are discovered during the one (1) year period commencing with recordation of the Notice of Completion.

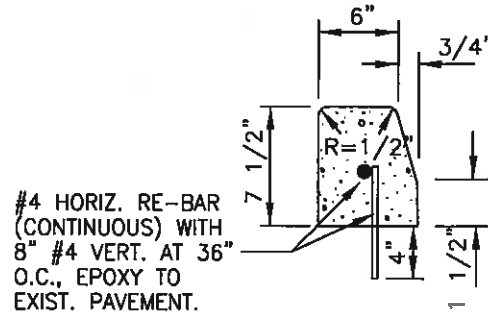
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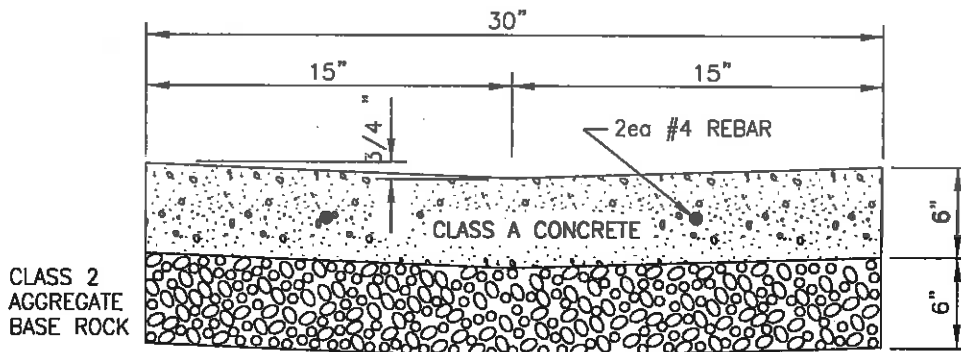
TYPE 1 CURB AND GUTTER



TYPE 2 FULL VERTICAL CURB



TYPE 3 (TEMPORARY) EXTRUDED CURB



TYPE 4 VALLEY GUTTER

- NOTES:**
1. A DEEP SCORE JOINT AT EVERY 10' (1/4" X 1 1/4" MIN.) AND A FELT SEPARATOR AT EVERY 60' (1/2") SHALL BE INSTALLED FOR ALL GUTTER TYPES.
 2. TYPE 3 (TEMPORARY) EXTRUDED CURB SHALL ONLY BE USED UPON WRITTEN APPROVAL BY THE CITY ENGINEER.



City of Morgan Hill
Public Works Department

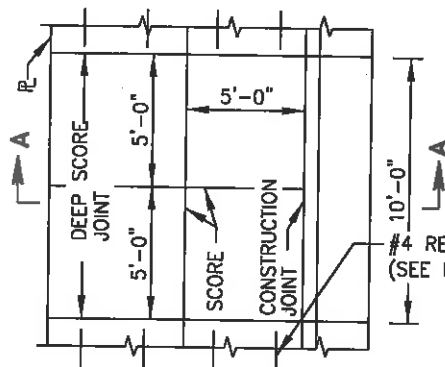
Jim Ashcraft
CITY ENGINEER

4/1/96
DATE

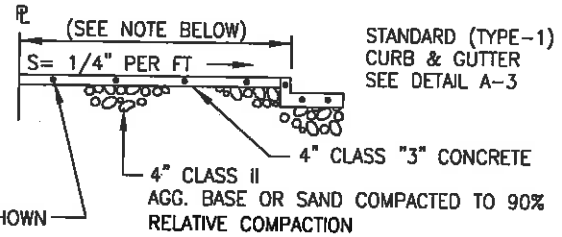
3/15/07
REVISED

CONCRETE CURB AND/OR GUTTER TYPES

DRAWING
NO.
A-3

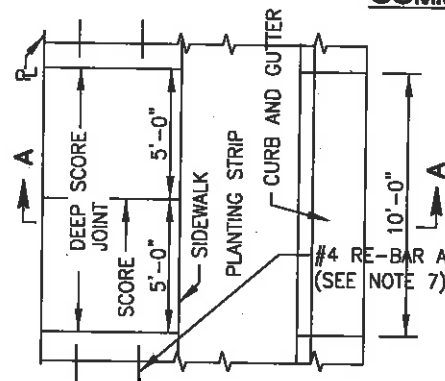


COMMERCIAL

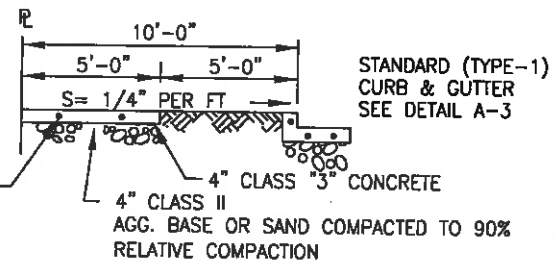


SECTION A-A

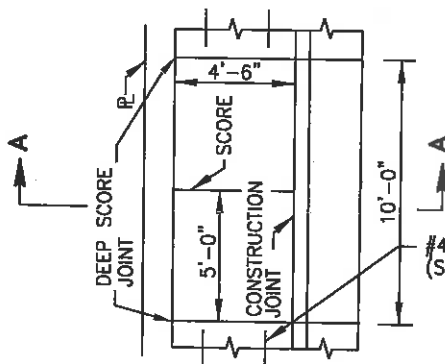
NOTE: 10' COMMERCIAL SIDEWALK IN DOWNTOWN CORE. FOR 5' SIDEWALK, SEE RESIDENTIAL ATTACHED OR DETACHED, DEPENDING UPON PLANNING DEPARTMENT REQUIREMENTS.



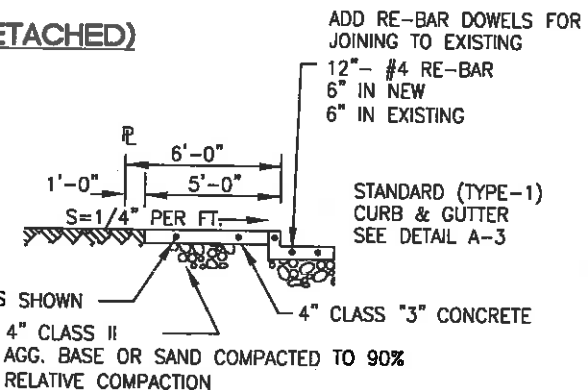
RESIDENTIAL (DETACHED)



SECTION A-A



RESIDENTIAL (ATTACHED)



SECTION A-A

NOTES:

1. CONSTRUCT 3/8" EXPANSION JOINTS WITH FELT FILLER AT RETURNS AND MAJOR STRUCTURES.
2. ROUND ALL EXPOSED EDGES TO 1/2" RADIUS.
3. PLACE EXPANSION JOINTS EVERY 60' (1/2" FELT SEPARATOR).
4. PLACE DEEP SCORE JOINTS EVERY 10'. (1/4" X 1 1/4" MIN.)
5. PLACE SCORE MARKS EVERY 5' IN SIDEWALK SECTIONS ONLY. (1/8" X 1/2" MIN.)
6. PLACE AN "S" FOR SEWER LATERAL AND A "W" FOR WATER SERVICE ON FACE OF CURB (NEW DEVELOPMENTS ONLY).
7. FOR NEW SIDEWALK POURED TO ADJOIN EXISTING SIDEWALK, 2-#4 REBARS SHALL BE DOWELLED 6" INTO EXISTING SIDEWALK AND EXTEND 6" INTO NEW SIDEWALK POUR (SEE DIAGRAM ABOVE).
8. FOR NEW ATTACHED SIDEWALK POURED TO ADJOIN EXISTING CURB, #4 REBARS SHALL BE DOWELLED 6" INTO BACK OF CURB AT EVERY 36" (NOT SHOWN IN DIAGRAM, SEE DETAIL A-3).



City of Morgan Hill
Public Works Department

Jim Ashcraft
CITY ENGINEER

4/1/96
DATE

3/15/07
REVISED

SIDEWALK COMMERCIAL,
DETACHED RESIDENTIAL,
AND ATTACHED RESIDENTIAL

DRAWING
NO.

A-4

REVISED BID SCHEDULE
2023 SIDEWALK REPAIR PROJECT

NAME OF BIDDER: _____

This Bid Schedule must be completed in and included with the Bid Proposal. The unit cost for each item must be inclusive of all costs, whether direct or indirect, including profit and overhead. The sum of all amounts entered in the "Extended Total" column must be identical to the Base Bid price entered in Section 1 of the Bid Proposal Form. Quantities shown are required for bid purposes and may or may not be final pay quantities. Actual quantities, if different, must be substantiated during the Project by Contractor (either by field measurement, trucking tags, or other means acceptable to the City's Project Manager).

Bid Item	Description of Bid Item	Approximate Quantity/Unit of Measure	Unit Price	Extended Total
1	Remove and replace concrete sidewalks and driveways at locations indicated on attached list.	5,877 sq. ft.		
2	Curb and Gutter Replacement	470 sq. ft.		
3	Asphalt Plugs	In the field		

Revised Bid Schedule Total	
-----------------------------------	--

END OF REVISED BID SCHEDULE



COMMUNITY SERVICES DEPARTMENT

17575 PEAK AVENUE
MORGAN HILL, CA 95037

GENERAL: (408) 779-7271
FAX: (408) 779-3117

WWW.MORGANHILL.CA.GOV

ADDENDUM NO. 2
CSD-2023-021

DATE: FEBRUARY 27, 2023

TO: ALL RESPONDING PARTIES TO THE INVITATION TO BID FOR
THE 2023 SIDEWALK REPAIR PROJECT

FROM: Keri Russell, Maintenance Manager
Cynthia Iwanaga, Management Analyst

SUBJECT: Responses to Questions and Clarifications for the 2023 Sidewalk Repair Project
Added: Revised Bid Schedule dated 2/27/2023

1. Please clarify the unit for the Asphalt Plug, does in the field mean each piece, by ton or SF etc.? Please see the attached Revised Bid Schedule dated 2/27/2023. The unit pricing has been clarified to be by SF. The total estimated SF is 470 SF.
All proposers should submit the Revised Bid Schedule dated 2/27/2023 with their bid proposal.
2. The due date and time for this bid remain the same, Thursday, March 2, 2023, at 10:30 a.m. via e-mail to cynthia.iwanaga@morganhill.ca.gov Late proposals will not be accepted.

THIS DOCUMENT AND THE ATTACHMENTS SHALL BECOME PART OF THE PROJECTS SPECIFICATION

Bidder must acknowledge receipt of this Addendum in the Bid Proposal (Section 2. Addenda) that is submitted to the City.

REVISED BID SCHEDULE
dated 2/27/2023

2023 SIDEWALK REPAIR PROJECT

NAME OF BIDDER: _____

This Bid Schedule must be completed in and included with the Bid Proposal. The unit cost for each item must be inclusive of all costs, whether direct or indirect, including profit and overhead. The sum of all amounts entered in the "Extended Total" column must be identical to the Base Bid price entered in Section 1 of the Bid Proposal Form. Quantities shown are required for bid purposes and may or may not be final pay quantities. Actual quantities, if different, must be substantiated during the Project by Contractor (either by field measurement, trucking tags, or other means acceptable to the City's Project Manager).

Bid Item	Description of Bid Item	Approximate Quantity/Unit of Measure	Unit Price	Extended Total
1	Remove and replace concrete sidewalks and driveways at locations indicated on attached list.	5,877 sq. ft.		
2	Curb and Gutter Replacement at locations indicated on attached list.	470 sq. ft.		
3	Asphalt Plugs	470 sq. ft.		

Revised Bid Schedule Total	
-----------------------------------	--

END OF REVISED BID SCHEDULE dated 2/27/2023

CONTRACT

This public works contract ("Contract") is entered into by and between the City of Morgan Hill ("City") and Villalobos & Associates, a California Corporation ("Contractor") for work on the 2023 Sidewalk Repair 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 April 5, 2023, (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: Technical Specifications and List of Sidewalk Repair Locations.
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 One Hundred Twenty-Three Thousand Seven Hundred Sixty Dollars and Fifty Cents (\$123,760.50) (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 forty-five (45) 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: keri.russell@morganhill.ca.gov
Copy to: cynthia.iwanaga@morganhill.ca.gov

Contractor:

Name: Villalobos & Associates
Address: P.O. Box 110004
City/State/Zip: Campbell, CA 95011
Phone: 408-426-1274
Attn: Tranquilino Villalobos Ledesma
Email: t.v.landscaping@gmail.com
Copy to: villalobosassociates@gmail.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.
- 10.7 Electronic Signatures.** Unless otherwise prohibited by law or CITY policy, the Parties agree that an electronic copy of a signed contract, or an electronically signed contract, has the same force and legal effect as a contract executed with an original ink signature. The term "electronic copy of a signed contract" refers to a transmission by facsimile, electronic mail, or other electronic means of a copy of an original signed contract in a portable document format. The term "electronically signed contract" means a contract that is executed by applying an electronic signature using technology approved by the CITY.

[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:

VILLALOBOS & ASSOCIATES

Signature

Tranquilino Villalobos/President
Name/Title [print]

Date: 3/13/2023

Corporate entities must provide a second signature:

Signature

Elizabeth Villalobos/Secretary
Name/Title [print]

Date: 3/13/2023

1017098
Contractor's License Number(s)

08/31/2024
Expiration Date(s)

Seal:

1000429889
Contractor's DIR Registration Number(s)

06/30/2023
Expiration Date

END OF CONTRACT

CITY COUNCIL STAFF REPORT

MEETING DATE: April 19, 2023

PREPARED BY:

Hilary Holeman, Administrative Analyst

APPROVED BY: City Manager

RATIFY CITY POSITIONS ON PENDING LEGISLATION

RECOMMENDATION(S)

1. Ratify the City's position on pending legislation, Assembly Bill 1708 (Muratsuchi) Theft;
2. Ratify the City's position on pending legislation, Assembly Bill 480 (Ting) Surplus Land; and
3. Ratify the City's position on pending legislation, Senate Bill 423 (Wiener) Land use: streamlined housing approvals: multifamily housing developments.

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Enhancing Public Safety and Quality of Life

Preserving and Cultivating Public Trust

Advocating for Local, Regional, and State Legislative Initiatives

2022-2023 Strategic Priorities

Economic Development

REPORT NARRATIVE:

Per Resolution No. 20-010 (Attachment 1), the City Council recognizes occasional situations arise where communication indicating support or opposition on pending State, County, or other regional boards' legislation or action that could be important and may occur prior to the next scheduled City Council meeting. Under these circumstances, the Mayor or City Manager is delegated the authority to prepare, execute and transmit written or verbal communications indicating a City's position when any of the following criteria are met: a) the League of California Cities, or a similar organization, has requested the City to comment or take a position, b) the timing to express a position occurs prior to the next scheduled Council meeting, and c) the pending State, County, or other regional boards' legislation or action clearly supports or clearly hinders the implementation or fulfillment of an adopted City Council Priority, Goal, or Strategy in a substantial manner such that it is in the best interest of the City to indicate its comment or position. When this occurs, a written report to the City Council for acceptance is required at the next possible meeting.

AB 1708 Theft

On March 22, 2023, the League of California Cities sent an Action Alert (Attachment 2) for cities to send letters of support for AB 1708 Theft. On April 4, 2023, the Mayor communicated a letter of support (Attachment 3) electronically via the California Legislature Position Letter Portal and the League of California Cities, and sent the letter to the Assembly Public Safety Committee Chair.

Bill Summary

Existing law, the Safe Neighborhoods and Schools Act, enacted by Proposition 47, as approved by the voters at the November 4, 2014, statewide general election, defines and prohibits an act of shoplifting and prohibits prosecution for an act of shoplifting under any other law. This bill would refine the definition of shoplifting and would specifically exclude certain offenses from prosecution as shoplifting, including, among others, the theft of a firearm or vehicle, identity theft, and credit card fraud. These offenses are prosecuted as misdemeanors or felonies elsewhere in the law.

Existing law requires, except as excluded, the theft of any property valued below \$950 to be charged as petty theft, a misdemeanor. This bill would similarly exclude certain offenses from this provision, including, among others, the theft of a vehicle, identity theft, and credit card fraud.

Existing law provides that a person with a prior conviction for specified sex offenses may be charged with a felony for shoplifting or for theft of property not exceeding \$950 in value. This bill would require a person convicted of petty theft or shoplifting, if the person has 2 or more prior convictions for specified theft-related offenses, to be punished by imprisonment in the county jail for up to one year, or for 16 months, or 2 or 3 years.

Existing law, until January 1, 2026, authorizes a city or county prosecuting authority or county probation department to create a diversion or deferred entry of judgment program pursuant to this section for persons who commit a theft offense or repeat theft offenses, as specified. This bill would authorize a city or county prosecuting authority or county probation department to create a diversion program for persons who commit theft or repeat theft offenses, as specified.

This bill would provide that the provisions of the bill that amend Proposition 47 would become effective only upon approval of the voters, and would provide for the submission of those provisions to the voters for approval at the next statewide general election.

The full AB 1708 Bill Text is included as Attachment 4

AB 480 Surplus Land

On March 23, 2023, the California Association for Local Economic Development (CALED) encouraged local governments to join them in opposition to AB 480 Surplus Land. On April 4, 2023, the Mayor communicated a letter of opposition (Attachment 5) electronically via the California Legislature Position Letter Portal and the League of

California Cities, and sent the letter to the author, Assembly Member Ting.

Bill Summary

Existing law prescribes requirements for the disposal of surplus land by a local agency, as defined, and requires, except as provided, a local agency disposing of surplus land to comply with certain notice requirements before disposing of the land or participating in negotiations to dispose of the land with a prospective transferee, particularly that the local agency send a notice of availability to specified entities that have notified the Department of Housing and Community Development of their interest in surplus land, as specified. Under existing law, if the local agency receives a notice of interest, the local agency is required to engage in good faith negotiations with the entity desiring to purchase or lease the surplus land. Existing law requires a local agency to take formal action in a regular public meeting to declare land is surplus and is not necessary for the agency's use and to declare land as either "surplus land" or "exempt surplus land," as supported by written findings, before a local agency may take any action to dispose of it consistent with an agency's policies or procedures. This bill would recast that provision and would authorize, in specified instances, that a local agency administratively declare land as "exempt surplus land" if the declaration and findings are published and available for public comment at least 30 days before the declaration takes effect. The bill would also require a local agency to provide a written notification to the Department of Housing and Community Development of its declaration and findings 30 days before disposing of land declared "exempt surplus land." Because this bill would require local officials to perform additional duties, it would impose a state-mandated local program.

The full AB 480 Bill Text is included as Attachment 6.

SB 423 Land use: streamlined housing approvals: multifamily housing developments

On March 16, 2023, the League of California Cities sent an Action Alert (Attachment 7) for cities to send letters of opposition to SB 423 Land use: streamlined housing approvals: multifamily housing developments. On April 10, 2023, the Mayor communicated a letter of support (Attachment 8) electronically via the California Legislature Position Letter Portal and the League of California Cities, and sent the letter to the Senate Committee on Housing Chair.

Bill Summary

This bill would modify and expand SB 35 provisions that allow certain multifamily housing developments to take advantage of a streamlined, ministerial approval process. Specifically, this bill would:

- (1) Remove the 2026 sunset and makes the statutes permanent
- (2) Apply SB 35 provisions to the Coastal Zone
- (3) Allow the State to approve housing developments on property they own or lease
- (4) Prohibit a city from enforcing its inclusionary housing ordinance if the income limits are higher than those in SB 35

The full SB 423 Bill Text is included as Attachment 9.

COMMUNITY ENGAGEMENT:

Inform

This report serves to inform the community on the City's position on pending legislation that directly impacts the City of Morgan Hill.

ALTERNATIVE ACTIONS:

The City Council could rescind the positions taken.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

City Council periodically ratifies City positions on various pending State, County or other regional board legislation or actions that have a direct impact on the City of Morgan Hill.

FISCAL AND RESOURCE IMPACT:

Tracking legislation is an activity included in the annual workplan of the City Manager's Office.

CEQA (California Environmental Quality Act):

Not a Project - administrative action/activity without an impact.

RESOLUTION NO. 20-010

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AUTHORIZING THE MAYOR OR CITY MANAGER TO PREPARE, EXECUTE AND TRANSMIT COMMUNICATIONS INDICATING A POSITION ON PROPOSED STATE, COUNTY, OR OTHER REGIONAL BOARDS' LEGISLATION OR ACTION ON CERTAIN MATTERS THAT MAY HAVE IMPACTS UPON THE CITY IN CERTAIN CIRCUMSTANCES AND DIRECTING A REPORT BACK TO CITY COUNCIL ON ANY SUCH COMMUNICATIONS TRANSMITTED. (THIS RESOLUTION RESCINDS RESOLUTION NO. 6851)

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 indicate City's position on proposed legislation of the State of California and is sometimes requested to so indicate City's position on such legislation for the benefit of the City; and

WHEREAS, the reasons supporting the adoption of this Resolution are set forth in detail in that certain City Council Staff Report submitted for City Council consideration at its meeting of February 5, 2020, submitted to the City Council by the City Manager (the "Staff Report"), the contents of which Staff Report are incorporated herein by this reference; 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 meeting 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 activities allowed under this Resolution do not constitute a project under the provisions of California Environmental Quality Act of 1970; 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 prefers, whenever possible, that determinations on whether to take a position on pending State, County, or other regional boards' legislation or action be brought before the City Council as a whole for consideration and action. However, the City Council recognizes that occasional, limited situations arise where communications indicating support or opposition on pending State, County, or other regional boards' legislation or action that could be important to City are requested from cities within timeframes that have deadlines occurring prior to the next scheduled meeting of the City Council as a whole at which the City Council could consider and determine City's position on such pending legislation. For these reasons, the City Council does further resolve, order and/or direct as follows:

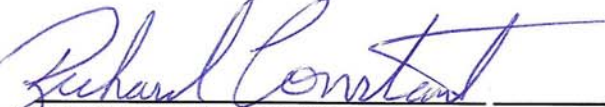
- a. That the Mayor and/or the City Manager is delegated authority to and is authorized to prepare, execute and transmit written or verbal communications indicating a City position on proposed pending State, County or other regional boards' legislation or action that may have impacts upon City when any of the following criteria are met:
 - i. The League of California Cities, or a successor or similar organization, has requested City comment or position on a piece of pending legislation or action, or the City has otherwise become aware of such pending legislation or action;
 - ii. A public hearing and an opportunity for City to comment or take a position upon such pending legislation or action is occurring in a timeframe and with a deadline to comment or express a position that occurs prior to the next scheduled meeting of the City Council at which the City Council could consider and determine City's comment or position on such pending legislation or action; or
 - iii. The pending legislation or action clearly supports or clearly hinders the implementation or fulfillment of an adopted City Council Priority, Goal or Strategy in a substantial manner such that it is in the best interests of City to indicate its comment or position on such pending legislation or action.
- b. That the Mayor and/or City Manager is hereby directed to provide a written report to the City Council for the Council's comment and acceptance at the City Council's next possible meeting whenever the Mayor or City Manager prepares, executes and transmits a communication indicating a comment or position on pending legislation or action pursuant to the authority delegated under this Resolution, which report shall include a copy of such pending legislation or action, and the comment or position transmitted.

Section 3. This Resolution shall take effect immediately upon adoption.

PASSED AND ADOPTED by the City Council of the City of Morgan Hill at its meeting held on this 5th day of February 2020 by the following vote:

AYES:	COUNCIL MEMBERS:	Yvonne Martinez Beltran, Rene Spring, John McKay, Larry Carr, Rich Constantine
NOES:	COUNCIL MEMBERS:	None
ABSTAIN:	COUNCIL MEMBERS:	None
ABSENT:	COUNCIL MEMBERS:	None

APPROVED:



RICH CONSTANTINE, Mayor

ATTEST:



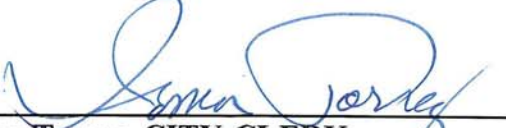
IRMA TORREZ, City Clerk

∞ CERTIFICATION ∞

I, Irma Torrez, City Clerk of the City of Morgan Hill, California, do hereby certify that the foregoing is a true and correct copy of Resolution No. 20-010, adopted by the City Council at the meeting held on the 5th day of February 2020.

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

DATE: 3/3/2020



Irma Torrez, CITY CLERK



AB 1708 (Muratsuchi) Theft. SUPPORT

ACTION

AB 1708 would amend Proposition 47 to increase accountability for repeat theft offenders and offer pathways for pre-plea diversion programming.

Voice your support for **AB 1708** by contacting your legislators and submitting a letter **TODAY**. A sample letter is attached.

Background: Proposition 47 made promises of safe neighborhoods, but the unintended consequences that followed have provided anything but. Our communities deserve better, and cities are more than ready to find solutions that fix Proposition 47.

What does AB 1708 specifically do?

- Require a person convicted of petty theft or shoplifting, with two or more prior convictions for specified theft-related offenses, to be punished by imprisonment in county jail for up to one year.
- Authorize a city, county prosecuting authority, or county probation department to create a diversion program for persons who commit repeat theft offenses.
- Any provisions that amend Proposition 47 would become effective only upon approval by the voters at the next statewide general election.

Talking points:

- According to a February 2023 study conducted by the Public Policy Institute of California, a strong majority of Californians worry they or a family member will be a victim of a crime.
- Cities are feeling impacts from crime-related activity in their communities and are looking for solutions to fix Proposition 47. According to a February 2023 study conducted by the Public Policy Institute of California, a strong majority of Californians worry they or a family member will be a victim of a crime (21% very, 44% somewhat).
- We need to increase accountability for those who continue to create victims throughout our communities.
- Mental health and substance use treatment programming are essential to lowering recidivism rates and increasing community wellness.
- AB 1708 would provide appropriate revisions to Proposition 47 that more holistically address the root causes of crime.



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April 3, 2023

The Honorable Reginald Jones-Sawyer
Chair, Assembly Public Safety Committee
Legislative Office Building
1020 N Street, Room 111
Sacramento, CA 95814

RE: AB 1708 (Muratsuchi) Theft. - Notice of SUPPORT *(As Amended 3/9/23)*

Dear Assembly Member Jones-Sawyer,

The City of Morgan Hill is pleased to support AB 1708 (Muratsuchi). This measure would increase accountability for repeat theft offenders and offer pathways for pre-plea diversion programming. If passed, the bill would send the issue to the voters for approval at the next statewide general election.

This strategy is one of many supported by cities to address crime and its underlying causes. We remain committed to improving California's carceral systems, interrupting and ending cycles of recidivism, and building a community-based system of care that appropriately meets the needs of all community members.

Proposition 47 of 2014 made promises of safe neighborhoods, but the unintended consequences that followed have provided anything but. According to a February 2023 study conducted by the Public Policy Institute of California, a strong majority of Californians worry they or a family member will be a victim of a crime (21% very, 44% somewhat). This is the sentiment being felt by residents of cities throughout the state.

The City of Morgan Hill has case study after case study that highlights the negative impacts of Proposition 47 such as one repeat offender being arrested four times in four different stolen cars within a month and repeat offenders engaging in over 40 take-over robberies/burglaries at Ulta Beauty Store, Target and Walmart. Post AB 109 and Proposition 47, our overall property crime rose 19.2%. Larcenies increased 40% after Prop 47 was passed. Some of our big box retailers have internal policies to no longer report larcenies and/or shoplifting. With the installation of license plate readers in August 2021 to December 2022, Officers have arrested 178 repeat offenders in stolen cars, charged them with 634 offenses and recovered 138 stolen vehicles - 98% lived in other jurisdictions and the majority had prior arrests for theft related crimes.

Our communities deserve better, and cities are more than ready to find solutions that fix Proposition 47. The City of Morgan Hill is keenly interested in exploring additional strategies to address the impacts of crime in our communities. This includes resources to improve community safety through prevention and early intervention programming, as well as improved re-entry service provision for our formerly incarcerated community members. While these provisions have historically been the responsibility of state and county departments, cities are interested in increased collaboration to meet these urgent needs.

For these reasons, the City of Morgan Hill requests your support on AB 1708.

Sincerely,

Mark Turner
Mayor

cc: The Honorable Al Muratsuchi, assemblymember.muratsuchi@assembly.ca.gov
Senator John Laird
Assemblymember Gail Pellerin
Seth Miller, Regional Public Affairs Manager, League of California Cities, smiller@cacities.org
Meg Desmond, League of California Cities, cityletters@cacities.org

AMENDED IN ASSEMBLY MARCH 9, 2023

CALIFORNIA LEGISLATURE—2023–24 REGULAR SESSION

ASSEMBLY BILL

No. 1708

Introduced by Assembly Member Muratsuchi

February 17, 2023

An act ~~relating to corrections~~, to amend Sections 459.5 and 490.2 of, to add Section 666.1 to, and to add Chapter 2.97 (commencing with Section 1001.98) to Title 6 of Part 2 of, the Penal Code, relating to theft.

LEGISLATIVE COUNSEL'S DIGEST

AB 1708, as amended, Muratsuchi. ~~Corrections:—rehabilitative programming—Theft.~~

(1) Existing law, the Safe Neighborhoods and Schools Act, enacted by Proposition 47, as approved by the voters at the November 4, 2014, statewide general election, defines and prohibits an act of shoplifting and prohibits prosecution for an act of shoplifting under any other law.

This bill would refine the definition of shoplifting and would specifically exclude certain offenses from prosecution as shoplifting, including, among others, the theft of a firearm or vehicle, identity theft, and credit card fraud.

(2) Existing law requires, except as excluded, the theft of any property valued below \$950 to be charged as petty theft, a misdemeanor.

This bill would similarly exclude certain offenses from this provision, including, among others, the theft of a vehicle, identity theft, and credit card fraud.

(3) Existing law provides that a person with a prior conviction for specified sex offenses may be charged with a felony for shoplifting or for theft of property not exceeding \$950 in value.

This bill would require a person convicted of petty theft or shoplifting, if the person has 2 or more prior convictions for specified theft-related offenses, to be punished by imprisonment in the county jail for up to one year, or for 16 months, or 2 or 3 years.

(4) Existing law, until January 1, 2026, authorizes a city or county prosecuting authority or county probation department to create a diversion or deferred entry of judgment program pursuant to this section for persons who commit a theft offense or repeat theft offenses, as specified.

This bill would authorize a city or county prosecuting authority or county probation department to create a diversion program for persons who commit theft or repeat theft offenses, as specified.

(5) This bill would provide that the provisions of the bill that amend Proposition 47 would become effective only upon approval of the voters, and would provide for the submission of those provisions to the voters for approval at the next statewide general election.

~~Existing law requires the Department of Corrections and Rehabilitation to conduct rehabilitative programming in a manner that meets specified requirements, including minimizing program wait times and offering a variety of program opportunities to inmates regardless of security level or sentence length.~~

~~This bill would express the intent of the Legislature to enact legislation that would increase accountability for repeat offenders through participation in rehabilitative services.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 459.5 of the Penal Code is amended to
2 read:
3 459.5. (a) Notwithstanding Section 459, shoplifting is defined
4 as entering a commercial establishment ~~with intent to commit~~
5 ~~larceny~~ while that establishment is open during regular business
6 hours, *with the intent to steal retail property or merchandise*, where
7 the value of the property that is taken or intended to be taken does
8 not exceed nine hundred fifty dollars (\$950). Any other entry into
9 a commercial establishment with intent to commit larceny is
10 burglary. Shoplifting shall be punished as a misdemeanor, except
11 that a person with one or more prior convictions for an offense

specified in clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667 or for an offense requiring registration pursuant to subdivision (c) of Section 290 may be punished pursuant to subdivision (h) of Section 1170.

(b) Any act of shoplifting as defined in subdivision (a) shall be charged as shoplifting. No person who is charged with shoplifting may also be charged with burglary or theft of the same property.

(c) *This section does not apply to theft of a firearm; forgery, as described in Chapter 4 (commencing with Section 470); the unlawful sale, transfer, or conveyance of an access card in violation of Section 484e; forgery of an access card in violation of Section 484f; the unlawful use of an access card in violation of Section 484g; theft from an elder or dependent adult in violation of subdivision (e) of Section 368; receiving stolen property in violation of Section 496; embezzlement, as described in Chapter 6 (commencing with Section 503); identity theft in violation of Section 530.5; or the theft or unauthorized use of a vehicle in violation of Section 10851 of the Vehicle Code.*

(d) *As used in this section, the following terms have the following meanings:*

(1) *“Retail property or merchandise” means any article, product, commodity, item, or component intended to be sold in retail commerce.*

(2) *“Value” means the retail value of an item as advertised by the affected retail establishment, including applicable taxes.*

SEC. 2. *Section 490.2 of the Penal Code is amended to read:*

490.2. (a) Notwithstanding Section 487 or any other provision of law defining grand theft, obtaining any property by theft where the value of the money, labor, real or personal property taken does not exceed nine hundred fifty dollars (\$950) shall be considered petty theft and shall be punished as a misdemeanor, except that such person may instead be punished pursuant to subdivision (h) of Section 1170 if that person has one or more prior convictions for an offense specified in clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667 or for an offense requiring registration pursuant to subdivision (c) of Section 290.

(b) This section shall not be applicable to any theft that may be charged as an infraction pursuant to any other provision of law.

(c) ~~This section shall~~ *does not apply to theft of a ~~firearm~~.
firearm; forgery, as described in Chapter 4 (commencing with*

1 Section 470); the unlawful sale, transfer, or conveyance of an
2 access card in violation of Section 484e; forgery of an access card
3 in violation of Section 484f; the unlawful use of an access card in
4 violation of Section 484g; theft from an elder or dependent adult
5 in violation of subdivision (e) of Section 368; receiving stolen
6 property in violation of Section 496; embezzlement, as described
7 in Chapter 6 (commencing with Section 503); identity theft in
8 violation of Section 530.5; or the theft or unauthorized use of a
9 vehicle in violation of Section 10851 of the Vehicle Code.

10 SEC. 3. Section 666.1 is added to the Penal Code, to read:

11 666.1. (a) (1) Notwithstanding any other law, a person who,
12 having two or more convictions for any of the offenses listed in
13 paragraph (2), and who is subsequently convicted of petty theft or
14 shoplifting, is punishable by imprisonment in the county jail not
15 exceeding one year, or pursuant to subdivision (h) of Section 1170.

16 (2) This section applies to the following offenses:

17 (A) Petty theft, as described in Section 488.

18 (B) Grand theft, as described in Section 487.

19 (C) Theft from an elder or dependent adult in violation of
20 subdivision (e) of Section 368.

21 (D) The theft or unauthorized use of a vehicle, as described in
22 Section 10851 of the Vehicle Code.

23 (E) Burglary, as described in Section 459.

24 (F) Carjacking, as described in Section 215.

25 (G) Robbery, as described in Section 211.

26 (H) Receiving stolen property, as described in Section 496.

27 (I) Shoplifting, as described in Section 459.5.

28 (J) Mail theft, as described in subdivision (e) of Section 530.5.

29 (b) This section shall not be construed to preclude prosecution
30 or punishment pursuant to any other law.

31 SEC. 4. Chapter 2.97 (commencing with Section 1001.98) is
32 added to Title 6 of Part 2 of the Penal Code, to read:

33
34 *CHAPTER 2.97. THEFT CRIMES DIVERSION*
35

36 1001.98. (a) The city or county prosecuting attorney or county
37 probation department may create a diversion program pursuant
38 to this section for persons who commit a theft offense or repeat
39 theft offenses. The program may be conducted by the prosecuting
40 attorney's office or the county probation department.

1 (b) Except as provided in subdivision (e), this chapter does not
2 limit the power of the prosecuting attorney to prosecute theft or
3 repeat theft.

4 (c) If a county creates a diversion or deferred entry of judgment
5 program for individuals committing theft or repeat theft offenses,
6 on receipt of a case or at arraignment, the prosecuting attorney
7 shall either refer the case to the county probation department to
8 conduct a prefiling investigation report to assess the
9 appropriateness of program placement or, if the prosecuting
10 attorney's office operates the program, determine if the case is
11 one that is appropriate to be referred to the program. In
12 determining whether to refer a case to the program, the probation
13 department or prosecuting attorney shall consider, but is not
14 limited to, all of the following factors:

15 (1) Any prefiling investigation report conducted by the county
16 probation department or nonprofit contract agency operating the
17 program that evaluates the individual's risk and needs and the
18 appropriateness of program placement.

19 (2) If the person demonstrates a willingness to engage in
20 community service, restitution, or other mechanisms to repair the
21 harm caused by the criminal activity and address the underlying
22 drivers of the criminal activity.

23 (3) If a risk and needs assessment identifies underlying
24 substance abuse or mental health needs or other drivers of criminal
25 activity that can be addressed through the diversion or deferred
26 entry of judgment program.

27 (4) If the person has a violent or serious prior criminal record
28 or has previously been referred to a diversion program and failed
29 that program.

30 (5) Any relevant information concerning the efficacy of the
31 program in reducing the likelihood of participants committing
32 future offenses.

33 (d) On referral of a case to the program, a notice shall be
34 provided to the person alleged to have committed the offense with
35 both of the following information:

36 (1) The date by which the person must contact the diversion
37 program or deferred entry of judgment program in the manner
38 designated by the supervising agency.

39 (2) A statement of the penalty for the offense or offenses with
40 which that person has been charged.

1 (e) *The prosecuting attorney may enter into a written agreement*
2 *with the person to refrain from, or defer, prosecution on the offense*
3 *or offenses on the following conditions:*

4 (1) *Completion of the program requirements such as community*
5 *service or courses reasonably required by the prosecuting attorney.*

6 (2) *Making adequate restitution or an appropriate substitute*
7 *for restitution to the victim or victims.*

8 SEC. 5. *This act amends the Safe Neighborhoods and Schools*
9 *Act, an initiative statute approved by the voters at the November*
10 *4, 2014, statewide general election as Proposition 47, and shall*
11 *become effective only when submitted to and approved by the*
12 *voters. The Secretary of State shall submit Sections 1, 2, and 3 of*
13 *this act for approval by the voters at a statewide election in*
14 *accordance with Section 9040 of the Elections Code.*

15 ~~SECTION 1. It is the intent of the Legislature to enact~~
16 ~~legislation that would increase accountability for repeat offenders~~
17 ~~through participation in rehabilitative services.~~



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FAX: (408) 779-3117
www.morganhill.ca.gov

April 4, 2023

The Honorable Philip Ting
State Capitol, Ste. 8230
Sacramento, CA 95814

Dear Assembly Member Ting:

The City of Morgan Hill **opposes** AB 480, which undermines the City's ability to pursue appropriate economic development activities on City owned properties, by expanding the scope of authority for Department of Housing and Community Development (HCD) to review "*any action to dispose of land*," which would include properties retained for agency use, properties declared "exempt surplus," and properties that local agencies are authorized by other laws to acquire and dispose of for economic development purposes.

The implementation of the Surplus Lands Act (SLA), including HCD's recent guidelines, have created immense delays and difficulties for local government agencies dealing with the control and disposal of their local properties. Regrettably, AB 480 would compound those difficulties by expanding state reviews and delays affecting properties retained for agency use and declared exempt surplus.

The Legislature should evaluate the unintended consequences caused by implementation of the existing law on local agency activities, including unresolved conflicts with other laws and state policy priorities the Legislature has enacted that affect the disposal of local agency property.

Please feel free to contact our Development Services Director, Jennifer Carman at jennifer.carman@morganhill.ca.gov with any questions.

Sincerely,

Mark Turner, Mayor

Cc: Cecilia Aguiar Curry, Chair, Assembly Local Government Committee
Buffy Wicks, Chair, Assembly Committee on Housing and Community Development
Gurbax Sahota, Chief Executive Officer, CA Association for Local Economic Development
Senator John Laird
Assemblymember Gail Pellerin
Seth Miller, Regional Public Affairs Manager, League of California Cities, smiller@cacities.org
Meg Desmond, League of California Cities, cityletters@cacities.org

AMENDED IN ASSEMBLY MARCH 14, 2023

CALIFORNIA LEGISLATURE—2023–24 REGULAR SESSION

ASSEMBLY BILL

No. 480

Introduced by Assembly Member Ting
(Principal coauthor: Senator Umberg)

February 7, 2023

An act to amend Sections 54221, 54222, 54222.5, 54223, 54224, 54225, 54227, and 54230.5 ~~of~~ *of, and to add Section 54221.5 to*, the Government Code, relating to local government.

LEGISLATIVE COUNSEL’S DIGEST

AB 480, as amended, Ting. Surplus land.

Existing law prescribes requirements for the disposal of surplus land by a local agency, as defined, and requires, except as provided, a local agency disposing of surplus land to comply with certain notice requirements before disposing of the land or participating in negotiations to dispose of the land with a prospective transferee, particularly that the local agency send a notice of availability to specified entities that have notified the Department of Housing and Community Development of their interest in surplus land, as specified. Under existing law, if the local agency receives a notice of interest, the local agency is required to engage in good faith negotiations with the entity desiring to purchase or lease the surplus land.

Existing law requires a local agency to take formal action in a regular public meeting to declare land is surplus and is not necessary for the agency’s use and to declare land as either “surplus land” or “exempt surplus land,” as supported by written findings, before a local agency may take any action to dispose of it consistent with an agency’s policies or procedures.

This bill would recast that provision and would authorize, in specified instances, that a local agency administratively declare land as “exempt surplus land” if the declaration and findings are published and available for public comment at least 30 days before the declaration takes effect. The bill would also require a local agency to provide a written notification to the Department of Housing and Community Development of its declaration and findings 30 days before disposing of land declared “exempt surplus land.” Because this bill would require local officials to perform additional duties, it would impose a state-mandated local program.

Existing law defines “exempt surplus land,” for which a local agency is not required to follow the requirements for disposal of surplus land, except as provided, as, among other things, surplus land that is subject to valid legal restrictions that are not imposed by the local agency and that would make housing prohibited, as specified.

This bill would require that those legal restrictions be documented and verified in writing by the relevant agencies that have authority relating to the restrictions.

~~Existing law defines terms for purposes of these provisions, including specifies that, for purposes of these provisions, the term “exempt surplus land,” which includes, among other things, surplus land that is put out to open, competitive bid by a local agency, as specified, for purposes of a mixed-use development that is more than one acre in area, that includes not less than 300 housing units, and that restricts at least 25% of the residential units to lower income households with an affordable sales price or an affordable rent for a minimum of 55 years for rental housing and 45 years for ownership housing.~~

This bill would modify these provisions to require that the mixed-use development include not less than 300 residential units.

Existing law also defines exempt surplus land as, among other things, land that was transferred by the state to a local agency, as specified, that includes residential units that are restricted to persons and families of low or moderate income with an affordable sales price or rent, at least 80% of which shall be restricted to persons and families of lower income.

This bill would expand the definition of exempt surplus land to include land that is owned by a California public-use airport on which residential use is prohibited pursuant to specified federal law.

Existing law requires any local agency disposing of surplus land to send a written notice of availability of the property to specified entities.

Existing law requires the Department of Housing and Community Development to maintain on its internet website a list of all notices of availability throughout the state.

This bill would require the department to also maintain on its internet website a list of all entities, including housing sponsors, that have notified the department of their interest in surplus land for the purpose of developing low- and moderate-income housing. The bill would make other nonsubstantive changes to provisions that describe the entities to which notices of availability for developing low- and moderate-income housing, for open-space purposes, and for school facilities construction are required to be sent.

Existing law requires that an entity proposing to use surplus land for developing low- and moderate-income housing agree to make available a specified percentage of the total number of units developed at affordable housing cost or affordable rent to lower income households, as specified, and that this requirement be contained in a covenant or restriction recorded against the surplus land at the time of the sale that shall run with the land and be enforceable by specified entities and persons.

This bill would make nonsubstantive changes to the provisions that describe the entities and persons that can enforce the covenant or restriction.

Existing law specifies that after the disposing agency has received a notice of interest from the entity desiring to purchase or lease the land, if price or terms cannot be agreed upon after a good faith negotiation period, the land may be disposed of, as specified.

This bill would recast that provision to state that after the specified good faith negotiation, the local agency may dispose of the surplus land, as specified.

Existing law proclaims that nothing in these provisions relating to the disposition of surplus property shall preclude a local agency, housing authority, or redevelopment agency that purchases land from a disposing agency from reconveying the land to a nonprofit or for-profit housing developer for development of low- and moderate-income housing.

This bill would modify that provision to remove reference to housing authorities and redevelopment agencies and make other nonsubstantive changes.

Existing law specifies that any public agency disposing of surplus land to a specified entity that intends to use the land for park or recreation purposes, for open-space purposes, for school purposes, or

for low- and moderate-income housing purposes may provide for a payment period of up to 20 years in any contract of sale or sale by trust deed for the land.

This bill would modify those provisions to refer, instead, to a local agency disposing of surplus land.

Existing law authorizes a local agency to negotiate concurrently with all entities that provide notice of interest for the purpose of developing affordable housing that meets specified requirements.

This bill would modify that provision to reference low- and moderate-income housing that meets specified requirements. The bill would make other nonsubstantive changes to this provision.

Existing law makes a local agency that disposes of land in violation of these provisions after receiving notice from the Department of Housing and Community Development liable for a penalty, ~~as specified: of 30% of the final sale price of the surplus land sold for a first violation and 50% for any subsequent violation.~~

This bill would, instead, make a local agency that disposes of surplus land in violation of these provisions after receiving a notification from the Department of Housing and Community Development, as specified, that the local agency is in violation of these provisions liable for a penalty of 30% of the greater of the final sale price, or of the fair market value at the time of disposition, as determined by an independent appraisal, of the surplus land for a first violation, and 50% of the greater of the 2 sums, for any subsequent violation. The bill would make nonsubstantive changes to, and correct an erroneous cross-reference in, those provisions.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: ~~no~~ yes.

The people of the State of California do enact as follows:

SECTION 1. Section 54221 of the Government Code is amended to read:

54221. As used in this article, the following definitions shall apply:

(a) (1) "Local agency" means every city, whether organized under general law or by charter, county, city and county, district, including school, sewer, water, utility, and local and regional park districts of any kind or class, joint powers authority, successor agency to a former redevelopment agency, housing authority, or other political subdivision of this state and any instrumentality thereof that is empowered to acquire and hold real property.

(2) The Legislature finds and declares that the term "district" as used in this article includes all districts within the state, including, but not limited to, all special districts, sewer, water, utility, and local and regional park districts, and any other political subdivision of this state that is a district, and therefore the changes in paragraph (1) made by the act adding this paragraph that specify that the provisions of this article apply to all districts, including school, sewer, water, utility, and local and regional park districts of any kind or class, are declaratory of, and not a change in, existing law.

(b) (1) "Surplus land" means land owned in fee simple by any local agency ~~for which the local agency's governing body takes formal action in a regular public meeting declaring that the land is surplus and that is not necessary for the agency's use. Land shall be declared either "surplus land" or "exempt surplus land," as supported by written findings, before a local agency may take any action to dispose of it consistent with an agency's policies or procedures. A local agency, on an annual basis, may declare multiple parcels as "surplus land" or "exempt surplus land." use as declared by the local agency pursuant to Section 54221.5.~~

(2) "Surplus land" includes land held in the Community Redevelopment Property Trust Fund pursuant to Section 34191.4 of the Health and Safety Code and land that has been designated in the long-range property management plan approved by the Department of Finance pursuant to Section 34191.5 of the Health and Safety Code, either for sale or for future development, but

1 does not include any specific disposal of land to an identified entity
2 described in the plan.

3 (3) Nothing in this article prevents a local agency from obtaining
4 fair market value for the disposition of surplus land consistent with
5 Section 54226.

6 (c) (1) Except as provided in paragraph (2), “agency’s use”
7 shall include, but not be limited to, land that is being used, *or is*
8 planned to be used pursuant to a written plan adopted by the local
9 agency’s governing ~~board for, or is disposed to support pursuant~~
10 ~~to subparagraph (B) of paragraph (2) board, for~~ agency work or
11 operations, including, but not limited to, utility sites, watershed
12 property, land being used for conservation purposes, land for
13 demonstration, exhibition, or educational purposes related to
14 greenhouse gas emissions, and buffer sites near sensitive
15 governmental uses, including, but not limited to, ~~waste water~~
16 ~~wastewater~~ treatment plants.

17 (2) (A) “Agency’s use” shall not include commercial or
18 industrial uses or activities, including nongovernmental retail,
19 entertainment, or office development. Property disposed of for the
20 sole purpose of investment or generation of revenue shall not be
21 considered necessary for the agency’s use.

22 (B) In the case of a local agency that is a district, excepting
23 those whose primary mission or purpose is to supply the public
24 with a transportation system, “agency’s use” may include
25 commercial or industrial uses or activities, including
26 nongovernmental retail, entertainment, or office development or
27 be for the sole purpose of investment or generation of revenue if
28 the agency’s governing body takes action in a public meeting
29 declaring that the use of the site will do one of the following:

30 (i) Directly further the express purpose of agency work or
31 operations.

32 (ii) Be expressly authorized by a statute governing the local
33 agency, provided the district complies with Section 54233.5 if
34 applicable.

35 (d) “Open-space purposes” means the use of land for public
36 recreation, enjoyment of scenic beauty, or conservation or use of
37 natural resources.

38 (e) “Persons and families of low or moderate income” has the
39 same meaning as provided in Section 50093 of the Health and
40 Safety Code.

(f) (1) Except as provided in paragraph (2), “exempt surplus land” means any of the following:

(A) Surplus land that is transferred pursuant to Section 25539.4 or 37364.

(B) Surplus land that is (i) less than 5,000 square feet in area, (ii) less than the minimum legal residential building lot size for the jurisdiction in which the parcel is located, or 5,000 square feet in area, whichever is less, or (iii) has no record access and is less than 10,000 square feet in area; and is not contiguous to land owned by a state or local agency that is used for open-space or low- and moderate-income housing purposes. If the surplus land is not sold to an owner of contiguous land, it is not considered exempt surplus land and is subject to this article.

(C) Surplus land that a local agency is exchanging for another property necessary for the agency’s use.

(D) Surplus land that a local agency is transferring to another local, state, or federal agency for the agency’s use, or to a federally recognized California Indian tribe.

(E) Surplus land that is a former street, ~~right-of-way~~, *right of way*, or easement, and is conveyed to an owner of an adjacent property.

(F) Surplus land that is put out to open, competitive bid by a local agency, provided all entities identified in subdivision (a) of Section 54222 will be invited to participate in the competitive bid process, for either of the following purposes:

(i) A housing development, that may have ancillary commercial ground floor uses, that restricts 100 percent of the residential units to persons and families of low or moderate income, with at least 75 percent of the residential units restricted to lower income households, as defined in Section 50079.5 of the Health and Safety Code, with an affordable sales price or an affordable rent, as defined in Sections 50052.5 or 50053 of the Health and Safety Code, for a minimum of 55 years for rental housing and 45 years for ownership housing, and in no event shall the maximum affordable sales price or rent level be higher than 20 percent below the median market rents or sales prices for the neighborhood in which the site is located.

(ii) A mixed-use development that is more than one acre in area, that includes not less than 300 residential units, and that restricts at least 25 percent of the residential units to lower income

1 households, as defined in Section 50079.5 of the Health and Safety
2 Code, with an affordable sales price or an affordable rent, as
3 defined in Sections 50052.5 and 50053 of the Health and Safety
4 Code, for a minimum of 55 years for rental housing and 45 years
5 for ownership housing.

6 (G) Surplus land that is subject to valid legal restrictions that
7 are not imposed by the local agency and that would make housing
8 prohibited, unless there is a feasible method to satisfactorily
9 mitigate or avoid the prohibition on the site. *The legal restriction*
10 *shall be documented and verified in writing by the relevant*
11 *agencies that have authority relating to the restrictions.* An existing
12 nonresidential land use designation on the surplus land is not a
13 legal restriction that would make housing prohibited for purposes
14 of this subparagraph. Nothing in this article limits a local
15 jurisdiction's authority or discretion to approve land use, zoning,
16 or entitlement decisions in connection with the surplus land.

17 (H) Surplus land that was granted by the state in trust to a local
18 agency or that was acquired by the local agency for trust purposes
19 by purchase or exchange, and for which disposal of the land is
20 authorized or required subject to conditions established by statute.

21 (I) Land that is subject to Sections 17388, 17515, 17536, 81192,
22 81397, 81399, 81420, and 81422 of the Education Code and Part
23 14 (commencing with Section 53570) of Division 31 of the Health
24 and Safety Code, unless compliance with this article is expressly
25 required.

26 (J) Surplus land that is a former military base that was conveyed
27 by the federal government to a local agency, and is subject to
28 Article 8 (commencing with Section 33492.125) of Chapter 4.5
29 of Part 1 of Division 24 of the Health and Safety Code, provided
30 that all of the following conditions are met:

31 (i) The former military base has an aggregate area greater than
32 five acres, is expected to include a mix of residential and
33 nonresidential uses, and is expected to include no fewer than 1,400
34 residential units upon completion of development or redevelopment
35 of the former military base.

36 (ii) The affordability requirements for residential units shall be
37 governed by a settlement agreement entered into prior to September
38 1, 2020. Furthermore, at least 25 percent of the initial 1,400
39 residential units developed shall be restricted to lower income
40 households, as defined in Section 50079.5 of the Health and Safety

1 Code, with an affordable sales price or an affordable rent, as
2 defined in Sections 50052.5 and 50053 of the Health and Safety
3 Code, for a minimum of 55 years for rental housing and 45 years
4 for ownership housing.

5 (iii) Before disposition of the surplus land, the agency adopts
6 written findings that the land is exempt surplus land pursuant to
7 this subparagraph.

8 (iv) Before disposition of the surplus land, the recipient has
9 negotiated a project labor agreement consistent with the local
10 agency's project stabilization agreement resolution, as adopted on
11 February 2, 2021, and any succeeding ordinance, resolution, or
12 policy, regardless of the length of the agreement between the local
13 agency and the recipient.

14 (v) The agency includes in the annual report required by
15 paragraph (2) of subdivision (a) of Section 65400 the status of
16 development of residential units on the former military base,
17 including the total number of residential units that have been
18 permitted and what percentage of those residential units are
19 restricted for persons and families of low or moderate income, as
20 defined in Section 50093 of the Health and Safety Code, or lower
21 income households, as defined in Section 50079.5 of the Health
22 and Safety Code.

23 A violation of this subparagraph is subject to the penalties
24 described in Section 54230.5. Those penalties are in addition to
25 any remedy a court may order for violation of this subparagraph
26 or the settlement agreement.

27 (K) Real property that is used by a district for agency's use
28 expressly authorized in subdivision (c).

29 (L) Land that has been transferred before June 30, 2019, by the
30 state to a local agency pursuant to Section 32667 of the Streets
31 and Highways Code and has a minimum planned residential density
32 of at least 100 dwelling units per acre, and includes 100 or more
33 residential units that are restricted to persons and families of low
34 or moderate income, ~~as defined in Section 50093 of the Health~~
35 ~~and Safety Code~~, with an affordable sales price or an affordable
36 rent, as defined in Sections 50052.5 and 50053 of the Health and
37 Safety Code, for a minimum of 55 years for rental housing and 45
38 years for ownership housing. For purposes of this paragraph, not
39 more than 20 percent of the affordable units may be restricted to
40 persons and families of moderate income and at least 80 percent

1 of the affordable units must be restricted to ~~persons and families~~
2 of lower income *households* as defined in Section 50079.5 of the
3 Health and Safety Code.

4 (M) Land that is owned by a California public-use airport on
5 which residential use is prohibited pursuant to Federal Aviation
6 Administration Order 5190.6B, Airport Compliance Program,
7 Chapter 20 — Compatible Land Use and Airspace Protection.

8 (2) Notwithstanding paragraph (1), a written notice of the
9 availability of surplus land for open-space purposes shall be sent
10 to the entities described in subdivision (b) of Section 54222 before
11 disposing of the surplus land, provided the land does not meet the
12 criteria in subparagraph (H) of paragraph (1), if the land is any of
13 the following:

14 (A) Within a coastal zone.

15 (B) Adjacent to a historical unit of the State Parks System.

16 (C) Listed on, or determined by the State Office of Historic
17 Preservation to be eligible for, the National Register of Historic
18 Places.

19 (D) Within the Lake Tahoe region as defined in Section 66905.5.

20 *SEC. 2. Section 54221.5 is added to the Government Code, to*
21 *read:*

22 *54221.5. (a) Before taking any action to dispose of land, a*
23 *local agency shall declare that the land is either “surplus land”*
24 *or “exempt surplus land” as specified in this section. The*
25 *declaration shall be supported by written findings before the local*
26 *agency may dispose of the land in a manner that is consistent with*
27 *this section and the local agency’s policies.*

28 *(b) Except as provided in subdivision (c), a local agency shall*
29 *take formal action at a regular public meeting to declare that land*
30 *is either “surplus land” or “exempt surplus land.”*

31 *(c) Notwithstanding subdivision (b), a local agency may declare*
32 *administratively that land is “exempt surplus land” pursuant to*
33 *subparagraphs (A), (B), (E), (H), or (I) of paragraph (1) of*
34 *subdivision (f) of Section 54221 if the declaration and findings*
35 *are published and available for public comment, including notice*
36 *to the entities identified in subdivision (a) of section 54222, at*
37 *least 30 days before the declaration takes effect.*

38 *(d) Notwithstanding Section 54222.3, 30 days before disposing*
39 *of land declared “exempt surplus land,” a local agency shall*
40 *provide the Department of Housing and Community Development*

1 *a written notification of its declaration and findings in a form and*
2 *manner prescribed by the department.*

3 *(e) A local agency may, on an annual basis, declare multiple*
4 *parcels as “surplus land” or “exempt surplus land.”*

5 ~~SEC. 2.~~

6 SEC. 3. Section 54222 of the Government Code is amended
7 to read:

8 54222. Except as provided in Division 23 (commencing with
9 Section 33000) of the Public Resources Code, any local agency
10 disposing of surplus ~~land~~ *land, declared pursuant to subdivision*
11 *(b) of Section 54221.5*, shall send, before disposing of that property
12 or participating in negotiations to dispose of that property with a
13 prospective transferee, a written notice of availability of the
14 property to all of the following:

15 (a) (1) A written notice of availability for developing low- and
16 moderate-income ~~housing~~ *housing, in a form prescribed by the*
17 *Department of Housing and Community Development*, shall be
18 sent to any local public entity, as defined in Section 50079 of the
19 Health and Safety Code, that has jurisdiction where the surplus
20 land is located. Housing sponsors, as defined by Section 50074 of
21 the Health and Safety Code, that have notified the Department of
22 Housing and Community Development of their interest in surplus
23 land shall be sent a notice of availability for the purpose of
24 developing low- and moderate-income housing. All notices shall
25 be sent by electronic mail, or by certified mail, and shall include
26 the location and a description of the property.

27 (2) The Department of Housing and Community Development
28 shall maintain on its internet website an up-to-date listing ~~of~~ *of,*
29 *and a link to*, all notices of availability throughout the state and a
30 listing of all entities, including housing sponsors, that have notified
31 the department of their interest in surplus land for the purpose of
32 developing low- and moderate-income housing.

33 (b) A written notice of availability for open-space purposes shall
34 be sent:

35 (1) To any park or recreation department of any city within
36 which the surplus land is located.

37 (2) To any park or recreation department of the county within
38 which the surplus land is located.

39 (3) To any regional park authority having jurisdiction within
40 the area in which the surplus land is located.

1 (4) To the State Resources Agency or any agency that may
2 succeed to its powers.

3 (c) A written notice of availability of land suitable for school
4 facilities construction or use by a school district for open-space
5 purposes shall be sent to any school district that has jurisdiction
6 where the surplus land is located.

7 (d) A written notice of availability for developing property
8 located within an infill opportunity zone designated pursuant to
9 Section 65088.4 or within an area covered by a transit village plan
10 adopted pursuant to the Transit Village Development Planning
11 Act of 1994 (Article 8.5 (commencing with Section 65460) of
12 Chapter 3 of Division 1 of Title 7) shall be sent to any county,
13 city, city and county, successor agency to a former redevelopment
14 agency, public transportation agency, or housing authority within
15 whose jurisdiction the surplus land is located.

16 (e) The entity desiring to purchase or lease the surplus land for
17 any of the purposes authorized by this section shall notify in writing
18 the disposing agency of its interest in purchasing or leasing the
19 land within 60 days after the agency's notice of availability is sent
20 via certified mail or provided via electronic mail.

21 (f) For the purposes of this section, "participating in
22 negotiations" does not include the commissioning of appraisals,
23 due diligence prior to disposition, discussions with brokers or real
24 estate agents not representing a potential buyer, or other studies
25 to determine value or best use of land, issuance of a request for
26 qualifications, development of marketing materials, or discussions
27 conducted exclusively among local agency employees and elected
28 officials.

29 ~~SEC. 3.~~

30 *SEC. 4.* Section 54222.5 of the Government Code is amended
31 to read:

32 54222.5. An entity proposing to use the surplus land for
33 developing low- and moderate-income housing shall agree to make
34 available not less than 25 percent of the total number of units
35 developed on the parcels at affordable housing cost, as defined in
36 Section 50052.5 of the Health and Safety Code, or affordable rent,
37 as defined in Section 50053 of the Health and Safety Code, to
38 lower income households, as defined in Section 50079.5 of the
39 Health and Safety Code. Rental units shall remain affordable to,
40 and occupied by, lower income households for a period of at least

55 years. The initial occupants of all ownership units shall be lower income households, and the units shall be subject to an equity sharing agreement consistent with paragraph (2) of subdivision (c) of Section 65915. These requirements shall be contained in a covenant or restriction recorded against the surplus land at the time of sale, that shall run with the land and shall be enforceable, against any owner who violates a covenant or restriction and each successor in interest who continues the violation, by any of the following:

- (a) The local agency that disposed of the surplus land.
- (b) A resident of a unit subject to this section.
- (c) A residents' association with members who reside in units subject to this section.
- (d) A former resident of a unit subject to this section who last resided in that unit.
- (e) An applicant seeking to enforce the covenants or restrictions for a particular unit that is subject to this section, if the applicant conforms to all of the following:
 - (1) Is of low or moderate income, ~~as defined in~~ *pursuant to* Section 50093 of the Health and Safety Code.
 - (2) Is able and willing to occupy that particular unit.
 - (3) Was denied occupancy of that particular unit due to an alleged breach of a covenant or restriction implementing this section.
- (f) A person on an affordable housing waiting list who is of low or moderate income, ~~as defined in~~ *pursuant to* Section 50093 of the Health and Safety Code, and who is able and willing to occupy a unit subject to this section.

~~SEC. 4.~~

SEC. 5. Section 54223 of the Government Code is amended to read:

54223. (a) After the disposing agency has received a notice of interest from the entity desiring to purchase or lease the surplus land on terms that comply with this article, the disposing agency and the entity shall enter into good faith negotiations to determine a mutually satisfactory sales price and terms or lease terms. If the price or terms cannot be agreed upon after a good faith negotiation period of not less than 90 days, the local agency may dispose of the surplus land without further regard to this article, except that Section 54233 shall apply.

(b) Residential use shall be deemed an acceptable use for the surplus land for the purposes of good faith negotiations with a local agency conducted pursuant to this article. Nothing in this subdivision shall restrict a local jurisdiction's authority or discretion to approve land use, zoning, or entitlement decisions in connection with the surplus land. Except as provided in subdivision (c), terms agreed to pursuant to the negotiations shall not do any of the following:

(1) Disallow residential use of the site as a condition of the disposal.

(2) Reduce the allowable number of residential units or the maximum lot coverage below what may be allowed by zoning or general plan requirements.

(3) Require as a condition of disposal, any design standards or architectural requirements that would have a substantial adverse effect on the viability or affordability of a housing development for very low, low-, or moderate-income households, other than the minimum standards required by general plan, zoning, and subdivision standards and criteria.

(c) Terms agreed to pursuant to the negotiations required by subdivision (a) may include limitations on residential use or density if, without the limitations, the residential use or density would have a specific, adverse impact, supported by written findings, upon the public health or safety or upon the operation or facilities of a local agency, and there is no feasible method to satisfactorily mitigate the impact.

~~SEC. 5.~~

SEC. 6. Section 54224 of the Government Code is amended to read:

54224. Nothing in this article shall preclude a local agency that purchases surplus land from a disposing agency pursuant to this article from reconveying the surplus land to a nonprofit or for-profit housing developer for development of low- and moderate-income housing as authorized under other provisions of law.

~~SEC. 6.~~

SEC. 7. Section 54225 of the Government Code is amended to read:

54225. Any local agency disposing of surplus land to an entity described in Section 54222 that intends to use the land for park or

recreation purposes, for open-space purposes, for school purposes, or for low- and moderate-income housing purposes may provide for a payment period of up to 20 years in any contract of sale or sale by trust deed for the land. The payment period for surplus land disposed of for housing for persons and families of low and moderate income may exceed 20 years, but the payment period shall not exceed the term that the land is required to be used for low- or moderate-income housing.

~~SEC. 7.~~

SEC. 8. Section 54227 of the Government Code is amended to read:

54227. (a) In the event that any local agency disposing of surplus land receives a notice of interest to purchase or lease that land from more than one of the entities to which notice of availability was given pursuant to this article, the local agency shall give first priority to the entity or entities that agree to use the site for housing that meets the requirements of Section 54222.5. If the local agency receives offers from more than one entity that agrees to meet the requirements of Section 54222.5, then the local agency shall give priority to the entity that proposes to provide the greatest number of units that meet the requirements of Section 54222.5. In the event that more than one entity proposes the same number of units that meet the requirements of Section 54222.5, priority shall be given to the entity that proposes the deepest average level of affordability for the affordable units. A local agency may negotiate concurrently with all entities that provide notice of interest for the purpose of developing low- and moderate-income housing that meets the requirements of Section 54222.5.

(b) Notwithstanding subdivision (a), first priority shall be given to an entity that agrees to use the site for park or recreational purposes if the land being offered is already being used and will continue to be used for park or recreational purposes, or if the land is designated for park and recreational use in the local general plan and will be developed for that purpose.

~~SEC. 8.~~

SEC. 9. Section 54230.5 of the Government Code is amended to read:

54230.5. (a) (1) A local agency that disposes of surplus land in violation of this article after receiving a notification from the

1 Department of Housing and Community Development pursuant
2 to subdivision (b) that the local agency is in violation of this article
3 shall be liable for a penalty of 30 percent of the *greater of the final*
4 ~~sale price of the surplus land price, or of the fair market value of~~
5 *the surplus land at the time of disposition, as determined by an*
6 *independent appraisal, of the surplus land* sold in violation of this
7 article for a first violation and 50 percent *of the greater of the two*
8 *sums*, for any subsequent violation. An entity identified in Section
9 54222 or a person who would have been eligible to apply for
10 residency in any affordable housing developed or a housing
11 organization as defined in Section 65589.5, or any beneficially
12 interested person or entity may bring an action to enforce this
13 section. A local agency shall have 60 days to cure or correct an
14 alleged violation before an action may be brought to enforce this
15 section, unless the local agency disposes of the surplus land before
16 curing or correcting the alleged violation, or the department deems
17 the alleged violation not to be a violation in less than 60 days.

18 (2) A penalty assessed pursuant to this subdivision shall, except
19 as otherwise provided, be deposited into a local housing trust fund.
20 The local agency may elect to instead deposit the penalty moneys
21 into the Building Homes and Jobs Trust Fund or the Housing
22 Rehabilitation Loan Fund. Penalties shall not be paid out of funds
23 already dedicated to affordable housing, including, but not limited
24 to, Low and Moderate Income Housing Asset Funds, funds
25 dedicated to housing for very low, low-, and moderate-income
26 households, and federal HOME Investment Partnerships Program
27 and Community Development Block Grant Program funds. The
28 local agency shall commit and expend the penalty moneys
29 deposited into the local housing trust fund within five years of
30 deposit for the sole purpose of financing newly constructed housing
31 units that are affordable to extremely low, very low, or low-income
32 households.

33 (3) Five years after deposit of the penalty moneys into the local
34 housing trust fund, if the funds have not been expended, the funds
35 shall revert to the state and be deposited in the Building Homes
36 and Jobs Trust Fund or the Housing Rehabilitation Loan Fund for
37 the sole purpose of financing newly constructed housing units
38 located in the same jurisdiction as the surplus land and that are
39 affordable to extremely low, very low, or low-income households.
40 Expenditure of any penalty moneys deposited into the Building

Homes and Jobs Trust Fund or the Housing Rehabilitation Loan Fund pursuant to this subdivision shall be subject to appropriation by the Legislature.

(b) (1) ~~Prior to~~ Before agreeing to terms for the disposition of surplus land, a local agency shall provide to the Department of Housing and Community Development a description of the notices of availability sent, and negotiations conducted with any responding entities, in regard to the disposal of the parcel of surplus land and a copy of any restrictions to be recorded against the property pursuant to Section ~~54233~~ 54222.5, 54233, or 54233.5, whichever is applicable, in a form prescribed by the Department of Housing and Community Development. A local agency may submit this information after it has sent notices of availability required by Section 54222 and concluded negotiations with any responding agencies. A local agency shall not be liable for the penalty imposed by subdivision (a) if the Department of Housing and Community Development does not notify the agency that the agency is in violation of this article within 30 days of receiving the description.

(2) The Department of Housing and Community Development shall do all of the following:

(A) Make available educational resources and materials that inform each agency of its obligations under this article and that provide guidance on how to comply with its provisions.

(B) Review information submitted pursuant to paragraph (1).

(C) Submit written findings to the local agency within 30 days of receipt of the description required by paragraph (1) from the local agency if the proposed disposal of the land will violate this article.

(D) Review, adopt, amend, or repeal guidelines to establish uniform standards to implement this section. The guidelines adopted pursuant to this subdivision are not subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2.

(E) Provide the local agency reasonable time, but not less than 60 days, to respond to the findings before taking any other action authorized by this section.

(3) (A) The local agency shall consider findings made by the Department of Housing and Community Development pursuant

1 to subparagraph (C) of paragraph (2) and shall do one of the
2 following:

3 (i) Correct any issues identified by the Department of Housing
4 and Community Development.

5 (ii) Provide written findings explaining the reason its process
6 for disposing of surplus land complies with this article and
7 addressing the Department of Housing and Community
8 Development's findings.

9 (B) If the local agency does not correct issues identified by the
10 Department of Housing and Community Development, does not
11 provide findings explaining the reason its process for disposing of
12 surplus land complies with this article and addressing the
13 Department of Housing and Community Development's findings,
14 or if the Department of Housing and Community Development
15 finds that the local agency's findings are deficient in addressing
16 the issues identified by the Department of Housing and Community
17 Development, the Department of Housing and Community
18 Development shall notify the local agency, and may notify the
19 Attorney General, that the local agency is in violation of this article.

20 (c) The Department of Housing and Community Development
21 shall implement the changes in this section made by the act adding
22 this subdivision commencing on January 1, 2021.

23 (d) Notwithstanding subdivision (c), this section shall not be
24 construed to limit any other remedies authorized under law to
25 enforce this article including public records act requests pursuant
26 to Division 10 (commencing with Section 7920.000) of Title 1.

27 *SEC. 10. If the Commission on State Mandates determines that*
28 *this act contains costs mandated by the state, reimbursement to*
29 *local agencies and school districts for those costs shall be made*
30 *pursuant to Part 7 (commencing with Section 17500) of Division*
31 *4 of Title 2 of the Government Code.*

O

OPPOSE SB 423 (Wiener)

Streamlined housing approvals: multifamily housing developments:
SB 35 (Chapter 366, Statutes of 2017) expansion.

ACTION

SB 423 would greatly expand SB 35 (Chapter 366, Statutes of 2017) provisions and eliminate the Jan. 1, 2026 sunset date, permanently requiring cities to ministerially approve certain housing projects without public input or environmental review.

SB 423 will be heard in the Senate Committee on Housing on March 21. Voice your opposition **TODAY** by submitting a letter to the Senate Committee on Housing and your legislator. If your Senator is on the committee, it is important for you to **submit a letter and call** them to express your opposition.

Members of the Senate Committee on Housing:

Senator Scott Wiener (Chair) — (916) 651-4011
Senator Rosilicie Ochoa Bogh (Vice Chair) — (916) 651-4023
Senator Catherine Blakespear — (916) 651-4038
Senator Anna Caballero — (916) 651-4014
Senator Dave Cortese — (916) 651-4015
Senator Mike McGuire — (916) 651-4002
Senator Steve Padilla — (916) 651-4018
Senator Kelly Seyarto — (916) 651-4032
Senator Nancy Skinner — (916) 651-4009
Senator Thomas Umberg — (916) 651-4034
Senator Aisha Wahab — (916) 651-4410

Background: In 2017, the Legislature passed, and the Governor signed SB 35. This law makes the approval of multifamily developments, many of which meet inadequate criteria, “ministerial” actions. As a result, the approval of these developments pre-empts local discretionary land use authority, bypasses the California Environmental Quality Act (CEQA), and ignores public input.

What does SB 423 specifically do?

- Removes the 2026 sunset and makes SB 35 statutes permanent.
- Applies SB 35 provision to cities that have not been found in substantial compliance with housing element law by the department.
- Applies SB 35 provisions to developments in the Coastal Zone.

- Allows the state to approve housing developments on property they own or lease without being required to follow local zoning and development standards.
- Prohibits a city from enforcing its inclusionary housing ordinance if the income limits are higher than those in SB 35.

Talking points:

- City officials intimately understand the housing crisis as it plays out in their communities every day. Local leaders are working to find creative solutions so homes of all income levels can be built.
- Cities are finalizing local housing plans that will identify sites for more than 2.5 million new homes statewide, all while navigating the state's annual barrage of overreaching housing bills that have thus far demonstrated limited success.
- SB 423 is the latest overreaching bill, and would force cities to approve certain housing projects without regard to the needs of the community, opportunities for environmental review, or public input.
- Instead of continuing to pursue top-down, one-size-fits-all legislation, lawmakers should partner with local officials.
- That's why **YOUR CITY NAME** is calling on the Governor and lawmakers to include a \$3 billion annual investment in the state budget to help cities prevent and reduce homelessness and spur housing development.
- Targeted, ongoing funding is the only way cities can find community-based solutions that get our residents off the streets and keep them in their homes.
- California will never produce the number of homes needed with an increasingly state driven, by-right housing approval process.
- Join me and oppose SB 423 (Wiener).



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April 10, 2023

The Honorable Scott Wiener
Chair, Senate Committee on Housing
1021 O Street, Suite 3330
Sacramento, CA 95814

RE: SB 423 (Wiener) Streamlined housing approvals: multifamily housing developments: SB 35 (Chapter 366, Statutes of 2017) Expansion. - Notice of Opposition

Dear Senator Wiener:

On behalf of the City of Morgan Hill, we respectfully write with a deep appreciation and shared concern for the statewide housing crisis, and the unprecedented need for affordable housing. However, the City of Morgan Hill writes to express our opposition to SB 423, which would greatly expand SB 35 (Chapter 366, Statutes of 2017) provisions and eliminate the January 1, 2026, sunset date. We recognize it may be a solution that is appealing to some cities that are truly "transit rich" and "job rich," unfortunately Morgan Hill is neither. All cities are not created equal in terms of resources that are desperately needed to ensure sustainable communities.

The City of Morgan Hill intimately understands this crisis as it plays out in our community every day. Morgan Hill has created more affordable units per capita than any other City in northern California and is committed to continuing this important work. We continue to not shy away from striving to achieve our production goals. Currently, there are more than 2,900 units in the development pipeline and 550 of them are designated as affordable. For the current Regional Housing Needs Allocation (RHNA) cycle (2015-2023), Morgan Hill has exceeded our total RHNA goal of 928 by producing 3,142 homes since 2014, thus satisfying our Housing goal by 338%. Morgan Hill has worked tirelessly with a very small team to exceed each income category of the RHNA allocations, including very low income for which the City is proud to have produced 311 units or 113% of the 5th cycle RHNA allocation.

SB 423 is the latest bill that would double-down on the recent trend of the state overriding its own mandated local housing plans by forcing cities to approve certain housing projects without opportunities for environmental review, impacts, or public input.

Finally, it should be noted that Morgan Hill is not only leading in affordable housing creation, but also is growing at a fast, steady pace of 2% per year. Morgan Hill is often listed as one of the fastest growing cities in Santa Clara County. Morgan Hill is building its fair share of housing and has exceeded our RHNA numbers both in the current 5th cycle and is on track to do so in the next 6th RHNA cycle. While the desire for housing production resonates strongly with us, we have the following concerns:

- Public engagement often leads to better projects. Not having such outlets will increase public distrust in government and could result in additional ballot measures limiting housing development.
- One-size-fits-all legislation is challenging and infeasible for smaller and less resourced jurisdictions like Morgan Hill.
- The lack of public transportation in Morgan Hill and the limited parking available leads to developments that are not conducive to the actual needs of the residents living in them.

We encourage lawmakers to partner with local officials. California Cities is calling on the Governor and lawmakers to include a \$3 billion annual investment in the state budget to help cities prevent and reduce homelessness and spur housing development. Targeted, ongoing funding at an appropriate scale to address the magnitude of the need is needed, a sustainable state investment that matches the scale of this long-term crisis.

For these reasons, the City of Morgan Hill respectfully opposes your measure.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark Turner", with a stylized flourish extending to the right.

Mark Turner
Mayor

Cc: Seth Miller, Regional Public Affairs Manager, League of California Cities, smiller@cacities.org
Meg Desmond, League of California Cities, cityletters@cacities.org
Senator John Laird
Assemblymember Gail Pellerin

AMENDED IN SENATE MARCH 28, 2023

SENATE BILL

No. 423

Introduced by Senator Wiener

(Principal coauthor: Assembly Member Wicks)

(Coauthor: Senator Hurtado)

(Coauthor: Assembly Member Grayson)

February 13, 2023

An act to amend Section 65913.4 of the Government Code, relating to land use.

LEGISLATIVE COUNSEL'S DIGEST

SB 423, as amended, Wiener. Land use: streamlined housing approvals: multifamily housing developments.

Existing law, the Planning and Zoning Law, authorizes a development proponent to submit an application for a multifamily housing development that is subject to a streamlined, ministerial approval process, as provided, and not subject to a conditional use permit, if the development satisfies specified objective planning standards, including, among others, that the development proponent has committed to record, prior to the issuance of the first building permit, a land use restriction or covenant providing that any lower or moderate-income housing units required, as specified, remain available at affordable housing costs, as defined, or rent to persons and families of lower or moderate-income for no less than specified periods of time. Existing law repeals these provisions on January 1, 2026.

This bill would authorize the Department of General Services to act in the place of a locality or local government, at the discretion of that department, for purposes of the ministerial, streamlined review for development on property owned by or leased to the state. The bill would

delete the January 1, 2026, repeal date, thereby making these provisions operative indefinitely.

This bill would modify the above-described objective planning standards, including by deleting the standard that prohibits a multifamily housing development from being subject to the streamlined, ministerial approval process if the development is located in a coastal zone, and by providing an alternative definition for “affordable housing costs” for a development that dedicates 100% of units, exclusive of a manager’s unit or units, to lower income households. The bill would, among other modifications, delete the objective planning standards requiring development proponents to pay at least the general prevailing rate of per diem wages and utilize a skilled and trained workforce and would instead require a development proponent to certify to the local government that certain wage and labor standards will be met, including a requirement that all construction workers be paid at least the general prevailing rate of wages, as specified. The bill would require the Labor Commissioner to enforce the obligation to pay prevailing wages. By expanding the crime of perjury, the bill would impose a state-mandated local program. The bill would specify that the requirements to pay prevailing wages, use a workforce participating in an apprenticeship, or provide health care expenditures do not apply to a project that consists of 10 or fewer units and is not otherwise a public work.

~~This bill would define “objective planning standards” to exclude specified standards, including local building codes, fire codes, other codes requiring detailed technical specifications, and standards that are not reasonably ascertainable by the local government within specified time limits, as described.~~

Existing law requires a local government to approve a development if the local government determines the development is consistent with the objective planning standards. Existing law requires, if the local government determines a submitted development is in conflict with any of the objective planning standards, the local government to provide the development proponent written documentation of the standards the development conflicts with and an explanation for the conflict within certain timelines depending on the size of the development. Existing law, the Housing Accountability Act, prohibits a local agency from disapproving a housing development project, as described, unless it makes specified written findings.

This bill would instead require approval if a local government’s planning director or ~~any equivalent local government staff, including~~

~~all relevant planning and permitting departments, equivalent position determines the development is consistent with the objective planning standards. The bill would make conforming changes. The bill would require all departments of the local government that are required to issue an approval of the development prior to the granting of an entitlement to also comply with the above-described streamlined approval requirements within specified time periods. The bill would prohibit a local government from requiring a development proponent to provide consultant studies, as described, or other studies requiring, prior to approving a development that meets the requirements of the above-described streamlining provisions, compliance with any standards necessary to receive a postentitlement permit or studies, information, or other materials that are unnecessary to ascertain consistency do not pertain directly to determining whether the development is consistent with the objective planning standards. standards applicable to the development.~~

The bill would, for purposes of these provisions, establish that the total number of units in a development includes (1) all projects developed on a site, regardless of when those developments occur, and (2) all projects developed on sites adjacent to a site developed pursuant to these provisions if, after January 1, 2023, the adjacent site had been subdivided from the site developed pursuant to these provisions.

Existing law authorizes the local government’s planning commission or any equivalent board or commission responsible for review and approval of development projects, or as otherwise specified, to conduct any design review or public oversight of the development.

This bill would remove the above-described authorization to conduct public oversight of the development and would only authorize design review to be conducted by the local government’s planning commission or any equivalent board or commission responsible for design review.

By imposing additional duties on local officials, the bill would impose a state-mandated local program.

The bill would include findings that changes proposed by this bill address a matter of statewide concern rather than a municipal affair and, therefore, apply to all cities, including charter cities.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for specified reasons.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares that it has
- 2 provided reforms and incentives to facilitate and expedite the
- 3 construction of affordable housing. Those reforms and incentives
- 4 can be found in the following provisions:
- 5 (a) Housing element law (Article 10.6 (commencing with
- 6 Section 65580) of Chapter 3 of Division 1 of Title 7 of the
- 7 Government Code).
- 8 (b) Extension of statute of limitations in actions challenging the
- 9 housing element and brought in support of affordable housing
- 10 (subdivision (d) of Section 65009 of the Government Code).
- 11 (c) Restrictions on disapproval of housing developments
- 12 (Section 65589.5 of the Government Code).
- 13 (d) Priority for affordable housing in the allocation of water and
- 14 sewer hookups (Section 65589.7 of the Government Code).
- 15 (e) Least cost zoning law (Section 65913.1 of the Government
- 16 Code).
- 17 (f) Density Bonus Law (Section 65915 of the Government
- 18 Code).
- 19 (g) Accessory dwelling units (Sections 65852.150 and 65852.2
- 20 of the Government Code).
- 21 (h) By-right housing, in which certain multifamily housing is
- 22 designated a permitted use (Section 65589.4 of the Government
- 23 Code).
- 24 (i) No-net-loss-in zoning density law limiting downzonings and
- 25 density reductions (Section 65863 of the Government Code).
- 26 (j) Requiring persons who sue to halt affordable housing to pay
- 27 attorney's fees (Section 65914 of the Government Code) or post
- 28 a bond (Section 529.2 of the Code of Civil Procedure).
- 29 (k) Reduced time for action on affordable housing applications
- 30 under the approval of development permits process (Article 5
- 31 (commencing with Section 65950) of Chapter 4.5 of Division 1
- 32 of Title 7 of the Government Code).
- 33 (l) Limiting moratoriums on multifamily housing (Section 65858
- 34 of the Government Code).

1 (m) Prohibiting discrimination against affordable housing
2 (Section 65008 of the Government Code).

3 (n) California Fair Employment and Housing Act (Part 2.8
4 (commencing with Section 12900) of Division 3 of Title 2 of the
5 Government Code).

6 (o) Community Redevelopment Law (Part 1 (commencing with
7 Section 33000) of Division 24 of the Health and Safety Code, and
8 in particular Sections 33334.2 and 33413 of the Health and Safety
9 Code).

10 (p) Streamlining housing approvals during a housing shortage
11 (Section 65913.4 of the Government Code).

12 (q) Housing sustainability districts (Chapter 11 (commencing
13 with Section 66200) of Division 1 of Title 7 of the Government
14 Code).

15 (r) Streamlining agricultural employee housing development
16 approvals (Section 17021.8 of the Health and Safety Code).

17 (s) *The Housing Crisis Act of 2019 (Senate Bill 330 (Chapter*
18 *654 of the Statutes of 2019))*.

19 (t) *Allowing four units to be built on single-family parcels*
20 *statewide (Senate Bill 9 (Chapter 162 of Statutes of 2021))*.

21 (u) *The Middle Class Housing Act of 2022 (Section 65852.24*
22 *of the Government Code)*.

23 (s)
24 (v) Affordable Housing and High Road Jobs Act of 2022
25 (Chapter 4.1 (commencing with Section 65912.100) of Division
26 1 of Title 7 of the Government Code).

27 SEC. 2. Section 65913.4 of the Government Code is amended
28 to read:

29 65913.4. (a) A development proponent may submit an
30 application for a development that is subject to the streamlined,
31 ministerial approval process provided by subdivision (c) and is
32 not subject to a conditional use permit or any other nonlegislative
33 discretionary approval if the development complies with
34 subdivision (b) and satisfies all of the following objective planning
35 standards:

36 (1) The development is a multifamily housing development that
37 contains two or more residential units.

38 (2) The development and the site on which it is located satisfy
39 all of the following:

1 (A) It is a legal parcel or parcels located in a city if, and only
2 if, the city boundaries include some portion of either an urbanized
3 area or urban cluster, as designated by the United States Census
4 Bureau, or, for unincorporated areas, a legal parcel or parcels
5 wholly within the boundaries of an urbanized area or urban cluster,
6 as designated by the United States Census Bureau.

7 (B) At least 75 percent of the perimeter of the site adjoins parcels
8 that are developed with urban uses. For the purposes of this section,
9 parcels that are only separated by a street or highway shall be
10 considered to be adjoined.

11 (C) (i) A site that meets the requirements of clause (ii) and
12 satisfies any of the following:

13 (I) The site is zoned for residential use or residential mixed-use
14 development.

15 (II) The site has a general plan designation that allows residential
16 use or a mix of residential and nonresidential uses.

17 (III) The site is zoned for office or retail commercial use and
18 meets the requirements of Section 65852.24.

19 (ii) At least two-thirds of the square footage of the development
20 is designated for residential use. Additional density, floor area,
21 and units, and any other concession, incentive, or waiver of
22 development standards granted pursuant to the Density Bonus Law
23 in Section 65915 shall be included in the square footage
24 calculation. The square footage of the development shall not
25 include underground space, such as basements or underground
26 parking garages.

27 (3) (A) The development proponent has committed to record,
28 prior to the issuance of the first building permit, a land use
29 restriction or covenant providing that any lower or moderate
30 income housing units required pursuant to subparagraph (B) of
31 paragraph (4) shall remain available at affordable housing costs
32 or rent to persons and families of lower or moderate-income for
33 no less than the following periods of time:

34 (i) Fifty-five years for units that are rented.

35 (ii) Forty-five years for units that are owned.

36 (B) The city or county shall require the recording of covenants
37 or restrictions implementing this paragraph for each parcel or unit
38 of real property included in the development.

39 (4) The development satisfies clause (i) or (ii) of subparagraph
40 (A) and satisfies subparagraph (B) below:

1 (A) (i) For a development located in a locality that is in its sixth
2 or earlier housing element cycle, the development is located in
3 either of the following:

4 (I) In a locality that the department has determined is subject
5 to this clause on the basis that the number of units that have been
6 issued building permits, as shown on the most recent production
7 report received by the department, is less than the locality's share
8 of the regional housing needs, by income category, for that
9 reporting period. A locality shall remain eligible under this
10 subclause until the department's determination for the next
11 reporting period.

12 (II) In a locality that the department has determined is subject
13 to this clause on the basis that the locality did not adopt a housing
14 element that has been found in substantial compliance with housing
15 element law (Article 10.6 (commencing with Section 65580) of
16 Chapter 3) by the department. A locality shall remain eligible under
17 this subclause until such time as the locality adopts a housing
18 element that has been found in substantial compliance with housing
19 element law (Article 10.6 (commencing with Section 65580) of
20 Chapter 3) by the department.

21 (ii) For a development located in a locality that is in its seventh
22 or later housing element cycle, is located in a locality that the
23 department has determined is subject to this clause on the basis
24 that the locality did not adopt a housing element that has been
25 found in substantial compliance with housing element law (Article
26 10.6 (commencing with Section 65580) of Chapter 3) by the
27 department by the statutory deadline, or that the number of units
28 that have been issued building permits, as shown on the most recent
29 production report received by the department, is less than the
30 locality's share of the regional housing needs, by income category,
31 for that reporting period. A locality shall remain eligible under
32 this subparagraph until the department's determination for the next
33 reporting period.

34 (B) The development is subject to a requirement mandating a
35 minimum percentage of below market rate housing based on one
36 of the following:

37 (i) The locality did not adopt a housing element pursuant to
38 Section 65588 that has been found in substantial compliance with
39 the housing element law (Article 10.6 (commencing with Section
40 65580) of Chapter 3) by the department, did not submit its latest

1 production report to the department by the time period required
2 by Section 65400, or that production report submitted to the
3 department reflects that there were fewer units of above
4 moderate-income housing issued building permits than were
5 required for the regional housing needs assessment cycle for that
6 reporting period. In addition, if the project contains more than 10
7 units of housing, the project does either of the following:

8 (I) The project dedicates a minimum of 10 percent of the total
9 number of units, before calculating any density bonus, to housing
10 affordable to households making at or below 80 percent of the area
11 median income. However, if the locality has adopted a local
12 ordinance that requires that greater than 10 percent of the units be
13 dedicated to housing affordable to households making below 80
14 percent of the area median income, that local ordinance applies.

15 (II) (ia) If the project is located within the San Francisco Bay
16 area, the project, in lieu of complying with subclause (I), dedicates
17 20 percent of the total number of units, before calculating any
18 density bonus, to housing affordable to households making below
19 120 percent of the area median income with the average income
20 of the units at or below 100 percent of the area median income.
21 However, a local ordinance adopted by the locality applies if it
22 requires greater than 20 percent of the units be dedicated to housing
23 affordable to households making at or below 120 percent of the
24 area median income, or requires that any of the units be dedicated
25 at a level deeper than 120 percent. In order to comply with this
26 subclause, the rent or sale price charged for units that are dedicated
27 to housing affordable to households between 80 percent and 120
28 percent of the area median income shall not exceed 30 percent of
29 the gross income of the household.

30 (ib) For purposes of this subclause, “San Francisco Bay area”
31 means the entire area within the territorial boundaries of the
32 Counties of Alameda, Contra Costa, Marin, Napa, San Mateo,
33 Santa Clara, Solano, and Sonoma, and the City and County of San
34 Francisco.

35 (ii) The locality’s latest production report reflects that there
36 were fewer units of housing issued building permits affordable to
37 either very low income or low-income households by income
38 category than were required for the regional housing needs
39 assessment cycle for that reporting period, and the project seeking
40 approval dedicates 50 percent of the total number of units, before

calculating any density bonus, to housing affordable to households making at or below 80 percent of the area median income. However, if the locality has adopted a local ordinance that requires that greater than 50 percent of the units be dedicated to housing affordable to households making at or below 80 percent of the area median income, that local ordinance applies.

(iii) The locality did not submit its latest production report to the department by the time period required by Section 65400, or if the production report reflects that there were fewer units of housing affordable to both income levels described in clauses (i) and (ii) that were issued building permits than were required for the regional housing needs assessment cycle for that reporting period, the project seeking approval may choose between utilizing clause (i) or (ii).

(C) (i) A development proponent that uses a unit of affordable housing to satisfy the requirements of subparagraph (B) may also satisfy any other local or state requirement for affordable housing, including local ordinances or the Density Bonus Law in Section 65915, provided that the development proponent complies with the applicable requirements in the state or local law. If a local requirement for affordable housing requires units that are restricted to households with incomes higher than the applicable income limits required in subparagraph (B), then units that meet the applicable income limits required in subparagraph (B) shall be deemed to satisfy those local requirements for higher income units.

(ii) A development proponent that uses a unit of affordable housing to satisfy any other state or local affordability requirement may also satisfy the requirements of subparagraph (B), provided that the development proponent complies with applicable requirements of subparagraph (B).

(iii) A development proponent may satisfy the affordability requirements of subparagraph (B) with a unit that is restricted to households with incomes lower than the applicable income limits required in subparagraph (B).

(D) The amendments to this subdivision made by the act adding this subparagraph do not constitute a change in, but are declaratory of, existing law.

(5) The development, excluding any additional density or any other concessions, incentives, or waivers of development standards for which the development is eligible pursuant to the Density Bonus

1 Law in Section 65915, is consistent with objective zoning
2 standards, objective subdivision standards, and objective design
3 review standards in effect at the time that the development is
4 submitted to the local government pursuant to this section, or at
5 the time a notice of intent is submitted pursuant to subdivision (b),
6 whichever occurs earlier. For purposes of this paragraph, “objective
7 zoning standards,” “objective subdivision standards,” and
8 “objective design review standards” mean standards that involve
9 no personal or subjective judgment by a public official and are
10 uniformly verifiable by reference to an external and uniform
11 benchmark or criterion available and knowable by both the
12 development applicant or proponent and the public official before
13 submittal. These standards may be embodied in alternative
14 objective land use specifications adopted by a city or county, and
15 may include, but are not limited to, housing overlay zones, specific
16 plans, inclusionary zoning ordinances, and density bonus
17 ordinances, subject to the following:

18 (A) A development shall be deemed consistent with the objective
19 zoning standards related to housing density, as applicable, if the
20 density proposed is compliant with the maximum density allowed
21 within that land use designation, notwithstanding any specified
22 maximum unit allocation that may result in fewer units of housing
23 being permitted.

24 (B) In the event that objective zoning, general plan, subdivision,
25 or design review standards are mutually inconsistent, a
26 development shall be deemed consistent with the objective zoning
27 and subdivision standards pursuant to this subdivision if the
28 development is consistent with the standards set forth in the general
29 plan.

30 (C) It is the intent of the Legislature that the objective zoning
31 standards, objective subdivision standards, and objective design
32 review standards described in this paragraph be adopted or
33 amended in compliance with the requirements of Chapter 905 of
34 the Statutes of 2004.

35 (D) The amendments to this subdivision made by the act adding
36 this subparagraph do not constitute a change in, but are declaratory
37 of, existing law.

38 (E) A project that satisfies the requirements of Section 65852.24
39 shall be deemed consistent with objective zoning standards,
40 objective design standards, and objective subdivision standards if

the project is consistent with the provisions of subdivision (b) of Section 65852.24 and if none of the square footage in the project is designated for hotel, motel, bed and breakfast inn, or other transient lodging use, except for a residential hotel. For purposes of this subdivision, “residential hotel” shall have the same meaning as defined in Section 50519 of the Health and Safety Code.

(6) The development is not located on a site that is any of the following:

(A) Either prime farmland or farmland of statewide importance, as defined pursuant to United States Department of Agriculture land inventory and monitoring criteria, as modified for California, and designated on the maps prepared by the Farmland Mapping and Monitoring Program of the Department of Conservation, or land zoned or designated for agricultural protection or preservation by a local ballot measure that was approved by the voters of that jurisdiction.

(B) Wetlands, as defined in the United States Fish and Wildlife Service Manual, Part 660 FW 2 (June 21, 1993), unless the development within the wetlands has been authorized *by a permit or other approval issued* pursuant to federal or other state law.

(C) Within a very high fire hazard severity zone, as determined by the Department of Forestry and Fire Protection pursuant to Section 51178, or within a high or very high fire hazard severity zone as indicated on maps adopted by the Department of Forestry and Fire Protection pursuant to Section 4202 of the Public Resources Code. This subparagraph does not apply to sites excluded from the specified hazard zones by a local agency, pursuant to subdivision (b) of Section 51179, or sites that have adopted fire hazard mitigation measures pursuant to existing building standards or state fire mitigation measures applicable to the development.

(D) A hazardous waste site that is listed pursuant to Section 65962.5 or a hazardous waste site designated by the Department of Toxic Substances Control pursuant to Section 25356 of the Health and Safety Code, unless either of the following apply:

(i) The site is an underground storage tank site that received a uniform closure letter issued pursuant to subdivision (g) of Section 25296.10 of the Health and Safety Code based on closure criteria established by the State Water Resources Control Board for residential use or residential mixed uses. This section does not

1 alter or change the conditions to remove a site from the list of
2 hazardous waste sites listed pursuant to Section 65962.5.

3 (ii) The State Department of Public Health, State Water
4 Resources Control Board, Department of Toxic Substances Control,
5 or a local agency making a determination pursuant to subdivision
6 (c) of Section 25296.10 of the Health and Safety Code, has
7 otherwise determined that the site is suitable for residential use or
8 residential mixed uses.

9 (E) Within a delineated earthquake fault zone as determined by
10 the State Geologist in any official maps published by the State
11 Geologist, unless the development complies with applicable seismic
12 protection building code standards adopted by the California
13 Building Standards Commission under the California Building
14 Standards Law (Part 2.5 (commencing with Section 18901) of
15 Division 13 of the Health and Safety Code), and by any local
16 building department under Chapter 12.2 (commencing with Section
17 8875) of Division 1 of Title 2.

18 (F) Within a special flood hazard area subject to inundation by
19 the 1 percent annual chance flood (100-year flood) as determined
20 by the Federal Emergency Management Agency in any official
21 maps published by the Federal Emergency Management Agency.
22 If a development proponent is able to satisfy all applicable federal
23 qualifying criteria in order to provide that the site satisfies this
24 subparagraph and is otherwise eligible for streamlined approval
25 under this section, a local government shall not deny the application
26 on the basis that the development proponent did not comply with
27 any additional permit requirement, standard, or action adopted by
28 that local government that is applicable to that site. A development
29 may be located on a site described in this subparagraph if either
30 of the following are met:

31 (i) The site has been subject to a Letter of Map Revision
32 prepared by the Federal Emergency Management Agency and
33 issued to the local jurisdiction.

34 (ii) The site meets Federal Emergency Management Agency
35 requirements necessary to meet minimum flood plain management
36 criteria of the National Flood Insurance Program pursuant to Part
37 59 (commencing with Section 59.1) and Part 60 (commencing
38 with Section 60.1) of Subchapter B of Chapter I of Title 44 of the
39 Code of Federal Regulations.

(G) Within a regulatory floodway as determined by the Federal Emergency Management Agency in any official maps published by the Federal Emergency Management Agency, unless the development has received a no-rise certification in accordance with Section 60.3(d)(3) of Title 44 of the Code of Federal Regulations. If a development proponent is able to satisfy all applicable federal qualifying criteria in order to provide that the site satisfies this subparagraph and is otherwise eligible for streamlined approval under this section, a local government shall not deny the application on the basis that the development proponent did not comply with any additional permit requirement, standard, or action adopted by that local government that is applicable to that site.

(H) Lands identified for conservation in an adopted natural community conservation plan pursuant to the Natural Community Conservation Planning Act (Chapter 10 (commencing with Section 2800) of Division 3 of the Fish and Game Code), habitat conservation plan pursuant to the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.), or other adopted natural resource protection plan.

(I) Habitat for protected species identified as candidate, sensitive, or species of special status by state or federal agencies, fully protected species, or species protected by the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.), the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code), or the Native Plant Protection Act (Chapter 10 (commencing with Section 1900) of Division 2 of the Fish and Game Code), unless the development within the habitat has been authorized *by a permit or approval issued* pursuant to federal or other state law.

(J) Lands under conservation easement.

(7) The development is not located on a site where any of the following apply:

(A) The development would require the demolition of the following types of housing:

(i) Housing that is subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of moderate, low, or very low income.

(ii) Housing that is subject to any form of rent or price control through a public entity's valid exercise of its police power.

1 (iii) Housing that has been occupied by tenants within the past
2 10 years.

3 (B) The site was previously used for housing that was occupied
4 by tenants that was demolished within 10 years before the
5 development proponent submits an application under this section.

6 (C) The development would require the demolition of a historic
7 structure that was placed on a national, state, or local historic
8 register.

9 (D) The property contains housing units that are occupied by
10 tenants, and units at the property are, or were, subsequently offered
11 for sale to the general public by the subdivider or subsequent owner
12 of the property.

13 (8) Except as provided in paragraph (9), a proponent of a
14 development project approved by a local government pursuant to
15 this section shall require in contracts with construction contractors,
16 and shall certify to the local government, that the following
17 standards specified in this paragraph will be met in project
18 construction, as applicable:

19 (A) A development that is not in its entirety a public work for
20 purposes of Chapter 1 (commencing with Section 1720) of Part 7
21 of Division 2 of the Labor Code and approved by a local
22 government pursuant to Article 2 (commencing with Section
23 65912.110) or Article 3 (commencing with Section 65912.120)
24 shall be subject to all of the following:

25 (i) All construction workers employed in the execution of the
26 development shall be paid at least the general prevailing rate of
27 per diem wages for the type of work and geographic area, as
28 determined by the Director of Industrial Relations pursuant to
29 Sections 1773 and 1773.9 of the Labor Code, except that
30 apprentices registered in programs approved by the Chief of the
31 Division of Apprenticeship Standards may be paid at least the
32 applicable apprentice prevailing rate.

33 (ii) The development proponent shall ensure that the prevailing
34 wage requirement is included in all contracts for the performance
35 of the work for those portions of the development that are not a
36 public work.

37 (iii) All contractors and subcontractors for those portions of the
38 development that are not a public work shall comply with both of
39 the following:

1 (I) Pay to all construction workers employed in the execution
2 of the work at least the general prevailing rate of per diem wages,
3 except that apprentices registered in programs approved by the
4 Chief of the Division of Apprenticeship Standards may be paid at
5 least the applicable apprentice prevailing rate.

6 (II) Maintain and verify payroll records pursuant to Section
7 1776 of the Labor Code and make those records available for
8 inspection and copying as provided in that section. This subclause
9 does not apply if all contractors and subcontractors performing
10 work on the development are subject to a project labor agreement
11 that requires the payment of prevailing wages to all construction
12 workers employed in the execution of the development and
13 provides for enforcement of that obligation through an arbitration
14 procedure. For purposes of this subclause, “project labor
15 agreement” has the same meaning as set forth in paragraph (1) of
16 subdivision (b) of Section 2500 of the Public Contract Code.

17 (B) (i) The obligation of the contractors and subcontractors to
18 pay prevailing wages pursuant to this paragraph may be enforced
19 by any of the following:

20 (I) The Labor Commissioner through the issuance of a civil
21 wage and penalty assessment pursuant to Section 1741 of the Labor
22 Code, which may be reviewed pursuant to Section 1742 of the
23 Labor Code, within 18 months after the completion of the
24 development.

25 (II) An underpaid worker through an administrative complaint
26 or civil action.

27 (III) A joint labor-management committee through a civil action
28 under Section 1771.2 of the Labor Code.

29 (ii) If a civil wage and penalty assessment is issued pursuant to
30 this paragraph, the contractor, subcontractor, and surety on a bond
31 or bonds issued to secure the payment of wages covered by the
32 assessment shall be liable for liquidated damages pursuant to
33 Section 1742.1 of the Labor Code.

34 (iii) This paragraph does not apply if all contractors and
35 subcontractors performing work on the development are subject
36 to a project labor agreement that requires the payment of prevailing
37 wages to all construction workers employed in the execution of
38 the development and provides for enforcement of that obligation
39 through an arbitration procedure. For purposes of this clause,
40 “project labor agreement” has the same meaning as set forth in

1 paragraph (1) of subdivision (b) of Section 2500 of the Public
2 Contract Code.

3 (C) Notwithstanding subdivision (c) of Section 1773.1 of the
4 Labor Code, the requirement that employer payments not reduce
5 the obligation to pay the hourly straight time or overtime wages
6 found to be prevailing does not apply to those portions of
7 development that are not a public work if otherwise provided in a
8 bona fide collective bargaining agreement covering the worker.

9 (D) The requirement of this paragraph to pay at least the general
10 prevailing rate of per diem wages does not preclude use of an
11 alternative workweek schedule adopted pursuant to Section 511
12 or 514 of the Labor Code.

13 (E) A development of 50 or more housing units approved by a
14 local government pursuant to this section shall meet all of the
15 following labor standards:

16 (i) The development proponent shall require in contracts with
17 construction contractors and shall certify to the local government
18 that each contractor of any tier who will employ construction craft
19 employees or will let subcontracts for at least 1,000 hours shall
20 satisfy the requirements in clauses (ii) and (iii). A construction
21 contractor is deemed in compliance with clauses (ii) and (iii) if it
22 is signatory to a valid collective bargaining agreement that requires
23 utilization of registered apprentices and expenditures on health
24 care for employees and dependents.

25 (ii) A contractor with construction craft employees shall either
26 participate in an apprenticeship program approved by the California
27 Division of Apprenticeship Standards pursuant to Section 3075 of
28 the Labor Code, or request the dispatch of apprentices from a
29 state-approved apprenticeship program under the terms and
30 conditions set forth in Section 1777.5 of the Labor Code. A
31 contractor without construction craft employees shall show a
32 contractual obligation that its subcontractors comply with this
33 clause.

34 (iii) Each contractor with construction craft employees shall
35 make health care expenditures for each employee in an amount
36 per hour worked on the development equivalent to at least the
37 hourly pro rata cost of a Covered California Platinum level plan
38 for two adults 40 years of age and two dependents 0 to 14 years
39 of age for the Covered California rating area in which the
40 development is located. A contractor without construction craft

employees shall show a contractual obligation that its subcontractors comply with this clause. Qualifying expenditures shall be credited toward compliance with prevailing wage payment requirements set forth in this paragraph.

(iv) (I) The development proponent shall provide to the local government, on a monthly basis while its construction contracts on the development are being performed, a report demonstrating compliance with clauses (ii) and (iii). The reports shall be considered public records under the California Public Records Act (Division 10 (commencing with Section 7920.000) of Title 1), and shall be open to public inspection.

(II) A development proponent that fails to provide the monthly report shall be subject to a civil penalty for each month for which the report has not been provided, in the amount of 10 percent of the dollar value of construction work performed by that contractor on the development in the month in question, up to a maximum of ten thousand dollars (\$10,000). Any contractor or subcontractor that fails to comply with clauses (ii) and (iii) shall be subject to a civil penalty of two hundred dollars (\$200) per day for each worker employed in contravention of clauses (ii) and (iii).

(III) Penalties may be assessed by the Labor Commissioner within 18 months of completion of the development using the procedures for issuance of civil wage and penalty assessments specified in Section 1741 of the Labor Code, and may be reviewed pursuant to Section 1742 of the Labor Code. Penalties shall be deposited in the State Public Works Enforcement Fund established pursuant to Section 1771.3 of the Labor Code.

(v) Each construction contractor shall maintain and verify payroll records pursuant to Section 1776 of the Labor Code. Each construction contractor shall submit payroll records directly to the Labor Commissioner at least monthly in a format prescribed by the Labor Commissioner in accordance with subparagraph (A) of paragraph (3) of subdivision (a) of Section 1771.4 of the Labor Code. The records shall include a statement of fringe benefits. Upon request by a joint labor-management cooperation committee established pursuant to the Federal Labor Management Cooperation Act of 1978 (29 U.S.C. Sec. 175a), the records shall be provided pursuant to subdivision (e) of Section 1776 of the Labor Code.

(vi) All construction contractors shall report any change in apprenticeship program participation or health care expenditures

1 to the local government within 10 business days, and shall reflect
2 those changes on the monthly report. The reports shall be
3 considered public records pursuant to the California Public Records
4 Act (Division 10 (commencing with Section 7920.000) of Title 1)
5 and shall be open to public inspection.

6 (vii) A joint labor-management cooperation committee
7 established pursuant to the Federal Labor Management Cooperation
8 Act of 1978 (29 U.S.C. Sec. 175a) shall have standing to sue a
9 construction contractor for failure to make health care expenditures
10 pursuant to clause (iii) in accordance with Section 218.7 or 218.8
11 of the Labor Code.

12 (9) Notwithstanding paragraph (8), a development that is subject
13 to approval pursuant to this section is exempt from any requirement
14 to pay prevailing wages, use a workforce participating in an
15 apprenticeship, or provide health care expenditures if it satisfies
16 both of the following:

17 (A) The project consists of 10 or fewer units.

18 (B) The project is not a public work for purposes of Chapter 1
19 (commencing with Section 1720) of Part 7 of Division 2 of the
20 Labor Code.

21 (10) The development shall not be upon an existing parcel of
22 land or site that is governed under the Mobilehome Residency Law
23 (Chapter 2.5 (commencing with Section 798) of Title 2 of Part 2
24 of Division 2 of the Civil Code), the Recreational Vehicle Park
25 Occupancy Law (Chapter 2.6 (commencing with Section 799.20)
26 of Title 2 of Part 2 of Division 2 of the Civil Code), the
27 Mobilehome Parks Act (Part 2.1 (commencing with Section 18200)
28 of Division 13 of the Health and Safety Code), or the Special
29 Occupancy Parks Act (Part 2.3 (commencing with Section 18860)
30 of Division 13 of the Health and Safety Code).

31 (b) (1) (A) (i) Before submitting an application for a
32 development subject to the streamlined, ministerial approval
33 process described in subdivision (c), the development proponent
34 shall submit to the local government a notice of its intent to submit
35 an application. The notice of intent shall be in the form of a
36 preliminary application that includes all of the information
37 described in Section 65941.1, as that section read on January 1,
38 2020.

39 (ii) Upon receipt of a notice of intent to submit an application
40 described in clause (i), the local government shall engage in a

1 scoping consultation regarding the proposed development with
2 any California Native American tribe that is traditionally and
3 culturally affiliated with the geographic area, as described in
4 Section 21080.3.1 of the Public Resources Code, of the proposed
5 development. In order to expedite compliance with this subdivision,
6 the local government shall contact the Native American Heritage
7 Commission for assistance in identifying any California Native
8 American tribe that is traditionally and culturally affiliated with
9 the geographic area of the proposed development.

10 (iii) The timeline for noticing and commencing a scoping
11 consultation in accordance with this subdivision shall be as follows:

12 (I) The local government shall provide a formal notice of a
13 development proponent's notice of intent to submit an application
14 described in clause (i) to each California Native American tribe
15 that is traditionally and culturally affiliated with the geographic
16 area of the proposed development within 30 days of receiving that
17 notice of intent. The formal notice provided pursuant to this
18 subclause shall include all of the following:

19 (ia) A description of the proposed development.

20 (ib) The location of the proposed development.

21 (ic) An invitation to engage in a scoping consultation in
22 accordance with this subdivision.

23 (II) Each California Native American tribe that receives a formal
24 notice pursuant to this clause shall have 30 days from the receipt
25 of that notice to accept the invitation to engage in a scoping
26 consultation.

27 (III) If the local government receives a response accepting an
28 invitation to engage in a scoping consultation pursuant to this
29 subdivision, the local government shall commence the scoping
30 consultation within 30 days of receiving that response.

31 (B) The scoping consultation shall recognize that California
32 Native American tribes traditionally and culturally affiliated with
33 a geographic area have knowledge and expertise concerning the
34 resources at issue and shall take into account the cultural
35 significance of the resource to the culturally affiliated California
36 Native American tribe.

37 (C) The parties to a scoping consultation conducted pursuant
38 to this subdivision shall be the local government and any California
39 Native American tribe traditionally and culturally affiliated with
40 the geographic area of the proposed development. More than one

1 California Native American tribe traditionally and culturally
2 affiliated with the geographic area of the proposed development
3 may participate in the scoping consultation. However, the local
4 government, upon the request of any California Native American
5 tribe traditionally and culturally affiliated with the geographic area
6 of the proposed development, shall engage in a separate scoping
7 consultation with that California Native American tribe. The
8 development proponent and its consultants may participate in a
9 scoping consultation process conducted pursuant to this subdivision
10 if all of the following conditions are met:

11 (i) The development proponent and its consultants agree to
12 respect the principles set forth in this subdivision.

13 (ii) The development proponent and its consultants engage in
14 the scoping consultation in good faith.

15 (iii) The California Native American tribe participating in the
16 scoping consultation approves the participation of the development
17 proponent and its consultants. The California Native American
18 tribe may rescind its approval at any time during the scoping
19 consultation, either for the duration of the scoping consultation or
20 with respect to any particular meeting or discussion held as part
21 of the scoping consultation.

22 (D) The participants to a scoping consultation pursuant to this
23 subdivision shall comply with all of the following confidentiality
24 requirements:

25 (i) Section 7927.000.

26 (ii) Section 7927.005.

27 (iii) Subdivision (c) of Section 21082.3 of the Public Resources
28 Code.

29 (iv) Subdivision (d) of Section 15120 of Title 14 of the
30 California Code of Regulations.

31 (v) Any additional confidentiality standards adopted by the
32 California Native American tribe participating in the scoping
33 consultation.

34 (E) The California Environmental Quality Act (Division 13
35 (commencing with Section 21000) of the Public Resources Code)
36 shall not apply to a scoping consultation conducted pursuant to
37 this subdivision.

38 (2) (A) If, after concluding the scoping consultation, the parties
39 find that no potential tribal cultural resource would be affected by
40 the proposed development, the development proponent may submit

an application for the proposed development that is subject to the streamlined, ministerial approval process described in subdivision (c).

(B) If, after concluding the scoping consultation, the parties find that a potential tribal cultural resource could be affected by the proposed development and an enforceable agreement is documented between the California Native American tribe and the local government on methods, measures, and conditions for tribal cultural resource treatment, the development proponent may submit the application for a development subject to the streamlined, ministerial approval process described in subdivision (c). The local government shall ensure that the enforceable agreement is included in the requirements and conditions for the proposed development.

(C) If, after concluding the scoping consultation, the parties find that a potential tribal cultural resource could be affected by the proposed development and an enforceable agreement is not documented between the California Native American tribe and the local government regarding methods, measures, and conditions for tribal cultural resource treatment, the development shall not be eligible for the streamlined, ministerial approval process described in subdivision (c).

(D) For purposes of this paragraph, a scoping consultation shall be deemed to be concluded if either of the following occur:

(i) The parties to the scoping consultation document an enforceable agreement concerning methods, measures, and conditions to avoid or address potential impacts to tribal cultural resources that are or may be present.

(ii) One or more parties to the scoping consultation, acting in good faith and after reasonable effort, conclude that a mutual agreement on methods, measures, and conditions to avoid or address impacts to tribal cultural resources that are or may be present cannot be reached.

(E) If the development or environmental setting substantially changes after the completion of the scoping consultation, the local government shall notify the California Native American tribe of the changes and engage in a subsequent scoping consultation if requested by the California Native American tribe.

(3) A local government may only accept an application for streamlined, ministerial approval pursuant to this section if one of the following applies:

1 (A) A California Native American tribe that received a formal
2 notice of the development proponent's notice of intent to submit
3 an application pursuant to subclause (I) of clause (iii) of
4 subparagraph (A) of paragraph (1) did not accept the invitation to
5 engage in a scoping consultation.

6 (B) The California Native American tribe accepted an invitation
7 to engage in a scoping consultation pursuant to subclause (II) of
8 clause (iii) of subparagraph (A) of paragraph (1) but substantially
9 failed to engage in the scoping consultation after repeated
10 documented attempts by the local government to engage the
11 California Native American tribe.

12 (C) The parties to a scoping consultation pursuant to this
13 subdivision find that no potential tribal cultural resource will be
14 affected by the proposed development pursuant to subparagraph
15 (A) of paragraph (2).

16 (D) A scoping consultation between a California Native
17 American tribe and the local government has occurred in
18 accordance with this subdivision and resulted in agreement
19 pursuant to subparagraph (B) of paragraph (2).

20 (4) A project shall not be eligible for the streamlined, ministerial
21 process described in subdivision (c) if any of the following apply:

22 (A) There is a tribal cultural resource that is on a national, state,
23 tribal, or local historic register list located on the site of the project.

24 (B) There is a potential tribal cultural resource that could be
25 affected by the proposed development and the parties to a scoping
26 consultation conducted pursuant to this subdivision do not
27 document an enforceable agreement on methods, measures, and
28 conditions for tribal cultural resource treatment, as described in
29 subparagraph (C) of paragraph (2).

30 (C) The parties to a scoping consultation conducted pursuant
31 to this subdivision do not agree as to whether a potential tribal
32 cultural resource will be affected by the proposed development.

33 (5) (A) If, after a scoping consultation conducted pursuant to
34 this subdivision, a project is not eligible for the streamlined,
35 ministerial process described in subdivision (c) for any or all of
36 the following reasons, the local government shall provide written
37 documentation of that fact, and an explanation of the reason for
38 which the project is not eligible, to the development proponent
39 and to any California Native American tribe that is a party to that
40 scoping consultation:

(i) There is a tribal cultural resource that is on a national, state, tribal, or local historic register list located on the site of the project, as described in subparagraph (A) of paragraph (4).

(ii) The parties to the scoping consultation have not documented an enforceable agreement on methods, measures, and conditions for tribal cultural resource treatment, as described in subparagraph (C) of paragraph (2) and subparagraph (B) of paragraph (4).

(iii) The parties to the scoping consultation do not agree as to whether a potential tribal cultural resource will be affected by the proposed development, as described in subparagraph (C) of paragraph (4).

(B) The written documentation provided to a development proponent pursuant to this paragraph shall include information on how the development proponent may seek a conditional use permit or other discretionary approval of the development from the local government.

(6) This section is not intended, and shall not be construed, to limit consultation and discussion between a local government and a California Native American tribe pursuant to other applicable law, confidentiality provisions under other applicable law, the protection of religious exercise to the fullest extent permitted under state and federal law, or the ability of a California Native American tribe to submit information to the local government or participate in any process of the local government.

(7) For purposes of this subdivision:

(A) “Consultation” means the meaningful and timely process of seeking, discussing, and considering carefully the views of others, in a manner that is cognizant of all parties’ cultural values and, where feasible, seeking agreement. Consultation between local governments and Native American tribes shall be conducted in a way that is mutually respectful of each party’s sovereignty. Consultation shall also recognize the tribes’ potential needs for confidentiality with respect to places that have traditional tribal cultural importance. A lead agency shall consult the tribal consultation best practices described in the “State of California Tribal Consultation Guidelines: Supplement to the General Plan Guidelines” prepared by the Office of Planning and Research.

(B) “Scoping” means the act of participating in early discussions or investigations between the local government and California Native American tribe, and the development proponent if

1 authorized by the California Native American tribe, regarding the
2 potential effects a proposed development could have on a potential
3 tribal cultural resource, as defined in Section 21074 of the Public
4 Resources Code, or California Native American tribe, as defined
5 in Section 21073 of the Public Resources Code.

6 (8) This subdivision shall not apply to any project that has been
7 approved under the streamlined, ministerial approval process
8 provided under this section before the effective date of the act
9 adding this subdivision.

10 (c) (1) ~~If~~ *Notwithstanding any local law, if* a local government's
11 planning director or ~~any equivalent local government staff,~~
12 ~~including all relevant planning and permitting departments,~~
13 *equivalent position* determines that a development submitted
14 pursuant to this section is consistent with the objective planning
15 standards specified in subdivision (a) and pursuant to paragraph
16 (3) of this subdivision, ~~it~~ *the local government* shall approve the
17 development. Upon a determination that a development submitted
18 pursuant to this section is in conflict with any of the objective
19 planning standards specified in subdivision (a), the local
20 government staff or relevant local planning and permitting
21 department that made the determination shall provide the
22 development proponent written documentation of which standard
23 or standards the development conflicts with, and an explanation
24 for the reason or reasons the development conflicts with that
25 standard or standards, as follows:

26 (A) Within 60 days of submittal of the development to the local
27 government pursuant to this section if the development contains
28 150 or fewer housing units.

29 (B) Within 90 days of submittal of the development to the local
30 government pursuant to this section if the development contains
31 more than 150 housing units.

32 (2) If the local government's planning director or ~~any equivalent~~
33 ~~local government staff~~ *equivalent position* fails to provide the
34 required documentation pursuant to paragraph (1), the development
35 shall be deemed to satisfy the objective planning standards
36 specified in subdivision (a).

37 (3) For purposes of this section, a development is consistent
38 with the objective planning standards specified in subdivision (a)
39 if there is substantial evidence that would allow a reasonable person
40 to conclude that the development is consistent with the objective

1 planning standards. The local government shall not determine that
2 a development, including an application for a modification under
3 subdivision ~~(g)~~, (h), is in conflict with the objective planning
4 standards on the basis that application materials are not included,
5 if the application contains substantial evidence that would allow
6 a reasonable person to conclude that the development is consistent
7 with the objective planning standards.

8 ~~(4) For purposes of evaluating consistency with the objective~~
9 ~~planning standards under this section, the local government shall~~
10 ~~not require a development proponent to provide consultant studies~~
11 ~~requiring presubmittal scope approval by the local government or~~
12 ~~other studies or materials that are unnecessary to ascertain~~
13 ~~consistency with the objective planning standards.~~

14 *(4) Upon submittal of an application for streamlined, ministerial*
15 *approval pursuant to this section to the local government, all*
16 *departments of the local government that are required to issue an*
17 *approval of the development prior to the granting of an entitlement*
18 *shall comply with the requirements of this section within the time*
19 *periods specified in paragraph (1).*

20 (d) (1) Any design review of the development may be conducted
21 by the local government's planning commission or any equivalent
22 board or commission responsible for design review. That design
23 review shall be objective and be strictly focused on assessing
24 compliance with criteria required for streamlined projects, as well
25 as any reasonable objective design standards published and adopted
26 by ordinance or resolution by a local jurisdiction before submission
27 of a development application, and shall be broadly applicable to
28 development within the jurisdiction. That design review shall be
29 completed, and if the development is consistent with all objective
30 standards, the local government shall approve the development as
31 follows and shall not in any way inhibit, chill, or preclude the
32 ministerial approval provided by this section or its effect, as
33 applicable:

34 (A) Within 90 days of submittal of the development to the local
35 government pursuant to this section if the development contains
36 150 or fewer housing units.

37 (B) Within 180 days of submittal of the development to the
38 local government pursuant to this section if the development
39 contains more than 150 housing units.

(2) If the development is consistent with the requirements of subparagraph (A) or (B) of paragraph (9) of subdivision (a) and is consistent with all objective subdivision standards in the local subdivision ordinance, an application for a subdivision pursuant to the Subdivision Map Act (Division 2 (commencing with Section 66410)) shall be exempt from the requirements of the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) and shall be subject to the public oversight timelines set forth in paragraph (1).

(3) If a local government determines that a development submitted pursuant to this section is in conflict with any of the standards imposed pursuant to paragraph (1), it shall provide the development proponent written documentation of which objective standard or standards the development conflicts with, and an explanation for the reason or reasons the development conflicts with that objective standard or standards consistent with the timelines described in paragraph (1) of subdivision (c).

(e) (1) Notwithstanding any other law, a local government, whether or not it has adopted an ordinance governing automobile parking requirements in multifamily developments, shall not impose automobile parking standards for a streamlined development that was approved pursuant to this section in any of the following instances:

(A) The development is located within one-half mile of public transit.

(B) The development is located within an architecturally and historically significant historic district.

(C) When on-street parking permits are required but not offered to the occupants of the development.

(D) When there is a car share vehicle located within one block of the development.

(2) If the development does not fall within any of the categories described in paragraph (1), the local government shall not impose automobile parking requirements for streamlined developments approved pursuant to this section that exceed one parking space per unit.

(f) Notwithstanding any law, a local government shall not require any of the following prior to approving a development that meets the requirements of this section:

1 (1) *Studies, information, or other materials that do not pertain*
2 *directly to determining whether the development is consistent with*
3 *the objective planning standards applicable to the development.*

4 (2) (A) *Compliance with any standards necessary to receive a*
5 *postentitlement permit.*

6 (B) *This paragraph does not prohibit a local agency from*
7 *requiring compliance with any standards necessary to receive a*
8 *postentitlement permit after a permit has been issued pursuant to*
9 *this section.*

10 (C) *For purposes of this paragraph, “postentitlement permit”*
11 *has the same meaning as provided in subparagraph (A) of*
12 *paragraph (3) of subdivision (j) of Section 65913.3.*

13 ~~(F)~~

14 (g) (1) *If a local government approves a development pursuant*
15 *to this section, then, notwithstanding any other law, that approval*
16 *shall not expire if the project satisfies both of the following*
17 *requirements:*

18 (A) *The project includes public investment in housing*
19 *affordability, beyond tax credits.*

20 (B) *At least 50 percent of the units are affordable to households*
21 *making at or below 80 percent of the area median income.*

22 (2) (A) *If a local government approves a development pursuant*
23 *to this section, and the project does not satisfy the requirements*
24 *of subparagraphs (A) and (B) of paragraph (1), that approval shall*
25 *remain valid for three years from the date of the final action*
26 *establishing that approval, or if litigation is filed challenging that*
27 *approval, from the date of the final judgment upholding that*
28 *approval. Approval shall remain valid for a project provided*
29 *construction activity, including demolition and grading activity,*
30 *on the development site has begun pursuant to a permit issued by*
31 *the local jurisdiction and is in progress. For purposes of this*
32 *subdivision, “in progress” means one of the following:*

33 (i) *The construction has begun and has not ceased for more than*
34 *180 days.*

35 (ii) *If the development requires multiple building permits, an*
36 *initial phase has been completed, and the project proponent has*
37 *applied for and is diligently pursuing a building permit for a*
38 *subsequent phase, provided that once it has been issued, the*
39 *building permit for the subsequent phase does not lapse.*

1 (B) Notwithstanding subparagraph (A), a local government may
2 grant a project a one-time, one-year extension if the project
3 proponent can provide documentation that there has been
4 significant progress toward getting the development construction
5 ready, such as filing a building permit application.

6 (3) If the development proponent requests a modification
7 pursuant to subdivision ~~(g)~~, (h), then the time during which the
8 approval shall remain valid shall be extended for the number of
9 days between the submittal of a modification request and the date
10 of its final approval, plus an additional 180 days to allow time to
11 obtain a building permit. If litigation is filed relating to the
12 modification request, the time shall be further extended during the
13 pendency of the litigation. The extension required by this paragraph
14 shall only apply to the first request for a modification submitted
15 by the development proponent.

16 (4) The amendments made to this subdivision by the act that
17 added this paragraph shall also be retroactively applied to
18 developments approved prior to January 1, 2022.

19 ~~(g)~~

20 (h) (1) (A) A development proponent may request a
21 modification to a development that has been approved under the
22 streamlined, ministerial approval process provided in subdivision
23 (c) if that request is submitted to the local government before the
24 issuance of the final building permit required for construction of
25 the development.

26 (B) Except as provided in paragraph (3), the local government
27 shall approve a modification if it determines that the modification
28 is consistent with the objective planning standards specified in
29 subdivision (a) that were in effect when the original development
30 application was first submitted.

31 (C) The local government shall evaluate any modifications
32 requested pursuant to this subdivision for consistency with the
33 objective planning standards using the same assumptions and
34 analytical methodology that the local government originally used
35 to assess consistency for the development that was approved for
36 streamlined, ministerial approval pursuant to subdivision (c).

37 (D) A guideline that was adopted or amended by the department
38 pursuant to subdivision ~~(m)~~ (n) after a development was approved
39 through the streamlined, ministerial approval process described in

1 subdivision (c) shall not be used as a basis to deny proposed
2 modifications.

3 (2) Upon receipt of the development proponent's application
4 requesting a modification, the local government shall determine
5 if the requested modification is consistent with the objective
6 planning standard and either approve or deny the modification
7 request within 60 days after submission of the modification, or
8 within 90 days if design review is required.

9 (3) Notwithstanding paragraph (1), the local government may
10 apply objective planning standards adopted after the development
11 application was first submitted to the requested modification in
12 any of the following instances:

13 (A) The development is revised such that the total number of
14 residential units or total square footage of construction changes
15 by 15 percent or more. The calculation of the square footage of
16 construction changes shall not include underground space.

17 (B) The development is revised such that the total number of
18 residential units or total square footage of construction changes
19 by 5 percent or more and it is necessary to subject the development
20 to an objective standard beyond those in effect when the
21 development application was submitted in order to mitigate or
22 avoid a specific, adverse impact, as that term is defined in
23 subparagraph (A) of paragraph (1) of subdivision (j) of Section
24 65589.5, upon the public health or safety and there is no feasible
25 alternative method to satisfactorily mitigate or avoid the adverse
26 impact. The calculation of the square footage of construction
27 changes shall not include underground space.

28 (C) (i) Objective building standards contained in the California
29 Building Standards Code (Title 24 of the California Code of
30 Regulations), including, but not limited to, building plumbing,
31 electrical, fire, and grading codes, may be applied to all
32 modification applications that are submitted prior to the first
33 building permit application. Those standards may be applied to
34 modification applications submitted after the first building permit
35 application if agreed to by the development proponent.

36 (ii) The amendments made to clause (i) by the act that added
37 clause (i) shall also be retroactively applied to modification
38 applications submitted prior to January 1, 2022.

39 (4) The local government's review of a modification request
40 pursuant to this subdivision shall be strictly limited to determining

1 whether the modification, including any modification to previously
2 approved density bonus concessions or waivers, modify the
3 development's consistency with the objective planning standards
4 and shall not reconsider prior determinations that are not affected
5 by the modification.

6 ~~(h)~~

7 (i) (1) A local government shall not adopt or impose any
8 requirement, including, but not limited to, increased fees or
9 inclusionary housing requirements, that applies to a project solely
10 or partially on the basis that the project is eligible to receive
11 ministerial or streamlined approval pursuant to this section.

12 (2) (A) A local government shall issue a subsequent permit
13 required for a development approved under this section if the
14 application substantially complies with the development as it was
15 approved pursuant to subdivision (c). Upon receipt of an
16 application for a subsequent permit, the local government shall
17 process the permit without unreasonable delay and shall not impose
18 any procedure or requirement that is not imposed on projects that
19 are not approved pursuant to this section. The local government
20 shall consider the application for subsequent permits based upon
21 the objective standards specified in any state or local laws that
22 were in effect when the original development application was
23 submitted, unless the development proponent agrees to a change
24 in objective standards. Issuance of subsequent permits shall
25 implement the approved development, and review of the permit
26 application shall not inhibit, chill, or preclude the development.
27 For purposes of this paragraph, a "subsequent permit" means a
28 permit required subsequent to receiving approval under subdivision
29 (c), and includes, but is not limited to, demolition, grading,
30 encroachment, and building permits and final maps, if necessary.

31 (B) The amendments made to subparagraph (A) by the act that
32 added this subparagraph shall also be retroactively applied to
33 subsequent permit applications submitted prior to January 1, 2022.

34 (3) (A) If a public improvement is necessary to implement a
35 development that is subject to the streamlined, ministerial approval
36 pursuant to this section, including, but not limited to, a bicycle
37 lane, sidewalk or walkway, public transit stop, driveway, street
38 paving or overlay, a curb or gutter, a modified intersection, a street
39 sign or street light, landscape or hardscape, an above-ground or
40 underground utility connection, a water line, fire hydrant, storm

1 or sanitary sewer connection, retaining wall, and any related work,
2 and that public improvement is located on land owned by the local
3 government, to the extent that the public improvement requires
4 approval from the local government, the local government shall
5 not exercise its discretion over any approval relating to the public
6 improvement in a manner that would inhibit, chill, or preclude the
7 development.

8 (B) If an application for a public improvement described in
9 subparagraph (A) is submitted to a local government, the local
10 government shall do all of the following:

11 (i) Consider the application based upon any objective standards
12 specified in any state or local laws that were in effect when the
13 original development application was submitted.

14 (ii) Conduct its review and approval in the same manner as it
15 would evaluate the public improvement if required by a project
16 that is not eligible to receive ministerial or streamlined approval
17 pursuant to this section.

18 (C) If an application for a public improvement described in
19 subparagraph (A) is submitted to a local government, the local
20 government shall not do either of the following:

21 (i) Adopt or impose any requirement that applies to a project
22 solely or partially on the basis that the project is eligible to receive
23 ministerial or streamlined approval pursuant to this section.

24 (ii) Unreasonably delay in its consideration, review, or approval
25 of the application.

26 (i)

27 (j) (1) This section shall not affect a development proponent's
28 ability to use any alternative streamlined by right permit processing
29 adopted by a local government, including the provisions of
30 subdivision (i) of Section 65583.2.

31 (2) This section shall not prevent a development from also
32 qualifying as a housing development project entitled to the
33 protections of Section 65589.5. This paragraph does not constitute
34 a change in, but is declaratory of, existing law.

35 (j)

36 (k) The California Environmental Quality Act (Division 13
37 (commencing with Section 21000) of the Public Resources Code)
38 does not apply to actions taken by a state agency, local government,
39 or the San Francisco Bay Area Rapid Transit District to:

(1) Lease, convey, or encumber land owned by the local government or the San Francisco Bay Area Rapid Transit District or to facilitate the lease, conveyance, or encumbrance of land owned by the local government, or for the lease of land owned by the San Francisco Bay Area Rapid Transit District in association with an eligible TOD project, as defined pursuant to Section 29010.1 of the Public Utilities Code, nor to any decisions associated with that lease, or to provide financial assistance to a development that receives streamlined approval pursuant to this section that is to be used for housing for persons and families of very low, low, or moderate income, as defined in Section 50093 of the Health and Safety Code.

(2) Approve improvements located on land owned by the local government or the San Francisco Bay Area Rapid Transit District that are necessary to implement a development that receives streamlined approval pursuant to this section that is to be used for housing for persons and families of very low, low, or moderate income, as defined in Section 50093 of the Health and Safety Code.

~~(k)~~

(l) For purposes of establishing the total number of units in a development under this chapter, a development or development project includes both of the following:

(1) All projects developed on a site, regardless of when those developments occur.

(2) All projects developed on sites adjacent to a site developed pursuant to this chapter if, after January 1, 2023, the adjacent site had been subdivided from the site developed pursuant to this chapter.

~~(t)~~

(m) For purposes of this section, the following terms have the following meanings:

(1) “Affordable housing cost” has the same meaning as set forth in Section 50052.5 of the Health and Safety Code.

(2) (A) Subject to the qualification provided by subparagraphs (B) and (C), “affordable rent” has the same meaning as set forth in Section 50053 of the Health and Safety Code.

(B) For a development for which an application pursuant to this section was submitted prior to January 1, 2019, that includes 500 units or more of housing, and that dedicates 50 percent of the total number of units, before calculating any density bonus, to housing

1 affordable to households making at, or below, 80 percent of the
2 area median income, affordable rent for at least 30 percent of these
3 units shall be set at an affordable rent as defined in subparagraph
4 (A) and “affordable rent” for the remainder of these units shall
5 mean a rent that is consistent with the maximum rent levels for a
6 housing development that receives an allocation of state or federal
7 low-income housing tax credits from the California Tax Credit
8 Allocation Committee.

9 (C) For a development that dedicates 100 percent of units,
10 exclusive of a manager’s unit or units, to lower income households,
11 “affordable rent” shall mean a rent that is consistent with the
12 maximum rent levels stipulated by the public program providing
13 financing for the development.

14 (3) “Department” means the Department of Housing and
15 Community Development.

16 (4) “Development proponent” means the developer who submits
17 a housing development project application to a local government
18 under the streamlined, ministerial review process pursuant to this
19 section.

20 (5) “Completed entitlements” means a housing development
21 that has received all the required land use approvals or entitlements
22 necessary for the issuance of a building permit.

23 (6) “Health care expenditures” include contributions under
24 Section 401(a), 501(c), or 501(d) of the Internal Revenue Code
25 and payments toward “medical care,” as defined in Section
26 213(d)(1) of the Internal Revenue Code.

27 (7) “Housing development project” has the same meaning as in
28 Section 65589.5.

29 (8) “Locality” or “local government” means a city, including a
30 charter city, a county, including a charter county, or a city and
31 county, including a charter city and county.

32 (9) “Moderate-income housing units” means housing units with
33 an affordable housing cost or affordable rent for persons and
34 families of moderate income, as that term is defined in Section
35 50093 of the Health and Safety Code.

36 ~~(10) “Objective planning standards” shall not include standards~~
37 ~~in the California Building Standards Code (Title 24 of the~~
38 ~~California Code of Regulations), local building codes, fire codes,~~
39 ~~noise ordinances, other codes requiring detailed technical~~
40 ~~specifications, studies that are evaluated with subsequent permits;~~

1 or other standards that are not reasonably ascertainable by the local
2 government within the time limits set forth in subdivisions (c) and
3 (d). Excluded objective planning standards include, but are not
4 limited to, construction logistics plans, plumbing plans, electrical
5 plans, grading, excavation plans, geotechnical studies, and offsite
6 public improvement plans.

7 ~~(11)~~

8 (10) “Production report” means the information reported
9 pursuant to subparagraph (H) of paragraph (2) of subdivision (a)
10 of Section 65400.

11 ~~(12)~~

12 (11) “State agency” includes every state office, officer,
13 department, division, bureau, board, and commission, but does not
14 include the California State University or the University of
15 California.

16 ~~(13)~~

17 (12) “Reporting period” means either of the following:

18 (A) The first half of the regional housing needs assessment
19 cycle.

20 (B) The last half of the regional housing needs assessment cycle.

21 ~~(14)~~

22 (13) “Urban uses” means any current or former residential,
23 commercial, public institutional, transit or transportation passenger
24 facility, or retail use, or any combination of those uses.

25 ~~(m)~~

26 (n) The department may review, adopt, amend, and repeal
27 guidelines to implement uniform standards or criteria that
28 supplement or clarify the terms, references, or standards set forth
29 in this section. Any guidelines or terms adopted pursuant to this
30 subdivision shall not be subject to Chapter 3.5 (commencing with
31 Section 11340) of Part 1 of Division 3 of Title 2 of the Government
32 Code.

33 ~~(n)~~

34 (o) The determination of whether an application for a
35 development is subject to the streamlined ministerial approval
36 process provided by subdivision (c) is not a “project” as defined
37 in Section 21065 of the Public Resources Code.

38 ~~(o)~~

39 (p) Notwithstanding any law, for purposes of this section and
40 for development on property owned by or leased to the state, the

1 Department of General Services may act in the place of a locality
2 or local government, at the discretion of the department.

3 ~~(p)~~

4 (q) The provisions of clause (iii) of subparagraph (E) of
5 paragraph (8) of subdivision (a) relating to health care expenditures
6 are distinct and severable from the remaining provisions of this
7 section. However, the remaining portions of paragraph (8) of
8 subdivision (a) are a material and integral part of this section and
9 are not severable. If any provision or application of paragraph (8)
10 of subdivision (a) is held invalid, this entire section shall be null
11 and void.

12 ~~(q)~~

13 (r) It is the policy of the state that this section be interpreted
14 and implemented in a manner to afford the fullest possible weight
15 to the interest of, and the approval and provision of, increased
16 housing supply.

17 SEC. 3. The Legislature finds and declares that ensuring access
18 to affordable housing is a matter of statewide concern and is not
19 a municipal affair as that term is used in Section 5 of Article XI
20 of the California Constitution. Therefore, Section 2 of this act
21 amending Section 65913.4 of the Government Code applies to all
22 cities, including charter cities.

23 SEC. 4. No reimbursement is required by this act pursuant to
24 Section 6 of Article XIII B of the California Constitution because
25 a local agency or school district has the authority to levy service
26 charges, fees, or assessments sufficient to pay for the program or
27 level of service mandated by this act or because costs that may be
28 incurred by a local agency or school district will be incurred
29 because this act creates a new crime or infraction, eliminates a
30 crime or infraction, or changes the penalty for a crime or infraction,
31 within the meaning of Section 17556 of the Government Code, or
32 changes the definition of a crime within the meaning of Section 6
33 of Article XIII B of the California Constitution.

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CITY COUNCIL STAFF REPORT

MEETING DATE: April 19, 2023

PREPARED BY:

Chris Ghione, Public Services Director

APPROVED BY: City Manager

RECEIVE UPDATE REGARDING PAVEMENT REHABILITATION PLANNING

RECOMMENDATION(S)

Receive update on pavement rehabilitation planning.

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Maintaining and Enhancing Infrastructure

2022-2023 Strategic Priorities

Transportation

REPORT NARRATIVE:

For the last half of a decade, the City has made continued strides to improve its pavement conditions across the City. The City's most recent overall Pavement Condition Index (PCI) rating for the end of calendar year 2022 was 75. This is up from an overall PCI of 73 at the end of 2021. The City has steadily improved the condition of its streets since 2018 through investment of City dollars, annual funding from State Senate Bill 1 (Road Repair and Accountability Act of 2017), and Measure B funding (2016 voter approved countywide half-cent sales tax to enhance transportation).

City staff are in the process of bidding the 2023 Pavement Rehabilitation Project. As planned, the project prioritizes the repair of the City's arterial and collector roadways, while allocating available funds to the resurfacing of residential streets that are significantly degraded. However, budget limitations have prevented the City from funding all the previously planned work. Notably, due to cost constraints, the Jackson Meadows neighborhood work will need to be delayed. However, the work is still prioritized within the 5-year plan.

This update is provided now to provide the Council with a high level outline of future pavement rehabilitation planning. The current plan for rehabilitation of roadways is outlined below:

2021 Pavement Rehabilitation Project

- Tennant Avenue from Vineyard Avenue to Monterey Road
- Peak Avenue from Dunne Avenue to Wright Avenue
- DeWitt Avenue from Alkire Avenue to Claremont Avenue
- Main Avenue from DeWitt Avenue to Peak Avenue
- Wright Avenue from Peak Avenue to Monterey Road
- Farallon Avenue from Alkire Avenue to Peak Avenue
- Alkire Avenue from DeWitt Avenue to Peak Avenue
- Torrey Court
- West Central Ave from Monterey Road to Del Monte Avenue
- Park Way

2022 Pavement Rehabilitation Project

- East Dunne Avenue from Hill Road to City limit (Grant Funded)
- Jackson Oaks Drive and Streets within Jackson Oaks neighborhood (Resurfacing work on Oak View Circle and Hilltop Court was deferred pending water line replacement work in these streets)
- Hill Road from East Dunne to Barrett Avenue/City limit
- Murphy Road from San Pedro to the City limit
- Rustling Oaks Court
- Condit Road from San Pedro Avenue to Tennant Avenue
- Church from San Pedro Avenue to Barrett Avenue
- Mast between Church Street and Vineyard Boulevard
- Vineyard Boulevard between Tennant Avenue and Mast Avenue
- West Main Avenue from DeWitt Avenue to John Telfer Drive
- Via Grande
- Hidalgo Court
- La Giralda Court
- Lindo Lane (Future repair work needed to address unstable roadway subgrade)
- *Main Avenue from Monterey to Butterfield – Not completed*

2023 Planned Pavement Rehabilitation

- Main Avenue from Monterey Road to Butterfield Boulevard
- Streets within La Crosse Drive Area including: La Crosse Drive, La Mirada Court, La Porte Court, La Prenda Court, La Rena Court, La Roda Court, La Escuela Court, Descansa Court, El Pajaro Court, La Mesa Court, La Sierra Court, La Bella Court, La Honda Court, La Mar Court, La Jolla Court
- East Middle between Monterey and the Railroad Tracks
- Oak View Circle

2024 Planned Pavement Rehabilitation

- East Dunne Avenue Overpass from Condit Road to Laurel Road
- Del Monte Avenue from 2nd Street to Keystone Avenue
- Del Monte Avenue from Spring Avenue to Cosmo Avenue
- Keystone Avenue
- East Central from Monterey to about 20 feet from the intersection
- San Pedro from Butterfield Boulevard to Walnut Grove Drive
- San Ramon from San Pedro Avenue to San Marcos Drive
- Markross Court
- Cochrane Circle
- Railroad Ave from Tennant Avenue to San Pedro Avenue
- Hilltop Court
- Arterial Street Sealing – Streets TBD

2025 Planned Pavement Rehabilitation

- Monterey Road from Cochrane Road to East Middle Avenue/City limit - with Grant Project
- Llagas Road
- Streets within Woodland Acres Neighborhood, including Rolling Hills Drive, Woodland Avenue, Woodland Court, Rocky Ridge Road, Greenwood Avenue, Black Oak Court
- Sunnyside Avenue
- Arterial Street Sealing – Streets TBD

2026 Planned Pavement Rehabilitation

- Streets within western Jackson Meadows Neighborhoods, including Gallop Drive, Hay Loft Way, Hay Loft Court, Fountain Oaks Drive, Fountain Court, Saddleback Drive, Gitano Court, Huston Court, Pinto Court, Palomino Court, Buckskin Court, Sorrel Way, Cimarron Drive, Calero Court, Saddlehorn Way, Ranger Court, Arabian Court, Feliz Court, Ponderosa Court, Fountain Avenue
- Arterial Street Sealing – Streets TBD

2027 Planned Pavement Rehabilitation

- Calle Mazatan Area
- Peppertree Drive neighborhood east of Nordstrom School
- Arterial Street Sealing – Streets TBD

The plan is consistent with the City's past practice of prioritizing arterial and collector streets, while beginning the process of repairing the worst residential streets in the City. The City has successfully maintained and/ or improved its overall weighted pavement

condition index over the last 5 years through consistent investment.

COMMUNITY ENGAGEMENT:

City staff are working on a significant communication planning effort to be implemented ahead of the work, which is planned to occur during the summer months. City staff regularly receive requests for pavement repairs from throughout the community and these are reviewed and repaired by street maintenance staff if smaller in nature or incorporated into the larger pavement rehab planning if larger in nature.

ALTERNATIVE ACTIONS:

The City Council could provide staff with additional direction or feedback as deemed appropriate.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The City Council has taken significant actions related to funding pavement rehabilitation. Current appropriations for the 2023 Pavement Rehabilitation Project are funded through the Fiscal Year 2022/23 and 2023/24 Budget.

FISCAL AND RESOURCE IMPACT:

There is no fiscal impact associated with receiving the report. Award of the project and final costs for the 2023 Pavement Rehabilitation project will return to the Council for approval.

CEQA (California Environmental Quality Act):

Categorical Exemption

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

CITY COUNCIL STAFF REPORT

MEETING DATE: April 19, 2023

PREPARED BY:

Chris Ghione, Public Services Director

APPROVED BY: City Manager

APPROVE LEADERSHIP MORGAN HILL RENOVATION AND ART PROJECT AT THE STAGE PICNIC AREA OF COMMUNITY PARK

RECOMMENDATION(S)

1. Approve Leadership Morgan Hill - Class of 2023 project for the renovation and installation of artwork at the Stage Picnic Area of Community Park; and
2. Delegate final approval of artwork to Leadership Morgan Hill and a sub-committee of the Library, Culture and Arts Commission.

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Maintaining and Enhancing Infrastructure

Supporting our Youth, Seniors, and Entire Community

REPORT NARRATIVE:

The 2023 Class of Leadership Morgan Hill has reached out to the City looking to coordinate their annual class project. Each year Leadership Morgan Hill hosts a leadership class for community members specific to Morgan Hill. Part of completion of the program requires the class to complete a public service project. The class of 2023 has proposed a project, "Building Community at Community Park: Stage BBQ Mural and Renovation." The project will include renovation and adding public art to the area. The donation of the work on the project must be approved by the City Council. The project proposal is attached to this staff report for review. Both the Library, Culture and Arts Commission and Parks and Recreation Commission have recommended approval of the project.

The Leadership Class has not yet selected final artwork for the project. Per the permanent art policy for the City, the selected art will need to come back to the Commission and Council unless the delegation of approval of the final artwork is made. The Leadership Class has requested the final artwork at the project be decided by the Leadership Class with approval of a subcommittee of the Library, Culture and Arts Commission. The Library, Culture and Arts Commission has also recommended this approach.

COMMUNITY ENGAGEMENT:

EmpowerThe project was brought forward by community members enrolled in Leadership Morgan Hill (Class) and will be implemented by these community members.

ALTERNATIVE ACTIONS:

The City Council could choose not to approve the project and provide the Leadership Class of 2023 with alternate feedback. The City Council could also choose not to delegate authority on the final artwork and request that the artwork return to the Library, Culture and Arts Commission and the City Council for final review.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The City has worked with Leadership Morgan Hill on various class projects over the last two decades. The City Council has most recently approved the utility box art project conducted in 2018, the installation of artistic bike racks in the Downtown in 2019, and the construction of gateway monument signs in 2022.

FISCAL AND RESOURCE IMPACT:

The renovation and artwork project at Community Park is not anticipated to create significant ongoing operational expenses. The Project will require limited support from the Public Services Department, but work will renovate a City facility that otherwise would not be renovated.

CEQA (California Environmental Quality Act):

Categorical Exemption

Minor alterations to existing City facilities fall within the CEQA categorical exemption of Class 1, Existing Facilities.

Chris Ghione
chris.ghione@morganhill.ca.gov
Public Services Director
City of Morgan Hill

We have presented the Class of 2023 proposed project **Building Community at Community Park: Stage BBQ Mural and Renovation** to the LMH Board. They had a favorable response, but wanted to clarify some items before issuing final approval, which we hope to receive by March 20. Because we are committed to completing the project in a timely manner, we want to go ahead and give you this overview of our project for your review in hopes that we can get on the PRC agenda for March 21 and the LCAC agenda for April 9, subject to our Board approval. We are looking forward to working with you and your team to gain all necessary approvals as quickly as possible and to successfully implement our project by early September.

Project: Building Community at Community Park: Stage BBQ Mural and Renovation
--

Renovate the Stage BBQ area at Community Park and install a mural that reflects the themes of Community (the name of the park) and Inclusion (the spirit of the neighboring Magical Bridge Playground).

Project Scope

The project will involve:

- cleaning, prepping and base color painting of the building
- installation of mural on the large wall located under the roof
- additional artistic embellishments on other walls if budget allows
- installation of gratitude plaque to acknowledge LMH, City of Morgan Hill support, and major donors
- cleaning of concrete flooring, tables, waste bins and BBQ
- picnic tables may also be painted if time and budget allow

Specific details on the areas included in the project are as follows:

Area A: Stage BBQ Area Building (includes 5 walls, doors, fascia trim, pillars)- basic scope of project

- (1) Clean and prep surfaces
- (2) Prime/base coat all areas of structure
- (3) Mural on wall 1 (inside wall covered by roof)
- (4) Embellishments on outer walls (#2-5) (will depend upon budget)

Area B: Tables - would like to include in scope provided that we have sufficient funds

(1) Power wash, remove gum, possible patch/repair?

(2) Paint if funds allow

Area C: Floor - would like to include in scope provided that we have sufficient time and funds

(1) Power wash, remove gum, possible patch/repair?

(2) Possibly paint some decorative embellishments if funds and time allow

Area D: Ceiling - We feel that prep and painting of the ceiling is important for a quality project, but have concerns about including this in the scope of the project due to the necessity of lift equipment and the cost possibly exceeding our budgetary restrictions. The project can be completed without any work on the ceiling, but we are in negotiations with the artist to complete this part of the project using a subcontractor, the cost of which would be included in the artist's fee.

Project Purpose

The Stage BBQ area in Community Park is looking run down and needs enhancement to be a more fitting neighbor to the new and brightly colored Magical Bridge playground. Per Chris Ghione (City of Morgan Hill), the City has identified an immediate need to enhance this area and has discussed looking for a community organization that would be willing to take on the project. Our classmate Chiquy Mejia (Morgan Hill Recreation Department) had also been seeking enhancements of the area as it is frequently used for events hosted by community members.

The project is about more than painting and a mural– it is about community. Our work will provide an attractive area for residents to enjoy a picnic or host community events. We are committed to bringing people together– engaging the community in funding, providing a space for art that expresses community and inclusion, and celebrating together with the community at an unveiling ceremony. We believe this will inspire others to connect with and serve our community, and will bring positive attention to the Leadership Morgan Hill program.

Project Alignment with City's Strategic Plan

The project provides a unique opportunity to deepen the City of Morgan Hill's strategic priorities and plan. As we aim to strengthen the fostering of community at Community Park, this project will bring diverse people together in not only facilitating the project, but also through increased use of the beautified project site. It is a city goal to create and manage a volunteer program for the Magical Bridge Playground in Community Park and it is our hope that with increased awareness through this project we may aid the City in actualizing this ongoing goal. Furthermore, we are committed to leveraging community engagement and messaging that is

responsive to our communities linguistic diversity — also in alignment with a City priority. We are confident that our project is not only aligned with the City's Strategic Plan, but it will also create unique opportunities to deepen and extend its impact through the diverse reach of our cohort and LMH community.

Timeline

March 20	Obtain approval from the LMH Board.
March 20	Begin fundraising activities.
March 21	Present project to PRC
March 21	Gain approval of PRC
March 27	Final artist selection with full Class of '23
April 9	Present project to LCAC
April 9	Gain approval of LCAC
April 10	Apply for necessary permits
April 10	Begin marketing campaign
May 20	LMH '23 on-site work day
August 19	Mural art completed
Sept 9	Grand opening of mural

Artist work days will be scheduled in late May to mid-August (TBD and scheduled around community bookings of the space).

Budget

LMH Class of '23 intends to raise \$10,000 in donations to cover the expenses of the project. (This is the maximum allowed under the LMH Board regulations.) Additionally, we intend to seek in-kind donations (labor and materials) to increase the total available resources to complete the project, but will ensure that the basic project scope can be completed within the \$10K cash limit.

We anticipate the expenses to break down as follows:

- ☐ \$7500- mural expenses (prep, all materials, artist fees)
- ☐ \$ 500- marketing and community event
- ☐ \$ 500- fundraising expenses, gratitude plaque
- ☐ \$1500- contingencies

Artist and Art Concept

Our LMH class has been in contact with eight artists and has obtained four bids for the mural project. We have made a preliminary selection of an artist, but before finalizing we are negotiating some details and collaborating on the art concept.

In evaluating the artists' proposals we have considered the following:

Artist:

- 1) Artist should be an experienced outdoor muralist with experience painting the types of surfaces we are working with.
- 2) Artist's proposed fee should be within our budget and competitively priced.
- 3) Artist should be knowledgeable about the types of paint, primer and coatings that will result in a beautiful, durable mural that is resistant to the elements and to graffiti. They should be capable of advising us on (or completing themselves) any prep work needed to provide an adequate painting surface.
- 4) Consider ties that the artist has to the Morgan Hill/South County community.
- 5) Preference may be given to an artist who has already done work for the City of Morgan Hill. This will expedite approvals due to the artist's familiarity with requirements and the City's comfort level based on past relationships.
- 6) Can also consider: Is the artist representative of our community? Can we amplify an artist from an underrepresented group?

Art:

The following will be considered in choosing the final art for the mural. Is the piece:

- 1) Appropriate for the type of events the space is used for. (Various types of community gatherings, some impromptu, some booked in advance through the city. Birthday parties, scouting events, memorials/celebrations of life, community group gatherings, family holiday gatherings, etc.)
- 2) Appropriate considering who uses the space: a wide cross-section of our community– a very broad demographic (age, race, socioeconomic level, gender, etc.)
- 3) Tied to our themes of COMMUNITY and INCLUSION.
- 4) Suitably blended into the larger area. We will take into account the view of the mural from the Magical Bridge playground and from the side where the painted utility box is located. Ensure that the mural colors and images tie into these other elements to avoid the area looking too busy and/or disjointed.
- 5) Achievable within our deadline. Avoid anything overly complex or time consuming that may cause project delays.

- 6) Visually beautiful, uplifting and an enhancement to the community's enjoyment of the space.

Pending approval of our Board, we anticipate finalizing the details regarding the artist selection by March 27.

Photos: Stage BBQ Area Currently





Concept Renderings: Mural



Leadership Morgan Hill
Class of 2023

Project Proposal

Building Community at Community Park

Renovate the Stage BBQ area at Community Park and install a mural that reflects the themes of Community (the name of the park) and Inclusion (the spirit of the neighboring Magical Bridge Playground).

Project Scope

- **cleaning, prepping** and base color **painting** of the building
- installation of **mural** (wall 1)
- additional **artistic embellishments** on other walls and floor
- **anti-graffiti** coating
- installation of gratitude **plaque** to acknowledge artist, LMH, City of Morgan Hill, and major donors
- **cleaning** of area, concrete flooring, tables, waste bins and BBQ
- **picnic tables** sanded and painted

Selected Artist: Lina Velasquez

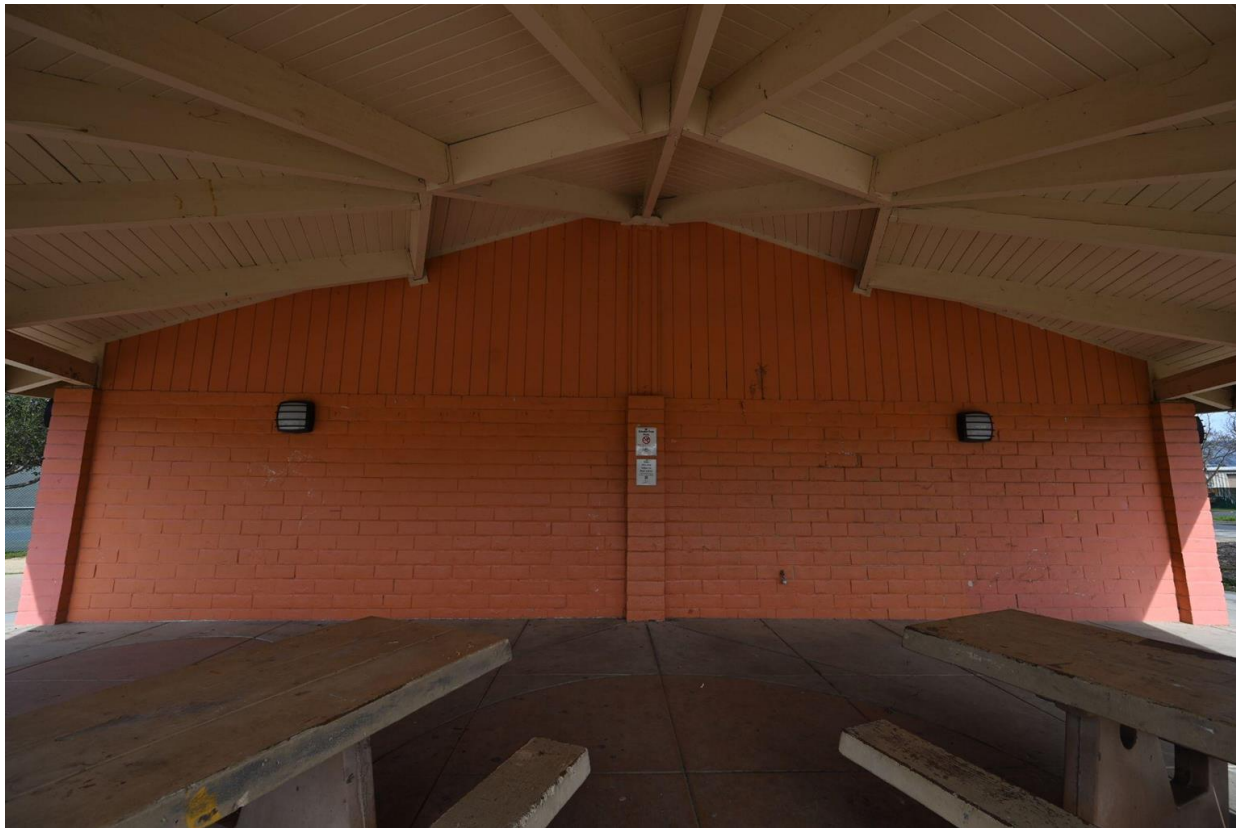
- 17 year Morgan Hill Resident
- 12 years as local volunteer
- Many contributions to our community
 - Pop up parks
 - Utility boxes
 - Magical Bridge Playground
 - Youth Action Council
 - Senior Watercolor Class
- Artwork at Bubbles & Brew and Kelly Brewing Company
- Reflects LMH Mission: Inspire, Connect, Serve



Project Budget

☐	\$ 7,500	mural expenses (prep, all materials, artist fees)
☐	\$ 500	marketing and community event
☐	\$ 500	fundraising expenses, gratitude plaque
☐	<u>\$ 1,500</u>	contingencies
	\$ 10,000	

- fundraising by LMH Class of 2023
- additional in-kind contributions may allow us to enhance the project or reduce cash fundraising requirements



Stage BBQ Mural Project (Wall 1)



The Tree as a Symbol of Inclusion and Community

- All are welcome to partake in the nourishment, strength, beauty and shade of a tree.
- “Planting trees so that others may enjoy the shade.” → Caring for the future of our community.
- Limbs and branches symbolize the breadth of our community, but also open arms to newcomers and new ideas.
- Feathers as leaves, uniting the elements of the community.

There is little else on Earth that plays host to such a rich community of life within a single living organism.” — Sir David Attenborough

Building Community at Community Park: Stage BBQ Mural

Before



After



Mural location: Wall 1

Building Community at Community Park: Stage BBQ Mural

Before



After (concept only- not final art)



Location: Wall 2



Mayor Mark Turner: State of the City Address 2023

“Public art enhances communities in several ways. ...add(s) character and identity to Morgan Hill ...a great addition to our community ...reflect(s) our community’s values, history and culture, creating a sense of place for our residents and visitors alike ...brings people together”

“Public art can boost our local economy and public art supports local artists”

“Walls can become a canvas for beautiful murals.”

“I believe Morgan Hill can become a premier location in Santa Clara County for public art. ...I would challenge our Arts commissioners to communicate a bold plan. Force us to make public art a priority in our community.”

Supporting LCAC Goals (2022-23 Work Plan)

- Develop outreach program to the Latinx community through art programming
- Explore opportunities for youth engagement in arts
- Partner with artist to complete a community mural

Building Community & Art Appreciation

- **Marketing** will bring public attention to the mural, artist, and the installation process.
- Youth will be invited to a **meet-and-greet with the artist**, to learn about the art and and see the work-in-process. (Sessions in **English and Spanish.**)
- Mural will be unveiled at a **community celebration** which could be an opportunity to **promote other arts programs** in Morgan Hill.

Proposed Timeline

April 4	Presented project to LCAC & gained approval
April 19 approval	Present project to MH City Council & gain
May 20	Estimated start of on-site work
August 19	Mural art completed
Aug/Sep(TBD)	Mural unveiling & on-site community event

Painting times will be scheduled to minimize impact on community (avoiding conflict with other events and limiting weekend work).

Our ask:

We seek your approval to move forward
with the
Stage BBQ Area Mural Project

Appendix

Stage BBQ Mural Project

Criteria for Evaluating the Artists' Proposals

1. Artist should be an **experienced outdoor muralist** with experience painting the types of surfaces we are working with.
2. Artist's proposed fee should be **within our budget** and competitively priced.
3. Artist should be **knowledgeable** about the types of paint, primer and coatings that will result in a beautiful, durable mural that is resistant to the elements and to graffiti. They should be capable of advising us on (or completing themselves) any prep work needed to provide an adequate painting surface.
4. Consider ties that the artist has to the **Morgan Hill/South County community**.
5. Preference may be given to an artist who has **already done work for the City of Morgan Hill**. This will expedite approvals due to the artist's familiarity with requirements and the City's comfort level based on past relationships.
6. Can also consider: Is the artist representative of **our community**? Can we amplify an artist from an underrepresented group?

Criteria for Evaluating the Art

1. Appropriate for the **type of events** the space is used for. (Various types of community gatherings, some impromptu, some booked in advance through the city. Birthday parties, scouting events, memorials/celebrations of life, community group gatherings, family holiday gatherings, etc.)
2. Appropriate considering **who uses the space**: a wide cross-section of our community– a very broad demographic (age, race, socioeconomic level, gender, etc.)
3. Tied to our themes of **COMMUNITY** and **INCLUSION**.
4. Suitably **blended into the larger area**. We will take into account the view of the mural from the Magical Bridge playground and from the side where the painted utility box is located. Ensure that the mural colors and images tie into these other elements to avoid the area looking too busy and/or disjointed.
5. **Achievable within our deadline**. Avoid anything overly complex or time consuming that may cause project delays.
6. Visually **beautiful, uplifting and an enhancement** to the community's enjoyment of the space.

Lina Velasquez Quote

- 1.Paint shaded area and columns. Includes power washing and primer for the interior and exterior.
- 2.Paint for the ceiling, this includes power washer, primer, and fixing some of the cracks.
- 3.Design and interior mural.
- 4.Floor power washing, remove stains and graffiti, painting of circles on floor
- 5.Tables (includes sanding and covering holes to have a flatter/smooth surface). Beige paint.
6. Anti-graffiti coating

TOTAL COST:
\$7,000

Budget breakdown:

- \$5,000 - labor
- \$1,000 - paint
- \$1,000 - additional supplies for washing, priming, painting

Optional Addition:

- \$7,000 + \$700 (to fix benches and tables with cement)

A tree is a fountain of life which gives nourishment and it provides protection and shade. The tree represents life and death and the roots are symbols of our beginning and the branches reaching to the heavens represent our end. The branches represent the infinite number of roads and opportunities we select during our lifetime. A tree is majestic, has energy, strength and elegance.

We are creating this mural to beautify the space where the Morgan Hill Community gathers to celebrate their special events such as birthdays, baptisms, family reunions, life of a loved one, and/or to simply spend time with family and friends.

A tree is for everyone, a tree does not exclude anyone. It is elegant and the colors will suit all occasions and allow for Morgan Hill residents to enjoy the location and the tree.