



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, September 6, 2023 5:00 PM

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

AMENDED AGENDA - TELECONFERENCE INFORMATION ADDED

TELECONFERENCE

Council Member Yvonne Martinez Beltran will be participating in the City Council meeting via teleconference as follows:

Hotel Pacific
300 Pacific Street
Monterey, Ca 93940

The public may attend the City Council meeting and will have the opportunity for public comment from the Monterey teleconference location.

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 who 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 p.m. the day of the meeting will be provided to the City Council as time allows.

Written comments WILL NOT be read aloud during the City Council Meeting. Please note that written comments are posted on the City's website, 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

5:00 pm Closed Session

CALL TO ORDER

ROLL CALL ATTENDANCE

DECLARATION OF POSTING AGENDA

CLOSED SESSION

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; Dat Nguyen, Finance 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

CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

Significant exposure to litigation pursuant to § 54956.9(b): (one case)

Claim of DeNova Homes re" Builder's Remedy

OPPORTUNITY FOR PUBLIC COMMENT

ADJOURN TO CLOSED SESSION

REGULAR MEETING

6:00 pm

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

RECOGNITIONS

The City of Morgan Hill recognizes Ryder Kirk and Rohan Wilmot for earning the honored Eagle Scout Award.

The City of Morgan Hill recognizes the Friends of Morgan Hill Senior Center for their outstanding dedication to the Morgan Hill Senior Center.

PROCLAMATIONS

Proclaiming the month of September as National Emergency Preparedness Month

Proclaiming the month of September as National Hispanic and Latinex Heritage Month

Proclaiming the month of September as Suicide Prevention Awareness Month

Proclaiming the month of September as Childhood Cancer Awareness Month

CITY COUNCIL REPORTS

Mayor Turner

CITY MANAGER'S REPORT

New Hire, Promoted, and Retired Employee 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.

1. ACCEPT \$30,000 DONATION FROM THE FRIENDS OF MORGAN HILL SENIOR CENTER

Recommendation:

1. Accept a \$30,000 donation from the Friends of the Morgan Hill Senior Center to support services at the Centennial Recreation Senior Center; and
2. Authorize the City Manager to execute any agreements necessary for donation acceptance.

2. **ACCEPT THE GRANT FUNDING FROM CALIFORNIA HIGHWAY PATROL'S CANNABIS TAX FUND GRANT PROGRAM FOR DUI SATURATION PATROLS AND THE PURCHASING OF EQUIPMENT**

Recommendation:

1. Accept the grant funding from the California Highway Patrol's (CHP) Cannabis Tax Fund Grant Program (CTFGP) and adopt a resolution to amend the City's Fiscal Year 2023-24 General Fund budget, accepting grant funding of \$10,144, and appropriating \$10,144, and;
2. Authorize the City Manager to execute the California Highway Patrol's (CHP) Cannabis Tax Fund Grant Program's (CTFGP) agreement.

3. **ACCEPT MORGAN HILL RECTANGULAR RAPID FLASHING BEACON (RRFB) AND HIGH INTENSITY ACTIVATED CROSSWALK BEACON (HAWK) PROJECT IN THE AMOUNT OF \$729,046**

Recommendation:

1. Accept as complete the Morgan Hill Rectangular Rapid Flashing Beacon (RRFB) and High Intensity Activated Crosswalk Beacon (HAWK) Project;
2. Authorize the City Engineer to sign the Notice of Completion; and
3. Direct the City Clerk to file said Notice of Completion with the County Recorder's Office.

4. **ADOPT ORDINANCE 2348, NEW SERIES, ESTABLISHING CHAPTER 18.29 (MONTEREY CORRIDOR FORM-BASED CODE) OF TITLE 18 (ZONING) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL AND ESTABLISHING THE MONTEREY CORRIDOR FORM-BASED CODE REGULATING PLAN IMPLEMENTING A FORM-BASED CODE ALONG THE MONTEREY ROAD CORRIDOR CREATING A VIBRANT MIXED-USE CORRIDOR THAT ENCOURAGES WALKING AND BIKING AS ENVISIONED WITHIN THE CITY OF MORGAN HILL 2035 GENERAL PLAN**

Recommendation:

Waive the reading, adopt Ordinance No. 2348, 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.

5. **ADOPT RESOLUTION AMENDING FISCAL YEAR (FY) 2023-24 COUNTYWIDE SOLID WASTE BUDGET FOR ADMINISTRATIVE SERVICES**

Recommendation:

Adopt resolution appropriating an additional \$95,680 to the City's FY 2023-24 budget in the Countywide Solid Waste Administration Fund (246) and the General Fund (010).

6. APPROVE CONSULTANT AGREEMENT WITH LUHDORFF AND SCALMANINI FOR TWO TEST WELLS

Recommendation:

1. Approve Consultant Agreement for Design Professionals with Luhdorff and Scalmanini Consulting Engineers for a total not to exceed contract amount of \$347,100; and
2. Authorize the City Manager to execute and administer the Consultant Agreement for Design Professionals with Luhdorff and Scalmanini Consulting Engineers.

7. APPROVE SECOND AMENDMENT TO THE AGREEMENT WITH DUKE'S ROOT CONTROL

Recommendation:

Approve and authorize the City Manager to execute a second amendment to the agreement with Duke's Root Control for additional root control treatment for a total agreement not to exceed amount of \$99,185.

8. APPROVE OBJECTIVE DEVELOPMENT STANDARD WAIVERS FOR THE EDES-ALCINI: AFFORDABLE HOUSING PROJECT AT EDES COURT AND MONTEREY ROAD

Recommendation:

Adopt Resolution approving the request for waivers for the Edes-Alcini project.

9. APPROVE THE PURCHASE OF A FIRE APPARATUS FOR THE THIRD FIRE STATION

Recommendation:

1. Approve the purchase of a fire apparatus for the third fire station with Burton's Fire Inc. in the amount of \$949,080 plus a 5% contingency; and
2. Authorize the City Manager to executive and administer the purchase agreement; and
3. Approve a budget amendment to move the approved funding from FY 2024-25 to FY 2023-24; and
4. Authorize an interfund loan to Public Safety Facilities Impact Fund (315) of \$1.0 million from Local Drainage Impact Fund (303).

10. APPROVE THE AUGUST 23, 2023 CITY COUNCIL MEETING MINUTES

Recommendation:

Approve the August 23, 2023 City Council Meeting Minutes.

11. APPROVE THE CONSULTANT AGREEMENT WITH CIVICPLUS, LLC FOR CIVICREC ENTERPRISE RECREATION SOFTWARE

Recommendation:

1. Approve the consultant agreement with CivicPlus, LLC in the amount of \$472,886 for CivicRec enterprise recreation software; and
2. Adopt a resolution amending the FY 2023-24 General Fund (Fund 010) Budget to appropriate an additional \$108,942; and
3. Authorize the City Manager to execute and administer the consultant agreement with CivicPlus, LLC.

12. AUTHORIZE THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH GRANITE GOVERNMENT SOLUTIONS FOR CONSOLIDATED TELECOMMUNICATION SERVICES

Recommendation:

1. Authorize the City Manager to enter into an agreement with Granite Government Solutions for consolidated telecommunication services; and
2. Authorize the City Manager to execute and administer the consultant agreement with Granite Government Solutions.

13. AWARD SMART IRRIGATION CONTROLLER SYSTEM CONTRACT TO MEDALLION LANDSCAPE MANAGEMENT, INC.

Recommendation:

1. Award contract to Medallion Landscape Management, Inc. in the amount of \$435,398 for the supply, installation and programming of a Citywide Smart Irrigation Controller System with a 5% contingency not to exceed \$21,770;
2. Authorize the City Manager to execute and administer that certain contract with Medallion Landscape Management, Inc; and
3. Adopt a resolution amending the FY 2023-24 Budget appropriating \$457,168, including \$228,584 from the Water Operations Fund (650) and \$228,584 from the General Fund (010).

PUBLIC HEARINGS

14. ADOPT A CITYWIDE VEHICLE-MILES-TRAVELED (VMT) POLICY INCLUSIVE OF ESTABLISHING VMT AS THE APPROPRIATE METRIC FOR EVALUATING TRANSPORTATION-RELATED IMPACTS UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) AND ESTABLISHING VMT SCREENING CRITERIA, VMT THRESHOLDS OF SIGNIFICANCE, AND TRANSPORTATION DEMAND MANAGEMENT (TDM) STRATEGIES

Recommendation:

1. Open/close public hearing; and
2. Adopt Resolution adopting Screening Criteria and Thresholds of Significance regarding the City's implementation of State Senate Bill 743 (SB 743) transition from Level-of-Service (LOS) to Vehicle-Miles-Traveled (VMT) as the metric for transportation analysis under the California Environmental Quality Act (CEQA) for development projects.

15. ADOPT RESOLUTION AMENDING AND RESTATING THE CITY OF MORGAN HILL'S STATEWIDE COMMUNITY INFRASTRUCTURE PROGRAM ("SCIP")

Recommendation:

1. Open and Close Public Hearing; and
2. Adopt amended and restated resolution

OTHER BUSINESS

16. APPROVE CONDITIONAL FUNDING FOR THE MAGNOLIAS AFFORDABLE HOUSING DEVELOPMENT BY FIRST COMMUNITY HOUSING AND EDEN HOUSING (FCH-EDEN) FROM DESIGNATED HOUSING FUNDS

Recommendation:

Approve conditional funding for the FCH-Eden Housing Project, "The Magnolias," in the amount of \$600,000, contingent on FCH-Eden's ability to obtain the remaining gap funds, and subject to an agreement negotiated by the City Attorney.

17. PROVIDE DIRECTION REGARDING CITY COUNCIL TERM LIMITS

Recommendation:

Provide direction to staff regarding the drafting of an ordinance creating term limits that would be submitted to the voters in November 2024.

18. APPROVE CODE OF CONDUCT FOR PUBLIC MEETINGS IN THE COUNCIL CHAMBER AND CONFERENCE ROOMS

Recommendation:

Approve City Council Policy, "Code of Conduct for Public Meetings in the Council Chamber and Conference Rooms"

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

Recommendation:

Determine if the majority of the City Council want the following items agendized at a future meeting for discussion:

1. Consider prohibiting pedestrians on median islands; and
2. Consider restoring the use of natural gas in new construction.

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.



Holland & Knight

560 Mission Street, Suite 1900 | San Francisco, CA 94105 | T 415.743.6900 | F 415.743.6910
Holland & Knight LLP | www.hklaw.com

Daniel R. Golub
415-743-6900
Daniel.Golub@hklaw.com

August 18, 2023

Jennifer Carman, Director
Development Services Department
City of Morgan Hill
17575 Peak Ave.
Morgan Hill, CA 95037

VIA EMAIL (jennifer.carman@morganhill.ca.gov)

Dear Ms. Carman:

Holland & Knight represents DeNova Homes, Inc. (the “Applicant”) with respect to the Monterey-Butterfield Project (the “Project”). Our West Coast Land Use and Environmental Group focuses particularly on enforcing California’s recently reformed housing laws, including the Housing Accountability Act (the “HAA”).¹

As you know, the Applicant submitted a preliminary application for the Project pursuant to the Housing Crisis Act of 2019 (“SB 330”) on July 13, 2023 (the “Preliminary Application”). On August 11, 2023, the Applicant received a letter from the City of Morgan Hill (the “City”), purporting to respond to the Preliminary Application. We write in response to that letter.

We were very surprised to read the City take the position that it will refuse to recognize the applicability of the “Builder’s Remedy,” and to refuse to allow a much-needed 20% lower income affordable housing project to proceed. As set forth below, such action would clearly violate the HAA and subject the City to substantial liability. We hope the City will reconsider its course of action and instead work collaboratively with the Applicant to process a Project that will contribute very significantly to the region’s desperate need for housing opportunities.

As a preliminary matter, the City’s letter states that the *Preliminary Application* “has been initially reviewed and will not be able to be processed due to inconsistencies with the General Plan and Zoning Ordinance.” To be clear, a city is neither required to process a Preliminary Application, nor authorized by statute to determine that a Preliminary Application cannot be processed. Rather, SB 330 provides that an applicant “shall be deemed to have submitted a preliminary application upon providing all of the following information about the proposed project to the city, county, or city and county from which approval for the project is being sought

¹ Gov. Code § 65589.5.

and upon payment of the permit processing fee[.]”² The Preliminary Application provided the information called for by SB 330 (the City’s letter does not and cannot dispute this) and the Applicant tendered payment of the relevant fees (as the City’s letter acknowledges). As such, the Applicant is now deemed to have submitted the Preliminary Application for purposes of SB 330 and the HAA as a matter of law. No response from the City is necessary, nor does the City’s purported refusal to “process” the Preliminary Application have any legal effect.

The HAA provides that “a housing development project shall be subject only to the ordinances, policies, and standards adopted and in effect when a preliminary application including all of the information required by subdivision (a) of Section 65941.1 was submitted.”³ The date of that submittal, as discussed above, is July 13, 2023. As of July 13, 2023, the City had not adopted a housing element that substantially complies with Article 10.6 of the Government Code.⁴ That state of affairs precludes the City from disapproving any “housing development project for very low, low-, or moderate income households” (such as the Project) under Subdivision (d)(5) of the HAA. The HAA is clear that “inconsistencies with the General Plan and Zoning Ordinance” – which are identified in the City’s letter as the reasons City will refuse to approve the Project – are simply unavailable as a basis for disapproving a Project when a city has not adopted a Housing Element in substantial compliance with the law.⁵

To the extent the City’s letter is indicating that the City will refuse to process – or otherwise disapprove – the forthcoming formal application for the Project, any such action would inarguably violate the HAA, and would authorize the Applicant as well as others to bring a cause of action against the City to remedy that violation. As HCD has succinctly put it, on at least one Notice of Violation issued to a City for exactly the same conduct: “the Builder’s Remedy applies, and the City’s denial of the Project application based on inconsistency with zoning and land use designation is a violation of the HAA.”⁶ In any litigation, the City would bear the burden of demonstrating that its conduct complied with the HAA,⁷ the HAA would be interpreted and applied to provide “the fullest possible weight to the interest of, and the approval and provision of, housing,”⁸ and a reviewing court would adopt a non-deferential “rigorous independent review ... in order to prevent the City from circumventing what was intended to be a strict limitation on its authority.” *California Renters Legal Advocacy & Education Fund v. City of San Mateo* (2021) 68 Cal.App.5th 820, 844 (citations omitted). If liable, City would be

² Gov. Code § 65941.1 (emphasis added).

³ Gov. Code § 65589.5(o)(1).

⁴ See HCD, “Housing Element Review and Compliance Report” (<https://www.hcd.ca.gov/planning-and-community-development/housing-open-data-tools/housing-element-review-and-compliance-report>).

⁵ Gov. Code § 65589.5(d).

⁶ HCD, “City of La Cañada Flintridge Denial of 600 Foothill Boulevard Housing Project – Notice of Violation” (June 8, 2023) (<https://www.hcd.ca.gov/sites/default/files/docs/planning-and-community/HAU/la-canada-flintridge-nov-060823.pdf>).

⁷ Gov. Code § 65589.6.

⁸ Gov. Code § 65589.5(a)(2)(L).

subject to significant liability in the form of, *inter alia*, mandamus relief, attorneys’ fees, and potentially applicable fees and penalties, in a minimum amount of \$10,000 per housing unit.⁹ Given the Project’s 323 proposed units, this works out to a minimum fine of \$3,230,000. This \$3,230,000 minimum fine may be further based on several factors including “any prior violations of [the HAA].”¹⁰ On this point we are compelled to mention that the City has violated the HAA in the past. See *MWest Propco XXIII LLC v. City of Morgan Hill* (Super. Ct. Santa Clara County, Sep. 25, 2018, No. 18-CV-333676). Finally, should the Court find that the City “acted in bad faith when it disapproved” the Project, it is statutorily obligated to “multiply the fine ... by a factor of five.”¹¹ Here, bad faith “includes, but is not limited to, an action that is frivolous or otherwise entirely without merit.”¹² As explained further below, the City’s wholly-unexplained position that “[w]e do not believe the City is subject to Builder’s Remedy” is entirely without merit. For reference, a minimum fine of \$3,230,000, multiplied by a factor of five, would total \$16,150,000.

The City’s letter says that “[w]e do not believe the City is subject to Builder’s Remedy.” There is no reasoning provided to support this assertion, nor is any reasoning apparent. While the letter states that “the City adopted the sixth-cycle Housing Element on January 25, 2023[,]” the letter declines to mention that the Housing Element City adopted in January was rejected by the California Department of Housing and Community Development (“HCD”) on April 3, 2023, who confirmed that the January 25, 2023 Housing Element did *not* substantially comply with Housing Element Law.¹³

To be clear, this rejection was not a close call. HCD denoted **six pages** of inconsistencies with Housing Element Law in its rejection letter. These include, but are not limited to:

- Failure to affirmatively further fair housing:
 - Failure to analyze racially concentrated areas of affluence;
 - Failure to provide a complete analysis regarding persons experiencing homelessness;
 - Failure to provide an analysis of the housing element site inventory in connection with the City’s independent obligation to affirmatively further fair housing;
 - Failure to include meaningful programs and actions to promote housing mobility; and

⁹ Gov. Code § 65589.5(k)(1)(B).

¹⁰ Gov. Code § 65589.5(k)(1)(B).

¹¹ Gov. Code § 65589.5(l) (emphasis added).

¹² Gov. Code § 65589.5(l).

¹³ HCD, “City of Morgan Hill’s 6th Cycle Adopted Housing Element” (Apr. 3, 2023) (<https://www.morganhill.ca.gov/DocumentCenter/View/43884/sclMorganHillAdoptedOut040323>).

- Failure to provide local data and knowledge needed to analyze current fair housing conditions.
- Failure to analyze special housing needs:
 - Failure to analyze availability and gaps in resources with respect to Extremely Low Income Households; and
 - Failure to analyze gaps in addressing the needs of special needs households and to identify specific programs to address those gaps.
- Failure to analyze governmental constraints on housing:
 - Failure to add a program committing to adopting reduced parking requirements for smaller bedroom units;
 - Failure to discuss local processing and permitting procedures, including the Permit Streamlining Act and the California Environmental Quality Act;
 - Failure to include a program committing to reduce off-site improvement requirements;
 - Failure to include a program to remove constraints regarding reasonable accommodations for persons with disabilities; and
 - Failure to include a program removing constraints regarding group homes.
- Failure to analyze existing assisted housing developments:
 - Failure to include an assessment of conversion risk and related analysis.
- Failure to include programs needed to implement the policies of the Housing Element:
 - Failure to ensure that programs provide specificity in implementation, including required steps and timelines.
- Failure to identify actions to make sites available during the planning period:
 - Failure to include programs with actions to facilitate development of pipeline projects.
- Failure to adopt programs for preservation of assisted housing:
 - Failure to include programs with specific and proactive actions to preserve at-risk units.¹⁴

To date, the City has not responded to these findings, nor has it amended its Housing Element to address a single one of these issues.

¹⁴ HCD, “City of Morgan Hill’s 6th Cycle Adopted Housing Element” (Apr. 3, 2023) (<https://www.morganhill.ca.gov/DocumentCenter/View/43884/sclMorganHillAdoptedOut040323>).

HCD's determinations regarding certification are not merely advisory. Statutory law assigns responsibility for certification of Housing Element compliance to HCD alone.¹⁵ Indeed, the City's own Housing Element Update website acknowledges that HCD is the arbiter of substantial compliance: "The Housing Element must be updated every eight years, must address statutory requirements regarding its content, and is subject to mandatory review and certification by the California Housing and Community Development Department (HCD)."¹⁶ Moreover, although Housing Element law does establish a procedure for jurisdictions to dispute HCD's findings,¹⁷ the City did not follow this procedure. Instead, the City simply received confirmation from HCD that its Housing Element was inadequate for myriad reasons, and did nothing to address those findings. On that record, there can be no argument that the City's housing element substantially complies with Article 10.6 of the Government Code in the face of HCD's contrary determination.

Finally, as has been repeatedly confirmed by HCD:

The submittal of a complete preliminary application pursuant to Government Code section 65941.1 vests the right to develop a housing development project in accordance with the ordinances, policies, and standards in effect when a preliminary application is submitted. (Gov. Code § 65589.5, subd. (o)(1).)

Therefore, if the submittal occurs at a time when the jurisdiction does not have a compliant housing element, any potential benefits afforded to the applicant as a result of the jurisdiction's noncompliant status would remain throughout the entitlement process even if the jurisdiction subsequently achieves compliance during the entitlement process.¹⁸

Thus, the City cannot sidestep this issue by subsequently bringing itself into compliance with Article 10.6 of the Government Code. Although this seems unlikely in view of the City's apparent decision to do nothing to address the numerous issues HCD identified more than four months ago, we note it for completeness.

Technical assistance by the Association of Bay Area Governments recognizes the applicability of the Builder's Remedy,¹⁹ and courts have also already begun to recognize its applicability, as well

¹⁵ Gov. Code § 65585(d) ("In its written findings, the department shall determine whether the draft element or draft amendment substantially complies with this article.") (emphasis added); see also City of La Cañada Flintridge 600 Foothill Boulevard – Letter of Technical Assistance" (March 22, 2023) (<https://www.hcd.ca.gov/sites/default/files/docs/planning-and-community/HAU/la-canada-flintridge-ta-032223.pdf>) (In other words, a local jurisdiction does not have the authority to determine that its adopted element is in substantial compliance but may provide reasoning why HCD should make a finding of substantial compliance").

¹⁶ City of Morgan Hill, "Housing Element Update" (<https://www.morganhill.ca.gov/2063/Housing-Element-Update>).

¹⁷ Gov. Code § 65585(f).

¹⁸ HCD, "3030 Nebraska Avenue, Santa Monica – Letter of Technical Assistance" (Oct. 5, 2022) (<https://www.hcd.ca.gov/sites/default/files/docs/planning-and-community/HAU/santa-monica-TA-100522.pdf>).

¹⁹ Association of Bay Area Governments, "The 'Builder's Remedy' and Housing Elements" (July 18, 2023) (<https://abag.ca.gov/tools-resources/digital-library/builders-remedy-and-housing-elementspdf>) ("[i]f a locality has

as HCD's primary role in Housing Element Law compliance. See, e.g., *Californians for Homeownership, Inc. v. City of La Cañada Flintridge* (Super. Ct. L.A. County, July 11, 2023, No. 23-STCP-00699), at 25 (addressing respondent's refusal to process a builder's remedy application; petitioners' "concern about the City's future compliance with the builder's remedy is real."); see also *Martinez v. City of Clovis* (2023) 90 Cal.App.5th 193, 243 (judicial deference to HCD on Housing Element Law compliance issues). We hope the City will recognize its applicability as well.

Although the Applicant must expressly reserve its rights to enforce the law, we should be clear that the Applicant would much prefer to avoid litigation and to instead work collaboratively with City officials to design and build an affordable housing project that meets the requirements of the law as well any legitimate concerns City officials may have about the Project's design. The fact that the City must ultimately approve the Project does not mean the City is without authority to work with the Applicant to establish appropriate conditions on the Project, as long as those conditions do not impair the Applicant's ability to feasibly deliver the affordable housing the Project is designed to provide. Our firm is working collaboratively with several other jurisdictions where Builder's Remedy applications are being processed, because those localities recognize that for the limited time that a city remains out of Housing Element compliance, the HAA forbids disapproval of lower-income housing. By contrast, we are aware of very few jurisdictions taking the position that they will fight the applicability of this important provision of state housing law. We strongly urge Morgan Hill not to be one of them.

Consistent with the law, the Applicant will submit a formal application for the Project pursuant to Government Code Section 65941.1(d)(1). When that occurs, we urge the City to process the application in accordance with its legal obligations under the HAA. We look forward to working cooperatively with the City with respect to the Project.

Please do not hesitate to contact us with any questions you may have.

Very truly yours,

A handwritten signature in black ink, appearing to read "Daniel R. Golub", with a stylized, flowing script.

Daniel R. Golub
William Sterling
West Coast Land Use & Environmental Law Practice Group
Holland & Knight LLP

cc: Donald Larkin, Morgan Hill City Attorney (donald.larkin@morganhill.ca.gov)

not adopted a housing element in substantial compliance with state law, developers may propose eligible housing development projects that do not comply with either the zoning or the general plan").

Alex Fisch, Special Assistant Attorney General for Housing Policy
(Alex.Fisch@doj.ca.gov)

Shannan West, Housing Accountability Unit Chief, Department of Housing &
Community Development (Shannan.West@hcd.ca.gov)

David Zisser, Assistant Deputy Director, Department of Housing & Community
Development (david.zisser@hcd.ca.gov)

CITY COUNCIL STAFF REPORT

MEETING DATE: September 6, 2023

PREPARED BY:

Jennie Tucker, Recreation Manager

APPROVED BY: City Manager

ACCEPT \$30,000 DONATION FROM THE FRIENDS OF MORGAN HILL SENIOR CENTER

RECOMMENDATION(S)

1. Accept a \$30,000 donation from the Friends of the Morgan Hill Senior Center to support services at the Centennial Recreation Senior Center; and
2. Authorize the City Manager to execute any agreements necessary for donation acceptance.

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Supporting our Youth, Seniors, and Entire Community

2022-2023 Strategic Priorities

Fiscal Sustainability

Guiding Documents

Bikeways, Trails, and Recreation Master Plan

REPORT NARRATIVE:

Over the past several years, the Friends of the Morgan Hill Senior Center has supported operations at the Centennial Recreation Senior Center through annual financial donations to the City. The donations are used to offset costs for the Senior Center. The donation typically includes support for staffing and program costs at the Senior Center and allows a higher level of service than what would be provided by City funds alone. Previous donations have supported specific programs such as senior transportation and helped the Senior Center reopen after the COVID pandemic.

The Friends of the Morgan Hill Senior Center was established in 2011 with the primary purpose of raising funds to support Senior Center operations. "Friends", a group of more than 40 community volunteers, host the ongoing Tuesday night Bingo at the Community and Cultural Center as its primary fundraising activity. Bingo was not able to be held for two years during the pandemic, but was able to start back in March 2022.

This year, the Friends of the Morgan Hill Senior Center presented the City a donation of \$30,000 to help fund operations at the Senior Center. The Friends are also donating \$20,000 to the Mt. Madonna YMCA to assist with the nutrition program also held at the Senior Center.

When the City took on the management of the Senior Center in 2015, the Friends estimated that funding of \$20,000 per year would be available to support the City's operation of the Center. The donations have been at that level or higher every year except FY 2020-21. Financial sustainability continues to be a focus area of the Senior Center in partnership with the Friends.

COMMUNITY ENGAGEMENT:

None.

The Friends shared the open application period with City staff and provided City staff with a deadline to apply for funds. The City continues to recognize the Friends' contributions at the Senior Center and publicly when receiving donations.

ALTERNATIVE ACTIONS:

The City Council could choose not to accept the donation.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The City Council has accepted annual donations from the Friends with the exception of FY 2020-21.

FISCAL AND RESOURCE IMPACT:

The \$30,000 will be accepted into the General Fund and will directly offset costs associated with operating the Senior Center. The current fiscal year budgeted donation for the Morgan Hill Senior Center is \$30,000.

CEQA (California Environmental Quality Act):

Not a Project

Since the resulting activity is an administrative program that will not result in a change to the physical environment, this action is not a project under the California Environmental Quality Act.

CITY COUNCIL STAFF REPORT

MEETING DATE: September 6, 2023

PREPARED BY:

Ray Ramos, Administrative Sergeant

APPROVED BY: City Manager

ACCEPT THE GRANT FUNDING FROM CALIFORNIA HIGHWAY PATROL'S CANNABIS TAX FUND GRANT PROGRAM FOR DUI SATURATION PATROLS AND THE PURCHASING OF EQUIPMENT

RECOMMENDATION(S)

1. Accept the grant funding from the California Highway Patrol's (CHP) Cannabis Tax Fund Grant Program (CTFGP) and adopt a resolution to amend the City's Fiscal Year 2023-24 General Fund budget, accepting grant funding of \$10,144, and appropriating \$10,144, and;
2. Authorize the City Manager to execute the California Highway Patrol's (CHP) Cannabis Tax Fund Grant Program's (CTFGP) agreement.

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Enhancing Public Safety

2022-2023 Strategic Priorities

Fiscal Sustainability

Transportation

Guiding Documents

Economic Blueprint

Public Safety Master Plan

Vision Zero

REPORT NARRATIVE:

The Morgan Hill Police Department (MHPD) is committed to maintaining safe roadways for our community and proactively locating motorists in our City that are Driving Under the Influence (DUI).

On February 16, 2023, MHPD applied for a grant to assist in our continued efforts to reduce the number of impaired drivers. MHPD sought funding for three saturation patrols, four Alco-Sensor VXL Preliminary Alcohol Screening (P.A.S.) devices with thermal printers, 500 Alco-Sensor VXL mouthpieces, Alco-Sensor VXL Accelerator

software and associated taxes for the equipment. The saturation patrols have proven to be an effective method of identifying and stopping impaired drivers from our City's roadways. The P.A.S. devices are a key component in our evidence gathering process in determining blood alcohol levels.

MHPD was conditionally approved for \$10,144 through California Highway Patrol's (CHP) Cannabis Tax Fund Grant Program (CTFGP) on June 7, 2023. The purpose of the grant funding is to help our agency reduce and mitigate the impact of impaired driving in our community.

The official Grant Agreement for signature is forthcoming. In order to execute the Grant Agreement, CHP is requesting documentation from the City of Morgan Hill authorizing MHPD to receive the requested funding. The Agreement is a one-time funding request with no reoccurring costs. MHPD requests the City Council to authorize entrance into this Grant Agreement.

COMMUNITY ENGAGEMENT:

This staff report will serve as the instrument to inform the community of the Agreement between the City of Morgan Hill and CHP'S CTFGP.

ALTERNATIVE ACTIONS:

The City Council could choose not to accept the grant funding, which would result in no additional funding for saturation patrols or equipment upgrades.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The Council has accepted grant funding from the Selective Traffic Enforcement Program (STEP) grants through the Office of Traffic Safety (OTS).

Below is the grant cycles and the amount awarded to MHPD from OTS.

10/1/2007 to 9/30/2008 - \$9,536
 10/1/2009 to 9/30/2010 - \$13,131
 10/1/2010 to 9/30/2011 - \$18,895
 10/1/2012 to 9/30/2013 - \$24,750
 10/1/2013 to 9/30/2014 - \$36,800
 10/1/2018 to 9/30/2019 - \$43,000

FISCAL AND RESOURCE IMPACT:

Recognize \$10,144 as revenue towards California Highway Patrol's (CHP) Cannabis Tax Fund Grant Program (CTFGP) (010.37516). Appropriate \$10,144 in Field Operations, Other Supplies (010.3210.42248) for the cost associated with the three saturation patrols, four Alco-Sensor VXL Preliminary Alcohol Screening (P.A.S.) devices with thermal printers, 500 Alco-Sensor VXL mouthpieces, Alco-Sensor VXL Accelerator software and associated taxes for the equipment. A Budget Scorecard is attached.

Below is a matrix outlining the proposed budget requested from CHP'S CTFGP.

California Highway Patrol Cannabis Tax Fund Grant Program

Labor Cost: Saturation Patrols	2 Officers	\$1,750.00
	1 Corporal	Total for 3 Officers
	4 Alco-Sensor VXL universal screener with thermal printer	\$7,000.00
	500 mouthpieces	\$140.00
Equipment Cost	Alco-Sensor Software	\$395.00
	Taxes	\$858.86
Total requested:		
\$10,143.86		

CEQA (California Environmental Quality Act):

Not a Project - Continuing administrative or maintenance activities, such as purchases for supplies, personnel-related actions, general policy and procedure making.

DEPARTMENT OF CALIFORNIA HIGHWAY PATROL

601 North 7th Street
Sacramento, CA 95811
(916) 843-3330
(800) 735-2929 (TT/TDD)
(800) 735-2922 (Voice)



June 7, 2023

File No.: 060.15426.14597.066.2023.06004

Corporal John Kuhlen
Morgan Hill Police Department
16200 Vineyard Boulevard
Morgan Hill, CA 95037

Dear Corporal Kuhlen:

On behalf of the California Highway Patrol (CHP), it is my pleasure to inform you, the Morgan Hill Police Department, is conditionally approved for Cannabis Tax Fund Grant Program (CTFGP) funding in the amount of \$10,143.86. The purpose of this grant funding is to help your agency reduce and mitigate the impacts of impaired driving in your community.

The official Grant Agreement for signature is forthcoming. In order to execute your Grant Agreement, please provide documentation from a local governing body, authorizing your organization to receive this grant funding, to the Cannabis Grants Unit, by email at CGUGrants@chp.ca.gov, as soon as possible. Refer to California Code of Regulations Title 13, Division 2, Chapter 13, Section 1890.13(g) for additional information.

The CHP looks forward to partnering with you and your agency on this project in an effort to make California's roadways a safer place to travel. If you have any questions, please feel free to contact the Cannabis Grants Unit at (916) 843-4360.

Sincerely,

A handwritten signature in blue ink that reads "K. M. Davis".

K. M. DAVIS, Chief
Enforcement and Planning Division





Morgan Hill Police Department

Prepared by Morgan Hill Police Department
for California Highway Patrol (CHP) Law Enforcement: Small and Mid-Size Organizations/Agencies FY 2023/2024

Submitted by John Kuhlen

Submitted on 02/16/2023 3:54 PM Pacific Standard Time



Opportunity Details

Opportunity Information

Title

Law Enforcement: Small and Mid-Size Organizations/Agencies FY 2023/2024

Description

Law Enforcement grants provide financial assistance to allied agencies for the education, prevention, and the enforcement of laws related to driving under the influence of alcohol and other drugs, including cannabis and cannabis products.

The intent of the program is to educate the public regarding the dangers of impaired driving, enforce impaired driving laws on the roadway, and improve Agency's effectiveness through training and development of new strategies.

Awarding Agency Name

California Highway Patrol

Agency Contact Name

Cannabis Grants Unit (CGU)

Agency Contact Phone

916-843-4360

Agency Contact Email

CGUGrants@chp.ca.gov

Fund Activity Categories

Education, Law, Justice and Legal Services

Departments

Subjects

Opportunity Manager

Cannabis Grants Unit (CGU)

Opportunity Posted Date

1/6/2023

Public Link

<https://www.gotomygrants.com/Public/Opportunities/Details/259db833-ebad-4961-9186-e38e7f99b9e6>

Is Published

Yes

Funding Information

Funding Sources

State

Funding Source Description

With the passage of Proposition 64 in 2016, The Control, Regulate, and Tax Adult Use Marijuana Act (AUMU), California voters mandated the state to set aside funding for the CHP to provide grants to local governments and qualified non-profit organizations for the education, prevention, and enforcement of impaired driving laws pursuant to Section 34019 (f)(3)(B) Revenue and Taxation Code (RTC).

Funding Restrictions



State Agencies/Departments, please refer to Section 34019 (f)(3)(b) RTC and California Code of Regulations, Title 13, Division 2, Chapter 12, for additional information.

Award Information

Award Range

\$500,000.00 Ceiling

Award Period

07/01/2023 - 06/30/2024

Award Type

Competitive

Indirect Costs Allowed

No

Matching Requirement

No

Submission Information

Submission Window

01/06/2023 8:00 AM - 02/23/2023 5:00 PM

Submission Timeline Type

One Time

Submission Timeline Additional Information

Grant Applicants are advised to ask submittal questions well before the deadline. The Cannabis Grants Unit (CGU) cannot guarantee an immediate response and the Grant Management System (GMS) will automatically close at 5:00 PM PST. Once a Grant Application is submitted through the GMS, Grant Applicants may not add, edit, or delete any Grant Application information.

Question Submission Information

Question Submission Email Address

CGUGrants@chp.ca.gov

Eligibility Information

Eligibility Type

Public

Additional Eligibility Information

Small and Mid-Size Law Enforcement Organizations/Agencies, with the primary function of enforcing traffic laws, which includes responding to calls, making arrests, and issuing citations, pursuant to the California Penal Code, California Vehicle Code, and California Health and Safety Code

Small-Size Law Enforcement Organizations/Agencies: 100 employees or less
Mid-Size Law Enforcement Organizations/Agencies: 500 employees or less

Additional Information

Additional Information URL

<https://www.chp.ca.gov/programs-services/programs/cannabis-tax-fund-grant-program>



Award Administration Information

State Award Notices

Awards will be announced in May and June 2023.

Administrative and National Policy Requirements

The California Highway Patrol (CHP) adopted regulations within Title 13 of the California Code of Regulations (CCR), Division 2, by adding Chapter 13, which govern the CHP, Cannabis Tax Fund Grant Program.

These regulations outline:

- * Grant Provisions
- * Grant Project Types
- * Specific Grant Application Requirements
- * Grant Evaluation Criteria
- * Necessary Administrative Procedures for the Program

Regulations can be found at:

<https://www.chp.ca.gov/programs-services/programs/cannabis-tax-fund-grant-program/program-regulations>

Reporting

Quarterly Reporting is required and due within 14 calendar days after the close of each quarter.

Quarter One (Q1): July 1 - September 30

Quarter Two (Q2): October 1 - December 31

Quarter Three (Q3): January 1 - March 31

Quarter Four (Q4): April 1 - June 30

Other Information

Please ensure your Organization/Agency has the capability to electronically sign required documents (ex: Grant Agreement).



Project Information

Application Information

Application Name

Morgan Hill Police Department

Award Requested

\$10,143.86

Total Award Budget

\$10,143.86

Primary Contact Information

Name

John Kuhlen

Email Address

john.kuhlen@morganhill.ca.gov

Address

**16200 Vineyard Boulevard
Morgan Hill, California 95037**

Phone Number

(408) 779-2101



Project Description

1. Organization/Agency Representatives

Organization/Agency Section/Unit (subdivision) to administer the Grant Agreement

Morgan Hill Police Department

Organization/Agency Representative

Please complete the following fields with appropriate Organization/Agency representatives, as applicable.

- **The Authorized Official is authorized to enter into a Grant Agreement with signing authority.**
- **The Authorized Financial Contact maintains financial records, documentation, and recipient of warrant.**
- **The Administrative Contact is responsible for day-to-day administration.**

Note: Information requested is for Grant Application purposes only. Security roles (titles) differ from those within the GMS.

Authorized Official Name (first and last)

Shane Palsgrove

Authorized Official Title

Chief of Police

Authorized Official Address (street, city, state, zip code)

16200 Vineyard Boulevard Morgan Hill, Ca. 95037

Official Address to Receive Reimbursement Payment - MUST MATCH FISCAL FORM (street, city, state, zip code)

17575 Peak Avenue Morgan Hill, California 95037

Authorized Official Phone Number (with area code)

408-779-2101

Authorized Official Email Address

shane.palsgrove@morganhill.ca.gov

Authorized Financial Contact Name (first and last)

Patricia Pretell

Authorized Financial Contact Title

Management Analyst

Authorized Financial Contact Phone Number (with area code)

408-776-7300

Authorized Financial Contact Email Address

patricia.pretell@morganhill.ca.gov

Administrative Contact Name (first and last)

John kuhlen

Administrative Contact Title

Traffic Corporal

Administrative Contact Phone Number (with area code)

408-779-2101

Administrative Contact Email Address



john.kuhlen@morganhill.ca.gov

Morgan Hill Police Department
Morgan Hill Police Department



2. Senate/Assembly/Congressional/County Information

Instructions

To determine the State Senate District(s), State Assembly District(s), and California Congressional District(s), copy and paste the below URL in your browser and search:

<https://gis.data.ca.gov/maps/CDEGIS::legislative-districts-in-california-2/about>
<https://gis.data.ca.gov/maps/CDEGIS::legislative-districts-in-california-2/about>

Select one or more State Senate District(s) where the proposed Project activities will occur. To make multiple selections, hold down the Ctrl key and click each one.

State Senate 15

Select one or more State Assembly District(s) where the proposed Project activities will occur. To make multiple selections, hold down the Ctrl key and click each one.

State Assembly 30

Select one or more California Congressional District(s) where the proposed Project activities will occur. To make multiple selections, hold down the Ctrl key and click each one.

California Congressional District 19

Select one or more California counties where the proposed Project activities will occur. To make multiple selections, hold down the Ctrl key and click each one.

Santa Clara

Number of residents (population) that your Organization/Agency serves.

47763



3. Statistical Data

Please ensure the responses below are accurate and align with the statistical data provided within the Grant Application.

If a question is not applicable, please input "0" or "N/A".

Number of schools in your jurisdiction:*

	Elementary Schools	Middle Schools	High Schools	Colleges/Universities
Number of Schools	7	4	3	0

Number of law enforcement personnel within your Organization/Agency.

42

Does your Organization/Agency have specifically designated traffic enforcement personnel who conduct driving under the influence (DUI) enforcement operations?

- ☒ Yes
☐ No

How often does your Organization/Agency conduct DUI enforcement activities (ex: DUI Saturation Patrols, DUI Checkpoints)?*

	Weekly Average	Monthly Average	Yearly Average
Enforcement Activities			12

How many law enforcement personnel have attended Standard Field Sobriety Test (SFST), Advanced Roadside Impaired Driving Enforcement (ARIDE), and/or Drug Recognition Evaluator (DRE) training?*

	SFST	ARIDE	DRE
Number of Trained Law Enforcement Personnel	31	7	2

How many certified DREs does your Organization/Agency currently have?

0

How many law enforcement personnel are certified SFST and/or DRE Instructors?*

	SFST	DRE
Number of Certified Instructors	1	0

What in-service training does your Organization/Agency offer related to DUI?

As part of our training plan in the Field Training Officer (FTO) program, our personnel are trained in administering the proper validated tests. The training includes comprehension of the verbiage associated to each test. Since we have one certified SFST instructor, we have conducted in-house training to our Officers to increase our number of personnel certified in DUI detection and enforcement. The SFST course is a core training requirement set forth by our department for our Officers.

Is training conducted at your Organization/Agency or at an alternate facility?

- ☐ Within Organization/Agency
☒ Alternate Facility

Does your law enforcement personnel participate in training with local city attorneys and/or district attorneys?

- ☐ Yes
☒ No

Grant Funded Equipment



Grant Funded Equipment

Have Cannabis Tax Fund Grant Program Grant Funds been utilized to purchase equipment (an acquisition cost of at least \$5,000)?

- ☐ Yes
☒ No

If yes, list EACH equipment item and fiscal year of the Grant Agreement.



4. Project Description

Project Types: Please select project type(s) applicable to your Project.

- ☐ Law Enforcement Training
- ☐ Public Education and/or Prevention
- ☒ Enforcement Efforts

Provide a brief overview/synopsis (a paragraph) of the proposed Project, detailing what activities/items will be used to obtain the desired outcome(s). PLEASE DO NOT COPY AND PASTE TABLES IN FIELD - TYPE INFORMATION IN FIELD.

Morgan Hill Police Department is requesting funding for saturation patrols during this grant funding process. MHPD recognizes the benefit of saturation patrols with motivated Officers that are willing to locate, identify and arrest impaired drivers. Normally, either through Department budget or OTS grants, MHPD routinely deploys DUI saturation patrols during events or holidays that have an increased likelihood of having impaired drivers on the roadways. MHPD has historically attempted to deploy 12 two man DUI saturation patrols during the year. The saturation patrols correlate with downtown event and concert series, and major holidays.

Morgan Hill Police Department is requesting funding for equipment that is essential for DUI enforcement. Our department is seeking to update and replace our five Preliminary Alcohol Screening (PAS) devices. Our current devices, Intoximeter Incorporated Alco-Sensor IV, have been having reliability and functionality issues due to their long service life at our department. These issues have caused our department to send the devices back to the manufacturer several times. The replacement PAS devices, Alco-Sensor VXL with thermal printers, will be upgraded technology with the ability to print PAS results on scene. The new devices will also be accompanied with new software for downloads and discovery. The PAS devices are a valuable tool for Officers conducting DUI enforcement and will help our department reach the desired goals of increasing our DUI enforcement proactivity and lowering our number of injury collisions that are associated with alcohol impairment. These PAS devices would be used directly with our requested project activity and for years to come.



5. Problem Statement & Proposed Solution

First, clearly identify the problem/need (Problem Statement) in your local community that will be addressed by the Project. Then, clearly identify the Proposed Solution to address the problem/need. If applicable, provide recent and high-level statistical data that directly supports the problem/need in your local community. PLEASE DO NOT COPY AND PASTE TABLES IN FIELD - EITHER TYPE INFORMATION IN FIELD OR ATTACH DOCUMENT.

The Morgan Hill Police Department is located in Santa Clara County at the southern end of what is known internationally as Silicon Valley. Our city comprises approximately 12 square miles nestled in between the cities of Gilroy to the south and San Jose, a large metropolitan area of over 1 million residents, to the north. We are primarily a suburban community that is unique in that we have residential, commercial, and retail development as well as agricultural land that is actively cultivated. We have a concentration of high-tech and manufacturing companies, but a majority of our residents travel daily to employment centers to the north and south of Morgan Hill. Our population is approximately 47,763 and our resident demographic is primarily households with school-age children.

The continued growth of residential development over the past several years both within our town and to the south in cities such as Gilroy, Hollister and Salinas has significantly impacted traffic during the peak morning and afternoon/evening commute hours. US Highway 101 runs through Morgan Hill and can slow to a snail's pace in the northbound direction starting in the early morning hours and southbound starting as early as 2:00 pm. To avoid this, many commuters from outside Morgan Hill use two of our northbound/southbound arterial streets: Monterey Road and Butterfield Boulevard to bypass 101. Many times, the use of wayfinding apps directs commuters to use our arterial and surface streets to avoid congestion on the freeway. Commuters from outside our city along with the influx of new residents has resulted in congestion, collisions as well as physical wear and tear on our roadways.

In addition to increased commuter traffic that flows through our city, our downtown is a culinary destination for the region. During the evening hours, especially on the weekends, our downtown is lively and vibrant with varied activities from dinner theater and shopping to the choice of over a dozen restaurants, beer and wine bars. Special events such as the Mushroom Mardi Gras, the Fourth of July Parade and the Taste of Morgan Hill are family favorites and attract 250,000 visitors each year. You can find art walks, brew crawls and wine strolls throughout the year. While the city benefits greatly from this development, the impacts on law enforcement have increased the need for additional enforcement due to a growing number of motorists driving under the influence during the evening hours. As our state recovers from the pandemic and businesses reopen, we anticipate the need for even greater DUI enforcement in the evening hours.

The area of primary concern for Morgan Hill involves DUI drivers. The second area is DUI injury collisions. According to the 2018 OTS rankings, we ranked 33 out of 97 for alcohol-involved collisions and 58 out of 97 for impaired drivers between the ages of 21 and 34. We ranked 33 out of 97 similar sized cities involving pedestrians. In 2016, we experienced a spike in all collisions including injury collisions. That year the total number of collisions jumped by 40% over the 3-year average of 2013-2015. Injury collisions rose by 54% in 2016 over the average of the 3 previous years combined. Between 2019 through 2020 we saw an overall decrease in collisions. This decrease was due to the pandemic and the stay-at-home order mandated by the state. Over the past two years 2021 & 2022, we are seeing an increase and recognized there is still much work to be done. The Police Department participates as part of an inter-departmental team working to enhance engineering, enforcement, education and equity among pedestrians, bicyclists, and motorists. In 2022, out of 107 injury collisions, 30 collisions were alcohol involved. Also in 2022, MHPD arrested 251 DUI drivers.

In 2022, the Morgan Hill Police Department experienced a 92% increase in vehicle collisions as compared to 2021. When comparing 2022 to the previous five-year average, there was a 38% increase in collisions. In 2022, precisely 25% of all collisions were determined to have a primary collision factor of driving under the influence of alcohol or drugs. Enforcement efforts resulted in a 58% increase in DUI arrests from 2022 to 2021 and are up 41% from the previous five-year average. According to our data, 45% of those arrested for DUI are residents of our city and 18% are residents from our neighboring jurisdiction (Gilroy). We also noted a 95% prosecution rate for all DUIs (the remaining 5% are drug related and qualify for prosecutorial deferral in Santa Clara County).

Our proposed solution is to continue our efforts in DUI enforcement to lower our number of injury collision involving alcohol. By providing MHPD with this equipment request, Officers will have the reliable PAS devices to conduct a thorough investigation with the ability to print the PAS results on scene. Our request to update our PAS devices will support our Officers subjective interpretation of the Standardized Field Sobriety Tests with an objective and unbiased P.A.S. result. We will also be conducting two DUI checkpoints in the coming year to increase our DUI enforcement and public awareness.

Statistical Data/Report(s)



6. Performance Measures/Scope of Work

Using what you provided in the Project Description, detail the activities/items below which will serve as your goals and objectives for the Project. For each, include estimated timelines (ex: monthly, quarterly), quantitative measurements (ex: reduction of DUI/DUID by %), and justification detailing how it will enhance/support the Project. NOTE: The Performance Measures/Scope of Work must be consistent with the Project Description and Budget. PLEASE DO NOT COPY AND PASTE TABLES IN FIELD - TYPE INFORMATION IN FIELD.

Our department is committed to maintaining safe roadways for our community. In 2020 and 2021, our department saw an overall decrease in collisions and DUI arrest. This is directly attributed to the Covid 19 pandemic and the state mandated stay at home orders. However, when comparing 2022 to the previous five year average, there was a 38% increase in collisions. Of the 107 collisions in 2022, 30 collisions were alcohol involved. Morgan Hill Police Officers recognized the trend of alcohol involved collisions and proactively arrested 251 DUI drivers in 2022. The project activity requested (saturation patrol) would strive to identify DUI drivers and would be scheduled during events with a higher likelihood of DUI drivers on the roadway. Using 2022 DUI arrests (251), MHPD arrested on average 20.9 impaired drivers per month. It should be noted these arrests were conducted through patrol proactivity and calls for service as limited staffing prevented DUI saturation patrols. If funded, MHPD would strive to increase the number of arrested impaired drivers per month to 24 and hpe to increase the number of arrested impaired drivers for the year to 288. MHPD has also requested funding for OTS for additional saturation patrols and two DUI checkpoints. Our equipment funding request for four P.A.S. devices would directly be used during our DUI enforcement, saturation patrols and planned checkpoints.

Our goals and objectives for this project are a reduction in injury collisions that involved alcohol and continue our proactive DUI enforcements. A performance measure for lowering the number of injury collisions involving alcohol/ drugs would be conducted quarterly through data analysis. The performance measure will be confirmed in our reporting and ultimate ranking through OTS. The number of arrests in prior years can be a bench mark for our Department to gauge our proactive DUI enforcement activity. Another performance measure would be a reduction in the percentage of injury collisions involving alcohol. For 2022, 25% of our injury collisions involved alcohol. Any reduction in the percentage of injury collisions involving alcohol would be a success. But MHPD would strive in at least a 10% decrease in the injury collisions where alcohol is the primary collision factor.



7. Project Performance Evaluation

Provide the method of evaluation to show Project effectiveness and positive impact(s) on the community. These strategies shall include captured quantitative/qualitative data and a communication plan to share Project results with both internal and external stakeholders. PLEASE DO NOT COPY AND PASTE TABLES IN FIELD - TYPE INFORMATION IN FIELD.

Our request for funding of 4 new Alco-Sensor VXL PAS devices would assist with our DUI enforcement and arrests. Removing a driver under the influence of alcohol and/or drugs from our roadways has an immediate positive impact on our community. Our strategies for our DUI enforcement would use data to ensure effective enforcement and public awareness. Using data from prior years, our department will identify areas in our jurisdiction where we have seen the highest number of collisions involving alcohol and the areas where we have seen the highest number of arrests. This would allow the deployment of high visibility enforcement in those areas and especially in our downtown area. Our high visibility enforcement and saturation patrols would ensure the community that our enforcement efforts will keep them safe. Also, would have deployed DUI checkpoints in areas for high visibility for the purposes of DUI arrests but also for public education and awareness. After our high visibility enforcement, would ensure our enforcement efforts were successful by researching data to determine if our enforcement lowered the number of collisions involving alcohol/drugs.

Our communication plan would include incorporating both the Police Department and the community. MHPD Traffic Division will utilize data to inform our Patrol Division of area hotspots associated to DUI collisions and arrests. Since 45% of our DUI arrests have involved residents of our city and 18% from our neighboring jurisdiction, MHPD Traffic Division would notify patrol to be on the lookout for identified repeat offenders. With the intent of keeping good communication with our community, MHPD Traffic Division would issue press releases and media alerts informing the public of our enforcement campaigns. These releases and alerts will coincide with our planned DUI checkpoints and saturation patrols. During the enforcement campaigns, MHPD will utilize our mobile message boards for public notification and awareness. Also, we would implement an end of the year summary to our community, through our social media outlets, of our enforcement efforts with quantitative data to ensure the community that impaired driving and traffic enforcement was also a priority of our department.



8. Program Sustainability

Describe the plan for reducing reliance on future grant funding. Include a summary and timeframe to continue efforts when grant funds are either not available or significantly reduced. PLEASE DO NOT COPY AND PASTE TABLES IN FIELD - TYPE INFORMATION IN FIELD.

As mentioned, Morgan Hill is requesting funding to update and replace our aging PAS devices. Some of our PAS devices have been in service for 10-15 years and we are experiencing reliability issues that require additional maintenance and calibration needs. Once funded and the new PAS devices are purchased, our reliance on additional grant funding for this equipment would not be needed and would benefit the Department for years to come.



9. Administrative Support

Describe the administrative support, including the Organization/Agency's grant experience, personnel, and physical resources needed to successfully implement the Project. PLEASE DO NOT COPY AND PASTE TABLES IN FIELD - TYPE INFORMATION IN FIELD.

Our Police and City Administrative have consistently supported traffic and DUI enforcement measures. In 2022, MHPD has dedicated two full time Police Officers and a Police Corporal to the Traffic Division. The Traffic Division is responsible for coordinating the Department's enforcement efforts with the Field Patrol Division. The duties include responding to all collisions, saturation patrols and traffic enforcement. MHPD Administration is projected to increase the Traffic Division by two additional full time Officers by 2024, in a continued effort to keep our roadways safe.

Our agency has the necessary qualifications and experience to achieve our result of lowering the number of DUI injury collisions and increasing the number of DUI arrests. Our current staffing level is sufficient to achieve these results with our 42 sworn Officers, who are comprised of field patrol division, traffic division, special operations division and administrative divisions. Of the 42 full time Officers, 31 Officers are SFST trained, 7 Officers are ARIDE trained, and 2 Officers have prior DRE training. We have one SFST certified instructor that provides the in-house training for new sworn Officers.

Since 2007, our agency has received six OTS grants. We successfully implemented the activities called for in the grant and submitted all reports on time. We feel confident in our agency's ability to conduct DUI checkpoints, saturation patrol and continue our enforcement efforts and reduce the number of alcohol related injury collisions. Our Police Analyst and Finance Department have substantial experience in grant reporting, monitoring requirements and fiscal management. Our agency performed well during past grant awards and submitted all claims and required documentation prior to deadlines set by OTS.



10. Other Grant Programs

Impaired Driving Enforcement Funding

Has your Organization/Agency previously received grant funding for impaired driving enforcement?

- ☒ Yes
☐ No

If yes, detail the outcome. PLEASE DO NOT COPY AND PASTE TABLES IN FIELD - TYPE INFORMATION IN FIELD.

Morgan Hill Police Department (MHPD) has received Selective Traffic Enforcement Program (STEP) grants through the Office of Traffic Safety (OTS). In the 2024 grant cycle, we have applied for funding for the build out of a DUI checkpoint trailer, funding for overtime staffing of two (2) DUI checkpoints and the overtime funding for twelve (12) two-officer saturation patrols. MHPD has received six (6) grants from OTS for funding for DUI checkpoints and saturation patrols. Below is the grant cycles and the amount awarded to MHPD from OTS.

10/1/2007 to 9/30/2008 - \$9,536

10/1/2009 to 9/30/2010 - \$13,131

10/1/2010 to 9/30/2011 - \$18,895

10/1/2012 to 9/30/2013 - \$24,750

10/1/2013 to 9/30/2014 - \$36,800

10/1/2018 to 9/30/2019 - \$43,000

Proposals to Other Grant Programs

Has or will your Organization/Agency submit a proposal to another grant program for this Project (ex: funds for the same components as this Project, or for similar/related components that will be completed during the same time period as this Project)?

- ☐ Yes
☒ No

If yes, identify the granting Organization/Agency(s), grant program name(s), proposal title, date submitted (or to be submitted), and relationship between the proposals. In addition, clearly distinguish which tasks would be funded by CGU and which tasks would be funded by other Organizations/Agencies. PLEASE DO NOT COPY AND PASTE TABLES IN FIELD - TYPE INFORMATION IN FIELD.



11. Terms and Conditions

By submitting your Grant Application, you agree to the following Terms and Conditions:

I certify, under penalty of perjury, that the information I entered in this Grant Application is true and complete to the best of my knowledge. I further understand that any false, incomplete, or incorrect statements may result in my disqualification from the grant process or dismissal from receiving grants funded by the California Highway Patrol (CHP), Cannabis Tax Fund Grant Program. I authorize the California Highway Patrol, Cannabis Grants Unit (CGU), to investigate referenced documents or other documents submitted to the program to check the accuracy of the information provided.

I agree with the Request for Application, the above Terms and Conditions, and the California Code of Regulations, Title 13, Division 2, Chapter 13, Sections 1890.00 through 1890.27.

☒ I Agree

When using the GMS (AmpliFund), I authorize the state to take my requested action by an electronic means and authorize the state to accept the combination of my User ID and password in lieu of my written signature.

☒ I Agree

My password is unique to me and is to remain confidential. I will not allow other individuals to use my User ID and password to access the GMS (AmpliFund).

☒ I Agree

It is my responsibility to maintain the confidentiality of GMS (AmpliFund) information.

☒ I Agree

Once I submit the Grant Application, I am unable to add, edit, or delete any Grant Application information.

☒ I Agree

Confidentiality Notice: All documents submitted as a part of the Cannabis Tax Fund Grant Program Grant Application are public documents and may be subject to a request pursuant to the California Public Records Act. The CHP, CGU, cannot ensure the confidentiality of any information submitted in or with this Grant Application (Gov. Code, § 6250 et seq.).

☒ I Agree

Generated Income Disclaimer: There will be no program income generated from this grant. Nothing in this Grant Agreement shall be interpreted as a requirement, formal or informal, that a particular law enforcement officer issue a specified or predetermined number of citations in pursuance of the goals and objectives. Although special emphasis will be placed upon violations specific to this Grant Agreement, appropriate enforcement action will be taken for all observed violations.

☒ I Agree

Financial Information System for California Government Agency Taxpayer ID (FI\$Cal Form)

A FI\$Cal Form is required for reimbursement. If the Grant Applicant does not have a completed FI\$Cal Form at final Grant Application submission time, the Grant Applicant may submit the completed FI\$Cal Form via email to CGU prior to execution of the Grant Agreement. NOTE: The "Remit-To Address" on the FI\$Cal Form MUST match the "Official Address to Receive Reimbursement Payment" you entered in Form #1. Organization/Agency Representative. This address shall be the official address on file with FI\$Cal and the State Controller's Office (SCO) to receive warrants (Reimbursement Request Payments). Forms are located on the Cannabis Tax Fund Grant Program's web site at <https://www.chp.ca.gov/programs-services/programs/cannabis-tax-fund-grant-program>.

☒ I Agree

FI\$Cal Form

Government-Agency-Taxpayer pvp.pdf

City Council or County Resolution

A county, city, district, or other public body shall provide a copy of a resolution, order, motion, or ordinance of local governing body, which by law has the authority to enter into an agreement authorizing execution of a Grant Agreement. If the Grant Applicant does not have a signed resolution at final Grant Application submission time, the Grant Applicant may submit a signed resolution via email to CGU prior to execution of the Grant Agreement. NOTE: The resolution MUST explicitly state the Organization/Agency has delegated authority to enter into a Grant Agreement for the requested amount.



Morgan Hill Police Department
Morgan Hill Police Department

☒ I Agree

Resolution
City resolution.docx



Budget

Proposed Budget Summary

Expense Budget

	Grant Funded	Total Budgeted
Personnel		
Saturation Patrol	\$1,750.00	\$1,750.00
Subtotal	\$1,750.00	\$1,750.00
Equipment		
4 Alco-Sensor VXL universal screener with thermal printer	\$7,000.00	\$7,000.00
500 Alco-Sensor VXL mouthpieces	\$140.00	\$140.00
Alco-Sensor VXL Accelerator Software	\$395.00	\$395.00
Tax	\$858.86	\$858.86
Subtotal	\$8,393.86	\$8,393.86
Total Proposed Cost	\$10,143.86	\$10,143.86

Revenue Budget

	Grant Funded	Total Budgeted
Grant Funding		
Award Requested	\$10,143.86	\$10,143.86
Subtotal	\$10,143.86	\$10,143.86
Total Proposed Revenue	\$10,143.86	\$10,143.86

Proposed Budget Detail

See attached spreadsheet.

Proposed Budget Narrative

Personnel

Costs may include compensation for salaries and fringe benefits, such as annual leave and sick leave, for work directly related to the Project. Personnel salaries must be consistent with Project activities. To be eligible for reimbursement, Personnel Services must occur within the Project Performance Period. Please note, full salary positions are not allowed. Please itemize separate Budget Line Items by activity (ex: one Budget Line Item for DUI Saturation Patrol; one Budget Line Item for DUI Checkpoint). Please include salary and benefits, combined/rolled-up, in the same Budget Line Item for each activity. For EACH Budget Line Item, the narrative shall include the below:
* Number of Times Activity Will Occur (ex: 4 DUI Checkpoints; 1 per Quarter) * Classification(s) Working Activity (ex: 10 Officers and 1 Sergeant per DUI Checkpoint) * Number of Hours for Each Classification Working Activity (ex: Officers - 6 hours; Sergeant - 6 hours) * Rate of Pay for Each Classification Working Activity [notate regular or



overtime pay] (ex: Officer - OT \$60/hour; Sergeant - OT \$80/hour) * Total (ex: Officer - 6 hrs X \$60 X 4 X 10 = \$14,400; Sergeant - 6 hrs X \$80 X 4 X 1 = \$1,920; TOTAL = \$16,320)

Saturation Patrol

MHPD is requesting funding for a DUI saturation patrol. This project activity would correlate directly with our equipment request. Our DUI saturation patrol would consist of 2 Officers and one Corporal. The following formula would apply to this project. 1 (saturation patrol) x 2 (Officers OT rate \$119.46) x 5 (hours of operation) = \$1194.60 1 (saturation patrol) x 1 (Corporal OT rate \$128.58) x 4 (hours of operation) = \$514.32 The total for the saturation patrol of 2 Officers and 1 Corporal would be \$1708.92.

Equipment

Costs may include non-expendable, tangible, personal property having a normal useful life of more than one year, and an acquisition cost of at least \$5,000 (ex: four identical assets, which cost \$1,250 each, for a total of \$5,000, are not considered an equipment purchase). Equipment shall be directly related and necessary to complete grant-funded activities included in the Project. In order to seek grant funds for equipment, the Project shall contain a correlating grant-funded activity (ex: message board for DUI Saturation Patrols and DUI Checkpoints). Equipment should be purchased at the beginning of the Project Performance Period to ensure it is utilized when completing corresponding Project activities. To be eligible for reimbursement, Equipment must be purchased and received within the Project Performance Period. Please itemize separate Budget Line Items for each Equipment. For EACH Budget Line Item, the narrative shall include the below: * Description of Equipment * Quantity * Unit Cost and Total Cost

4 Alco-Sensor VXL universal screener with thermal printer

The Alco-Sensor VXL has a base price of \$1,750.00 per device. MHPD is looking to outfit our department with 4 devices that can be utilized by multiple patrol teams and traffic team. These PAS devices would be used directly during our project activity (saturation patrol)

500 Alco-Sensor VXL mouthpieces

Purchase of 500 mouthpieces for the Alco-Sensor VXL devices. Each mouthpiece is \$0.28 per unit. The mouthpieces are necessary to use the PAS devices for a requested project activity. It is expected the amount of mouthpieces requested would be sufficient for over two years.

Alco-Sensor VXL Accelerator Software

Software for Alco-Sensor VXL downloads and court discovery. This is a one-time fee for the software that is necessary for data download and is proprietary to the Alco-Sensor VXL.

Tax

Tax cost for above equipment request

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO THE CITY'S FISCAL YEAR 23-24 BUDGET ACCEPTING A GRANT PAYMENT OF \$10,144 FROM CALIFORNIA HIGHWAY PATROL'S CANNABIS TAX FUND GRANT PROGRAM AND APPROPRIATING \$10,144 FOR THE PURCHASE OF FOUR ALCO-SENSOR VXL PRELIMINARY ALCOHOL SCREENING EQUIPMENT AND THREE DUI SATURATION PATROLS

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 the purchase described in, and that is the subject of, this Resolution are set forth in detail in that certain City Council Staff Report entitled "Accept the Grant Funding From California Highway Patrol's (CHP) Cannabis Tax Fund Grant Program (CTFGP)" submitted for City Council consideration at its meeting of September 06, 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 23-24, 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 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 does further resolve, order and/or direct as follows:

- a. That the City is in support of the payment for the purchase of three saturation patrols, four Alco-Sensor VXL Preliminary Alcohol Screening (P.A.S.) devices with thermal printers, 500 Alco-Sensor VXL mouthpieces, Alco-Sensor VXL Accelerator software and associated taxes for the equipment; and
- b. That the City's previously adopted Fiscal Year 23-24 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
- c. 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 23-24 Budget of the City; and
- d. That the City Manager is hereby delegated authority to and is authorized to take all other ministerial actions that may be necessary or appropriate to implement the provisions of this Resolution.

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 6th day of September 2023 by the following vote:

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

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.XXXX , adopted by the City Council at the meeting held on September 06, 2023.

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

DATE: _____

MICHELLE BIGELOW, City Clerk

EXHIBIT A

AGENDA BUDGET SCORECARD

FISCAL YEAR 2023-2024

ADJUSTMENT #

007

FUND:

FUNCTION:

DEPARTMENT:

DIVISION:

OBJECT:

010	General Fund
020	Public Safety
020	Police
3210	PD - Field Patrol
42248	Contract Services

AGENDA DATE:

AGENDA ITEM TITLE:

09/06/23 California Highway Patrol's Cannabis Tax Fund Grant

	07/01/23 UN-AUDITED BEGINNING FUND BALANCE	ESTIMATED REVENUES	AMENDED APPROPRI- ATIONS	06/30/24 PROJECTED ENDING FUND BALANCE
ORIGINAL BUDGET	32,301,306	53,338,814	58,725,546	26,914,574
CUMULATIVE REVISIONS PRIOR TO RECOMMENDED ACTION	-	-	-	-
RECOMMENDED ACTION		10,144	10,144	-
RESULT OF RECOMMENDED ACTION	32,301,306	53,348,958	58,735,690	26,914,574

CITY COUNCIL STAFF REPORT

MEETING DATE: September 6, 2023

PREPARED BY:

Yat Cho, Senior Project Manager

APPROVED BY: City Manager

ACCEPT MORGAN HILL RECTANGULAR RAPID FLASHING BEACON (RRFB) AND HIGH INTENSITY ACTIVATED CROSSWALK BEACON (HAWK) PROJECT IN THE AMOUNT OF \$729,046

RECOMMENDATION(S)

1. Accept as complete the Morgan Hill Rectangular Rapid Flashing Beacon (RRFB) and High Intensity Activated Crosswalk Beacon (HAWK) Project;
2. Authorize the City Engineer to sign the Notice of Completion; and
3. Direct the City Clerk to file said Notice of Completion with the County Recorder's Office.

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Enhancing Public Safety

Supporting our Youth, Seniors, and Entire Community

2022-2023 Strategic Priorities

Transportation

Guiding Documents

Bikeways, Trails, and Recreation Master Plan

Morgan Hill 2035 General Plan

REPORT NARRATIVE:

On August 3, 2022, the Morgan Hill Rectangular Rapid Flashing Beacon (RRFB) and High Intensity Activated Crosswalk Beacon (HAWK) Project was awarded to Golden Bay Construction, Inc. in the amount of \$665,989 with an authorized contingency of \$66,599. The project resulted in the installation of RRFB Beacon at three locations (two on LaCrosse Drive and one on Middle Avenue/West Little Llagas Creek Trail).

Additionally, a HAWK beacon was installed at the intersection of Watsonville Road and the West Little Llagas Creek Trail. Further enhancements included concrete flatwork, striping, electrical, and other miscellaneous work (Attachment 1 - Vicinity Map).

Due to RRFB and HAWK equipment delays, work on the project did not commence until

April 2023. Once the equipment was delivered, the project moved quickly and was substantially completed by July 2023. The completion of this project has allowed the West Little Llagas Creek Trail from Watsonville Road to the north side of Silvera Lake to be opened for Public Use.

Three change orders were authorized in the amount of \$63,057 due to unforeseen conditions and additional work (Attachment 2). The final construction contract cost with Golden Bay Construction, Inc. is \$729,046. Staff recommends accepting this project as it is complete in accordance with the plans and specifications. By accepting this project, the City Clerk will file a Notice of Completion for this project (Attachment 3).

This project received grants from Valley Water, Santa Clara Valley Open Space Authority, and the State of California Habitat Conservation Fund (HCF) Program. Staff will submit all necessary paperwork to the grantors pending project acceptance by City Council for a reimbursement of up to \$526,000.

COMMUNITY ENGAGEMENT:

Inform

Prior to and during construction, the City provided provided weekly project updates on social media and the City website. A ribbon cutting was held on August 5, 2023 to provide additional information about the project and its opening.

ALTERNATIVE ACTIONS:

Accepting the project in accordance with the contract documents is a required process and enables the City to release any retained funds owed to the contractor per California Public Contract Code Section 7107.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

West Little Llagas Creek Trail Project

City Council approved the West Little Llagas Creek Trail as a project in the City's approved Capital Improvement Program. Furthermore, this is a project that has been supported by the City Council through the approval of the 2017 Master Bikeways, Trails, Parks, Facilities, and Recreation Master Plan.

September 27, 2017 - Grant Application to the State of California Habitat Conservation Fund (HCF) Program.

October 4, 2017 - Grant Application to Valley Water.

December 6, 2017 - Grant Application to the Santa Clara Valley Open Space Authority

July 17, 2019 - Approved Design Agreement for West Little Llagas Creek Trail Project.

September 15, 2020 - Parks and Recreation Commission approved West Little Llagas Creek Trail and Valley Water cost share.

April 5, 2022 - Library, Cultural and Arts Commission reviewed and recommended to the City Council that the Steelhead Trout Sculpture proposed by Evelyn Davis be approved.

May 4, 2022 - City Council Approved Sculpture Agreement with Evelyn Davis for Sculpture at West Little Llagas Creek Trail Project.

June 1, 2022 - City Council Authorized the City Manager to Execute Maintenance Agreements with the County of Santa Clara for Traffic Safety Improvements at Middle Avenue at the West Little Llagas Creek Trail, Watsonville Road at the West Little Llagas Creek Trail, and DeWitt Avenue/Spring Avenue Intersection.

August 3, 2022 - City Council awarded Morgan Hill Rectangular Rapid Flashing Beacon (RRFB) and High Intensity Activated Crosswalk Beacon (HAWK) Project.

FISCAL AND RESOURCE IMPACT:

The final contract amount for the Morgan Hill Rectangular Rapid Flashing Beacon (RRFB) and High Intensity Activated Crosswalk Beacon (HAWK) Project is \$729,046. The project was awarded to Golden Bay Construction, Inc. in the amount of \$665,989 with an authorized contingency of \$66,599 (total of \$732,588). This project is funded under the West Little Llagas Creek Trail Project (#117001) and Bike, Pedestrian, and Traffic Safety Project (#520023). The remaining funds of \$3,542 will be returned to Project #520023.

CEQA (California Environmental Quality Act):

Categorical Exemption

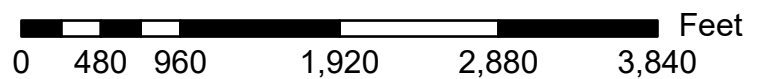
The activities described in this Staff Report are categorically exempt under CEQA, specifically pursuant to Section 15301 of the CEQA Guidelines (Existing Facilities), as the subject work involves the repair, maintenance, or minor alteration of existing City facilities involving negligible or no expansion of use of those facilities. Minor Alterations to Land, under this section, covers minor public or private alterations to the condition of land, water, and/or vegetation which do not involve removal of healthy, mature, scenic trees for forestry or agricultural purposes, including the creation of bicycle lanes on existing right-of-way.



**Engineering and Utilities Department
CIP Engineering Division**

Document path: G:\R-14\PROJ\Maribel\GIS\Morgan Hill RRFB HAWK

**Morgan Hill RRFB and
HAWK Project**



CIP Contract Acceptance Funding Closeout Statement

Project:	Morgan Hill Rectangular Rapid Flashing Beacon and High Intensity Activated Crosswalk		
Project No:	118020		
Date of Project Award:	3-Aug-22	Project Award Amount:	
Funding Source:		Contingency Authorized:	
Date of Project Acceptance:	6-Sep-23	Total Authorized:	
		Actual Base Contract Spent:	

Change Orders			
	Description	Date	Council Approval Req'd? (Y/N)
C.O. #1:	Fence Changes	19-Apr-23	N
C.O. #2:	Additonal Electrical Work	21-Jun-23	N
C.O. #3	Misc. Project Adds	10-Aug-23	N
			Total C.O.:

Additional Appropriations		
Source	Amount	Date
None		

Construction Fund Balance:	Total Construction Amount (Base Contract plus CO's): \$3,541.57
----------------------------	--

k Beacon (HAWK) Project	
	\$665,989
	\$66,599
	\$732,588
	\$665,989

\$23,400.00
\$14,049.43
\$25,608.00
\$63,057.43

\$729,046.43

Recording Requested By:
The City of _____

When Recorded Mail To:

<name, title>
<street address>
<city, state and zip>

EXEMPT FROM RECORDING FEES PER
GOVERNMENT CODE §§ 6103, 27383

SPACE ABOVE THIS LINE IS FOR RECORDER'S USE

NOTICE OF COMPLETION
Civil Code §§ 8182, 8184, 9204, and 9208

NOTICE IS HEREBY GIVEN THAT:

1. The undersigned is the agent of the owner of the Project described below.
2. Owner's full name is City of Morgan Hill ("City")
3. City's address is 17575 Peak Avenue Morgan Hill, CA 95037
4. The nature of City's interest in the Project is:
XX Fee Ownership ___ Lessee ___ Other: _____
5. Construction work on the Project performed on City's behalf is generally described as follows:
Installation of Rectangular Rapid Flashing Beacon at LaCrosse Drive (2 locations), Middle Avenue/West Little Llagas Creek Trail, and High Intensity Activated Crosswalk Beacon at Watsonville Road/West Little Llagas Creek Trail
6. The name of the original Contractor for the Project is: Golden Bay Construction, Inc.
7. The Project was accepted as complete on: September 6, 2023
8. The Project is located at: LaCrosse Drive (2 locations), Watsonville Road/West Little Llagas Creek Trail, Middle Avenue/West Little Llagas Creek Trail

Verification: In signing this document, I, the undersigned, declare under penalty of perjury under the laws of the State of California that I have read this notice, and I know and understand the contents of this notice, and that the facts stated in this notice are true and correct.

Date and Place

Signature

Name and Title

*EXEMPT FROM NOTARY ACKNOWLEDGMENT REQUIREMENTS PER
GOVERNMENT CODE § 27287 AND CIVIL CODE § 920*

CITY COUNCIL STAFF REPORT

MEETING DATE: September 6, 2023

PREPARED BY:

Kim Mancera, Deputy City Clerk

APPROVED BY: City Manager

ADOPT ORDINANCE 2348, NEW SERIES, ESTABLISHING CHAPTER 18.29 (MONTEREY CORRIDOR FORM-BASED CODE) OF TITLE 18 (ZONING) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL AND ESTABLISHING THE MONTEREY CORRIDOR FORM-BASED CODE REGULATING PLAN IMPLEMENTING A FORM-BASED CODE ALONG THE MONTEREY ROAD CORRIDOR CREATING A VIBRANT MIXED-USE CORRIDOR THAT ENCOURAGES WALKING AND BIKING AS ENVISIONED WITHIN THE CITY OF MORGAN HILL 2035 GENERAL PLAN

RECOMMENDATION(S)

Waive the reading, adopt Ordinance No. 2348, 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.

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Supporting our Youth, Seniors, and Entire Community

Preserving our Community History

Enhancing Diversity and Inclusiveness

2022-2023 Strategic Priorities

Affordable Housing and Homelessness

Economic Development

Guiding Documents

Economic Blueprint

Morgan Hill 2035 General Plan

REPORT NARRATIVE:

On August 23, 2023, the City Council introduced Ordinance No. 2348, New Series, by the following roll call votes: AYES: Borgioli, Libreros, Martinez Beltran, Spring, Turner; NOES: None; ABSTAIN: None; ABSENT: None.

Ordinance No. 2348 establishes Chapter 18.29 (Monterey Corridor Form-Based Code)

of Title 18 (Zoning Code) to create a vibrant mixed-use corridor that encourages walking and biking north and south of Downtown, from approximately Main Avenue north to Burnett Avenue and from approximately Dunne Avenue south to Rome Avenue. The Monterey Corridor Form-Based Code (FBC) will serve as the backbone, and reduce the cost, for a future Monterey Corridor Specific Plan that includes a Downtown Specific Plan update. The FBC establishes development standards that are objective and implement the community vision, emphasizing pedestrian-oriented building form and streamlined housing development with an appropriate mix of uses.

COMMUNITY ENGAGEMENT:

Inform/Engage

The Planning Commission held the first workshop regarding the FBC on September 8, 2020, in which LWC provided a presentation on 'What is a Form-Based Code', as well as the proposed boundary for the FBC. The Commission also reviewed, discussed, and provided feedback on the FBC Impediments and Recommendations Memo. The memo provided an overview of state legislation and form-based codes, highlighted policy direction related to form-based codes, assessed relevant standards in the existing Zoning Code, evaluated impediments to achieving the vision and objectives of the General Plan, and presented recommendations for the most effective form-based code approach.

A second Planning Commission workshop was held on April 13, 2021, in which LWC presented the Public Review Draft FBC, discussed FBC principles, and gathered input. The workshop was intended as an opportunity for the Community and Planning Commission to learn more about the project and review and comment on the Public Review Draft FBC.

A hybrid community meeting regarding the Monterey Corridor Form-Based Code was held on July 19, 2023, to update residents, property owners, and developers on the most recent version of the draft Form-Based Code.

In addition, City Staff presented the Monterey Corridor Form-Based Code at the Chamber of Commerce Economic Development Committee meeting on August 10, 2023.

A 10-day public hearing notice was published in the Friday, June 30, 2023, edition of the Morgan Hill Times pursuant to Government Code Sections 65090-65096. Notices were also provided in the City's 411 and the City's website: <https://www.morganhill.ca.gov/2060/Monterey-Corridor---Form-Base-Code>. On July 25, 2023, the Planning Commission held a public hearing regarding the proposed ordinance.

ALTERNATIVE ACTIONS:

Not Applicable.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On March 4, 2020, the City Council approved a Consultant Agreement with LWC to prepare the Monterey Corridor Form-Based Code (FBC).

On July 25, 2023, the Planning Commission considered and recommended the City Council approve the Monterey Corridor Form-Based Code on a vote of 6-0, with one member absent.

FISCAL AND RESOURCE IMPACT:

This item is included in the current adopted budget (FY22-23 and FY23-24) and is part of the Long Range Planning workplan and is funded through the Long Range Planning Fund (207). In addition, Long Range Planning secured grant funding through the 2019 Planning Grants Program from the State of California, Department of Housing and Community Development in the amount of \$160,000 for the preparation and development of a form-based code for the Monterey Road Corridor.

CEQA (California Environmental Quality Act):

Exempt

This Form-Based Code is exempt from environmental review pursuant to Section 15061(b)(3) of the California Environmental Quality Act (CEQA) Guidelines. The proposed project is covered by the common-sense exemption that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. The proposed project will not result in any direct impact upon the physical environment. Any development that occurs in the future subject to such standards will undergo an independent analysis per the requirements of CEQA. The Environmental Impact Report (EIR) for the Morgan Hill 2035 General Plan, which envisioned the transformation of the Monterey Corridor north and south of Downtown into a vibrant mixed-use corridor, was prepared in accordance with CEQA and certified by the Morgan Hill City Council on July 27, 2016 (SCH#2015022074).

ORDINANCE NO. 2348, NEW SERIES

AN ORDINANCE OF THE CITY OF MORGAN HILL ESTABLISHING CHAPTER 18.29 (MONTEREY CORRIDOR FORM-BASED CODE) WITHIN TITLE 18 (ZONING) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL AND ESTABLISHING THE MONTEREY CORRIDOR FORM-BASED CODE REGULATING PLAN IMPLEMENTING A FORM-BASED CODE ALONG THE MONTEREY ROAD CORRIDOR CREATING A VIBRANT MIXED-USE CORRIDOR THAT ENCOURAGES WALKING AND BIKING AS ENVISIONED WITHIN THE CITY OF MORGAN HILL 2035 GENERAL PLAN

THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES ORDAIN AS
FOLLOWS:

Section 1. The City Council incorporates by reference the findings contained in Planning Commission Resolution No. 23-06 which support approving the Zoning Text Amendments and Zoning Map to the Morgan Hill Municipal Code.

Section 2. The City of Morgan Hill Zoning Map is hereby amended to rezone properties located within the Monterey Corridor Form-Based Code plan area, referred to as the “Monterey Corridor Form-Based Code Regulating Plan”, as provided herein and as indicated in Exhibit “A”. The plan area generally encompasses the Monterey Road corridor north and south of Downtown, from approximately Main Avenue north to Burnett Avenue and from approximately Dunne Avenue south to Rome Avenue. This initiative involves updating the former zoning designations to new zoning districts of Neighborhood Form-Based (FB-N), Corridor Form-Based (FB-C), and Urban General Form-Based (FB-UG).

Section 3. Title 18 (Zoning) of the Morgan Hill Municipal Code, which establishes development standards and regulations for all zoning districts within City boundaries, is hereby amended to establish Chapter 18.29 (Monterey Corridor Form-Based Code) as shown within attached Exhibit “B”, introduced herewith and as specifically shown in this Ordinance.

Section 4. **Severability.** Should any provision of this ordinance be deemed unconstitutional or unenforceable by a court of competent jurisdiction, such provision shall be severed from the ordinance, and such severance shall not affect the remainder of the ordinance.

Section 5. **Effective Date; Posting.** This Ordinance shall take effect on the 31st day after adoption. The City Clerk is hereby directed to publish this Ordinance or a summary thereof pursuant to Government Code Section 36933.

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

APPROVED:

ATTEST:

MARK TURNER, Mayor

MICHELLE BIGELOW, City Clerk

∞ CERTIFICATE OF THE CITY CLERK ∞

I, MICHELLE BIGELOW, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 2348, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 6th day of September 2023.

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

DATE: _____

MICHELLE BIGELOW, City Clerk

Monterey Corridor Form-Based Code Regulating Plan
Public Review Draft

Legend

-  Neighborhood Form-Based (FB-N) Zoning District
-  Corridor Form-Based (FB-C) Zoning District
-  Urban General Form-Based (FB-UG) Zoning District
-  Form-Based Code Boundary

0 0.25 0.5 0.75 1 Miles



Monterey Corridor Form-Based Code

City of Morgan Hill

City Council | August 2023

Prepared by: Lisa Wise Consulting, LWC



LWC

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18.29.010 Introduction

Subsections:

- 18.29.010.A Purpose of the Form-Based Code
- 18.29.010.B Organization of the Form-Based Code
- 18.29.010.C How to Use the Form-Based Code

18.29.010.A Purpose of the Form-Based Code

The Form-Based Code (FBC) represents a paradigm shift in the way that the built environment is regulated. The formal short definition of a Form-Based Code is as follows:

“A form-based code is a land development regulation that fosters predictable built results and a high-quality public realm by using physical form (rather than separation of uses) as the organizing principle for the code. A form-based code is a regulation, not a mere guideline, adopted into city, town, or county law. A form-based code offers a powerful alternative to conventional zoning regulation.”

– Form-Based Codes Institute

Unlike conventional, use-based codes, FBCs utilize the intended form and character of a neighborhood, rather than use as the organizing framework of the code. Morgan Hill will join cities and counties across the country that are now utilizing FBCs to shift their “main streets” and commercial corridors into vibrant, mixed-use areas where residents can live, work, and play within close walking distance.

For the Monterey Corridor (Corridor), the FBC establishes development standards that are objective and implement the community vision, emphasizing pedestrian-oriented building form and streamlined housing development with an appropriate mix of uses. The FBC is designed with a user-friendly organizational structure, where City staff and community members can easily navigate and recognize the standards and requirements that apply to the applicable development site.

Regulations and standards in a FBC are presented graphically in simple diagrams and photographs as well as supplemental text. These standards are keyed to a plan (i.e., a Regulating Plan) that functions like a zoning map, assigning an appropriate form and scale through the application of form-based zones to specific lots. While FBCs focus on an intended physical form, they also regulate use by allowing a mix of appropriate land uses chosen to ensure compatibility among different contexts and the intended physical form of the area. The standards ultimately shape the relationship between building facades and the public realm (i.e., the public and private space between buildings), the form and mass of buildings in relation to one another, and the scale and type of blocks.

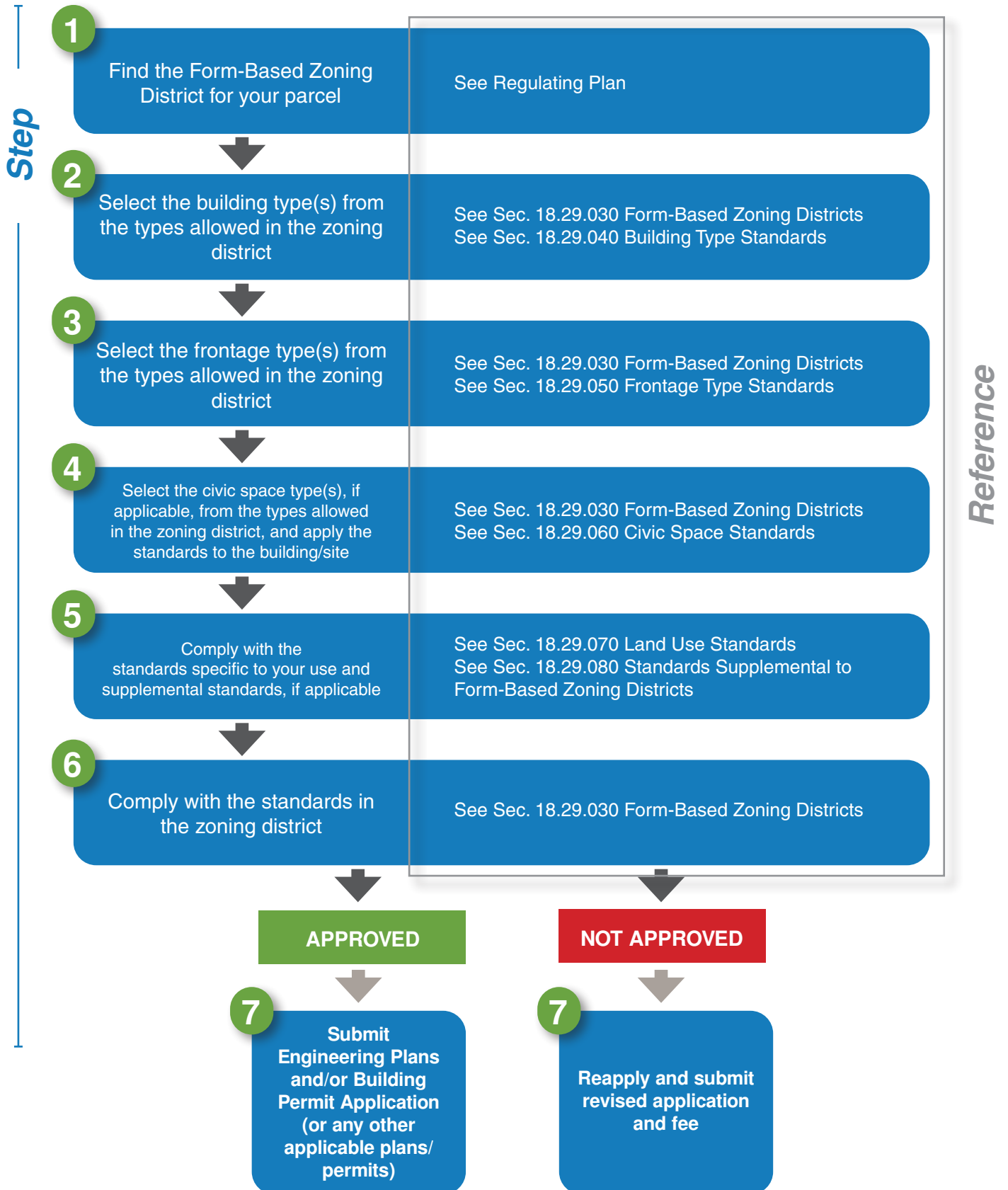
18.29.010.B Organization of the Form-Based Code

The following advisory text is intended to give a brief overview of the overall structure of Chapter 18.29 (Form-Based Zoning Districts).

1. **Section 18.29.010: Introduction.** This Section introduces the FBC, describes its components, and provides an illustrative explanation of how to use and apply the FBC to a typical development review application.
2. **Section 18.29.020: Purpose and Applicability of the Form-Based Code.** This Section provides the general purpose and intent of the form-based zoning districts and standards, as well as the applicability of the FBC.
3. **Section 18.29.030: Form-Based Zoning Districts.** This Section establishes the applicability of the form-based zoning districts, an overview of the zoning districts, and the specific purpose statements and development standards associated with each zoning district.
4. **Section 18.29.040: Building Type Standards.** This Section establishes the purpose and intent of the building type standards, the applicability of the standards, a description of each building type, and objective standards associated with each type.
5. **Section 18.29.050: Frontage Type Standards.** This Section establishes the purpose and intent of the frontage type standards, the applicability of the standards, a description of each frontage type, and objective standards associated with each type.
6. **Section 18.29.060: Civic Space Standards.** This Section establishes the purpose and intent of the civic space standards, the applicability of the standards, a description of each civic space type, and objective standards associated with each type.
7. **Section 18.29.070: Land Use Standards.** This Section establishes the land uses permitted in each form-based zoning district and any applicable specific use standards.
8. **Section 18.29.080: Standards Supplemental to Form-Based Zoning Districts.** This Section provides any additional standards or requirements necessary to implement walkable areas, including additional standards for landscaping, outdoor lighting, open space, signs, and a cross-reference to parking and loading standards (See Chapter 18.72, Parking and Loading).
9. **Section 18.29.090: Permits and Administration for Form-Based Zoning Districts.** This Section establishes any additional or unique provisions necessary to administer the FBC.
10. **Section 18.29.100: Definitions for Form-Based Zoning Districts.** This Section provides any additional or unique definitions necessary to understand the standards and requirements of the FBC.

18.29.010.C How to Use the Form-Based Code

Figure 18.29-1 How to Use the Form-Based Code



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18.29.020 Purpose and Applicability of the Form-Based Code

Subsections:

- 18.29.020.A Title
- 18.29.020.B Purpose
- 18.29.020.C Applicability

18.29.020.A Title

Chapter 18.29 (Form-Based Zoning Districts) of the Morgan Hill Municipal Code shall be known and may be cited as the Form-Based Code. Within this Chapter, it may also be known as the “FBC.”

18.29.020.B Purpose

The purpose of the FBC is to implement the General Plan, specifically the General Plan’s vision for the Corridor as a “vibrant mixed-use corridor that encourages walking and biking,” through standards for neighborhood design, building form, and land use. The specific purpose and intent of each zoning district is established in Section 18.29.030 (Form-Based Zoning Districts).

18.29.020.C Applicability

1. This Chapter applies to all new uses and projects on land delineated in the Form-Based Code Regulating Plan map. This area may be known and referred to as the “FBC Area.”
2. If any provision within this Chapter conflicts with another chapter of the Zoning Code, the FBC shall control.
3. Where the FBC is silent or does not provide an explicit provision, the Zoning Code shall apply.
4. Any requirement of state law will supersede any provision of this Chapter.

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18.29.030 Form-Based Zoning Districts

Subsections:

- 18.29.030.A Purpose and Intent
- 18.29.030.B Overview of Form-Based Zoning Districts
- 18.29.030.C Neighborhood Form-Based (FB-N) Zoning District
- 18.29.030.D Corridor Form-Based (FB-C) Zoning District
- 18.29.030.E Urban General Form-Based (FB-UG) Zoning District

18.29.030.A Purpose and Intent

1. General. The purpose of the form-based zoning districts is to provide for active, vibrant, and walkable destinations and neighborhoods in Morgan Hill with a diversity of residential and commercial land uses. The form-based zoning districts support a range of housing products, pedestrian-friendly public realm, and vertical and horizontal mixed-use projects. The diversity of pedestrian-friendly development, land uses, and general level of activity in the form-based zoning districts is intended to support a range of transportation choices, including walking, biking, and transit.
2. Specific. For specific intent statements, see each form-based zoning district established in this Section.

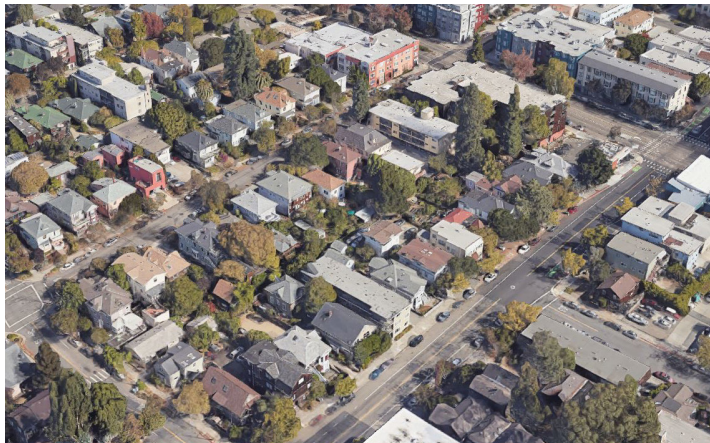
18.29.030.B Overview of Form-Based Zoning Districts

Table 18.29-1 provides an overview of each form-based zoning district.

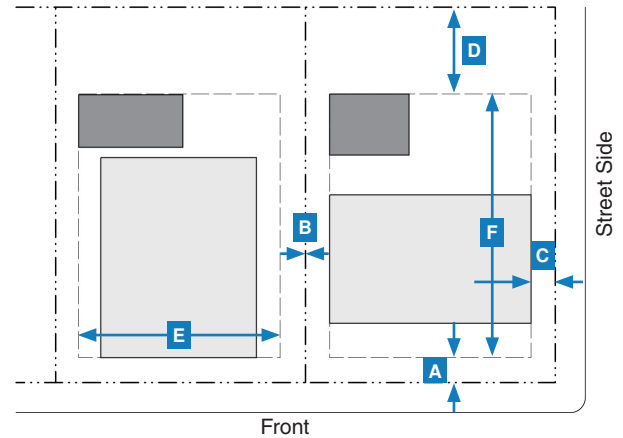
Table 18.29-1 Summary Table of Form-Based Zoning Districts

Zoning District	Neighborhood Form-Based (FB-N)	Corridor Form-Based (FB-C)	Urban General Form-Based (FB-UG)
			
Desired Form	Medium setbacks	Buildings placed at or near ROW	Small to large setbacks
	Neighborhood character	Mixed-use, walkable character	Mixed-use, walkable urban character
	Heights up to 35 ft.	Heights up to 45 ft.	Heights up to 55 ft.
	Compatible with neighborhood context	Diverse mix of building frontages	Diverse mix of building frontages
General Use	Residential with both detached and attached dwellings that offer a variety of housing options in a range of densities close to neighborhood-serving commercial uses.	Primarily ground floor commercial or service uses with a mix of commercial, residential, service, and/or office uses on upper stories.	Primarily business-oriented with a variety of supporting uses, including high-intensity residential projects.
Intent	A variety of housing opportunities that are accessible to range of income levels in a walkable environment with neighborhood-serving retail and services.	Variable intensities of infill and redevelopment with a mix of walkable uses, such as retail, service, and commercial, that are sensitive to the scale and character of the area.	Mixed-use commercial and residential hubs with a variety of uses and clustered job opportunity centers. Accessible corridors and streets with internal block patterns and an improved pedestrian experience transitioning from an auto-centric environment to a walkable environment.
Subsection	18.29.030.C	18.29.030.D	18.29.030.E

18.29.030.C Neighborhood Form-Based (FB-N) Zoning District



Note: image is illustrative, not regulatory.



Key for Diagrams

--- Lot Line	--- Building Setback Line
Principal Building	Accessory Building

1. Intent

The purpose of the Neighborhood Form-Based (FB-N) zoning district is to accommodate a variety of housing opportunities that are accessible to a range of income levels in a walkable environment with neighborhood-serving retail and services.

2. Lot Requirements

Dimension	Standard
a. Area	5,000 s.f. min.
b. Width	50 ft. min.
c. Depth	100 ft. min.

3. Building Placement

a. Building Setback

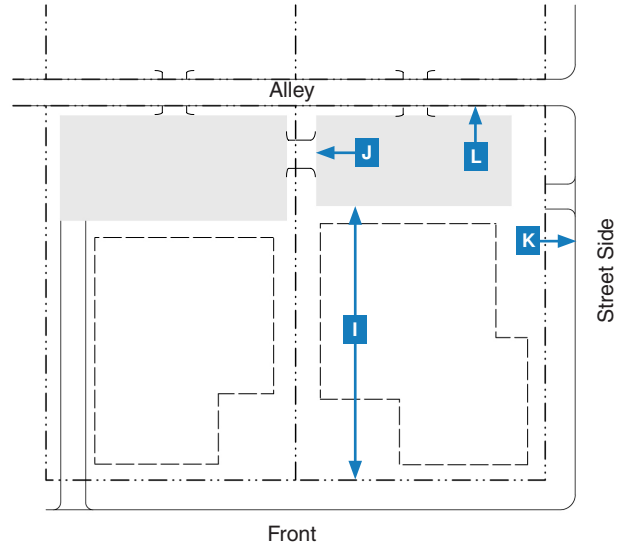
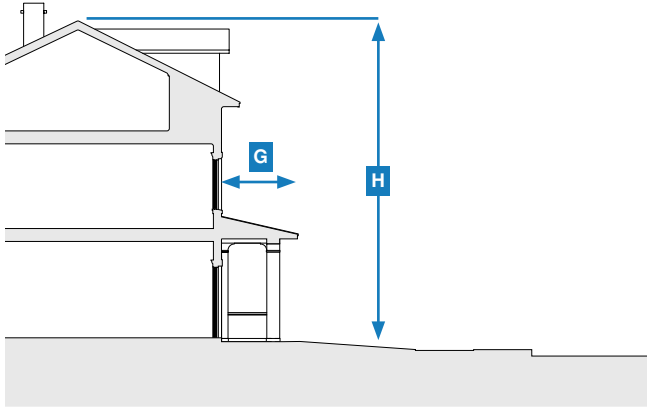
(i). Front	5 ft. min., 15 ft. max.	A
(ii). Interior Side	5 ft. min.	B
(iii). Street Side	5 ft. min., 15 ft. max.	C
(iv). Rear	15 ft. min.	D

b. Build-to-Zone

(i). Front	70% min. within setback range	E
(ii). Street Side	30% min. within setback range	F

4. Permitted Building Types

House
Accessory Dwelling Unit
Duplex/Duet
Multiplex Small
Bungalow Court
Townhouse



Key for Diagrams

--- Lot Line	--- Building Setback Line
■ Parking Area	

5. Building Form

a. Projections

(i). Front	5 ft. max.	G
(ii). Interior Side	3 ft. max.	
(iii). Street Side	5 ft. max.	
(iv). Rear	3 ft. max.	

b. Height Limit

35 ft. max. ¹	H
--------------------------	----------

c. Building Coverage

75% max.	
----------	--

Note:

1. 40 ft. allowed for vertical mixed-use.

6. Permitted Frontage Types

Front Yard
Porch, Engaged
Porch, Projecting
Stoop

7. Parking Placement

Setback	Standard	
a. Front	30 ft. min.	I
b. Interior Side	5 ft. min.	J
c. Street Side	10 ft. min.	K
d. Rear	0 ft. min.	L

8. Permitted Civic Space Types

Passage
Pocket Park/Plaza

9. Supplemental Standards

a. See Section 18.29.040 (Building Type Standards) for building type standards.
b. See Section 18.29.050 (Frontage Type Standards) for frontage type standards.
c. See Section 18.29.060 (Civic Space Standards) for civic space type standards.
d. See Section 18.29.080 (Standards Supplemental to Form-Based Zoning Districts) for supplemental standards.
e. See Section 18.56.020 (Height Exceptions) for allowed projections above height limits.
f. See Chapter 18.84 (Accessory Dwelling Units) for accessory dwelling unit standards.
g. See Section 18.92.130 (Residential Transition Standards) for residential transition standards.
h. See Chapter 18.44 (Accessory Structures and Uses) for standards for accessory structures.



Note: image is illustrative, not regulatory.

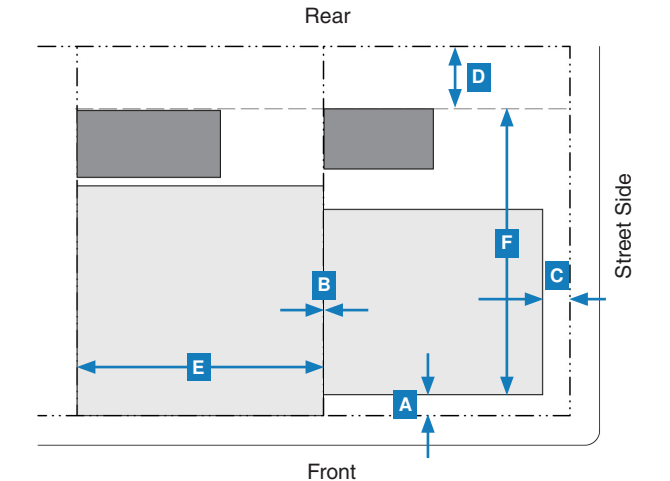
Key for Diagrams

	Lot Line		Building Setback Line
	Principal Building		Accessory Building

1. Intent

The purpose of the Corridor Form-Based (FB-C) zoning district is to accommodate variable intensities of infill and redevelopment with a mix of walkable uses, such as retail, service, and commercial, that are sensitive to the scale and character of the area.

2. Lot Requirements	
Dimension	Standard
a. Area	6,000 s.f. min.
b. Width	60 ft. min.
c. Depth	100 ft. min.

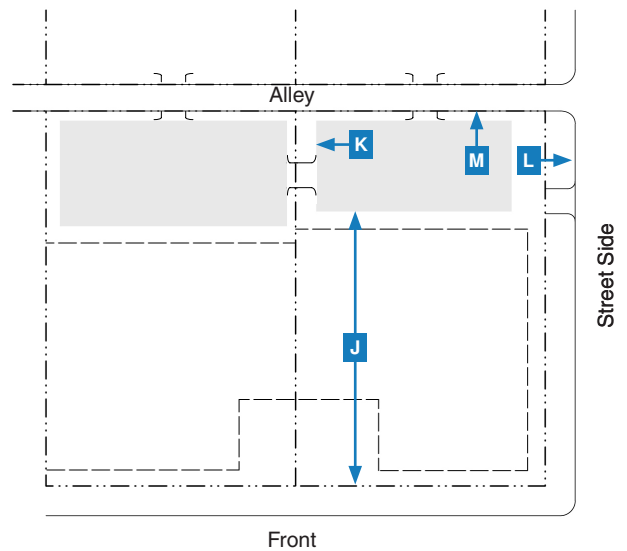
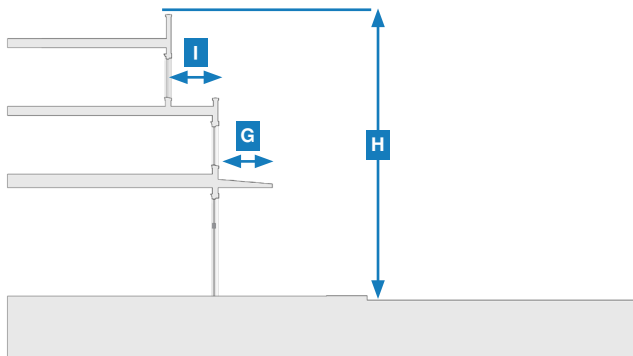


3. Building Placement

a. Building Setback		
(i). Front	0 ft. min., 15 ft. max.	A
(ii). Interior Side	0 ft. min.	B
(iii). Street Side	0 ft. min., 15 ft. max.	C
(iv). Rear	10 ft. min.	D

b. Build-to-Zone		
(i). Front	80% min. within setback range	E
(ii). Street Side	40% min. within setback range	F

4. Permitted Building Types	
Accessory Dwelling Unit	
Duplex/Duet	
Multiplex Small	
Multiplex Large	
Townhouse	
Courtyard Building	
Main Street Building	
Liner Building	



Key for Diagrams

--- Lot Line	--- Building Setback Line
 Parking Area	

5. Building Form

a. Projections

(i). Front	5 ft. max.	G
(ii). Interior Side	3 ft. max.	
(iii). Street Side	5 ft. max.	
(iv). Rear	3 ft. max.	

b. Height Limit

45 ft. max.	H
-------------	----------

c. Upper Story Stepback

8 ft. min. required for third story or higher	I
---	----------

d. Building Coverage

75% max.	
----------	--

6. Permitted Frontage Types

Forecourt
Porch, Engaged
Porch, Projecting
Shopfront
Stoop
Terrace

7. Parking Placement

Setback	Standard	
a. Front	40 ft. min.	J
b. Interior Side	0 ft min.	K
c. Street Side	10 ft min.	L
d. Rear	0 ft min.	M

8. Permitted Civic Space Types

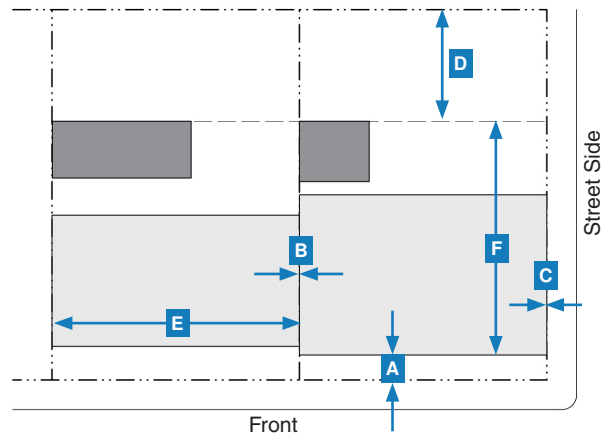
Passage
Pocket Park/Plaza
Plaza

9. Supplemental Standards

a. See Section 18.29.040 (Building Type Standards) for building type standards.
b. See Section 18.29.050 (Frontage Type Standards) for frontage type standards.
c. See Section 18.29.060 (Civic Space Standards) for civic space type standards.
d. See Section 18.29.080 (Standards Supplemental to Form-Based Zoning Districts) for supplemental standards.
e. See Section 18.56.020 (Height Exceptions) for allowed projections above height limits.
f. See Chapter 18.84 (Accessory Dwelling Units) for accessory dwelling unit standards.
g. See Section 18.92.130 (Residential Transition Standards) for residential transition standards.
h. See Chapter 18.44 (Accessory Structures and Uses) for standards for accessory structures.



Note: image is illustrative, not regulatory.



Key for Diagrams

--- Lot Line	--- Building Setback Line
 Principal Building	 Accessory Building

1. Intent

The purpose of the Urban General Form-Based (FB-UG) zoning district is to accommodate mixed-use commercial and residential hubs with a variety of uses, clustered job opportunity centers, and vehicular accessible corridors with internal block patterns and an improved pedestrian experience transitioning from an auto-centric environment to a walkable environment.

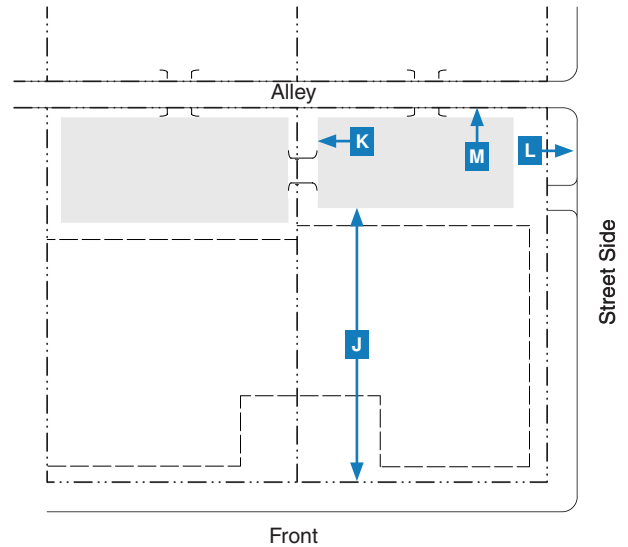
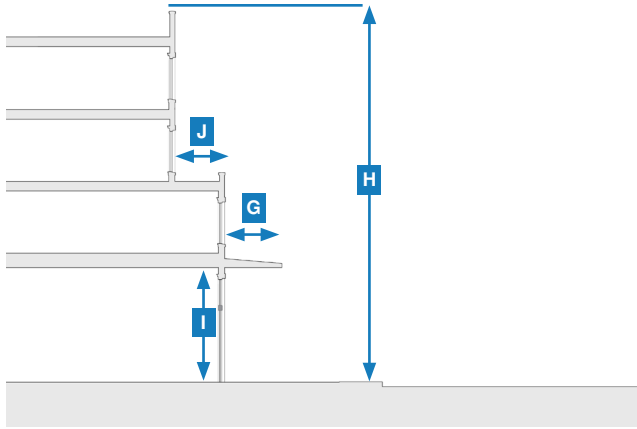
2. Lot Requirements	
Dimension	Standard
a. Area	10,000 s.f. min.
b. Width	100 ft. min.
c. Depth	100 ft. min.

3. Building Placement

a. Building Setback		
(i). Front	5 ft. min., 25 ft. max.	A
(ii). Interior Side	0 ft. min.	B
(iii). Street Side	0 ft. min., 25 ft. max.	C
(iv). Rear	20 ft. min.	D

b. Build-to-Zone		
(i). Front	65% min. within setback range	E
(ii). Street Side	25% min. within setback range	F

4. Permitted Building Types	
Accessory Dwelling Unit	
Multiplex Large	
Courtyard Building	
Main Street Building	
Liner Building	



Key for Diagrams

--- Lot Line	--- Building Setback Line
■ Parking Area	

5. Building Form

a. Projections

(i). Front	5 ft. max.	G
(ii). Interior Side	3 ft. max.	
(iii). Street Side	5 ft. max.	
(iv). Rear	3 ft. max.	

b. Height Limit

	55 ft. max.	H
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c. Ground Floor Ceiling Height

14 ft. min.	18 ft. max.	I
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d. Upper Story Stepback

8 ft. min. required for third story or higher	J
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e. Building Coverage

80% max.	
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6. Permitted Frontage Types

Forecourt
Shopfront
Stoop
Terrace

7. Parking Placement

Setback	Standard	
a. Front	40 ft. min.	J
b. Interior Side	0 ft min.	K
c. Street Side	10 ft min.	L
d. Rear	0 ft min.	M

8. Permitted Civic Space Types

Passage
Pocket Park/Plaza
Plaza

9. Supplemental Standards

a. See Section 18.29.040 (Building Type Standards) for building type standards.
b. See Section 18.29.050 (Frontage Type Standards) for frontage type standards.
c. See Section 18.29.060 (Civic Space Standards) for civic space type standards.
d. See Section 18.29.080 (Standards Supplemental to Form-Based Zoning Districts) for supplemental standards.
e. See Section 18.56.020 (Height Exceptions) for allowed projections above height limits.
f. See Chapter 18.84 (Accessory Dwelling Units) for accessory dwelling unit standards.
g. See Section 18.92.130 (Residential Transition Standards) for residential transition standards.
h. See Chapter 18.44 (Accessory Structures and Uses) for standards for accessory structures.

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18.29.040 Building Type Standards

Subsections:

- 18.29.040.A Purpose and Intent
- 18.29.040.B Applicability
- 18.29.040.C House
- 18.29.040.D Accessory Dwelling Unit
- 18.29.040.E Duplex/Duet
- 18.29.040.F Multiplex Small
- 18.29.040.G Multiplex Large
- 18.29.040.H Bungalow Court
- 18.29.040.I Townhouse
- 18.29.040.J Courtyard Building
- 18.29.040.K Main Street Building
- 18.29.040.L Liner Building

18.29.040.A Purpose and Intent

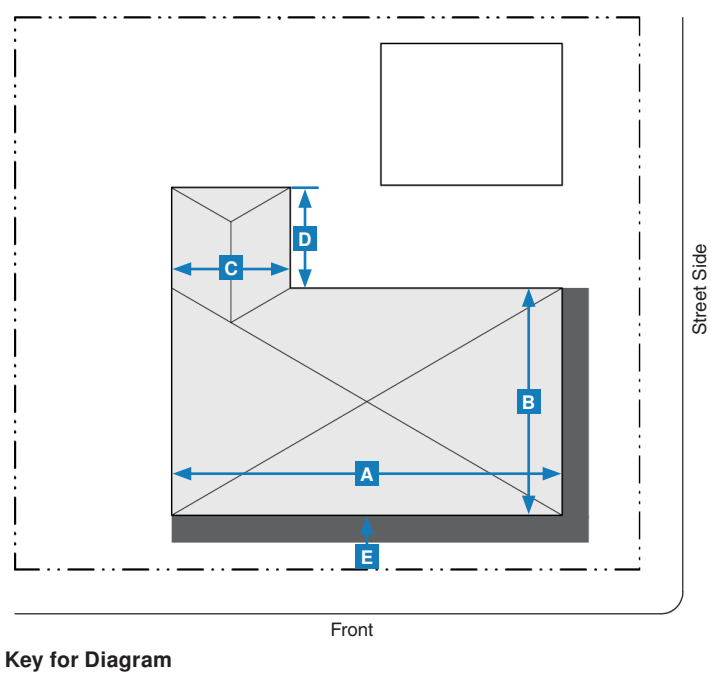
The purpose of this Section is to establish standards for all building types within the form-based zoning districts. The standards in this Section supplement the standards in Section 18.29.030 (Form-Based Zoning Districts) and are intended to provide a range of housing and development options that reinforce the character and scale of Morgan Hill's history and small-town development pattern.

18.29.040.B Applicability

1. This Section applies to all proposed projects within the form-based zoning districts. All new projects in the form-based zoning districts must apply at least one of the building types in this Section and be consistent with the identified building type standards and the standards in the applicable zoning district (see Section 18.29.030 (Form-Based Zoning Districts)). The building types support a variety of uses, as allowed in the zoning district (e.g., the "house" building type may include residential uses, eating and drinking uses, professional offices, or others if allowed in the zoning district) (see Section 18.29.070 (Land Use Standards)).
2. Building types not indicated as "permitted" in the applicable zoning district (see Section 18.29.030 (Form-Based Zoning Districts)) are not permitted in the zoning district.
3. If an applicant proposes multiple principal buildings on a single lot, the proposal must include potential lot lines in order to determine compliance with this Section.
4. The development of transportation, communications, and/or infrastructure facilities is exempt from this Section.



Note: image is illustrative, not regulatory.



Key for Diagram

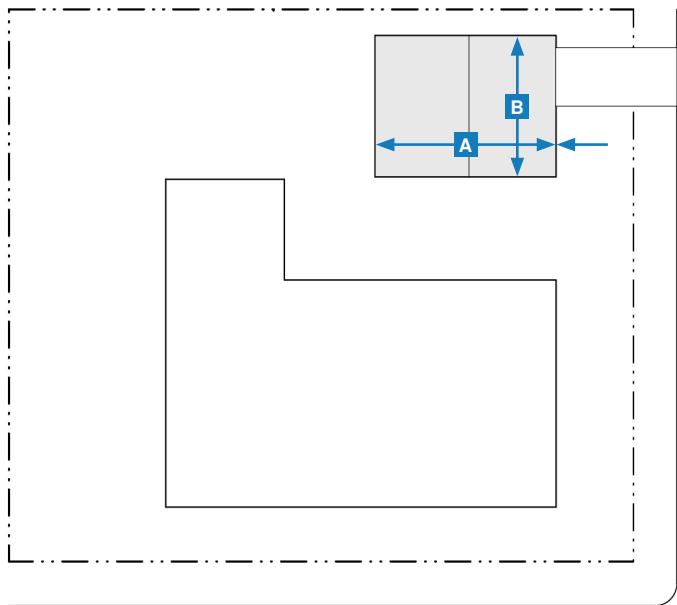
- Lot Line

Primary Building Type
- Frontage
- Accessory Building

1. Description		
A detached building with 1 unit, shallow setbacks, a rear yard, and located within a low intensity walkable neighborhood.		
2. Building Size and Massing		
a. Height		
2.5 stories max.		
b. Main Body		
Width	45 ft. max.	A
Depth	45 ft. max.	B
c. Secondary Wing		
Width	20 ft. max.	C
Depth	20 ft. max.	D
3. Pedestrian Access		
Primary Entrance	Front Setback	E
4. Private Open Space (per unit)		
Private open space is required per Subsection 18.29.080.D (Open Space Standards). Common open space is not required.		



Note: image is illustrative, not regulatory.



Key for Diagram

- Lot Line

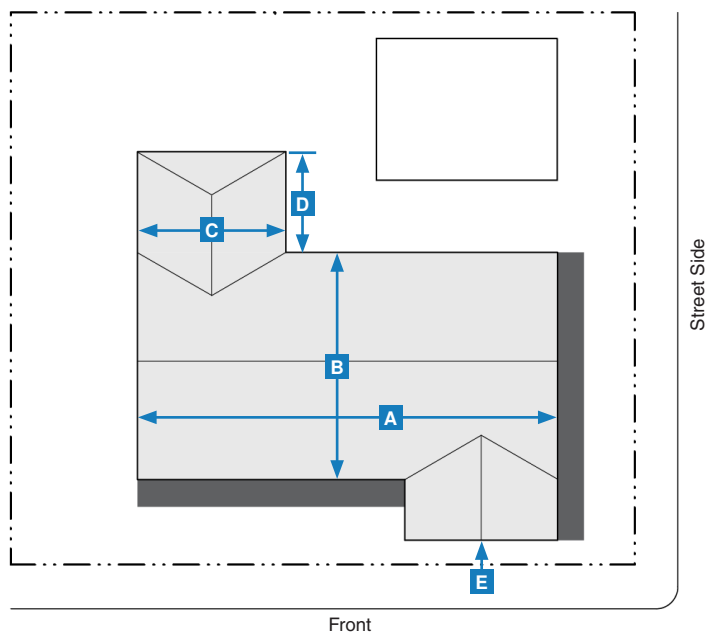
Accessory Building Type

Primary Building

1. Description		
An accessory structure usually located at the rear of a lot that provides a unit; may be located above the garage.		
2. Building Size and Massing		
a. Height		
2 stories max.		
b. Main Body		
Width	36 ft. max.	A
Depth	30 ft. max.	B
3. Pedestrian Access		
Primary Entrance	Street Side Setback, Alley, or Internal to Lot	C
4. Miscellaneous		
Accessory dwelling units are permitted consistent with Section 18.29.070 (Land Use Standards) and Chapter 18.84 (Accessory Dwelling Units).		



Note: image is illustrative, not regulatory.



Key for Diagram

 Lot Line
  Frontage

 Primary Building Type
 Accessory Building

1. Description

A detached building consisting of 2 side-by-side or stacked units with shallow setbacks. For side-by-side units, both face the street with separate entrances; for stacked units, both are accessible via a single entrance or separate entrances that face the street. This type has the appearance of a house and is scaled to fit within low and medium intensity walkable neighborhoods.

2. Building Size and Massing

a. Height

35 ft. max.

b. Main Body

Width	48 ft. max.	A
Depth	40 ft. max.	B

c. Secondary Wing

Width	20 ft. max.	C
Depth	24 ft. max.	D

3. Pedestrian Access

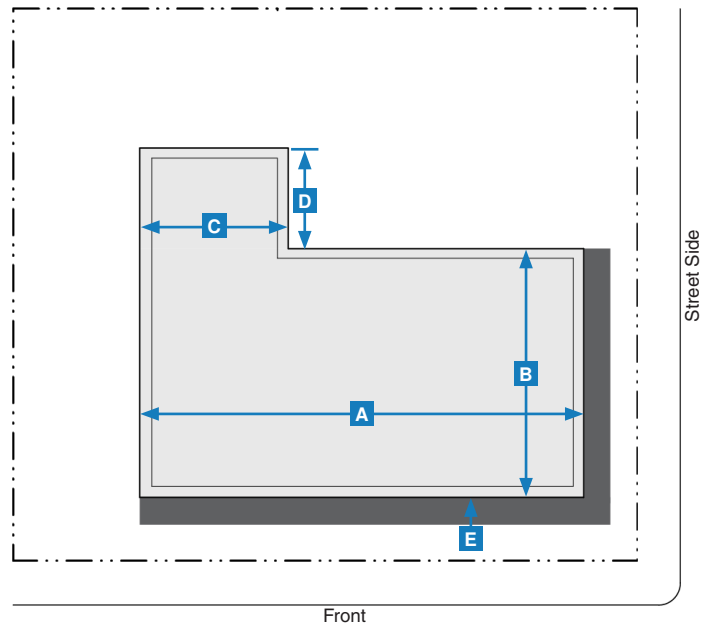
Primary Entrance	Front Setback	E
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4. Private Open Space (per unit)

Private open space is required per Subsection 18.29.080.D (Open Space Standards). Common open space is not required.



Note: image is illustrative, not regulatory.



Key for Diagram

--- Lot Line	Frontage
Primary Building Type	

1. Description

A detached building that consists of 3 to 6 side-by-side and/or stacked units, with one shared entry or individual entries along the front. This type has the appearance of a house and is scaled to fit within low and medium intensity walkable neighborhoods.

2. Building Size and Massing

a. Height	
	35 ft. max.

b. Main Body ¹		
Width	45 ft. max.	A
Depth	45 ft. max.	B

c. Secondary Wing		
Width	20 ft. max.	C
Depth	30 ft. max.	D

Note:

- May be exempt from the build-to-zone requirement established in the form-based zoning district if the maximum width and depth preclude the ability to meet the percentage required.

3. Pedestrian Access

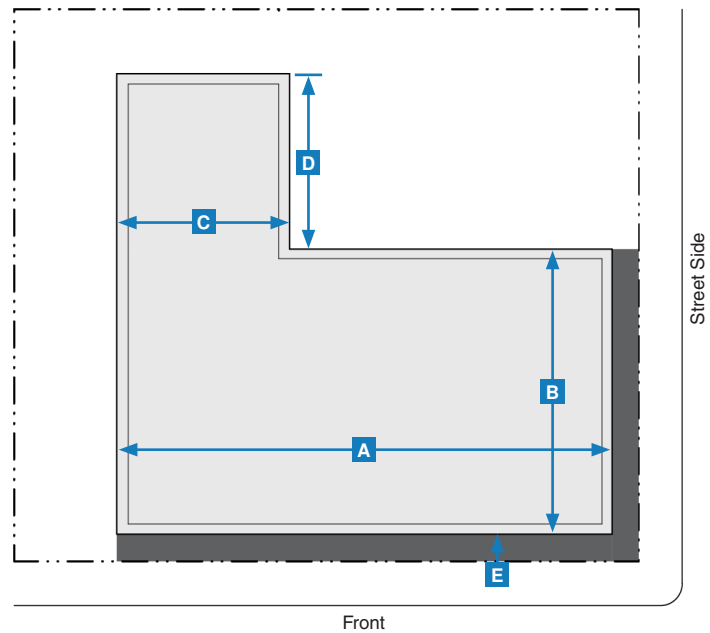
Primary Entrance	Front Setback	E
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4. Common Open Space

Common open space is required per Subsection 18.29.080.D (Open Space Standards). Private open space is not required.



Note: image is illustrative, not regulatory.



Key for Diagram

--- Lot Line

Primary Building Type

Frontage

1. Description

A detached building that consists of 7 to 12 side-by-side and/or stacked units, usually with one shared entry. This type is scaled to fit within medium intensity walkable neighborhoods.

2. Building Size and Massing

a. Height		
	45 ft. max.	

b. Main Body		
Width	60 ft. max.	A
Depth	60 ft. max.	B

c. Secondary Wing		
Width	24 ft. max.	C
Depth	40 ft. max.	D

3. Pedestrian Access		
Primary Entrance	Front Setback	E

4. Common Open Space

Common open space is required per Subsection 18.29.080.D (Open Space Standards). Private open space is not required.

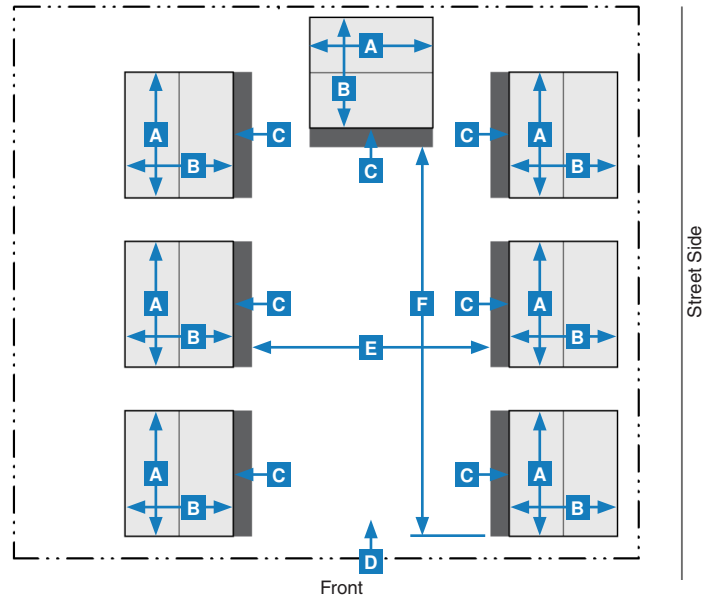
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Note: image is illustrative, not regulatory.



Key for Diagram

--- Lot Line	Frontage
Primary Building Type	

1. Description

A group of detached buildings (3 to 9 separate units) arranged to define a shared courtyard that is generally perpendicular to the street. The shared courtyard is common open space and replaces the need for private rear yards. This type is scaled to fit within low and medium intensity walkable neighborhoods.

2. Building Size and Massing ¹

a. Height

1.5 stories max.

b. Main Body ¹

Width	32 ft. max.	A
Depth	24 ft. max.	B

Note:

1. May be exempt from the build-to-zone requirement established in the form-based zoning district if the maximum width and depth preclude the ability to meet the percentage required.

3. Pedestrian Access

Primary Entrance	Shared Courtyard	C
Shared Courtyard	Accessible from Front Setback/Street	D

Pedestrian connections shall link all buildings to the shared courtyard, parking area(s), and public right-of-way.

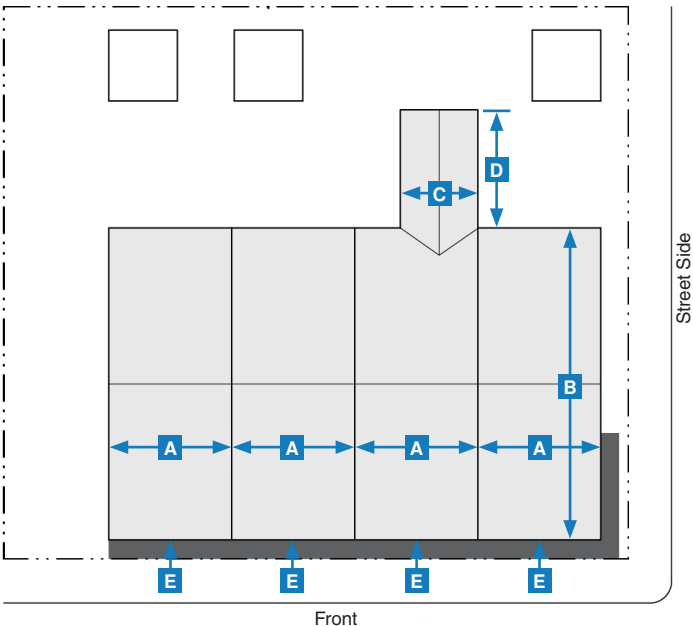
4. Common Open Space/Courtyard

Width	20 ft. min.	E
Depth	3-4 units: 75 ft. min.; 5-9 units: 90 ft. min.	F

Private open space is not required.



Note: image is illustrative, not regulatory.



a. Height		
	3.5 stories max.	

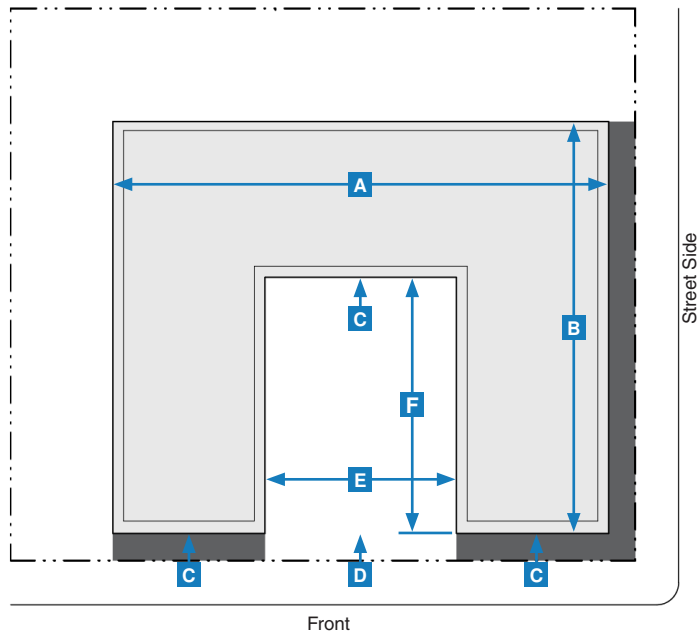
b. Main Body		
Width	18 ft. min.; 36 ft. max. (per unit)	A
Depth	50 ft. max.	B

c. Secondary Wing		
Width	14 ft. max.	C
Depth	25 ft. max.	D

3. Pedestrian Access		
Primary Entrance	Front Setback	E



Note: image is illustrative, not regulatory.



Key for Diagram

- Lot Line

Frontage

Primary Building Type

1. Description

A building comprised of multiple attached and/or stacked units, accessed from one or more shared courtyards. The shared courtyard is common open space and replaces the need for private rear yards. This type is frequently integrated into medium and high intensity walkable neighborhoods and can be applied in non-residential contexts.

2. Building Size and Massing

a. Height

45 ft. max.

b. Main Body

Width	100 ft. max.	A
Depth	100 ft. max.	B

3. Pedestrian Access

Primary Entrance	Shared Courtyard and/or Front Setback/Street	C
Shared Courtyard	Front Setback/Street	D

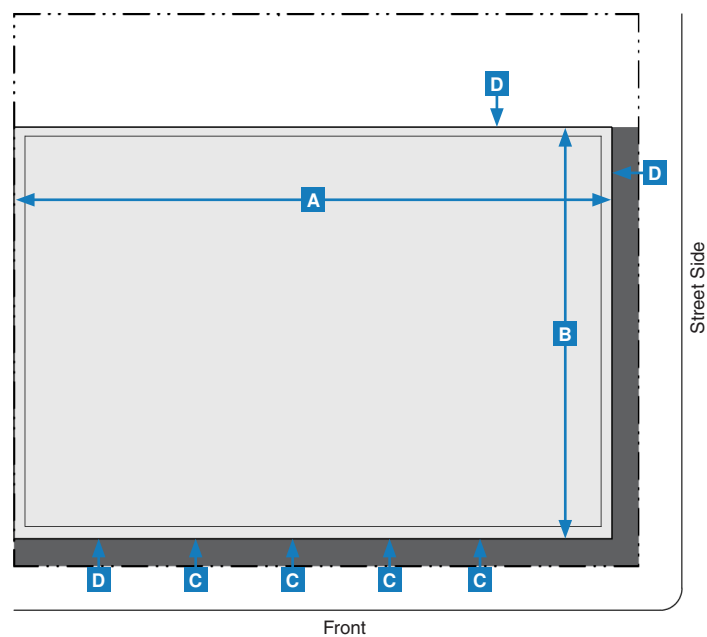
4. Common Open Space/Courtyard

Width	20 ft. min.; 50 ft. max.	E
Depth	20 ft. min.; 100 ft. max.	F

Private open space is not required.



Note: image is illustrative, not regulatory.



Key for Diagram

- Lot Line
- Frontage
- Primary Building Type

1. Description

An attached building intended to provide a vertical mix of uses with ground floor retail, office, or service uses with individual entries, and upper floor office, service, or residential uses with one or more shared entries. This type is the primary component of main street building form.

2. Building Size and Massing

a. Height	
	55 ft. max.

b. Main Body		
Width	200 ft. max.	A
Depth	120 ft. max.	B

3. Pedestrian Access

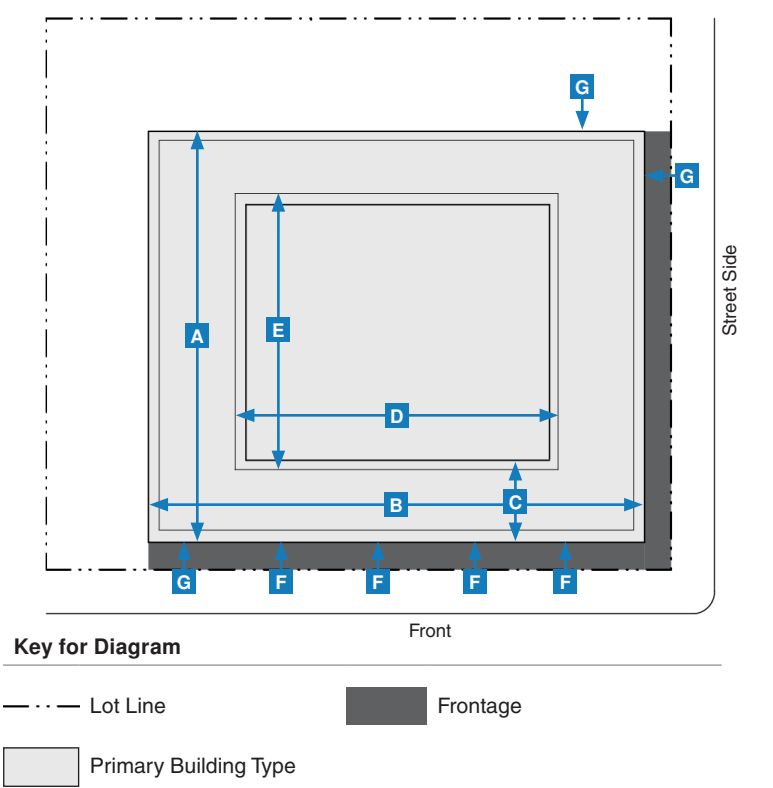
Primary Entrance, Ground Floor Spaces/Units	Front Setback/Street	C
Primary Entrance, Upper Floor Spaces/Units	Front Setback, Street Side Setback, Street, or Alley	D

4. Common Open Space

Common open space is required per Subsection 18.29.080.D (Open Space Standards). Private open space is not required.



Note: image is illustrative, not regulatory.



1. Description

A building in which the interior building is wrapped or lined by an exterior building. The interior building is usually a parking structure or large retail/entertainment space while the exterior building is intended for retail, service, office, or residential space. This type is a component of main street building form.

2. Building Size and Massing

a. Height		
55 ft. max.		
b. Exterior Building		
Length	400 ft. max.	A
Width	300 ft. max.	B
Depth	50 ft. max.	C
b. Interior Building		
Width	180 ft. max.	D
Depth	230 ft. max.	E

3. Pedestrian Access

Primary Entrance, Ground Floor Spaces/Units	Front Setback/Street	F
Primary Entrance, Upper Floor Spaces/Units	Front Setback, Street Side Setback, Street, or Alley	G

4. Common Open Space

Common open space is required per Subsection 18.29.080.D (Open Space Standards). Private open space is not required.

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18.29.050 Frontage Type Standards

Subsections:

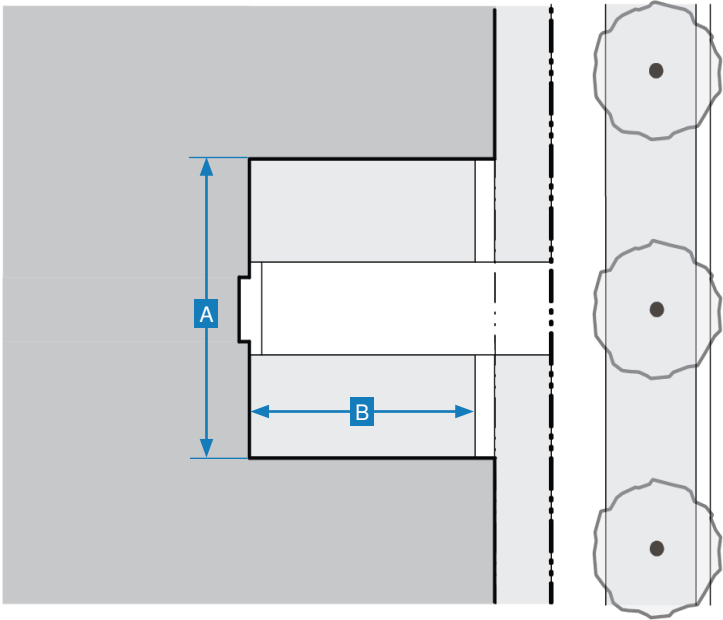
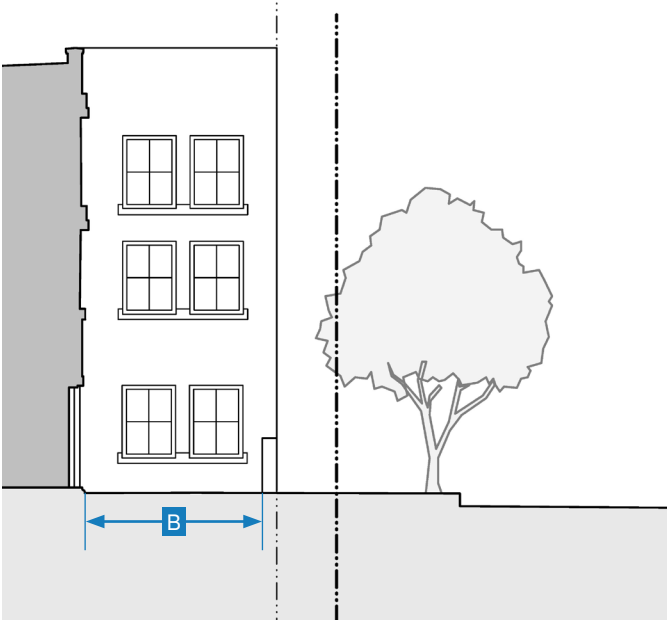
- 18.29.050.A Purpose and Intent
- 18.29.050.B Applicability
- 18.29.050.C Forecourt
- 18.29.050.D Front Yard
- 18.29.050.E Porch, Engaged
- 18.29.050.F Porch, Projecting
- 18.29.050.G Shopfront
- 18.29.050.H Stoop
- 18.29.050.I Terrace

18.29.050.A Purpose and Intent

The purpose of this Section is to establish standards for all frontage types within the form-based zoning districts. Private frontages are the components of a building that provide an important transition and relationship between the public realm and private development. The standards in this Section supplement the standards in Section 18.29.030 (Form-Based Zoning Districts) and are intended to ensure that development reinforces the character and scale of Morgan Hill's history and small-town development pattern.

18.29.050.B Applicability

1. This Section applies to all proposed projects within the form-based zoning districts. The standards in this Section must be considered in combination with the standards in the applicable zoning district (see Section 18.29.030 (Form-Based Zoning Districts)).
2. Frontage types not indicated as "permitted" in the applicable zoning district (see Section 18.29.030 (Form-Based Zoning Districts)) are not permitted in the zoning district.
3. Every new project and/or structure in the form-based zoning districts must provide at least one frontage type for each street frontage.
4. The development of transportation, communications, and/or infrastructure facilities is exempt from this Section.



Key for Diagrams

----- Lot Line	----- Setback Line
Grade	Building



Note: image is illustrative, not regulatory.

1. Description

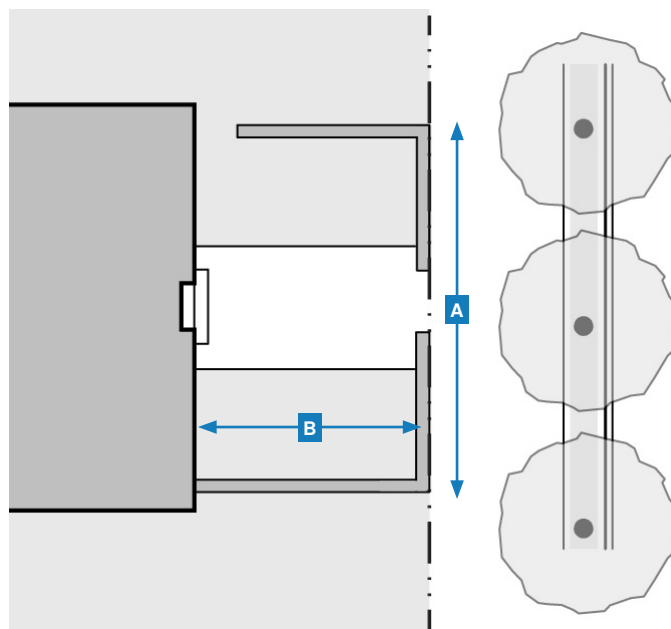
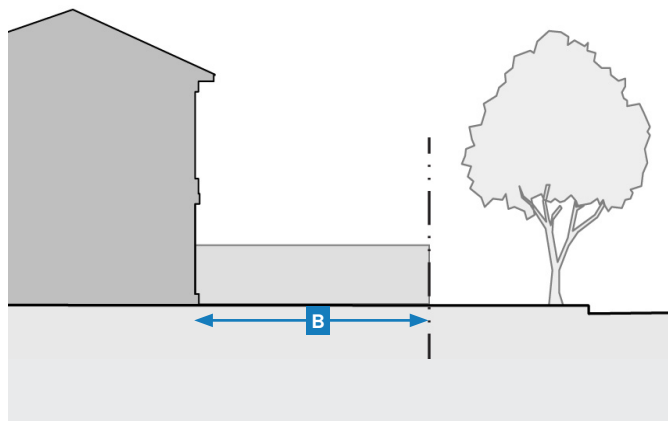
The main facade of the building is at or near the right-of-way and a portion (usually the central portion) is set back, creating a courtyard space. The space is commonly used as an entry court, shared garden area, or additional shopping or restaurant seating area.

2. Size

Width	15 ft. min.	A
Depth	15 ft. min.	B
Ratio, Width-to-Height	2:1 max.	
Transparency, Ground Floor	70% min.	
Transparency, Upper Floors	30% min.	

3. Miscellaneous

May be used in conjunction with another permitted frontage type (e.g., shopfront).



Key for Diagrams

--- Lot Line	--- Setback Line
Grade	Building



Note: image is illustrative, not regulatory.

1. Description

The main facade of the building has a landscaped area between the building and the right-of-way providing separation from the street. The front yard is visually continuous with adjacent yards and supports landscape in conjunction with other private frontages.

2. Size

Width	12 ft. min.	A
Depth	10 ft. min.	B
Height, Fences or Walls ¹	3 ft max.	

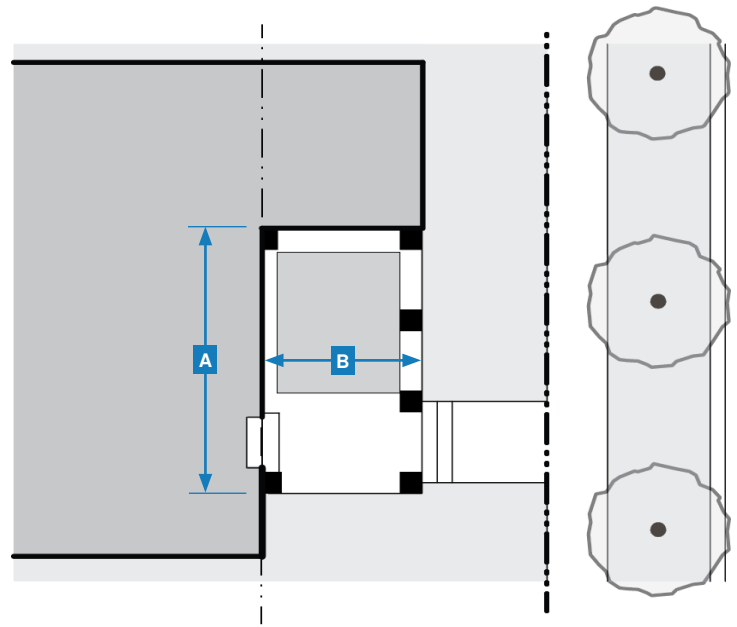
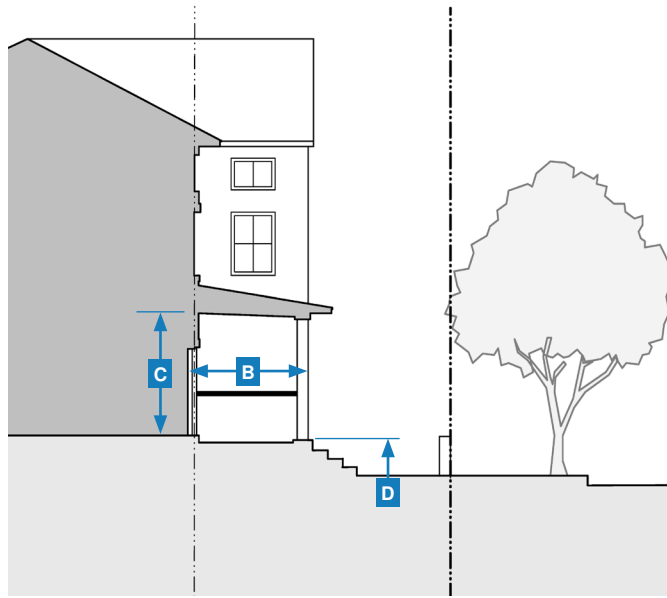
3. Miscellaneous

Must be used in conjunction with another permitted frontage type (e.g., porch).

Must be landscaped to the property line.

Note:

1. Fences or walls must comply with Chapter 18.52 (Fences and Walls).



Key for Diagrams

----- Lot Line	----- Setback Line
Grade	Building



Note: image is illustrative, not regulatory.

1. Description

The main facade of the building is set back from the right-of-way and a porch is attached providing access to the building. The porch provides necessary physical separation for the private lot from the public right-of-way. The engaged porch has two adjacent sides attached to the building while the other two sides are open.

2. Size

Width	50% min., 80% max. of building width	A
Depth	5 ft. min.	B
Height, Clear	8 ft. min., 14 ft. max.	C
Finish Level Above Sidewalk	1.5 ft. min., 6 ft. max.	D

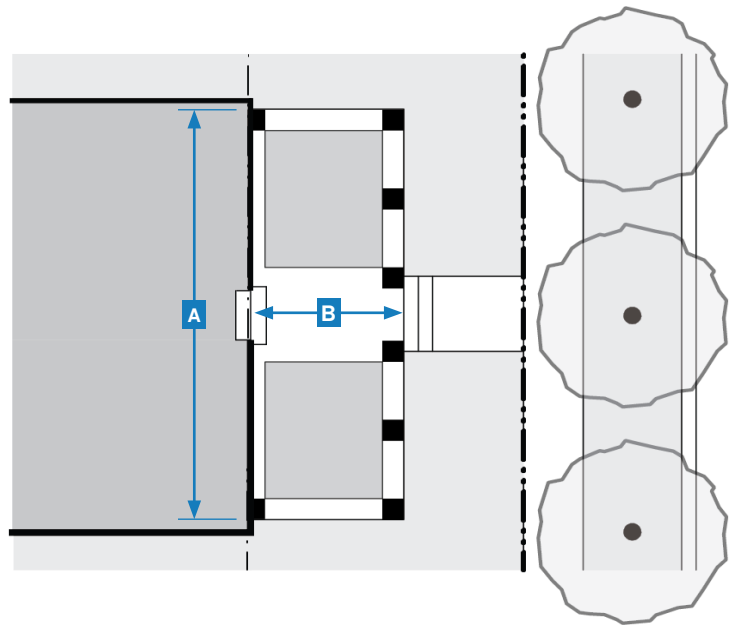
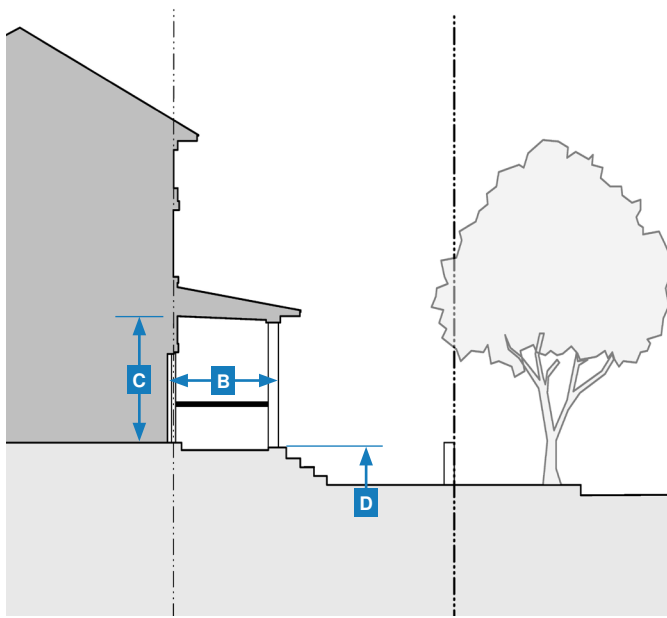
3. Miscellaneous

Must be open on two sides and have a roof.

Reasonable accommodation must be provided consistent with Chapter 18.118 (Reasonable Accommodations).

Note:

- May be increased by max. 50% to meet the base flood elevation plus 1-foot consistent with Chapter 15.80 (Flood Damage Prevention).



Key for Diagrams

----- Lot Line	----- Setback Line
Grade	Building



Note: image is illustrative, not regulatory.

1. Description

The main facade of the building is set back from the right-of-way and a porch is attached providing access to the building. The porch provides necessary physical separation for the private lot from the public right-of-way. The projecting porch is open on three sides and projects in front of the primary building wall.

2. Size

Width	70% min. of building width	A
Depth	5 ft. min.	B
Height, Clear	8 ft. min., 14 ft. max.	C
Finish Level Above Sidewalk	1.5 ft. min., 6 ft. max.	D

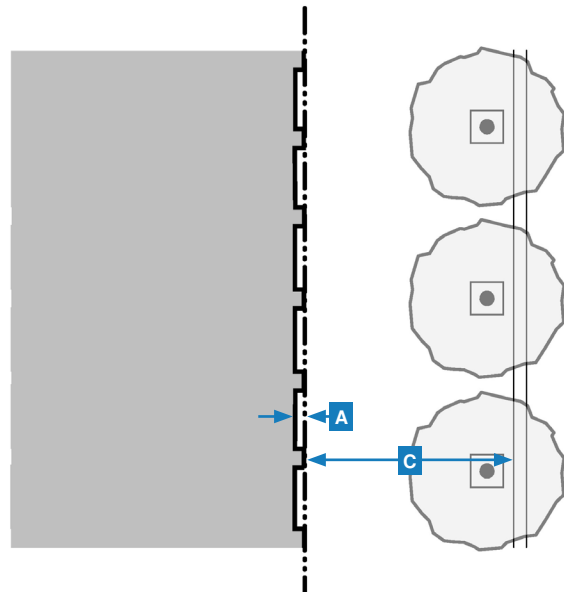
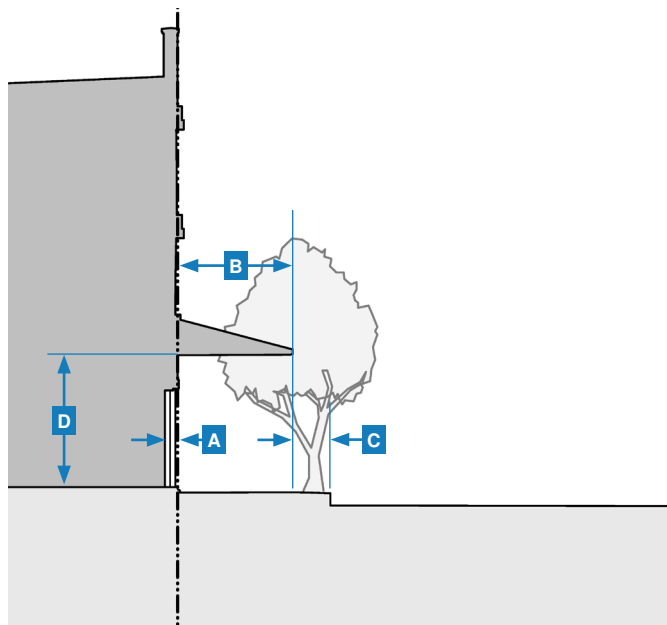
3. Miscellaneous

Must be open on three sides and have a roof.

Reasonable accommodation must be provided consistent with Chapter 18.118 (Reasonable Accommodations).

Note:

- May be increased by max. 50% to meet the base flood elevation plus 1-foot consistent with Chapter 15.80 (Flood Damage Prevention).



Key for Diagrams

----- Lot Line	----- Setback Line
Grade	Building



Note: image is illustrative, not regulatory.

1. Description

The main facade of the building is placed at or near the right-of-way with an at-grade entrance along the sidewalk. The shopfront is generally intended for retail or service uses and has substantial glazing at the ground floor level.

2. Size

Entry Recess	5 ft. max.	A
Transparency, Ground Floor	75% min.	

3. Projection ¹

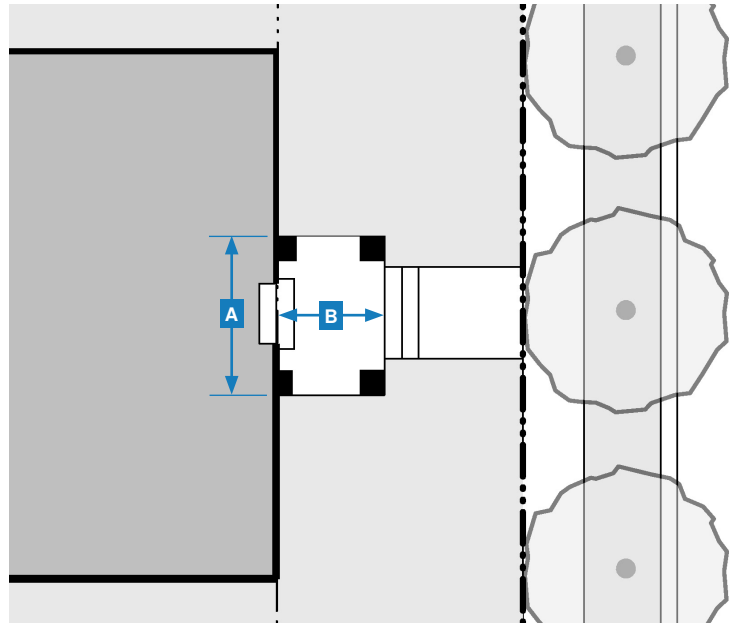
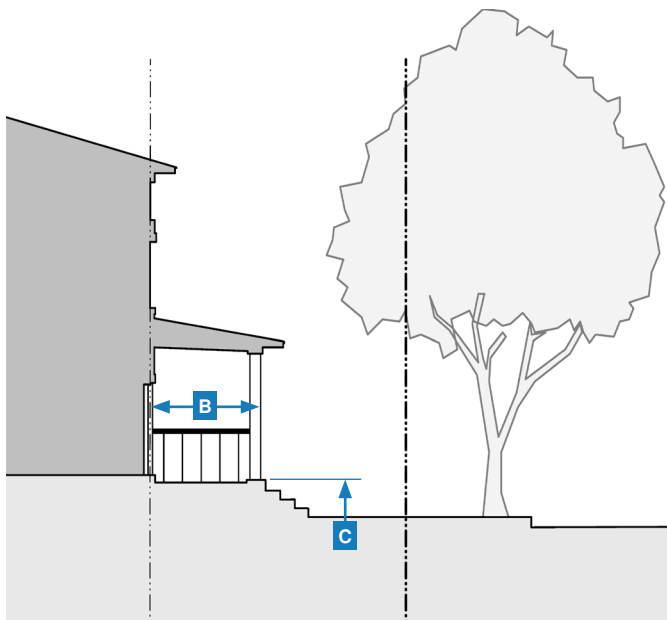
Depth	4 ft. min.	B
Setback from Curb	2 ft. min.	C
Height	8 ft. min.	D

4. Miscellaneous

May be used in conjunction with another permitted frontage type (e.g., terrace).

Note:

- May project over the sidewalk subject to approval of an Encroachment Permit.



Key for Diagrams

----- Lot Line	----- Setback Line
Grade	Building



Note: image is illustrative, not regulatory.

1. Description

The main facade of the building is near the right-of-way and the stoop engages the sidewalk. The stoop is elevated above the sidewalk, and the entrance is usually an exterior stair and landing.

2. Size

Width	4 ft. min., 8 ft. max.	A
Depth	4 ft. min., 8 ft. max.	B
Finish Level Above Sidewalk ¹	1.5 ft. min., 3 ft. max.	C

3. Miscellaneous

Stairs may be perpendicular or parallel to the building facade.

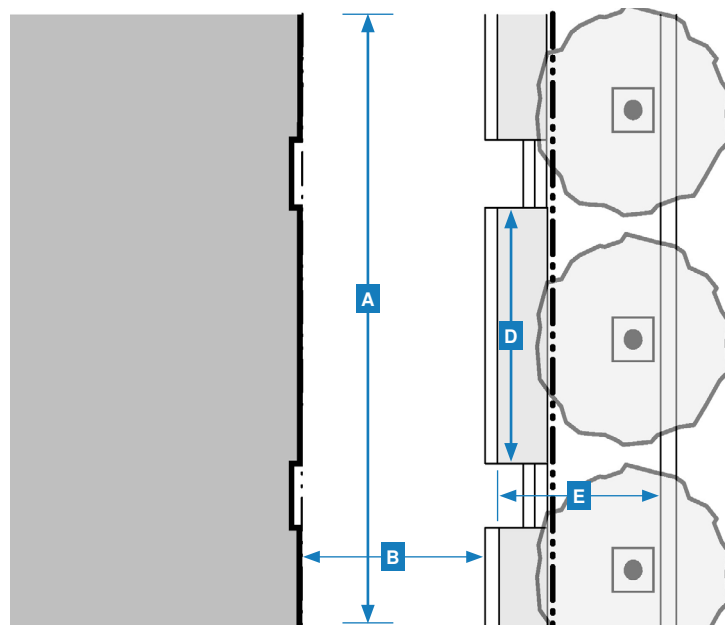
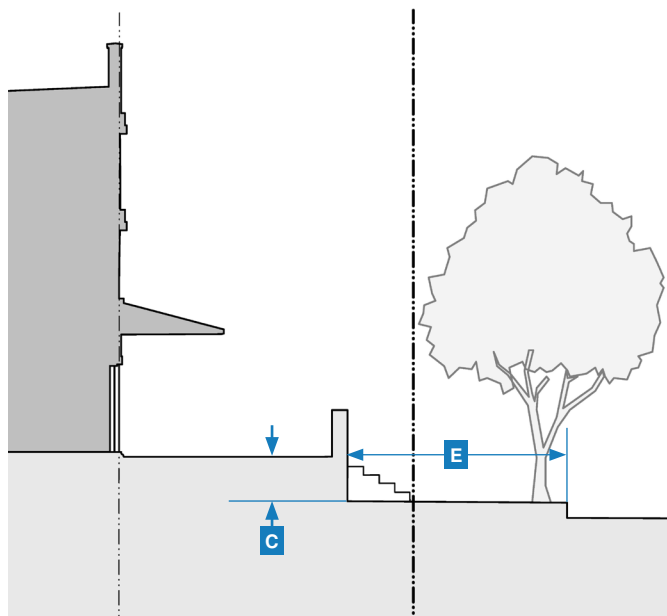
Entry doors must be covered or recessed.

Gates are not permitted.

Reasonable accommodation must be provided consistent with Chapter 18.118 (Reasonable Accommodations).

Note:

1. May be increased by max. 50% to meet the base flood elevation plus 1-foot consistent with Chapter 15.80 (Flood Damage Prevention).



Key for Diagrams

----- Lot Line	----- Setback Line
Grade	Building



1. Description

The main facade of the building has an elevated terrace that projects outward and engages the sidewalk with frequent stairs. The terrace allows at-grade access to all ground floor uses due to natural grade constraints or by artificially elevating the terrace floor. The terrace acts as a buffer from the sidewalk and may be landscaped to provide additional privacy. Building activities are slightly separated from the adjacent sidewalk by the terrace finish level, and the depth of the terrace provides space for outdoor seating, private yards, or any other appropriate uses.

2. Size

Length	120 ft. max	A
Depth	8 ft. min.	B
Finish Level Above Sidewalk ¹	1.5 ft. min., 5 ft. max.	C
Distance Between Stairs	25 ft. max.	D
Wall Setback from Right-of-Way	5 ft. min	E

3. Miscellaneous

May be used in conjunction with another permitted frontage type (e.g., shopfront).

Reasonable accommodation must be provided consistent with Chapter 18.118 (Reasonable Accommodations).

Note:

1. May be increased by max. 50% to meet the base flood elevation plus 1-foot consistent with Chapter 15.80 (Flood Damage Prevention).

18.29.060 Civic Space Standards

Subsections:

- 18.29.060.A Purpose and Intent
- 18.29.060.B Applicability
- 18.29.060.C Passage
- 18.29.060.D Pocket Park/Plaza
- 18.29.060.E Plaza

18.29.060.A Purpose and Intent

The purpose of this Section is to establish standards for all civic space types within the form-based zoning districts. The standards in this Section are intended to ensure that publicly accessible civic space is provided to reinforce walkable environments within Morgan Hill.

18.29.060.B Applicability

1. The standards in this Section apply to all projects within the form-based zoning districts that meet the following criteria.
 - a. All residential projects including 20 or more units must provide one civic space type.
 - b. All non-residential or mixed-use projects including two or more structures, or over 10,000 square feet of building space must provide one civic space type.
 - c. All projects greater than two acres in total site area must provide a passage and pocket park, or a plaza.
2. The standards in this Section must be considered in combination with the standards in the applicable zoning district (see Section 18.29.030 (Form-Based Zoning Districts)).
3. Civic space types not indicated as “permitted” in the applicable zoning district (see Section 18.29.030 (Form-Based Zoning Districts)) are not permitted in the zoning district.



Note: image is illustrative, not regulatory.

1. Description

An informal or formal gathering space that serves as a pedestrian connector between other gathering places, streets, and/or parking areas. Passages are hardscaped and located near the middle of a block, providing a pedestrian connection through a block. Passages may be linear or L-shaped. Passages provide additional frontage opportunities for retail and/or residential uses along edges.

2. Size

Width	15 ft. min
Length	30 ft. min.

3. Miscellaneous

Access	Must access the public right-of-way and/or internal alleys or sidewalks on 2 sides.
Required Amenities	Seating, potted plants, planters: Min. 1 each per 250 s.f.



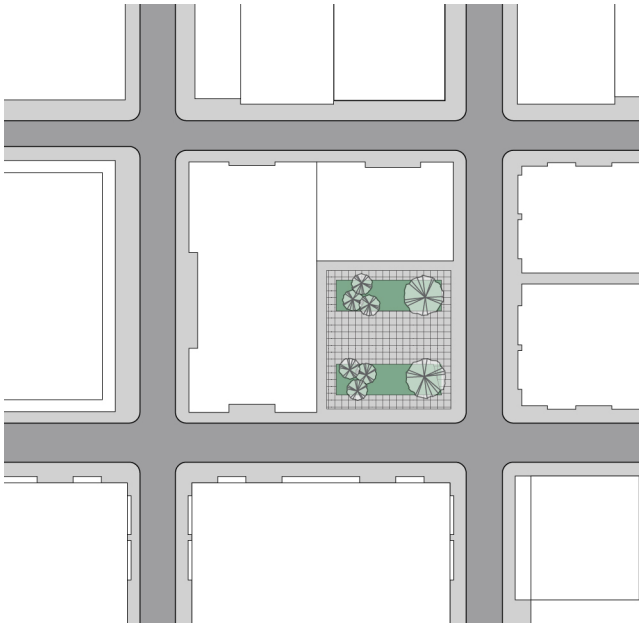
Note: image is illustrative, not regulatory.

1. Description

A small-scale landscaped or hardscaped open space designed to provide opportunities for neighborhood gathering and/or passive recreation, generally for those who live within walking distance. Pocket parks/plazas are usually accessible from the public right-of-way, but clearly delineated as a separate space.

2. Size	
Area	500 s.f. min., 0.25 ac. max.
Width	20 ft. min.
Length	20 ft. min.

3. Miscellaneous	
Frontage	Must have building frontages on at least 2 sides
Required Amenities	Seating, potted plants, planters: Min. 1 each per 250 s.f. Bicycle Parking: Min. 4 short-term spaces



Note: image is illustrative, not regulatory.

1. Description	
A space available for civic purposes and commercial activities intended to add to the activity and vibrancy of streets and neighborhoods. Plazas are formal spaces with interior green spaces and defined edges made primarily of hardscape materials.	
2. Size	
Area	0.25 ac. min.; 0.5 ac. max.
Width	60 ft. min.
Length	60 ft. min.
3. Miscellaneous	
Frontage	Must have building frontages on at least 2 sides
Required Amenities	Seating, potted plants, planters: Min. 1 each per 250 s.f. Bicycle Parking: Min. 6 short-term spaces

18.29.070 Land Use Standards

Subsections:

- 18.29.070.A Purpose and Applicability
- 18.29.070.B Permitted Land Uses
- 18.29.070.C Specific Use Standards

18.29.070.A Purpose and Applicability

1. This Section establishes the land uses permitted in each form-based zoning district and any specific use standards necessary to implement walkable areas. Where appropriate, land uses may cross-reference to applicable standards in Chapter 18.92 (Supplemental Standards).
2. Land uses are defined in Chapter 18.124 (Land Use Definitions). If a land use requires a distinct and different definition in the form-based zoning districts, the definition established in Section 18.29.100 (Definitions for Form-Based Zoning Districts) applies.

18.29.070.B Permitted Land Uses

1. Table 18.29-2 (Permitted Land Uses in the Form-Based Zoning Districts), identifies the land uses permitted in the form-based zoning districts by letter designation as follows unless a use or activity is prohibited or subject to a higher level of permit pursuant to other parts of this Code or other applicable regulations.
 - a. "P" designates uses permitted by right in the zoning district and is not subject to discretionary review and approval.
 - b. "A" designates uses that are permitted after review and approval of an Administrative Use Permit.
 - c. "C" designates uses that are permitted after review and approval of a Conditional Use Permit.
 - d. "-" designates uses that are not permitted.
2. A project which includes two or more categories of land use in the same building or on the same site is subject to the highest permit level required for any individual use or single component of the project.

Table 18.29.2 Permitted Land Uses in the Form-Based Zoning Districts

Land Use	Permit Required by Zone			Additional Regulations
	FB-N	FB-C	FB-UG	
Residential Uses				
Accessory Dwelling Unit (ADU)	P	P	P	See Chapter 18.84
Duplex/Duet	P	P	P	See Subsection 18.29.100.D
Group Housing	P	P	P	
Live/Work Unit	P	P	P	
Mixed-Use Residential	P	P	P	
Multi-Family Dwellings	P	P	P	See Subsection 18.29.070.C.3
Nursing Homes and Long-Term Care	C	C	C	
Residential Care Facilities	P	P	P	
Residential Care Facilities, Small	P	P	P	
Senior Housing, Independent Living	P	P	P	
Single-Family Attached Dwelling	P	P	P	
Single-Family Detached Dwelling	P	-	-	
Public and Quasi-Public Uses				
College and Trade Schools	C	P	P	
Community Assembly	C	C	C	
Cultural Institutions	A	A	A	
Day Care Centers	C	C	C	
Emergency Shelters	C	C	C	See Section 18.92.050
Government Offices	A	A	A	
Home Day Care, Large	P	P	P	
Home Day Care, Small	P	P	P	
Hospitals	-	C	C	
Instructional Services	A	P	P	
Medical Offices and Clinics	A	P	P	
Park and Recreational Facilities	P	P	P	
Public Safety Facilities	C	C	C	
Schools, Public and Private	C	C	C	
Social Services	C	C	C	
Commercial Uses				
Veterinarian Clinics and Hospitals	C	C	C	
Banks and Financial Institutions	P	P	P	
Business Support Services	P	P	P	
Cinemas and Theaters	A	A	P	
Commercial Recreation, Indoor				
≤ 15,000 sq. ft.	A	P	P	
> 15,000 sq. ft.	A	A	A	

P = Permitted Use

A = Administrative Use Permit required (See Section 18.108.020 (Administrative Use Permits))

C = Conditional Use Permit required (See Section 18.108.030 (Conditional Use Permits))

T = Temporary Use Permit required (See Chapter 18.108.090 (Temporary Use Permits))

- = Use not permitted

Table 18.29.2 Permitted Land Uses in the Form-Based Zoning Districts

Land Use	Permit Required by Zone			Additional Regulations
	FB-N	FB-C	FB-UG	
Drive- Through Facilities	-	C	C	See Subsection 18.29.070.C.2
Eating and Drinking Uses				
Bars and Nightclubs	-	C	C	
Restaurant, Fast Food	C	P	P	
Restaurant, Sit Down	P	P	P	
Tasting Rooms	A	P	P	
Farmers Markets	A	A	A	
Lodging Facilities				
Bed and Breakfast	P	P	P	
Hotels and Motels	C	C	C	
Personal Services	A	P	P	
Professional Offices	A	P	P	
Retail				
Convenience Market	A	P	P	See Section 18.92.030
General Retail	A	P	P	
Vehicle-Related Uses				
Fuel and Service Station	-	-	C	
Vehicle Rentals	-	-	C	
Vehicle Washing	-	-	C	

Industrial Uses

Food and Beverage Production				
< 5,000 sq. ft. ¹	-	P	P	
5,000 sq. ft. to 10,000 sq. ft. ¹	-	C	C	

Transportation, Communication, and Utility Uses

Parking Lots or Structures ²	C	C	C	
Recycling Facilities				
Reverse Vending Machines	-	C	C	
Transportation Terminals	-	-	-	
Wireless Communication Facilities	See Chapter 18.96			

Other Uses

Accessory Use(s)	See Chapter 18.44			
Home Occupations	See Section 18.92.060			
Temporary Use(s)	See Section 18.92.150			
Urban Agriculture				
Community Garden	A	A	A	
Home Gardens	P	P	P	
Urban Farm	C	C	C	

Notes:

1. On-site wholesale or retail sales required.
2. When proposed as a primary use.

18.29.070.C Specific Use Standards

1. Purpose and Applicability

- a. This Subsection provides site planning, development, and operating standards for certain land uses where permitted in compliance with Subsection 18.29.070.B (Permitted Land Uses) if necessary to meet the intent of the form-based zoning districts.
- b. This Subsection applies to all land uses and development within the form-based zoning districts. If a land use is not specified below, the standards in Chapter 18.92 (Supplemental Standards) apply. If a land use is specified below, the standards in this Subsection supersede any requirements in Chapter 18.92 unless otherwise described below. If a conflict exists between a provision in this Subsection and any other chapter of the Code, the most restrictive provision applies.
- c. Parking for all land uses shall comply with Subsection 18.29.080.E (Parking and Loading Standards).
- d. Signage for all land uses shall comply with Subsection 18.29.080.F (Sign Standards).

2. Drive-Through Facilities

- a. **Design Objectives.** A drive-through facility shall only be permitted if the Planning Commission determines that the design and operation will accommodate pedestrian connections, avoid congestion, and excessive pavement.
- b. **Location Limitations.**
 - (i) A drive-through facility shall only be located along a building facade away from a street frontage.
 - (ii) The drive aisle shall not be located between the property line and front of building.
 - (iii) The stacking area shall not be located adjacent and parallel to streets or public rights-of-way.
- c. **Visual Buffer.** The drive aisle shall be screened from streets or public rights-of-way with landscaping or walls and berms.
- d. **Drive-Through Lane Capacity.** See Subsection 18.92.040.B.
- e. **Drive-Through Lane Separation.** See Subsection 18.92.040.C.
- f. **Pedestrian Access.** See Subsection 18.92.040.D.
- g. **Drive-Through Lane Setback from Intersection.** See Subsection 18.92.040.E.

3. **Multi-Family Dwellings.** Walkways in multi-family dwelling developments shall be provided to connect units to recreational and other internal facilities as well as the other residential units and nearby public streets.

18.29.080 Standards Supplemental to Form-Based Zoning Districts

Subsections:

- 18.29.080.A Purpose and Applicability
- 18.29.080.B Landscaping Standards
- 18.29.080.C Outdoor Lighting Standards
- 18.29.080.D Open Space Standards
- 18.29.080.E Parking and Loading Standards
- 18.29.080.F Sign Standards

18.29.080.A Purpose and Applicability

This Section provides standards that are supplemental to the regulations of each form-based zoning district, and are specific to particular aspects of development, such as landscaping, parking, outdoor lighting, and signage. These standards are intended to promote projects that complement the character of Morgan Hill while meeting the intent of the form-based zoning districts.

18.29.080.B Landscaping Standards

1. This Subsection provides standards that complement infill development, walkable areas, and built environments that frame the public right-of-way with parking located to the side and rear of structures. Unless otherwise described below, Chapter 18.64 (Landscaping) shall apply.
2. This Subsection applies to the following:
 - a. Structures that are located 10 feet or fewer from the back of sidewalk; or
 - b. Structures that are located on the property line.
3. Public amenities (e.g., seating), structural shade elements, public art, or potted plants are required in the available space between the back of sidewalk and the structure.
4. Alternative paving materials (e.g., permeable paving, porous concrete, brick pavers) are permitted in areas between the back of sidewalk and the structure.
5. The Director may accept alternative design solutions consistent with Section 18.29.060 (Civic Space Standards).

18.29.080.C Outdoor Lighting Standards

1. Exterior lighting and parking lot lighting shall be provided, erected and maintained so any light is a fully-shielded light fixture and will not cast direct light or glare upon adjacent properties or public rights-of-way.
2. A parking area with six or more parking spaces shall include outdoor lighting that provides a minimum illumination of 1.0 foot-candles over the entire parking area.
3. All outdoor lighting along walkways, open space and recreation areas shall be pedestrian-scaled, fully shielded fixtures with a minimum illumination of 1.0 foot-candles.
4. The following types of outdoor lighting are prohibited:
 - a. Unshielded Light Fixtures.
 - b. Search lights, laser lights, or similar high intensity light, except as necessary for official emergency services.
 - c. Any lighting device located on the exterior of a building or on the inside of a window which is visible beyond the property boundaries of the lot or parcel with intermittent fading, flashing, blinking, rotating, or strobe light illumination.
 - d. Lighting that results in glare to motor vehicles on public rights-of-way.

18.29.080.D Open Space Standards

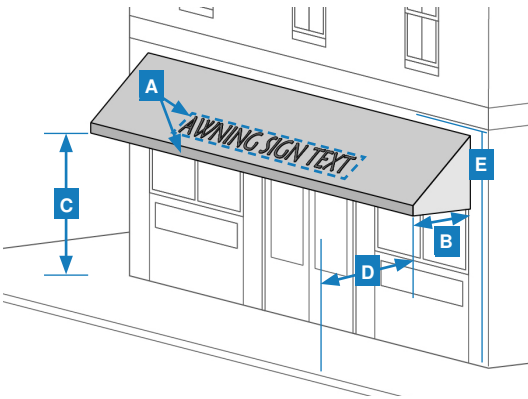
1. **Applicability.** Common and private open space is required for the building types specified in Section 18.29.040 (Building Type Standards). Standards and requirements for each type of open space are established below.
2. **Common Open Space.** All building types subject to common open space requirements must comply with the following provisions, unless otherwise indicated in Section 18.29.040 (Building Type Standards).
 - a. **Minimum Area:** 15 percent of the site. The area requirement may be met by providing a civic space type (see Section 18.29.060 (Civic Space Standards)), roof terrace, or roof garden, as approved by the Planning Commission.
 - b. **Minimum Horizontal Dimension:** 15 feet.
 - c. **Usability.** Common open space shall be accessible to all on-site residents. If the area requirement is met using a civic space type, the open space shall be publicly accessible.
3. **Private Open Space.** All building types subject to private open space requirements must comply with the following provisions.
 - a. **Minimum Area:** 100 square feet per unit. The area requirement may be met by providing a patio, deck, balcony, roof terrace, or other similar space.
 - b. **Minimum Horizontal Dimension:** 12 feet.

18.29.080.E Parking and Loading Standards

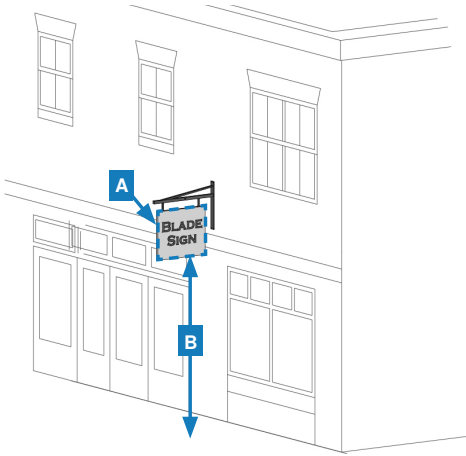
Parking and Loading Standards are provided in Chapter 18.72 (Parking and Loading) in the Zoning Code.

18.29.080.F Sign Standards

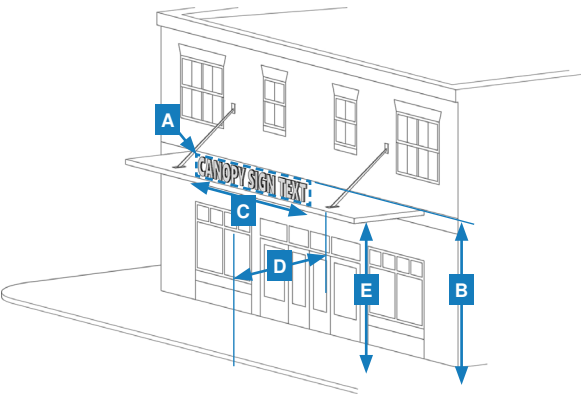
1. **Purpose.** This Subsection establishes standards related to the type, size, height, placement, number, and design of signs in the form-based zoning districts. The standards are intended to promote well-designed signs that reflect the intent of the form-based zoning districts.
2. **Signs Allowed Subject to a Sign Permit.** All sign types in this Subsection are permitted in the form-based zoning districts, subject to a sign permit, except as provided in Subsection 18.29.080.F.3.
3. **Signs Allowed Without a Sign Permit.** Window signs are allowed without a sign permit consistent with the standards in this Subsection. See Section 18.88.040 (Signs Allowed Without Permits) for all sign types that do not require a permit.
4. **Prohibited Signs.** All signs prohibited in Section 18.88.050 (Prohibited Signs) are prohibited in the form-based zoning districts with the exception of painted wall signs, which are permitted in all form-based zoning districts.
5. **General Sign Standards.** Standards for each allowed permanent sign type are provided in tables with a supporting illustration of each sign type. All permanent signs must comply with the standards for sign area, height, number, type, and other requirements provided in these tables.
 - a. **Sign Area for Permanent Building-Mounted Signs**
 - (i) Aggregate sign area of all building-mounted signs shall be limited to a maximum of 1.25 square feet per linear foot of building frontage along Monterey Road and a maximum of 1 square foot per linear foot of building frontage along other streets.
 - (ii) See Section 18.88.080.B.3 (Sites with Multiple Frontages) for sign standards regarding buildings with more than one frontage on a public street, excluding alleys.
 - b. **Monument Signs.** See Table 18.29-8 (Monument Signs) for free-standing sign standards.
 - c. **Font Types per Sign.** Signs shall be limited to a maximum of two letter styles or font types.
 - d. **Illumination**
 - (i) Signs may be internally or externally illuminated except where specifically prohibited. Internal illumination is permitted only when the portion of the sign that appears illuminated is primarily the sign text, registered trademark, or logo.
 - (ii) The light source for externally illuminated signs must be arranged and shielded to substantially confine all direct light rays onto the sign face and away from streets and adjacent properties.
 - e. **Materials and Design**
 - (i) Except for interior window signs, all permanent signs shall be constructed of wood, metal, plastic, glass, or similar durable and weatherproof materials.
 - (ii) The size of letters and graphics shall be proportional to the overall sign area.
 - (iii) Signs shall employ the use of simple and symmetrical sign shapes.
6. **Standards for Specific Sign Types.** The sign standards in this Subsection supersede the standards in Section 18.88.100 (Standards for Specific Sign Types).
7. **Adjustments to Sign Standards.** See Section 18.88.070 (Adjustment to Sign Standards).
8. **Master Sign Program.** See Section 18.88.110 (Master Sign Program).
9. **Temporary Signs.** See Section 18.88.120 (Temporary Signs).
10. **Nonconforming Signs.** See Section 18.88.130 (Nonconforming Signs).
11. **Violations and Enforcement.** See Section 18.88.140 (Violations and Enforcement).



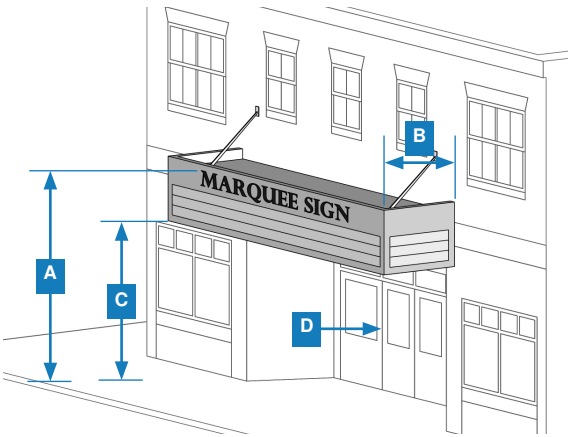
Standards	Requirements	
Sign Type	Awning	
Max. Area	2/3 of awning valance area and 15% of awning face, or 25 s.f. overall, whichever is less	A
Max. Projection from Building Wall	4 ft.; May project into public right-of-way with permit approval	B
Min. Vertical Clearance	8 ft.	C
Min. Horizontal Clearance	2 ft. from street or drive aisle curb	D
Placement	May only be mounted on the wall area below the second floor	E
Illumination	Illumination from below the awning or non-illuminated	
Materials	Plastic or vinyl material is not permitted	



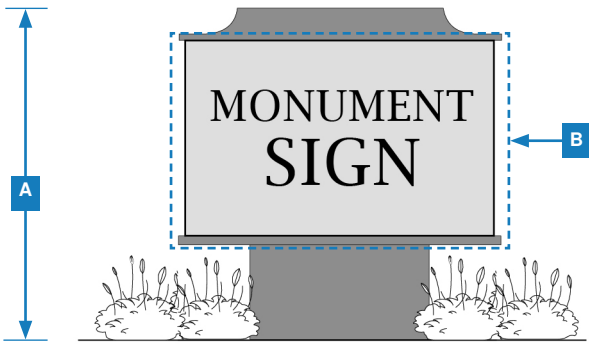
Standards	Requirements	
Sign Type	Blade	
Max. Number	1 per tenant space	
Max. Area	12 s.f.	A
Min. Vertical Clearance	8 ft.	B
Projection	May project into public right-of-way with permit approval	
Placement	If mounted below the underside of a walkway or overhead structure, must not extend beyond the edge of the structure on which it is located; Must be mounted perpendicular to the building face or corner of the building	
Illumination	Internal or external illumination	



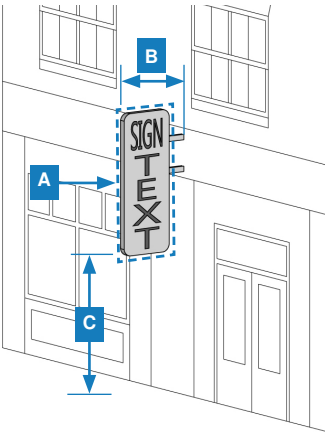
Standards	Requirements	
Sign Type	Canopy	
Max. Number	1 per tenant space	
Max. Area	1 s.f. per linear foot of canopy width	A
Max. Height	20 ft.	B
Max. Width	No greater than 60% of the width of the canopy on which it is displayed	C
Min. Horizontal Clearance	2 ft. from street or drive aisle curb	D
Min. Vertical Clearance	8 ft.	E
Projection	May project into public right-of-way with permit approval	
Placement	Must be placed above the doors and windows of the ground floor of a building	
Illumination	Internal illumination	



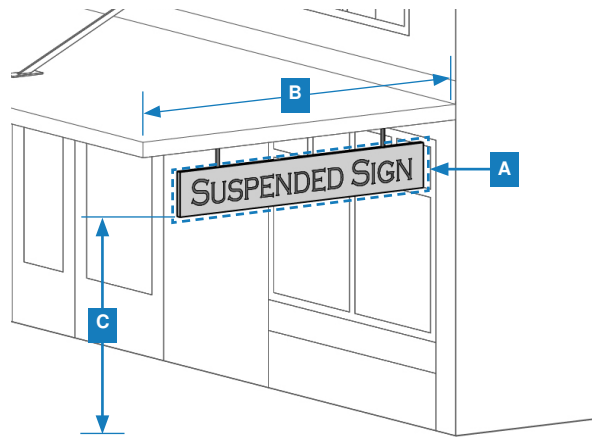
Standards	Requirements	
Sign Type	Marquee	
Max. Number	1 per building	A
Max. Height	35 ft.	
Use Restrictions	Limited to theaters, auditoriums, and indoor amusement/entertainment facilities	
Max. Projection from Building Wall	12 ft.; May project into public right-of-way with permit approval	B
Min. Vertical Clearance	8 ft.	C
Placement	Shall be affixed to a building wall directly above the primary public entrance of the use	D
Illumination	Internal, direct illumination, or chase lights only	



Standards	Requirements	
Sign Type	Monument	
Max. Number	1 per street frontage or 1 per vehicle access point from street	
Max. Height	8 ft.	A
Max. Area	0.5 s.f. per linear foot of property street frontage up to 50 s.f.	B
Max. Base Width	The monument sign's base must be at least 60% of the width of the sign.	
Setbacks	6 ft. min. from vehicle access ways and 3 ft. min. from property lines	
Illumination	Internal or external illumination	
Min. Separation	Shall be separated a min. of 75 ft. from monument signs on abutting properties and 100 ft. from monument signs on the same property	
Landscaping	Base area shall be located in an irrigated landscaped planting area	



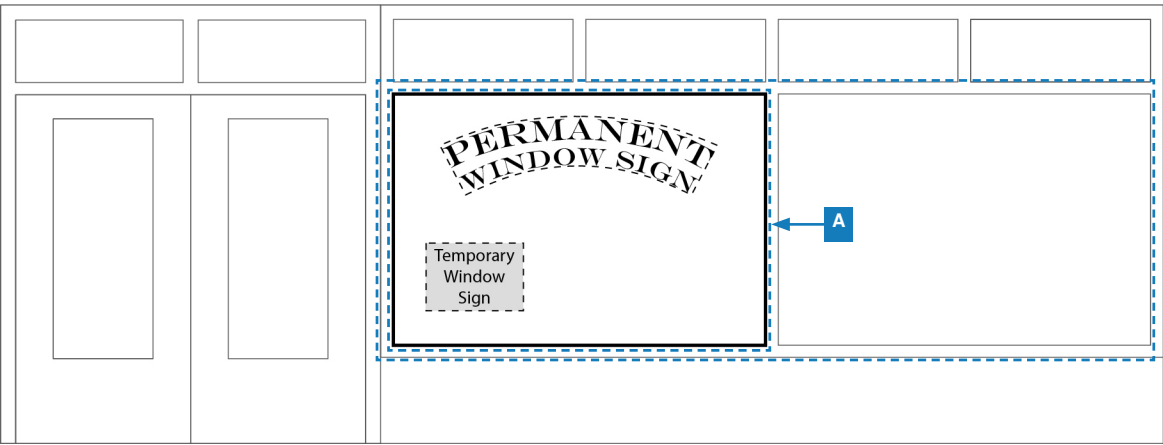
Standards	Requirements	
Sign Type	Projecting	
Max. Number	1 per tenant space	
Max. Area	24 s.f.	A
Max. Projection from Building Wall	6 ft.; May project into public right-of-way with permit approval	B
Min. Vertical Clearance	8 ft.	C
Min. Horizontal Clearance	2 ft. from street or drive aisle curb	
Landscaping	Internal illumination	



Standards	Requirements
Sign Type	Suspended
Max. Number	1 per tenant space
Max. Area	5 s.f. A
Max. Projection from Building Wall	No greater than the structure to which it is attached; May project into public right-of-way with permit approval
Min. Horizontal Clearance	2 ft. from street or drive aisle curb B
Min. Vertical Clearance	8 ft. C
Illumination	Internal or external illumination
Placement	Shall be suspended below a ground-level awning, canopy, or ceiling of an arcade



Standards	Requirements	
Sign Type	Wall	
Max. Number	1 per building frontage for single-tenant buildings and 1 per tenant space for multi-tenant buildings	
Max. Height	Not to exceed the top of the parapet of the building wall to which it is attached	A
Max. Area	See Subsection 18.29.040.F.5.a	B
Max. Projection from Building Wall	10 in.	
Illumination	Internal or external illumination	
Placement	Shall be attached to the building wall of the use associated with the sign; for multi-tenant buildings, shall be affixed to the portion of the wall where the business is located	



Standards	Requirements
Sign Type	Window
Max. Area of Permanent Sign	25% of window to which it is attached; Painted window signs and perforated vinyl signs are included in the 25% calculation
Illumination	Non-illuminated, neon, or single- or two-color LED A
Placement	Permitted on windows on the ground floor and second story only

18.29.090 Permits and Administration for Form-Based Zoning Districts

Subsections:

- 18.29.090.A Administrative Responsibility
- 18.29.090.B Common Permit Requirements
- 18.29.090.C Specific Permit Requirements
- 18.29.090.D Sign Permit Requirements
- 18.29.090.E Appeals
- 18.29.090.F Zoning Code Amendments
- 18.29.090.G Development Agreements
- 18.29.090.H Reasonable Accommodations
- 18.29.090.I Enforcement

18.29.090.A Administrative Responsibility

For all provisions related to administrative responsibility, see Chapter 18.100 (Administrative Responsibility).

18.29.090.B Common Permit Requirements

For all common permit requirements, see Chapter 18.104 (Common Permit Requirements).

18.29.090.C Specific Permit Requirements

For all common permit requirements, see Chapter 18.108 (Specific Permit Requirements).

18.29.090.D Sign Permit Requirements

For all sign permit requirements, see Section 18.88.030 (Required Permits) of Chapter 18.88 (Signs).

18.29.090.E Appeals

For all procedures related to appeals, see Chapter 18.112 (Appeals).

18.29.090.F Zoning Code Amendments

For all procedures related to Zoning Code Amendments, see Chapter 18.114 (Zoning Code Amendments).

18.29.090.G Development Agreements

For all procedures related to Development Agreements, see Chapter 18.116 (Development Agreements).

18.29.090.H Reasonable Accommodations

For all procedures related to reasonable accommodations, see Chapter 18.118 (Reasonable Accommodations).

18.29.090.I Enforcement

For procedures enforcement, see Chapter 18.120 (Enforcement).

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18.29.100 Definitions for Form-Based Zoning Districts

Subsections:

- 18.29.100.A “A” Terms
- 18.29.100.B “B” Terms
- 18.29.100.C “C” Terms
- 18.29.100.D “D” Terms
- 18.29.100.E “E” Terms
- 18.29.100.F “F” Terms
- 18.29.100.G “G” Terms
- 18.29.100.H “H” Terms
- 18.29.100.I “I” Terms
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- 18.29.100.T “T” Terms
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- 18.29.100.W “W” Terms
- 18.29.100.X “X” Terms
- 18.29.100.Y “Y” Terms
- 18.29.100.Z “Z” Terms

18.29.100.A “A” Terms

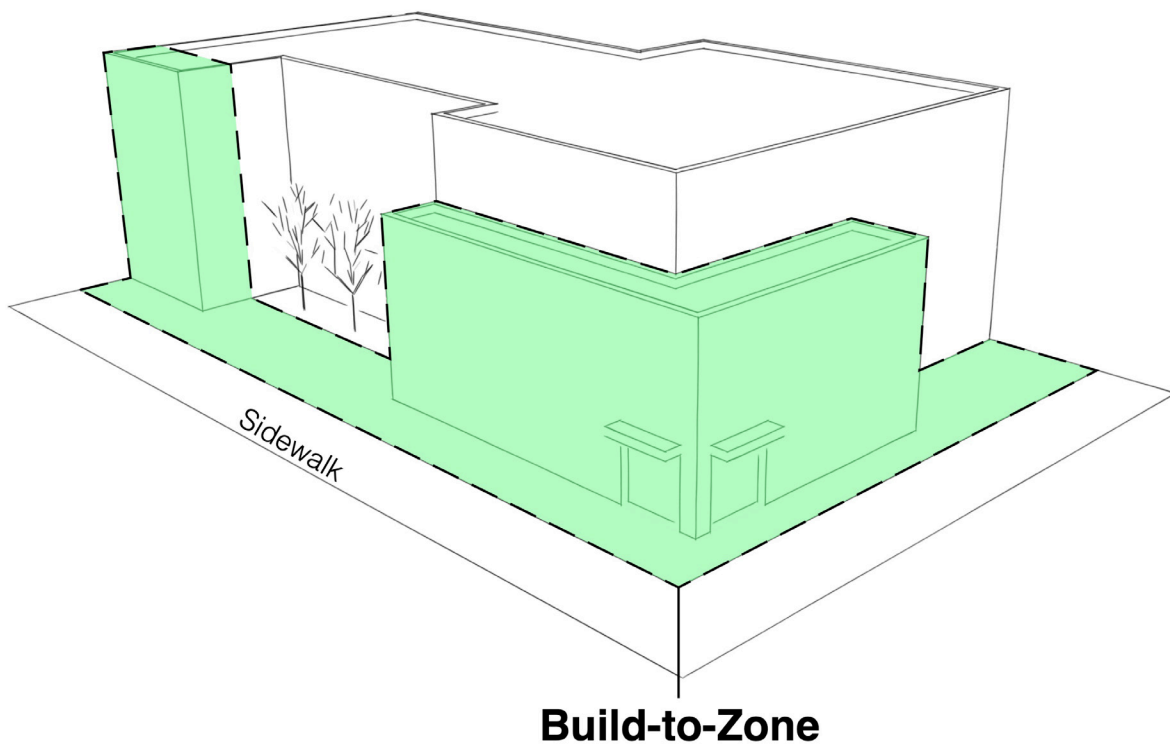
1. **Active Ground Floor.** A street frontage that allows for active visual engagement between the people outside of a structure and the use, activities, or people, located in the structure’s ground floor. In an active ground floor, the front facade of buildings and the main entrance face and open towards the right-of-way along which pedestrian access is provided.
2. **Affordable Units.** Units that are made available for rent at a price below the Fair Market Rent value, as recorded and updated from time to time by the City based on the U.S. Department of Housing and Urban Development data.

1. **Architectural Feature.** An architectural element, which alone or as part of a pattern, embodies the style, design, or general arrangement of the exterior of a building or structure, including but not limited to the kind, color, and texture of building materials, and style and type of windows, doors, lights, porches, and signs.

18.29.100.B “B” Terms

1. **Block Face.** The aggregate of all the building facades on one side of a block. The block face provides the context for establishing the architectural form of the edge of the block.
2. **Bungalow Court.** A group of detached buildings (ranging from three to nine separate units) arranged to define a shared courtyard that is generally perpendicular to the street. The shared courtyard is common open space and replaces the need for private rear yards. This type is scaled to fit within low and medium intensity walkable neighborhoods.
3. **Build-to-Zone.** The linear street frontage between the minimum and maximum setback lines along the front of a parcel and along the side street of a corner parcel in which a building must occupy for the established percentage of the street frontage.

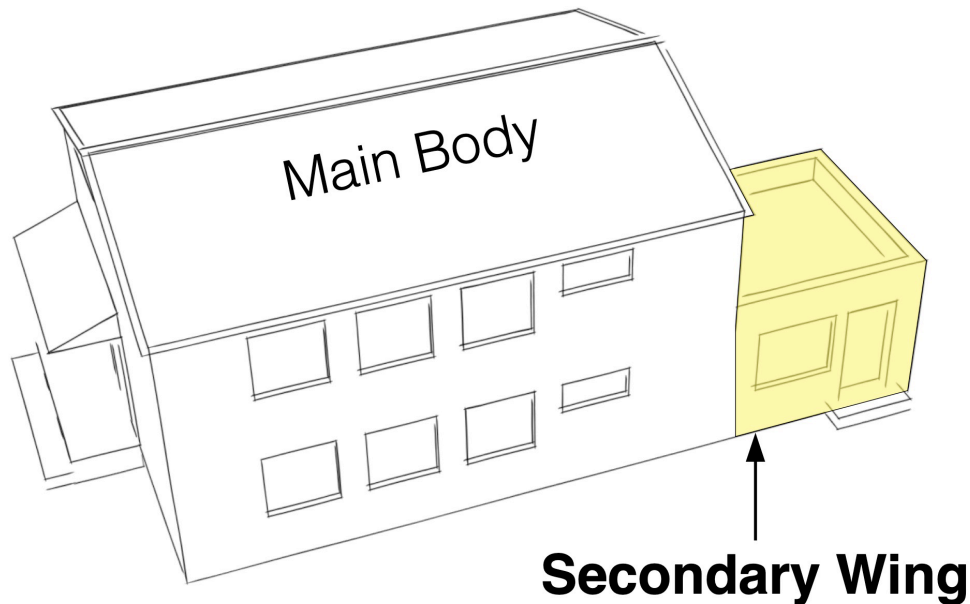
Figure 18.29-2 Build-to-Zone



4. **Building Entrance.** The place of pedestrian ingress and egress to a building most frequently used by the public.
5. **Building Form.** The overall shape and dimensions of a building.

6. **Building, Main Body.** The primary massing of a building.
7. **Building, Secondary Wing.** A part of a building or structure that is physically attached to the building or structure, but is secondary and incidental in terms of form and massing.

Figure 18.29-3 Secondary Wing



8. **Building Type.** A structure defined by a combination of its configuration, placement on a lot, and function.

18.29.100.C “C” Terms

1. **Ceiling Height, Ground Floor.** The height from the finished floor to the finished ceiling of primary rooms on the ground floor, not including secondary rooms such as bathrooms, closets, utility rooms, and storage spaces.
2. **Civic.** A term defining not-for-profit organizations that are dedicated to arts, culture, education, recreation, government, transit, and public parking facilities.
3. **Corner Entry.** A pedestrian entrance located on the corner of a building.
4. **Courtyard.** An unroofed area that is completely or partially enclosed by walls or buildings and often shared by multiple residential units or commercial spaces.
5. **Courtyard Building.** A building comprised of multiple attached and/or stacked units, accessed from one or more shared courtyards. The shared courtyard is common open space and replaces the need for private rear yards. This type is often integrated into medium and high intensity walkable neighborhoods and can be applied in non-residential contexts.
6. **Covered Parking.** A portion of a parking area in which a shade structure(s) has been installed to provide shade for parked vehicles.

18.29.100.D “D” Terms

1. **Depth, Ground Floor Space.** The distance from the street-facing facade to the rear interior wall of the ground-floor space available for a permitted use.
2. **Development Services Director.** The Development Services Director of the City of Morgan Hill or their designee, including Community Development Director. The Development Services Director is appointed by the City Manager.
3. **Direct Illumination.** Illumination resulting from light emitted directly from a bulb or light fixture, and not light diffused through translucent signs or reflected from other surfaces such as the ground or building face.
4. **Distance Between Entries.** The horizontal distance measured parallel to the facade between entrances to a building or buildings.
5. **Duplex/Duet.** A detached building consisting of two side-by-side or stacked units with shallow setbacks. For side-by-side units, both face the street with separate entrances; for stacked units, both are accessible via a single entrance or separate entrances that face the street. This type has the appearance of a house and is scaled to fit within low and medium intensity walkable neighborhoods.

18.29.100.E “E” Terms

1. **Entry.** An opening, such as a door, passage, or gate, that allows access to a building.

18.29.100.F “F” Terms

1. **Facade, Primary.** The exterior wall of a building facing a primary street.
2. **Facade, Secondary.** The exterior wall of a building facing a secondary street or side street.
3. **Finish Level, Ground Floor.** The height difference between the finished floor on the ground floor and the adjacent public sidewalk.
4. **Footprint.** The outline of the area of ground covered by the foundations of a building or structure.
5. **Forecourt.** The main facade of the building is at or near the right-of-way and a portion (usually the central portion) is set back, creating a courtyard space. The space may be used as an entry court, shared garden area, or additional shopping or restaurant seating area.
6. **Frontage.** A strip of land abutting a thoroughfare, civic space, or other public right-of-way.
 - a. **Frontage Private.** The area between the building facade and the shared lot line between the public right-of-way and the lot.
 - b. **Frontage Public.** The area between the curb of the vehicular lanes and the edge of the right-of-way.
7. **Frontage Line.** The lot line(s) of a lot fronting a thoroughfare or other public way, or a civic space.
8. **Front Yard.** The main facade of the building has a large, landscaped area between the building and the right-of-way providing a separation from the street. The front yard is visually continuous with adjacent yards and supports a landscape in conjunction with other private frontages.

18.29.100.G “G” Terms

1. **Ground Floor.** The floor of a building located nearest to the level of the ground around the building.

18.29.100.H “H” Terms

1. **House.** A detached building with one dwelling unit, shallow setbacks, a rear yard, and located within a low intensity walkable neighborhood.

18.29.100.I "I" Terms

1. **Illumination, External.** Illumination resulting from the face of the sign reflecting light from an external light source intentionally directed upon it.
2. **Illumination, Internal.** A form of sign illumination that includes cabinet signs, single-color LED signs, signs constructed with pan channel letters, or indirect halo illuminated channel letters on an unlit or otherwise indistinguishable background on a freestanding sign or building wall.

18.29.100.J "J" Terms

No specialized terms beginning with the letter "J" are currently defined.

18.29.100.K "K" Terms

No specialized terms beginning with the letter "K" are currently defined.

18.29.100.L "L" Terms

1. **LED (Light Emitting Diode).** A semiconductor diode that emits light when a voltage is applied to it.
2. **Light Fixture.** A complete lighting assembly (including the lamp, housing, reflectors, lenses, and shields), less the support assembly (pole or mounting bracket). Includes luminous tubes, lamps or similar devices that are permanently installed or portable and used for illumination, decoration, or advertisement.
3. **Light Fixture, Fully Shielded.** A light fixture or luminous tube constructed and mounted such that all light emitted by the fixture or tube, either directly from the lamp, tube, or a diffusing element, or indirectly by reflection or refraction from any part of the light fixture, is projected below a horizontal plane. If the lamp or tube, any reflective surface, or lens cover (clear or prismatic) is visible when viewed from above or directly from the side, from any angle around the fixture or tube, the fixture or tube is not fully shielded. To be fully shielded these fixtures must be closed on top and mounted so that the bottom opening is horizontal.
4. **Light Fixture, Unshielded.** A light fixture that is not fully shielded or partially shielded. Even though the lamp in these fixtures is shielded from direct view when viewed from the side or above, reflective surfaces and/or lens covers are directly visible from the side.
5. **Liner Building.** An attached building with two main components: an interior building and an exterior building to conceal the interior building from the street on the front and street side. The interior building is usually a parking structure or large retail/entertainment space and the exterior building is intended for retail, service, office, or residential space. This type is a component of main street building form.

18.29.100.M "M" Terms.

1. **Main Street Building.** An attached building intended to provide a vertical mix of uses with ground floor retail, office, or service uses with individual entries, and upper floor office, service, or residential uses with one or more shared entries. This type is the primary component of main street building form.
2. **Multiplex Large.** A detached building that consists of seven to twelve side-by-side and/or stacked units, with one shared entry. This type is scaled to fit within medium intensity walkable neighborhoods.
3. **Multiplex Small.** A detached building that consists of three to six side-by-side and/or stacked units, with one shared entry or individual entries along the front. This type has the appearance of a house and is scaled to fit within low and medium intensity walkable neighborhoods.

18.29.100.N “N” Terms.

No specialized terms beginning with the letter “N” are currently defined.

18.29.100.O “O” Terms.

1. **Open Space, Common.** A portion of a site that is designated and intended for the use or enjoyment of the residents or owners of the development and/or the overall community. Common open space may contain such complementary structures and improvements as are necessary and appropriate for the benefit and enjoyment of the individuals using the space.
2. **Open Space, Private.** A usable open space adjoining and directly accessible to a dwelling unit, reserved for the exclusive use of residents of the dwelling unit and their guests.

18.29.100.P “P” Terms.

1. **Parking Driveway Width.** The horizontal measurement of an access driveway to a parking area, measured perpendicular to the direction of travel.
2. **Passage.** An informal or formal gathering space that serves as a pedestrian connector between other gathering places, streets, and/or parking areas. Passages are usually hardscaped and located near the middle of a block, providing a pedestrian connection through a block. Passages may be linear or L-shaped. Passages provide additional frontage opportunities for retail and/or residential uses along edges.
3. **Pocket Park/Plaza.** A small-scale landscaped or hardscaped open space designed to provide opportunities for neighborhood gathering and/or passive recreation, generally for those who live within walking distance. Pocket parks/plazas are accessible from the public right-of-way, but clearly delineated as a separate space.
4. **Plaza.** A space available for civic purposes and commercial activities intended to add to the activity and vibrancy of streets and neighborhoods. Plazas are formal spaces with interior green spaces and defined edges made primarily of hardscape materials.
5. **Porch, Engaged.** The main facade of the building is setback from the right-of-way and a porch is attached providing access to the building. The porch provides necessary physical separation for the private lot from the public right-of-way. The engaged porch has two adjacent sides attached to the building while the other two sides are open.
6. **Porch, Projecting.** The main facade of the building is setback from the right-of-way and a porch is attached providing access to the building. The porch provides necessary physical separation for the private lot from the public right-of-way. The projecting porch is open on three sides and projects in front of the primary building wall.
7. **Projection.** Any architectural feature, structure, or structural element, such as an gallery, fence, garden wall, porch, stoop, balcony, bay window, or terrace, that breaks the plane of a horizontal regulatory limit extending into the facade zone or a setback.
8. **Public Realm.** The physical and social domain of the public that is held in common either by their physical presence or by visual association. This includes, but is not limited to plazas, squares, parks, thoroughfares, public frontages, private frontages, civic buildings, and civic spaces.

18.29.100.Q “Q” Terms.

No specialized terms beginning with the letter “Q” are currently defined.

18.29.100.R “R” Terms.

1. **Recessed Entry.** An entrance to a building that is set back from the facade of the building.
2. **Recreation, Active.** Recreational pursuits usually performed with others and often requiring equipment which require physical alteration to the area in which they are performed. Such areas are intensively used, and include but are not limited to playgrounds, sport courts, baseball/softball and other field sports, and swimming pools.
3. **Recreation, Passive.** Recreational pursuits involving existing natural resources which can be carried out with little alteration or disruption to the area in which they are performed. This includes, but is not limited to, such activities as walking, hiking, bicycling, bird and animal watching, and picnicking.
4. **Regulating Plan.** The map of an area designating the locations of form-based zoning districts. A regulating plan may be incorporated into the City’s official Zoning Map.
5. **Right-of-Way.** A strip of land acquired by reservation, dedication, forced dedication, prescription, or condemnation for public use for pedestrian and vehicular movement occupied by a road, crosswalk, railroad, electric transmission lines, oil or gas pipeline, water line, sanitary storm sewer or other public utility or facility.

18.29.100.S “S” Terms.

1. **Shopfront.** The main facade of the building is placed at or near the right-of-way with an at-grade entrance along the sidewalk. The shopfront is generally intended for retail or service uses and has substantial glazing at the ground floor level.
2. **Sidewalk.** The portion of a right-of-way that is paved and intended exclusively for pedestrian use, and often installed between the curb and adjacent property lines.
3. **Sign, Awning.** A roof or cover that projects from the wall of a building over a door or window, and made of canvas, aluminum or a similar material, which may be fixed in place or retractable for the purpose of shielding a doorway or window from the elements.
4. **Sign, Blade.** A permanent sign mounted either to the wall of a building by means of a bracket or attached to the underside of the lintel, arch, or other overhead structure above a porch or walkway and which is typically hung perpendicular to the wall of the building.
5. **Sign, Canopy.** A sign painted on, printed on, or otherwise attached flat against the surface of a canopy.
6. **Sign, Marquee.** A permanent sign structure placed over the entrance to a building and typically used for a theater or other entertainment use.
7. **Sign, Monument.** A permanent, freestanding sign with a solid base that is at least 60 percent the width of the sign face.
8. **Sign, Projecting.** A permanent sign that is attached to and extends perpendicular from the wall of a building.
9. **Sign, Suspended.** A permanent sign attached to or suspended from the underside of an arcade, canopy, or marquee and oriented to pedestrian traffic.
10. **Sign, Wall.** A permanent sign affixed to or erected against the wall or fascia of a building or structure, with the exposed face of the sign parallel to the plane of the wall or fascia to which it is affixed or erected.
11. **Sign, Window.** A permanent or temporary sign posted, painted, placed, or affixed in or on a window, or otherwise exposed to public view through a window.
12. **Stoop.** The main facade of the building is near the right-of-way and the stoop engages the sidewalk. The stoop is elevated above the sidewalk to ensure privacy within the building. The entrance is usually an exterior stair and landing.
13. **Street Frontage.** See the definition for “Frontage Line.”

18.29.100.T “T” Terms.

1. **Tandem Parking.** A parking space deep enough to allow two cars to park one behind the other.
2. **Terrace.** The main facade of the building has an elevated terrace that projects outward and engages the sidewalk with frequent stairs. The terrace allows at-grade access to all ground floor uses due to natural grade constraints or by artificially elevating the terrace floor. The terrace acts as a buffer from the sidewalk and may be landscaped to provide additional privacy. Building activities are slightly separated from the adjacent sidewalk by the terrace finish level, and the depth of the terrace provides space for outdoor seating, private yards, or any other appropriate uses.
3. **Townhouse.** An attached building that consists of three to ten units placed side-by-side with individual entries along the front. This type has a rear yard and is located within medium and high intensity walkable neighborhoods, or on or near a neighborhood main street.
4. **Transparency.** The area of a building frontage/facade that must contain transparent glass in order to improve building/tenant visibility and complement walkable environments.

18.29.100.U “U” Terms.

1. **Unit.** A discrete portion of a building.
2. **Upper Floor.** A floor in a building containing habitable space that is located above the ground floor.

18.29.100.V “V” Terms.

1. **Valance.** The vertical front face of an awning, parallel to the face of the building to which it is mounted.

18.29.100.W “W” Terms.

1. **Walkway.** A paved way located on one or more lots used for pedestrians and for the exclusive use of the lot owner(s), their guests, and invitees.

18.29.100.X “X” Terms.

No specialized terms beginning with the letter “X” are currently defined.

18.29.100.Y “Y” Terms.

No specialized terms beginning with the letter “Y” are currently defined.

18.29.100.Z “Z” Terms.

No specialized terms beginning with the letter “Z” are currently defined.

CITY COUNCIL STAFF REPORT

MEETING DATE: September 6, 2023

PREPARED BY:

Tanya Carothers, Environmental Services Administrator

APPROVED BY: City Manager

ADOPT RESOLUTION AMENDING FISCAL YEAR (FY) 2023-24 COUNTYWIDE SOLID WASTE BUDGET FOR ADMINISTRATIVE SERVICES

RECOMMENDATION(S)

Adopt resolution appropriating an additional \$95,680 to the City's FY 2023-24 budget in the Countywide Solid Waste Administration Fund (246) and the General Fund (010).

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Protecting the Environment

Advancing Regional 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 \$95,680 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 Countywide Solid Waste Program budget was established for FY 2023-24, it was estimated that \$376,674 would cover costs associated with City fulfillment of TAC Administrator and Contracting Agent services. However, the RWRC approved a budget for FY 2023-24 that totaled \$417,265 which is \$40,591 over the City's budgeted amount. This was followed by approval of a budget amendment for \$55,089 to cover costs associated with an increase in staffing resources, conferences and/or trainings, mileage, computer hardware, and general program supplies and services. The budget amendment was proposed to enable the City of Morgan Hill to operate as the

Administrator and Contractor with sufficient dedicated staffing, continued education in solid waste and the Brown Act, and supplies and services as warranted for a program of this scope and scale. The total approved FY 2023-24 RWRC budget for Countywide Solid Waste Services Administration and Contracting with the approved budget amendment is \$472,354.

Currently, the City's adopted budget for fulfillment of TAC Administrator and Contracting Agent services is \$376,674. Appropriation of an additional \$95,680 to the City's Countywide Solid Waste Program budget would increase funds to match the amount approved by the RWRC, bringing the City budget total to \$472,354 for FY 2023-24 (\$376,674 original adopted City budget + \$40,591 to match RWRC adopted budget + \$55,089 budget amendment = \$472,354).

Summary Table: 2023-24 RWRC and City Budgets for TAC Administrator and Contracting Agent Roles

ADOPTED RWRC Budget: TAC Contracting \$417,265

Agent + TAC Administrator

AMENDED RWRC Budget: TAC Contracting \$472,354

Agent + TAC Administrator

+ Additional Budget for additional staff support, trainings, etc.

Total Approved RWRC Budget **\$55,089**

Adjustment

ADOPTED City Budget: TAC Contracting \$376,674

Agent + TAC Administrator

PROPOSED City Amended Budget: TAC \$472,354

Contracting Agent + TAC Administrator

+ \$40,591 to match ADOPTED RWRC

budget

+ \$55,089 to match AMENDED RWRC

budget

Total Proposed City Budget Adjustment **\$95,680**

Staff recommends that the Council adopt the attached resolution (Attachment 1) appropriating \$95,680 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

\$95,680 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 FY 2023-24 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 \$376,674 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 \$95,680 to this budget will allow the City to fully cover services being provided as part of the Countywide Solid Waste Program. The additional \$95,680 will be appropriated to 010.5815 via the attached resolution and budget scorecard. This increase in expense is completely offset by the increase in revenue and results in no impact to the General Fund.

As Fiscal Agent, the County is the entity authorized and responsible for collecting County solid waste fees as well as revenues from other sources (e.g. grant funds, jurisdiction contributions, etc.). 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 2023-2024 BUDGET IN THE COUNTYWIDE SOLID WASTE ADMINISTRATIVE SERVICES FUND (FUND NO. 246) AND THE GENERAL FUND (FUND NO. 010), TO APPROPRIATE \$95,680 TO 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 Resolution Amending 2023/24 Countywide Solid Waste Budget For Administrative Services" submitted for City Council consideration at its meeting of September 6, 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 2023-2024 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 2023-2024 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 2023-2024 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 6th day of September 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 6th day of September 2023.

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

DATE: _____

MICHELLE BIGELOW, City Clerk

EXHIBIT A

AGENDA BUDGET SCORECARD

FISCAL YEAR 2023-2024

ADJUSTMENT #

008

FUND:

FUNCTION:

DEPARTMENT:

DIVISION:

OBJECT:

010	General Fund
40	Public Services
40	Public Services
5815	County Solid Waste Program
41100	Salaries

AGENDA DATE:

AGENDA ITEM TITLE:

09/06/23
FY 23-24 Countywide Solid Waste Program

	07/01/23 UN-AUDITED BEGINNING FUND BALANCE	ESTIMATED REVENUES	AMENDED APPROPRI- ATIONS	06/30/24 PROJECTED ENDING FUND BALANCE
ORIGINAL BUDGET	32,301,306	53,338,814	58,725,546	26,914,574
CUMULATIVE REVISIONS PRIOR TO RECOMMENDED ACTION	-	10,144	10,144	-
RECOMMENDED ACTION		95,680	95,680	-
RESULT OF RECOMMENDED ACTION	<u>32,301,306</u>	<u>53,444,638</u>	<u>58,831,370</u>	<u>26,914,574</u>

AGENDA BUDGET SCORECARD

FISCAL YEAR 2023-2024

ADJUSTMENT #

009

FUND:

246 Countywide Solid Waste Administration

FUNCTION:

40 Public Services

DEPARTMENT:

40 Public Services

DIVISION:

5820 County Solid Waste Program

OBJECT:

49210 TRANSFER OUT-010 (GENERAL FUND)

AGENDA DATE:

09/06/23

AGENDA ITEM TITLE:

FY 23-24 Countywide Solid Waste Program

	07/01/23 UN-AUDITED BEGINNING FUND BALANCE	ESTIMATED REVENUES	AMENDED APPROPRI- ATIONS	06/30/24 PROJECTED ENDING FUND BALANCE
ORIGINAL BUDGET	276,974	1,398,223	1,397,763	277,434
CUMULATIVE REVISIONS PRIOR TO RECOMMENDED ACTION	-	203,182	203,182	-
RECOMMENDED ACTION		95,680	95,680	-
RESULT OF RECOMMENDED ACTION	276,974	1,697,085	1,696,625	277,434

CITY COUNCIL STAFF REPORT

MEETING DATE: September 6, 2023

PREPARED BY:

David Gittleson, Associate Engineer

APPROVED BY: City Manager

APPROVE CONSULTANT AGREEMENT WITH LUHDORFF AND SCALMANINI FOR TWO TEST WELLS

RECOMMENDATION(S)

1. Approve Consultant Agreement for Design Professionals with Luhdorff and Scalmanini Consulting Engineers for a total not to exceed contract amount of \$347,100; and
2. Authorize the City Manager to execute and administer the Consultant Agreement for Design Professionals with Luhdorff and Scalmanini Consulting Engineers.

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Enhancing Public Safety

Maintaining and Enhancing Infrastructure

2022-2023 Strategic Priorities

Fiscal Sustainability

Guiding Documents

Water System Master Plan

REPORT NARRATIVE:

On December 15, 2021, the City Council adopted the 2021 Water System Master Plan. Utility master plans are the City's blueprint for building-out infrastructure to meet the community's needs now and as the City grows. In the case of the 2021 Water System Master Plan (WSMP), the growth horizon is build-out year of 2038. In addition to identifying future infrastructure, the Water System Master Plan also identifies existing system deficiencies to allow the City to plan for the resources necessary for both maintaining the existing systems and to build out the future infrastructure.

The City's 2021 Water System Master Plan calls for 3 new wells to be built by the year 2025. Following the construction of these three wells, the City will also need to construct a new well to meet future supply demands in the years 2030, 2035 and 2038. On May 24, 2022, Luhdorff and Scalmanini prepared a New Well Siting Recommendation

Report for the City which identified key locations for potential municipal well sites based upon the hydrogeology of the Morgan Hill area. The six key areas are as follow: Area 1 is between Serene Drive and Highway 101 north of Main Avenue, Area 2 is near Eagle View Drive and the Coyote Creek Trailhead, Area 3 is near Burnett Avenue and Highway 101, Area 4 is near Depaul Drive south of Cochrane Road, Area 5 is near Juliann Way, Area 6 is near Walnut Grove Drive north of West Dunne Avenue. Two other possible areas include areas near San Pedro and Barrett Avenues, both east of Hwy 101.

Staff is currently investigating two potential sites for new wells based on available land. One is located on a city-owned parcel on Eagle View Drive (Area 2). The other potential site is owned by the County and located at the end of Laurel Drive (Area 1), (see project location maps). The County is currently researching the process to dedicate this old roadway to the City. Should the City move forward with these two sites, test wells first need to be drilled to confirm water quality and volume output of the aquifer before constructing a larger municipal well.

Staff requested proposals from qualified firms in mid 2022. Two proposals were received by Hydrosience Engineers and Luhdorff and Scalmani in December 2022 and then both proposals were updated in July 2023. The scope of work includes drilling two test wells, analyzing the data, testing the water quality, estimating volume output, and preparing preliminary well designs. The consultant proposals were reviewed and scored by engineering and maintenance staff. Luhdorff and Scalmanini were chosen for this work due to their extensive well drilling experience within the Morgan Hill area. Most recently, Luhdorff and Scalmanini designed and provided construction support for the Boys Ranch Well #2A, Jackson Well #3, and East Main Avenue Well #3. These wells went online in August 2020, May 2001, and April 2022, respectively.

New municipal wells are a vital component to the City's water distribution system. Therefore, staff recommends that Luhdorff and Scalmanini be awarded the test wells contract to determine if these two potential sites are suitable for constructing permanent municipal wells. If the test well(s) provide favorable results, a larger municipal well will be constructed at the site, which will include a building, piping, pump system, electrical system, fencing and landscaping. If the wells demonstrate low production or poor water quality, the test well(s) will be abandoned and new location(s) will be identified.

COMMUNITY ENGAGEMENT:

Staff will provide monthly updates on the City's website and will provide weekly information through Nextdoor and the City's email subscriber list.

ALTERNATIVE ACTIONS:

None. Test wells are necessary in order to determine the depth of clean drinking water available at the proposed well site prior to constructing a larger capacity and more expensive well for municipal use.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On December 15, 2021, the City Council adopted the 2021 Water System Master Plan.

FISCAL AND RESOURCE IMPACT:

Fiscal:

If approved, the Professional Service Agreement with Luhdorff and Scalmanini could provide two new municipal water wells for the City. The not to exceed maximum contract amount is \$347,100. There is sufficient funding for this action in the current Capital Improvement Budget, in project #601000 – Water Wells, from the Water Impact Fund (651).

Resource:

Significant time is not required of staff for this work. This work is mostly performed by a consultant and a drilling contractor. Minor oversight will be required during the drilling due to the close proximity to residential properties.

CEQA (California Environmental Quality Act):

Categorical Exemption

New construction or conversion of small structures (CEQA Guidelines Section 15303d).

CONSULTANT AGREEMENT FOR DESIGN PROFESSIONALS

Luhdorff and Scalmanini Consulting Engineers

THIS AGREEMENT is entered into and becomes effective on _____ (Effective Date), by and between the CITY OF MORGAN HILL, a municipal corporation, ("CITY"), and Luhdorff and Scalmanini Consulting Engineers a California corporation ("CONSULTANT") hereinafter referred to collectively as "Parties." In consideration of the promises and the mutual covenants contained in this Agreement, the Parties agree as follows:

1. **City Authority**. This Agreement is entered into pursuant to the action of the Morgan Hill City Council taken on _____, _____, 20____.
2. **Term of Agreement**. This Agreement shall cover services rendered from the Effective Date of this Agreement until September 1, 2024 at which time CONSULTANT'S services shall be completed. The City Manager is authorized to extend the term of this Agreement for a maximum period of one year. Any such extension shall be in writing and signed by both Parties to this Agreement.
3. **Scope of Service**. The services to be performed by CONSULTANT shall be to drill two (2) test wells and analyze whether the well sites are suitable for further development into municipal wells as further described in **Exhibit A**.
4. **Compensation**. CONSULTANT shall be compensated as follows:
 - 4.1. **Amount**. \$347,100.00. Total compensation to CONSULTANT under this Agreement during its initial term set forth in Section 2 above shall not exceed Three Hundred Forty Seven Thousand One Hundred 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 CONSULTANT, so long as City Council has appropriated sufficient funds therefor, the Parties mutually agree to such amount in a writing signed by both Parties to this Agreement, and provided further that in no event shall such maximum compensation allowed for the term exceed the City Manager's authority pursuant to Chapter 3.04 of the Morgan Hill Municipal Code, unless otherwise authorized by City Council.
 - 4.2. **Billing**. CONSULTANT shall provide CITY with an invoice containing the dated, detailed, and itemized descriptions of all services performed and expenses incurred (if such expenses are reimbursable pursuant to Exhibit B) by CONSULTANT on a monthly basis unless otherwise specified in Exhibit B. All invoices shall be sent to the CITY addressed to the department head or project manager identified below in Section 13 Notices. Any rate charged shall be prorated where services are interrupted or not provided for any rate period (for example, any monthly rate charge should be prorated when services were interrupted or provided for only part of the month). For services billed on an hourly rate, the minimum unit of billed time shall not exceed one tenth of one hour. CITY shall pay for services and expenses (if so provided in Exhibit B) up to the limit of compensation set forth above, that in the CITY'S judgment were necessary and reasonable. Services for work performed and expenses incurred in excess of the total compensation set forth in paragraph 4.1 above shall be at no cost to CITY.
5. **Termination**. CITY or CONSULTANT shall have the right to terminate this Agreement, without cause, by giving thirty (30) days' written notice or less under urgent circumstances. Upon such

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

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

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

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

7.1. **Insurance Types and Amounts.**

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

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

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

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

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

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

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

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

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

7.2.2. Workers Compensation.

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

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

7.4. **Certificates**. CONSULTANT shall furnish CITY of Morgan Hill with copies of all certificates as outlined herein, whether new or modified, promptly upon receipt. In the event of a claim or legal action, CONSULTANT shall promptly furnish CITY of Morgan Hill with copies of all policies outlined herein. No policy subject to the CONSULTANT'S

agreement with the CITY shall be canceled or materially changed except after thirty (30) days' notice by the insurer to CITY. A "material change" is a change that results in non-compliance with any insurance requirements in this section 7. Certificates, including renewal certificates, may be mailed electronically to riskmgmt@morganhill.ca.gov or delivered to the Certificate Holder address provided herein.

Certificate Holder address:

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

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

9. **Compliance with Law.**

9.1. CONSULTANT and its officers, employees, agents, and subcontractors shall comply with all applicable laws, ordinances, administrative regulations, and permitting requirements in carrying out their obligations under this Agreement. CONSULTANT and its officers, employees, agents, and subcontractors covenant there shall be no discrimination based upon any basis prohibited by State or Federal law, including but not limited to, race, color, creed, religion, gender, marital status, age, sexual orientation, national origin, mental disability, physical disability, medical condition, or ancestry, in any activity pursuant to this Agreement.

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

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

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

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

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

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

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

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

Address of CONSULTANT is as follows:

Luhdorff and Scalmanini
500 First Street
Woodland, CA 95695
(530) 661-0109

Address of CITY is as follows:

Development Services Center	with a copy to:
David Gittleson, P.E.	City Clerk
City of Morgan Hill	City of Morgan Hill
17575 Peak Avenue	17575 Peak Avenue
Morgan Hill, CA 95037	Morgan Hill, CA 95037

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

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

16. **Maintenance of Records.**

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

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

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

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

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

19. **No Assignment.** Neither this Agreement nor any portion shall be assigned by CONSULTANT, without prior written consent of CITY. Any attempted assignment not first approved by CITY shall be

void and, at CITY'S option, shall terminate this Agreement effective as of the date of such attempted assignment.

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

21. **Defense and Indemnification.**

- 21.1. **Defense and Indemnification for Design Professional Services.** Consistent with California Civil Code Section 2782.8, for design professional services to be performed under this agreement by a design professional, as that term is defined under said Section 2782.8, CONSULTANT shall, to the fullest extent permitted by law, indemnify, defend and hold harmless CITY, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers ("INDEMNITEES") from and against any and all claims, liabilities, expenses, liens, or damages of any nature, including liability for bodily injury, property damage or personal injury, and including reasonable attorneys' fees and expenses, that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of CONSULTANT, and/or its agents, officers, employees, subcontractors, or independent contractors in performance of work hereunder or its failure to comply with any of its obligations contained in this Agreement ("CLAIM") to the extent of CONSULTANT'S proportionate percentage of fault.
- 21.2. **Defense and Indemnification for Non-Design Professional Services.** For all services performed under this agreement not covered by Section 21.1 above, CONSULTANT shall, to the fullest extent permitted by law, indemnify, defend and hold harmless CITY, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers ("INDEMNITEES") from and against any and all claims, liabilities, expenses, liens, or damages of any nature, including liability for bodily injury, property damage or personal injury, and including reasonable attorneys' fees and expenses, that arise out of, pertain to, or relate to the performance of this Agreement or the failure to comply with any obligations contained in this Agreement by CONSULTANT, and/or its agents, officers, employees, subcontractors, or independent contractors ("CLAIM").
- 21.3. **Exceptions.** CONSULTANT is not required to indemnify INDEMNITEES against liability for bodily injury, property damage or personal injury, or any other loss, damage or expense arising from the sole negligence, active negligence, or willful misconduct of the CITY.
- 21.4. **Not limited by insurance.** The indemnity, defense and hold harmless provisions of this Agreement apply to all CLAIMS alleged against an INDEMNITEE, regardless of whether any insurance policies are applicable. Policy limits do not act as a limitation upon the amount of indemnification or defense to be provided by CONSULTANT.
- 21.5. **Right to Offset.** CITY shall have the right to offset against any compensation due CONSULTANT under this Agreement any amount due CITY from CONSULTANT as a result of CONSULTANT'S failure to pay CITY promptly any indemnification arising under this Section (21) and any amount due CITY from CONSULTANT arising from CONSULTANT'S failure either to (i) pay taxes on amounts received pursuant to this Agreement or (ii) comply with applicable workers' compensation laws.

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

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

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

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

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

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

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

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.

[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:

Luhdorff and Scalmanini

City Attorney

By: William Halligan

Donald A. Larkin
Print Name

William Halligan President
Print Name and Title of Signer.
If Corporate: Chairman, President or Vice
President

Date: _____

Date: 8-10-2023

By: Scott Lewis

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

Date: 8/10/23



EXHIBIT A

July 10, 2023
File No. 21-2-120

Mr. David Gittleston
City of Morgan Hill
Engineering and Utilities
17575 Peak Avenue
Morgan Hill, CA 95037

Subject: Work Plan and Cost Estimate for the Investigation and Design Services for New Domestic Supply Wells – City of Morgan Hill

Dear Mr. Gittleston,

Luhdorff and Scalmanini, Consulting Engineers (LSCE) has prepared this detailed work plan and budget to provide the City of Morgan Hill (City) with site-specific hydrogeologic investigation services including borehole drilling, nested monitoring well installation, and well design services for two new water supply production wells to be constructed within the City.

Our work plan and budget are based on our current understanding of City's project goals and objectives and our experience working on similar projects in the City and throughout California.

We appreciate the opportunity to provide you with this scope and budget and would be pleased to respond if you have any questions regarding our work plan or budget.

Sincerely,

LUHDORFF AND SCALMANINI
CONSULTING ENGINEERS

Charlie Jenkins, P.G.
Project Geologist

Scott Lewis, P.G.
Senior Principal Geologist

Attachments: Sub-Contractor Bid Item Payment Sheet – Test Hole Monitoring Well Installation
2021-2022 Schedule of Fees for Engineering and Field Services

The Scope of Work outlined below includes the tasks required to investigate and evaluate the potential of two sites within the City for the installation of new wells to augment the City's current groundwater supply well network. If the sites are determined to be favorable for new wells, LSCE will prepare new well designs. The proposed work plan detailed below was developed based on our understanding of the City's needs and our experience with projects of similar size and scope.

SCOPE OF WORK

The Scope of Work is outlined in the following tasks:

- Task 1 – Project Coordination, Meetings, and Administration
- Task 2 – Site Specific Investigations
- Task 3 – Monitoring Well Sampling

Task 1 – Project Coordination, Meetings, and Administration

Task 1.1 – Project Kickoff

LSCE's work on the project will begin with a kickoff meeting with City staff and key LSCE team members to discuss the various aspects of the project. Items such as contact information, chain of command, the City's project expectations, respective roles and responsibilities, schedule, design preferences and parameters, and site constraints shall be discussed at the kick-off meeting.

Task 1.2 - Project Coordination, Meetings, and Administration

Key LSCE team members will attend regular design meetings with the City to discuss various aspects of the project. For each meeting, LSCE will prepare and distribute meeting agendas, minutes, and action item summaries. LSCE will also provide frequent updates via email or telephone throughout the project as needed. This task also provides for project management and administrative activities such as: (a) contractual arrangements, (b) ongoing examination regarding adherence to scope, budget, and schedule, (c) coordination of staff resources (d) internal review of work products, (e) management of subcontractors, (f) billing review, and (g) scoping and budgeting.

Task 2 – Site Specific Investigations

Task 2 includes site specific investigations that will include exploratory drilling to characterize subsurface materials, identify potential aquifer units, collection of water samples for analysis, collection of lithologic and geophysical data to be used to design a production well(s), and to estimate potential well yield. It is LSCE's understanding that the City has selected two sites for site specific investigations. One site is located at the Centennial Recreation Center, while the other is located at Galvin Park.

Task 2.1 Test Hole and Monitoring Well Evaluation

Task 2.1 will include test hole drilling and monitoring well installation at each of the two sites mentioned above. A test hole will be drilled at each site to collect lithologic samples for analysis and to conduct down hole geophysical surveys that will be used evaluate subsurface materials and to design the new production well(s). Based on the results of test hole drilling, LSCE will recommend converting the test holes to multiple completion monitoring well that will allow for the collection of zone-specific water levels and water quality samples. The preliminary test hole depth will be based on the information collected during the hydrogeologic investigation conducted previously and is assumed to be 375 feet for the purposes of

project cost estimate. LSCE will provide subcontracted test hole drilling services from a licensed drilling contractor and will oversee the work to ensure that it is performed in accordance with our stringent specifications and high expectations.

LSCE will provide documentation and sampling services during the drilling process including a drilling log, geological samples at a minimum of 10-foot intervals, geophysical (electric) logs, and grain size distribution analysis. If the nature, depth, and thickness of aquifer materials from the test holes are favorable in terms of potential water supply, LSCE will recommend converting each of the test holes to a multiple completion monitoring well. A typical monitoring well may include up to three, 2-inch diameter polyvinyl chloride (PVC) piezometers, completed in different zones. The screen section(s) of each piezometer will be isolated from one another using intermediate bentonite seals allowing for discrete water level measurements and water quality sampling. LSCE will oversee the construction and development of the monitoring wells. After development of the monitoring wells, LSCE will mobilize equipment to collect water samples from each piezometer and submit the samples to a state certified laboratory for a modified Title 22 Drinking Water analysis and other constituents of concern in the area.

If the results of the test hole investigation are not favorable for the construction of a drinking water supply well, and after discussions with the City, the test hole(s) will be abandoned in compliance with all State and local standards.

LSCE will compare the lithology encountered during drilling, geophysical logs, and zonal water quality to that of existing City wells and other wells (production and monitoring) in the vicinity of the project area. The performance of existing City wells and other wells completed by LSCE will be used to estimate the yield of wells constructed at each site. Based on favorable results from the test hole and monitoring well phases, LSCE will prepare preliminary production well designs.

Task 2.2 Investigation Summary and Preliminary Well Designs

LSCE will prepare and deliver to the City an Investigation Summary and Preliminary Well Design Report that will summarize the findings of the site assessment and site characterization work performed at each site as part of Tasks 2.1. The report will include:

- A summary of all field activities associated with test hole drilling, monitoring well construction and development, and water quality testing
- A lithologic log based upon interpretation of collected lithologic samples and geophysical logs
- Geophysical logs
- Grain size distribution charts of selected formation samples
- Monitoring well as-built diagrams
- Daily inspection sheets
- A summary of water quality results and analytical reports
- Copies of all project permits
- Copy of Well Completion Reports

LSCE will prepare site specific preliminary production well designs based on data gathered during test hole and monitoring well evaluation and our experience in the area. The principal design elements to achieve a hydraulically efficient and sand-free well include:

- Borehole and casing depths and diameters
- Casing material type(s)
- Screen placements
- Screen type and material

- Casing and screen wall thickness
- Gravel pack gradation
- Screen slot size
- Seal depths
- Accessory pipe depth, material, and diameter

The report will include drafted preliminary well design profiles. The design elements of the wells and yield estimation will be discussed in the report. An engineer's estimate for the construction and testing of the wells will be included in the reports. LSCE will meet with the City to discuss the results and findings of the test hole/monitoring well investigation and new well design recommendations. LSCE will incorporate the City's design comments into the final well design(s).

Task 3– Monitoring Well Sampling

Task 3 includes sampling of the newly installed monitoring wells (up to six individual piezometers). LSCE will provide technicians and equipment to purge and sample each piezometer. LSCE will deliver the samples to a California state certified laboratory for water quality analysis which will include a Title 22 Drinking Water analysis. The results of the water quality laboratory analysis will be tabulated in a water quality summary spreadsheet for reference.

COST ESTIMATE

The estimated budget to complete the Scope of Work described herein is based on our current understanding of the project and the effort that would be reasonably expected for a project of this size and scope. The attached worksheet summarizes the estimated costs per Task.

Table 1. Budget Estimate

Task	Engineering Services Cost	Outside Services Cost
Task 1: Project Coordination, Meetings, and Administration	\$9,800	
Task 2: Site Specific Investigations	\$60,100	\$243,600
Task 3: Monitoring Well Sampling	\$10,100	\$23,500
Totals	\$80,000	\$267,100
Grand Total	\$347,100	

LSCE proposes to perform the work described in this proposal for a sum of \$347,100. LSCE will bill monthly for labor and materials, only as incurred, in accordance with LSCE's 2021-2022 Schedule of Fees (attached). Prevailing wage rates shall be paid to all LSCE and subcontractor personnel for applicable work.

In the event that the City directs LSCE to deviate from the proposed scope of work, or as dictated by unforeseen conditions or events, LSCE will provide notification of any potential changes in the estimated cost to complete the work. LSCE will not proceed with any work that deviates from the approved scope and budget until approval to proceed is granted by the City.

Payment and Bid Sheet
City of Morgan Hill
Test Hole/Monitoring Well Installation

Item	Task	Units	Estimated Quantities	Unit Price	Total
1a	Mobilization	Lump Sum	1	28,000.00	\$28,000.00
1b	Site-to-Site Mobilization	Lump Sum	1	6,000.00	\$6,000.00
2	Test Hole Drilling	Linear Foot	750	35.00	\$26,250.00
3	Geophysical Logging	Lump Sum	2	3,200.00	\$6,400.00
4	Borehole Reaming	Linear Foot	550	30.00	\$16,500.00
5	Blank Monitoring Well Casing - 2" Sch 40 PVC	Linear Foot	1530	18.00	\$27,540.00
6	Monitoring Well Screen - 2" Sch. 40 PVC	Linear Foot	60	30.00	\$1,800.00
7	Gravel Envelope	Linear Foot	440	45.00	\$19,800.00
8	Intermediate Bentonite Seals	Linear Foot	60	45.00	\$2,700.00
9	Annular Surface Seal	Linear Foot	250	45.00	\$11,250.00
10	Well Development	Each	6	2,000.00	\$12,000.00
11	Surface Completion	Lump Sum	2	1,800.00	\$3,600.00
12	Full Containment and Disposal of Fluids and Cuttings	Lump Sum	2	25,000.00	\$50,000.00
13	Standby Time	Hour	0	475.00	\$0.00
Total Price					\$211,840.00

Bidder: Bradley & Sons
Signed: Rod Bradley
Date: 7-7-23



2021-2022 SCHEDULE OF FEES

ENGINEERING AND RELATED FIELD SERVICES

Professional*

Senior Principal	\$235/hr.
Principal Professional.....	\$230/hr.
Supervising Professional	\$220/hr.
Senior Professional	\$175 to 200/hr.
Project Professional	\$155 to 175/hr.
Staff Professional	\$140 to 155/hr.

Technical

Engineering Inspector	\$140/hr.
ACAD Drafting/GIS	\$140/hr.
Engineering Assistant.....	\$115 to 140/hr.
Scientist.....	\$115 to 140/hr.
Technician.....	\$115 to 140/hr.

Clerical Support

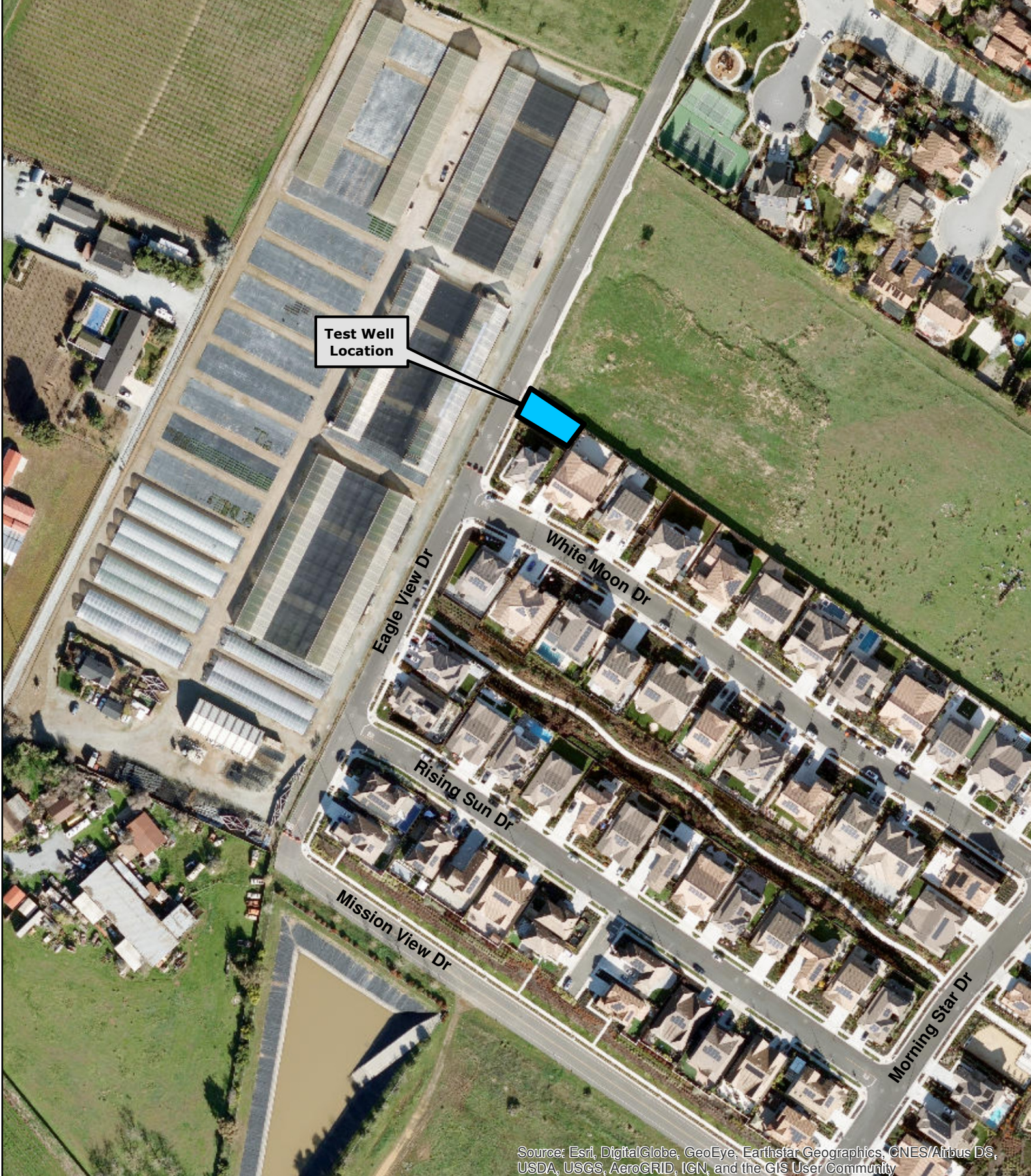
Word Processing, Clerical.....	\$90/hr.
Digital Communications Specialist	\$90/hr.
Project Admin/Accounting Assistant	\$90/hr.

Vehicle Use	\$0.58/mi.
Subsistence	Cost Plus 15%
Groundwater Sampling Equipment (Includes Operator)	\$170.00/hr
Copies	\$0.20 ea.
Professional or Technical Testimony	200% of Regular Rates
Technical Overtime (if required)	150% of Regular Rates
Outside Services/Rentals	Cost Plus 15%
Services by Associate Firms	Cost Plus 15%

* Engineer, Geologist, Hydrogeologist, and Hydrologist

EXHIBIT C
SCHEDULE OF PERFORMANCE

All work shall be completed by September 1, 2024





Esri, HERE, Garmin, (c) OpenStreetMap contributors, and the GIS user community. Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community



Engineering and Utilities Department
CIP Engineering Division

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TEST WELL #2 PROJECT LOCATION



310 155 0 310 620 930

Feet

CITY COUNCIL STAFF REPORT

MEETING DATE: September 6, 2023

PREPARED BY:

Inga Alonzo, Management Analyst

APPROVED BY: City Manager

APPROVE SECOND AMENDMENT TO THE AGREEMENT WITH DUKE'S ROOT CONTROL

RECOMMENDATION(S)

Approve and authorize the City Manager to execute a second amendment to the agreement with Duke's Root Control for additional root control treatment for a total agreement not to exceed amount of \$99,185.

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Enhancing Public Safety

Maintaining and Enhancing Infrastructure

2022-2023 Strategic Priorities

Fiscal Sustainability

Guiding Documents

Wastewater System Master Plan

REPORT NARRATIVE:

The City's sewer pipes are videotaped on a regular basis via CCTV cameras which help staff determine areas that require tree root treatments to avoid compromise of the City's sewer infrastructure.

In July 2021, staff did a formal, competitive Request for Proposals (RFP) to acquire a contractor to provide all labor, materials, equipment, travel, and associated costs to perform chemical root removal in areas of the City where it was needed. The RFP was advertised in the Morgan Hill Times and was posted to the City's website. There are very few known contractors that do this very specialized work, and the City of Morgan Hill, in particular, has very restrictive compliance measures for root control under the River Watch settlement agreement. That being said, we received one proposal from Duke's Root Control. Duke's Root Control met all of the qualifications and experience requirements for the scope of work for this project and were contracted to do the work in the amount of \$48,380.

The contractor guarantee on the original treatment is two years. The extended

guarantee will cover three additional years if a repeat application is carried out within 6 months of the expiration of the first two-year guarantee. The repeat application amount is 5% more than the original application at a cost of \$50,805. Staff is recommending the agreement be amended to conduct the repeat application.

COMMUNITY ENGAGEMENT:

Not Applicable

Since maintenance of the City's wastewater infrastructure is a regular operational function of the City, no efforts were made to inform the community about this proposed project.

ALTERNATIVE ACTIONS:

City Council could ask that this work be formally solicited again but that is not recommended because there are very few contractors that do this specialized work and it is unlikely to result in a lower cost to the City. The Council could decide not to amend the agreement for the additional root treatment but that is not recommended as staff believes the additional treatment is necessary and will extend the guarantee for three additional years.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The original agreement and the first amendment to the agreement were within the City Manager's authority and therefore did not require the approval of the City Council.

FISCAL AND RESOURCE IMPACT:

The funds for these services are budgeted in sewer operations contractual services (Fund 640).

CEQA (California Environmental Quality Act):

Categorical Exemption

The planned maintenance and management of existing City infrastructure falls within the CEQA categorical exemption of Class 1, Existing Facilities.

**SECOND AMENDMENT TO AGREEMENT
DUKE’S ROOT CONTROL, INC.**

This SECOND AMENDMENT TO AGREEMENT is entered into and becomes effective on _____ (Effective Date), by THE CITY OF MORGAN HILL, a municipal corporation, ("CITY") and DUKE’S ROOT CONTROL, INC., a New York Corporation ("SERVICE PROVIDER"), duly authorized to do business in California and will remain so during the term of this Agreement, hereinafter referred to collectively as the "Parties".

RECITALS

The following recitals are a substantive part of this Agreement:

1. This Second Amendment to Agreement is entered into pursuant to the action of the Morgan Hill City Council taken on _____, _____, 20____.
2. The CITY and SERVICE PROVIDER entered into that "Maintenance Service Agreement" made as of October 4, 2021, for services for a maximum compensation of Forty-one Thousand Three Hundred Twenty-Two Dollars (\$41,322.00) ("MAINTENANCE SERVICE AGREEMENT").
3. The CITY and SERVICE PROVIDER entered into a "First Amendment to Agreement" made as of February 3, 2022, under which the maximum compensation under the MAINTENANCE SERVICE AGREEMENT, as amended, was increased to Forty-Eight Thousand Three Hundred-Eighty Dollars (\$48,380.00). The MAINTENANCE SERVICE AGREEMENT and the First Amendment thereto are attached as Exhibit "1" to this Agreement.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

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

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

"2. **Term of Agreement.** This Agreement shall be effective and cover services rendered from October 4, 2021, until September 30, 2024. The City Manager is authorized to extend the term of this agreement for a maximum of two one-year extensions. Any such extension shall be in writing and signed by both parties to this Agreement."

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

"4.1. **Amount.** Compensation under this Agreement shall not exceed NINETY-NINE THOUSAND ONE HUNDRED EIGHTY-FIVE DOLLARS (\$99,185.00) and shall be billed based on the rate and basis set forth in Exhibit B and Revised Exhibit B dated January 12, 2022, and Revised Exhibit B dated October 1, 2023. 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 the immediately preceding prior year of service.

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 Second Amendment to Agreement and the terms and provisions of the MAINTENANCE SERVICE AGREEMENT or any earlier amendment, the terms of this Second Amendment to Agreement shall govern and control.

TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS:

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

ATTEST:

CITY OF MORGAN HILL

Michelle Bigelow, City Clerk

Date: _____

Christina Turner, City Manager

Date: _____

APPROVED AS TO FORM:

Donald Larkin, City Attorney

Date: _____

DUKE'S ROOT CONTROL, INC.

By: Matt Fishbone

Title: CEO & President

Print Name and Title of Signer.

If Corporate: Chairman, President,
or Vice President

Date: 8/24/2023

By: Richelle Owens

Title: VP of Finance

Print Name and Title of Signer.

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

Date: 8/24/2023

COMPANY NAME: DUKE'S ROOT CONTROL, INC

**EXHIBIT B
SCHEDULE OF COMPENSATION RATES**

Dated October 1, 2023

Sanitary Sewer Chemical Root Control Services

Sewer line chemical root control, including all labor, materials, equipment, travel, and associated costs, shall be paid for at the unit price per linear foot of each size pipe. Unit prices are to be computed per linear foot manhole-to-manhole.

PIPE SIZE	UNIT PRICE PER LINEAR FOOT	ESTIMATED FOOTAGE	TOTAL PRICE
6 inch	\$ 2.08	18,104	\$ 37,656.32
8 inch	\$ 2.08	3,668	\$ 7,629.44
10 inch	\$ 2.28	2,031	\$ 4,630.68
12 inch	\$ 2.49	357	\$ 888.93
15 inch*	\$6.05	0	\$0
18 inch*	\$ 8.69	0	\$0
21 inch*	\$ 10.67	0	\$0
24 inch*	\$ 13.78	0	\$0
* For future pricing reference only. Please fill in unit price per linear foot only on the items in red.		Sum Total Price (in figures)	\$ 50,805.37

EXHIBIT 1

**FIRST AMENDMENT TO MAINTENANCE SERVICE AGREEMENT
DUKE'S ROOT CONTROL, INC.**

This FIRST AMENDMENT TO AGREEMENT is entered into and becomes effective on 2/3/2022 (Effective Date), by THE CITY OF MORGAN HILL, a municipal corporation, ("CITY") and DUKE'S ROOT CONTROL, INC., a New York Corporation ("SERVICE PROVIDER"), duly authorized to do business in California and will remain so during the term of this Agreement.

RECITALS

The following recitals are a substantive part of this Agreement:

1. This First Amendment to Agreement is entered into based upon the authority of the City Manager pursuant to Chapter 3.04 of the Morgan Hill Municipal Code.
2. The CITY and SERVICE PROVIDER entered into that "Maintenance Service Agreement" made as of October 4, 2021, for services for a maximum compensation of Forty-One Thousand Three Hundred Twenty-Two and no/100 dollars (\$41,322.00) ("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 FORTY-EIGHT THOUSAND THREE HUNDRED-EIGHTY AND NO/100 DOLLARS (\$48,380.00) and shall be billed based on the rate and basis set forth in Exhibit "B" dated January 12, 2022. 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."

///

Signature on the Next Page

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

TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS:

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

ATTEST:

DocuSigned by:

Michelle Bigelow

Michelle Bigelow, City Clerk

Date: 2/3/2022

APPROVED AS TO FORM:

DocuSigned by:

Cynthia Harrison

Donald A. Lakin, City Attorney

Date: 2/1/2022

CITY OF MORGAN HILL

DocuSigned by:

Christina Turner

Christina Turner, City Manager

Date: 2/3/2022

DUKE'S ROOT CONTROL, INC.

Braden Boyko

By:

Title: BRADEN BOYKO - VICE PRESIDENT

Print Name and Title of Signer.

If Corporate: Chairman, President or Vice President

Date:

1/26/22

Richelle Owens

By:

Title: RICHELLE OWENS - SECRETARY

Print Name and Title of Signer.

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

Date:

1/26/22

128-04-21-064

EXHIBIT 1

**MAINTENANCE SERVICE AGREEMENT
DUKE'S ROOT CONTROL, INC.**

THIS AGREEMENT is entered into and becomes effective on 10/4/2021 (Effective Date), by and between the CITY OF MORGAN HILL, a municipal corporation, ("CITY"), and Duke's Root Control, Inc. a New York 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 authority of the City Manager pursuant to Chapter 3.04 of the Morgan Hill Municipal Code.
2. **Term of Agreement.** This Agreement shall cover services rendered from the Effective Date of this Agreement until September 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 Sanitary Sewer Root Control Services as further described in **Exhibit A**.
4. **Compensation.** SERVICE PROVIDER shall be compensated as follows:
 - 4.1. **Amount.** \$41,322.00. Total compensation to SERVICE PROVIDER under this Agreement during its initial term set forth in Section 2 above shall not exceed Forty-One Thousand, Three-Hundred Twenty-Two 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:

Duke's Root Control, Inc.
1020 Hiawatha Boulevard West
Syracuse, New York 13204

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: 10/6/2021

APPROVED AS TO FORM:

DocuSigned by:

Cynthia Hassan

City Attorney

Donald A. Larkin

Print Name

Date: 9/29/2021

827327

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

Expiration Date(s) 11/30/2021

Seal:

CITY OF MORGAN HILL

DocuSigned by:

Christina Turner

City Manager

Christina J. Turner

Print Name

Date: 10/4/2021

Duke's Root Control, Inc.

Brad Boyko
By:

BRADEN BOYKO - VICE PRESIDENT

Print Name and Title of Signer.

If Corporate: Chairman, President or Vice President

Date: 9/10/21

Lichelle Owens
By:

Lichelle Owens VP of Finance

Print Name and Title of Signer.

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

Date: 9/10/21

1000003539

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

Expiration Date(s) 6/30/2022

EXHIBIT A SCOPE OF SERVICES

The Scope of Work includes providing all labor, materials, equipment, travel, and associated costs to perform root foaming in sanitary sewers shown on the attached maps (Attachment A).

Contractor Responsibilities

- A. Provide appropriate and responsible traffic control devices during application of root foaming.
- B. If manhole entry is required, contractor must comply with all applicable confined space entry requirements.
- C. Remove from the site all discharge resulting from the root foaming applications and properly dispose of the discharge. Contractor shall comply with all federal, state and local regulations regarding disposal of herbicides and hazardous wastes.
- D. Compile records for each line segment in which root control chemicals are applied.
- E. Furnish product and service guarantee documentation to the City.
- F. If awarded the contract, the Contractor, if it does not already have one, warrants and hereby agrees to obtain a City of Morgan Hill business license prior to the issuance of the Notice to Proceed. The Contractor further agrees that the license will be kept current throughout the term of the contract.
- G. The Contractor shall provide a money-back guarantee on all work specified herein as set forth below.
- H. The Contractor is responsible for all property damage and for all cleanup and restoration associated with any chemical spill.
- I. The Contractor shall return upon request throughout the life of the guarantee to perform retreatment of sewer lines in accordance with guarantee requirements.
- J. The Contractor shall comply with all Federal, State and Local Laws with special attention to those laws that pertain to the handling, transportation, and use of any hazardous materials, and disposal of all pesticide containers.
- K. Contractor shall comply with the City's Sanitary Sewer Management Plan (SSMP) Section 14.4 as set forth below.
- L. Contractor shall comply with the River Watch Settlement agreement as set forth below.
- M. Contractor is responsible for Certification of Payment of Prevailing Wages.

Special Requirements

- A. The Contractor warrants that it has a valid California license for work to be performed.
- B. All contractors shall have a minimum level of pesticide application experience and employ a State Certified pesticide applicator on the job site at all times and must provide proof of certification and training by the herbicide manufacturer.
- C. Only certified crews shall be used for application of the herbicide systems of control herein described.
- D. Contractor must be licensed by the state to apply "restricted use" chemicals in sewer lines.
- E. Contractor shall provide Pollution Liability Insurance; in addition to all other insurance.
- F. Contractor shall submit with the Proposal package illustrative brochures or technical data, including a Material Safety Data Sheet (MSDS), and a specimen label of the product to be used for sewer root control.

Contractor Experience

The Contractor shall be licensed as a pesticide application business with the California Department of Pesticide Regulation.

All work shall be performed by Certified Pesticide Applicators licensed with the California Department of Pesticide Regulation. Certified Pesticide Applicators shall have a minimum of one year experience in performing the type of work specified and shall each have personally performed a minimum of 100,000 linear feet of treatments as a Certified Pesticide Applicator. A minimum of two Certified Pesticide Applicators that are registered with the California Department of Pesticide Regulation are required.

Compliance with Laws

The Contractor is directed to ensure compliance with all Federal, State and Local ordinances pertaining to the type of work specified herein. Particular attention shall be paid to those laws and ordinances relating to transportation of material (DOT), the application of sewer root control herbicides (US EPA), and traffic safety regulations. The Contractor's Federal DOT number and material EPA registration number must be submitted to the City.

Compliance with City' Sanitary Sewer Master Plan

Contractor shall comply with the City's Sanitary Sewer Management Plan (SSMP) Section 14.4 which states that all construction contractors working on City sewer facilities will be required to develop a project specific Overflow Emergency Response Plan (OERP), will provide project personnel with training regarding the content of the contractor's OERP and their role in the event of an SSO, and to follow that OERP in the event that they cause or observe a Sanitary Sewer Overflow (SSO). Emergency response procedures shall be discussed at project preconstruction meetings, regular project meetings and after any contractor involved incidents.

Compliance with City's Riverwatch Settlement Agreement

Contractor shall comply with the City's Riverwatch settlement agreement Section 2.4.a which states chemical root control chemicals shall be approved and/or recommended by the Federal Environmental Protection Agency or Regional Water Quality Control Board. All application shall comply with the recommendations of the manufacturer of the chemical and as required by CalOSHA. The contractor shall develop methods for the application of root control agents that lessen the incident of these agents escaping the collection system and keeping the public informed. These methods shall include:

- i. Blocking the line upstream and down-stream of the area of application;
- ii. Using root control agents that have a half-life of sixty (60) days or less and the breakdown products are non-toxic to aquatic plants or animals;
- iii. Developing and implementing best management practices to preclude the escape of the root control agent from the sewer line;
- iv. Recordkeeping that includes identifying the PACP rating in the section being treated; a map identifying locations where treatment occurs; the chemical(s) used, including the MSDS sheets; and the amounts applied;
- v. Not applying any root control agent to any sewer line that has a known PACP rating of 4 or 5 unless the contractor can ensure that none of the root control agent will escape the sewer line through any line defect;

vi. Not knowingly applying any root control agent in any location where groundwater can be contaminated via infiltration or exfiltration.

Composition of the Chemical Root Control Material

The chemical root control agent shall be registered with the EPA and the California Department of Pesticide Regulation, prior to the proposal package submission, and shall be labeled for use in sewers to control tree roots. The chemical Root control agent shall contain an active ingredient for controlling sewer roots and deterring their re-growth. There shall also be a surfactant system to deliver the active ingredient (herbicide) to the target root tissue.

A. Active ingredient:

1. Shall be a Category "E" compound, the most favorable rating attainable on the U.S. EPA's chronic exposure toxicological rating scale.
2. Shall not be considered a carcinogen, teratogen, mutagen, or oncogene, based on laboratory testing.
3. Shall not be on the California Proposition 65 List of Chemicals Known to Cause Cancer.
4. Shall be non-volatile in order to minimize exposure to collections system workers, treatment plant operators and homeowners through inhalation.
5. Products containing the active ingredient(s) metam-sodium or copper sulfate are not allowed.
6. Shall not be a precursor to NDMA (n-nitrosodimethylamine), a priority pollutant.

B. Surfactant system:

1. Shall produce a dense, small bubble, clinging foam, which sustains its shape for a minimum of one hour.
2. Shall enhance the penetration of herbicide into root masses.
3. Shall contain an Alkylpolyglucoside (formulations of vegetable oil and carbohydrate from agricultural products).

Manner of Application

All work shall be performed according to label instructions and in accordance with the best recommended practice for conditions present in the line under treatment. All applications shall be done by foaming or other methods as provided on the product label.

In addition, material application will also be sufficient to penetrate up the services lateral to at least five (5) feet. the foam shall be generated through the use of air injection equipment or sprayed with sewer cleaning equipment. Foam shall be pumped or sprayed into the sewer under pressure in accordance with the manufacturer's guidelines for the material. Foam quality shall be sufficient to penetrate "wye" connections and effectively treat large diameter pipe.

Stormwater Pollution Control

The Contractor shall exercise every reasonable precaution to prevent the discharge of any material which is not solely stormwater (i.e., rain) to the storm drain system. Non-allowable discharges include, but are not limited to, eroded soil from stockpiles or disturbed earth on-site, concrete and concrete washout water, saw cut slurry, fuel, oil, and other vehicle fluids, solid wastes, and chemicals. The Contractor will be responsible for the complete cleanup of all material that is discharged from the project. Should the Contractor fail to promptly and effectively clean up such

discharges, City may cause the cleanup to be performed by others, the costs to be deducted from any monies due or to become due the Contractor.

Protection of Wastewater Treatment Plant

The Contractor shall take all steps necessary and appropriate to prevent adverse effects on wastewater treatment plant processes during the application process.

Notwithstanding the requirement that the active ingredient shall not adversely affect wastewater treatment plant processes, if the wastewater treatment plant experiences any reduction in operating efficiency during the execution of the contract, the Contractor shall immediately suspend all applications, at the direction of the City. The contractor shall continue operations only after problems at the wastewater treatment plant have been corrected, satisfactory to the Wastewater Treatment Plant Operator.

Traffic Control

The Contractor shall be solely responsible for traffic control. The Contractor shall, during all phases of the work to provide for public safety and convenience. Root foaming operations will be conducted in such a manner as to cause as little inconvenience as possible to the abutting property owners. Convenient access to driveways, houses, and buildings along the line of work shall be maintained. Where work is located in high-traffic areas, the Contractor shall place proper traffic warning devices to protect the specific job site and to prevent accidents or personal injury to the public. Work shall be conducted between 7:00 a.m. and 4:00 p.m., Monday through Friday.

Property Damages Caused by the Contractor

Should the Contractor or his employees cause any damage to public or private property, the Contractor shall be required to make repairs immediately. The City may, however, elect to make repairs or replacements of damaged property and deduct the cost of such from moneys due or to become due the Contractor under this contract with the City.

Transportation, Storage, and Protection

All materials shall be transported, stored, and protected in accordance with manufacturer's recommendations and applicable Federal and State guidelines. Liquid chemicals must be packaged in mini-bulk containers that are designed for re-use with dry lock connectors, as part of a closed chemical handling system. Disposable pesticide containers will not be accepted for use on this project.

Reports on Completed Work to be Provided by the Contractor

A. Upon invoicing the City, or whenever requested to by the City, the Contractor shall submit reports which show the following information:

1. The report date.
2. The date each given sewer line was treated.
3. Street name for each given sewer line.
4. A description (manhole numbers, house numbers, cross streets, etc.) which will enable the City to accurately identify the exact location of each sewer line.
5. The pipe size for each given sewer line.
6. The length (manhole to manhole) for each given sewer line.

COMPANY NAME: DUKE'S ROOT CONTROL, INC

**EXHIBIT B
SCHEDULE OF COMPENSATION RATES**

Sanitary Sewer Chemical Root Control Services

Sewer line chemical root control, including all labor, materials, equipment, travel, and associated costs, shall be paid for at the unit price per linear foot of each size pipe. Unit prices are to be computed per linear foot manhole-to-manhole.

PIPE SIZE	UNIT PRICE PER LINEAR FOOT	ESTIMATED FOOTAGE	TOTAL PRICE
6 inch	\$ 1.98	14,539	\$ 28,787.22
8 inch	\$ 1.98	3,668	\$ 7,262.64
10 inch	\$ 2.17	2,031	\$ 4,407.27
12 inch	\$ 2.37	357	\$ 864.09
15 inch*	\$ 5.76	0	\$0
18 inch*	\$ 8.28	0	\$0
21 inch*	\$ 10.16	0	\$0
24 inch*	\$ 13.12	0	\$0
* For future pricing reference only. Please fill in unit price per linear foot only on the items in red.			Sum Total Price (in figures) \$ 41,321.22

**EXHIBIT C
SCHEDULE OF PERFORMANCE**

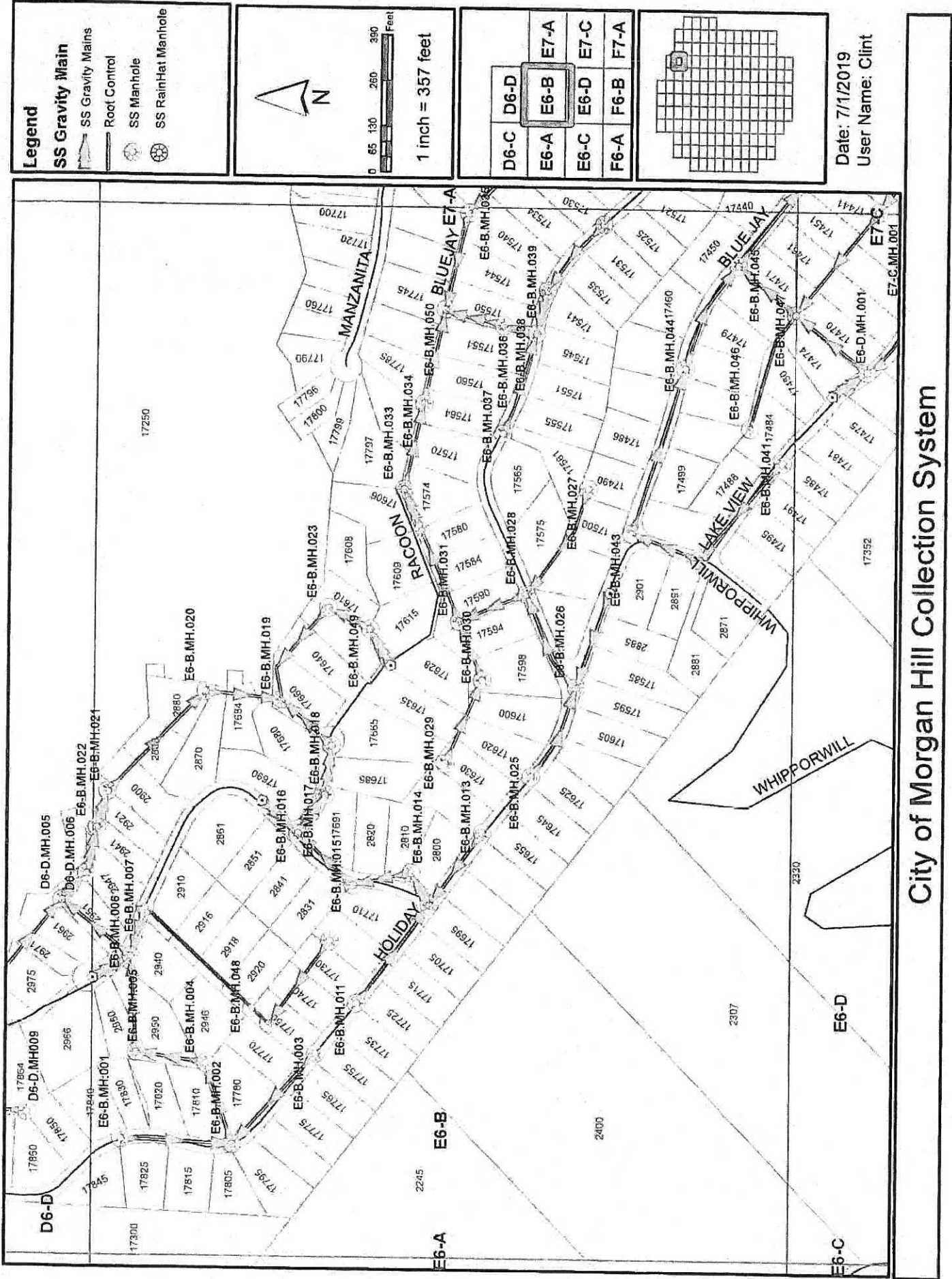
Work shall be conducted between 7:00 a.m. and 4:00 p.m., Monday through Friday.

Attachment A

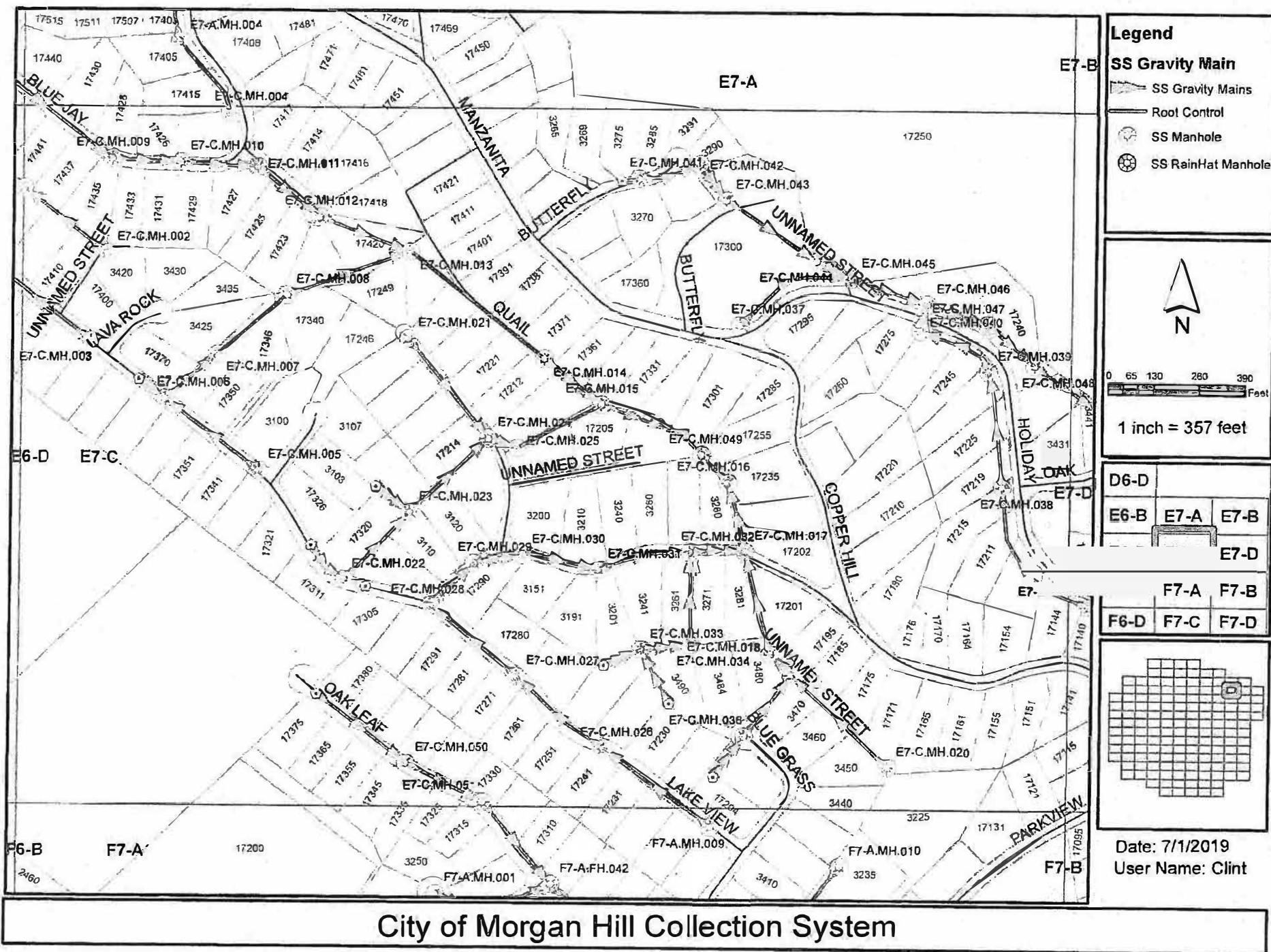
Date	Distance	Pipe Segment Reference	Material	Height (Diameter)	Street	Overall Ratings Index	Upstream MH	Downstream MH	Roots
7/18/2017	434.5	4237	Polyvinyl Chloride	8	19195 Taylor Ave.	2	E3-D.MH.002	E3-D.MH.003	3
5/22/2014 10:05	274	6957	Transite Pipe	6	2947 Holiday Ct	2	E6-B.MH.048	E6-B.MH.007	3
8/11/2010 14:19	274.4	6988	Asbestos Cement	6	BLUE JAY dr.	2	E6-B.MH.046	E6-B.MH.047	4
5/22/2014 9:29	58.3	6958	Transite Pipe	6	17750 Holiday Ct	2	E6-B.MH.009	E6-B.MH.048	3
4/23/2012 9:43	216.6	4759	Asbestos Cement	6	17415 Bluejay Court	3	E7-C.MH.004	E7-A.MH.004	5
8/11/2010 12:17	177.9	6996	Asbestos Cement	6	BLUE JAY CT.	3	E7-C.MH.007	E7-C.MH.008	3
7/2/2012 10:11	355.3	4762	Asbestos Cement	8	17211 Quail Court	3	E7-C.MH.013	E7-C.MH.014	3
1/31/2019 9:35	274	7000	Asbestos Cement	6	Quail Ct.	3	E7-C.MH.025	E7-C.MH.015	4
8/16/2010 15:03	88.2	4866	Asbestos Cement	6	D LIFT STATION	3	E7-D.MH.023	E7-D.MH.003	8
8/4/2010 12:09	164.7	4869	Asbestos Cement	6	SHADY LANE DR.	2	E7-D.MH.026	E7-D.MH.025	5
10/17/2013 10:11	219.3	6595	Transite Pipe	6	17101 Trail Ridge	3	E7-D.MH.027	E7-D.MH.026	5
4/20/2017	127.2	6623	Vitrified Clay Pipe	8	307 Via Loma	2	F3-D.MH.003	F3-D.MH.002	6
9/22/2010 12:00	310.4	5259	Asbestos Cement	6	LORI LANE	3	F7-A.MH.013	F7-A.MH.014	3
6/20/2006 10:39	120.9	6954	Vitrified Clay Pipe	8	JACKSON OAKS DR.	2	F7-B.MH.026	F7-B.MH.025	3
6/30/2014 13:30	83.9	4779	Transite Pipe	6	2490 Oak Hill Ct	1	F7-B.MH.045	F7-B.MH.044	5
6/15/2006 9:00	269	4942	Vitrified Clay Pipe	6	CIRCLE LN.	2	F7-D.MH.022	F7-D.MH.012	6
8/29/2008 7:51	393	4940	Vitrified Clay Pipe	6	Circle Lane	2	G7-B.MH.005	F7-D.MH.023	3
5/31/2019 9:50	305.5	6586	Vitrified Clay Pipe	6	16450 Jackson Oaks Dr.	2	F7-D.MH.033	F7-D.MH.034	3
6/6/2019 9:57	295.7	4966	Vitrified Clay Pipe	6	16245 Jackson Oaks Dr	2	F7-D.MH.053	F7-D.MH.054	3
7/28/2008	172	4789	Vitrified Clay Pipe	6	Jackson Oaks Drive	1	F7-D-050	F7-D-049	3
12/6/2018 12:31	200.7	4833	Vitrified Clay Pipe	6	Oakridge Ln.	2	F8-A.MH.003	F8-A.MH.001	5
12/19/2018 9:29	142.4	4837	Vitrified Clay Pipe	6	Oakridge Ln.	2	F8-A.MH.006	F8-A.MH.007	3
6/6/2019 12:56	224	4838	Vitrified Clay Pipe	6	Oak Ridge	2	F8-A.MH.007	F8-A.MH.008	5
1/29/2019 9:21	190.1	4846	Vitrified Clay Pipe	6	Live Oak Ln.	2	F8-A.MH.014	F8-A.MH.013	6
12/17/2018 12:30	205.8	4794	Vitrified Clay Pipe	6	Oak Canyon Ln.	2	F8-C.MH.006	F8-C.MH.005	3
6/9/2006 9:48	436	4964	Vitrified Clay Pipe	6	OAK CANYON DRIVE	2	F8-C.MH.009	F8-C.MH.005	5
5/24/2017 12:22	372.5	4433	Polyvinyl Chloride	6	18430 Castle Ridge Dr	2	G3-A.MH.011	G3-A.MH.010	6
3/16/2017 13:43	513.8	4445	Clay Tile	6	1115 Theresa In	2	G3-C.MH.001	G3-E.MH.032	4
12/27/2018 13:16	266.2	4394	Vitrified Clay Pipe	6	Del Monte	3	G4-A.MH.059	G4-A.MH.060	4
9/9/2016 12:46	104.5	3693	Vitrified Clay Pipe	6	Behind spring Ave.	2	H4-B.MH.049	G4-A.MH.064	8
8/6/2013 13:07	398	4454	Clay Tile	6	17975 Monterey Rd	2	G4-A.MH.065	G4-A.MH.066	3
1/1/2009 0:04	83.7	3689	Vitrified Clay Pipe	6	W central	2	G4-B.CO.009	G4-B.MH.009	3
12/28/2018 9:16	141.1	4393	Vitrified Clay Pipe	6	Del Monte	2	G4-A.MH.060	G4-C.MH.002	9
2/27/2018 12:43	234.1	4391	Vitrified Clay Pipe	6	Lindo Ln.	2	G4-C.MH.004	G4-C.MH.003	5
5/6/2019 12:35	313.4	5478	Vitrified Clay Pipe	6	barry Ct.	2	G4-C.MH.006	G4-C.MH.007	9
9/12/2017 8:35	252.2	5485	Reinforced Plastic Pipe	8	17890 crest Ave.	3	G4-C.MH.038	G4-C.MH.037	8

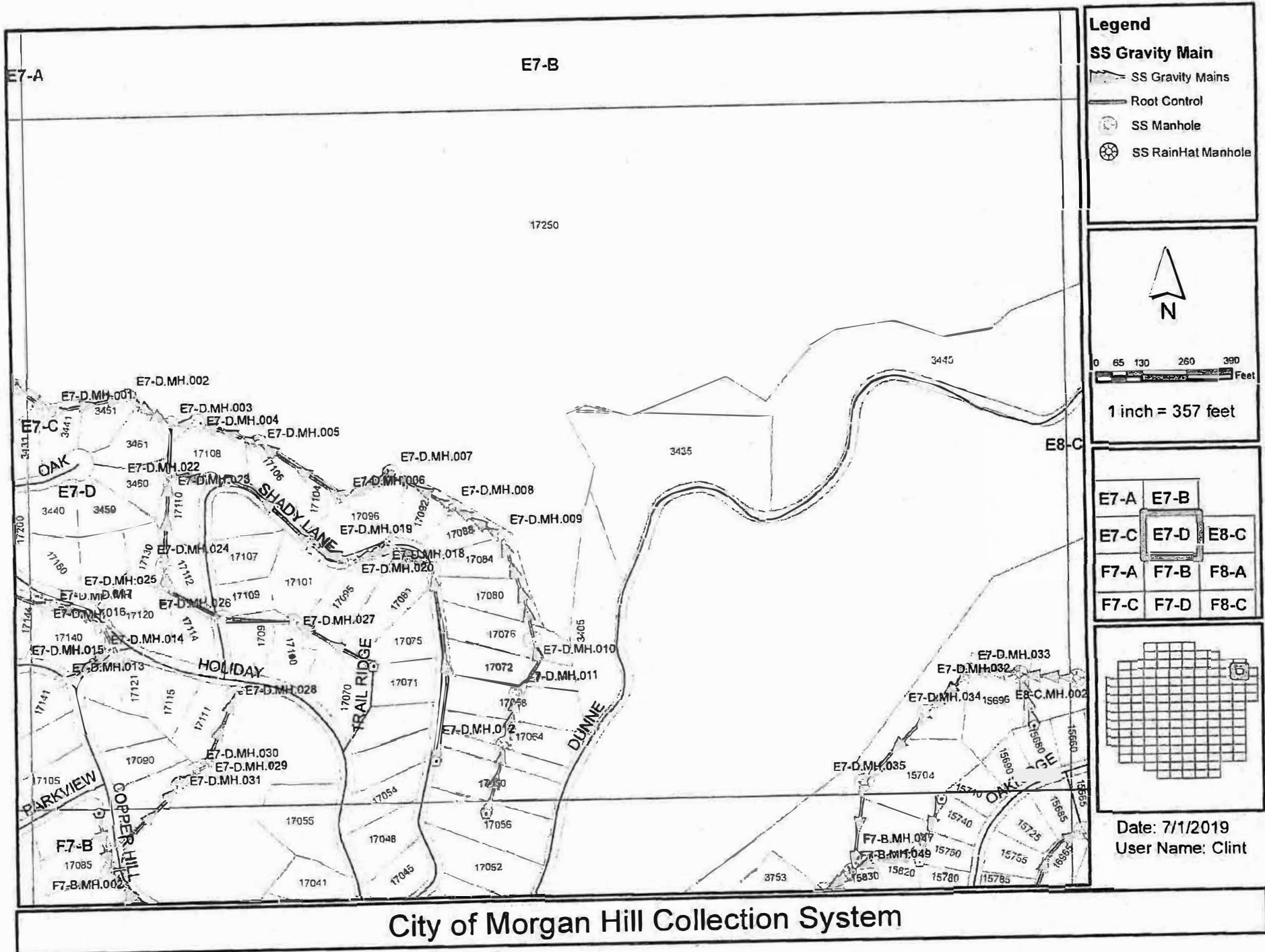
9/12/2017 9:23	45.1	3666	Vitrified Clay Pipe	6	340 Wright Ave.	3	G4-C.MH.039	G4-C.MH.038	4
1/10/2014 10:10	141.5	3712	Vitrified Clay Pipe	6	John Telfer/Claremont	2	196	G4-C.MH.043	3
1/15/2014 13:06	82.2	6331	Vitrified Clay Pipe	6	745 Claremont	1	G4-C.MH.055	G4-C.MH.054	9
1/7/2014 9:00	67.1	3703	Vitrified Clay Pipe	6	17730 John Telfer	1	201	G4-C.MH.057	9
1/16/2014 10:06	25	6316	Vitrified Clay Pipe	6	17685 Dewitt	1	H4-A.MH.004	G4-C.MH.078	3
5/9/2019 7:57	335.1	6482	Polyvinyl Chloride	6	E 2nd St.	2	G4-D.MH.033	G4-D.MH.031	4
8/17/2012 8:24	292.4	3731	Vitrified Clay Pipe	6	35 East 1st Street	1	G4-D.MH.037	G4-D.MH.036	4
5/7/2019 8:20	84.8	3751	Vitrified Clay Pipe	6	E 1st St.	2	G4-D.MH.035	G4-D.MH.036	5
1/28/2014 12:50	357	4386	Vitrified Clay Pipe	12	Central/Del Monte	2	G4-C.MH.001	G4-D.MH.053	6
3/14/2013 20:09	251.9	3740	Vitrified Clay Pipe	6	Del Monte/First St	2	184	G4-D.MH.079	6
10/15/2018 10:39	44.1	3737	Vitrified Clay Pipe	6	W 2nd	2	245	G4-D.MH.082	4
10/15/2018 9:37	146.8	3738	Vitrified Clay Pipe	6	W 2nd	2	15	G4-D.MH.082	7
9/16/2014 9:53	141	3741	Vitrified Clay Pipe	6	165 Nob Hill	1	G4-D.MH.086	G4-D.MH.087	5
9/15/2014 12:47	253.1	3746	Clay Tile	6	Nob Hill/Hale	1	G4-D.MH.098	G4-D.MH.095	4
12/10/2012 9:50	120.9	6833	Vitrified Clay Pipe	8	17030 Pine Way	1	G6-A.MH.023	G6-A.MH.013	3
6/13/2006 12:05	218.1	4938	Vitrified Clay Pipe	6	OAKWOOD CT.	3	G7-B.MH.019	G7-B.MH.006	5
8/25/2008 13:47	102.2	7072	Vitrified Clay Pipe	6	Oakwood Court	3	G7-B.MH.012	G7-B.MH.011	5
1/10/2014 14:14	176	3717	Vitrified Clay Pipe	6	860 Claremont	1	243	H4-A.MH.003	8
1/14/2014 14:22	127	3715	Vitrified Clay Pipe	6	17635 Dewitt	1	H4-A.MH.006	H4-A.MH.005	4
1/16/2014 10:30	213.4	6317	Vitrified Clay Pipe	6	17685 Dewitt	1	G4-C.MH.078	H4-A.MH.005	5
10/25/2017 12:10	67.9	6314	Vitrified Clay Pipe	8	Clairmont Ct.	2	H4-A.MH.007	H4-A.MH.006	3
2/27/2014 9:42	38.1	6311	Vitrified Clay Pipe	6	860 Claremont	1	H4-A.MH.008	H4-A.MH.007	3
1/15/2014 10:02	174.6	6313	Vitrified Clay Pipe	6	860 Claremont	1	H4-A.MH.003	H4-A.MH.008	6
9/25/2013 9:32	52.3	3719	Vitrified Clay Pipe	6	875 Main Ave	2	9	H4-A.MH.012	3
6/2/2016 14:03	190.4	3711	Vitrified Clay Pipe	6	17265 Dewitt Ave	2	H4-A.MH.030	H4-A.MH.031	5
6/25/2019 14:45	247.5	3762	Vitrified Clay Pipe	6	John Telfer	1	19	H4-A.MH.043	4
5/1/2014 9:01	125.3	6172	Vitrified Clay Pipe	6	17145 Dewitt Ave	3	29	H4-A.MH.047	4
11/6/2012 8:37	30.2	6202	Vitrified Clay Pipe	6	16910 La Selva	2	H4-C.MH.019	H4-A.MH.054	3
5/26/2016 10:12	357.7	6203	Vitrified Clay Pipe	6	16940 La Selva	1	H4-A.MH.054	H4-A.MH.055	3
11/7/2012 9:59	232.2	6204	Vitrified Clay Pipe	6	530 La Selva	2	H4-A.MH.055	H4-A.MH.069	3
1/30/2018 14:15	231.6	3820	Vitrified Clay Pipe	6	Del Monte Ave	2	H4-B.MH.042	H4-B.MH.043	5
1/29/2018 14:08	158.3	3821	Vitrified Clay Pipe	6	Manor Ct.	2	H4-B.MH.045	H4-B.MH.046	3
7/3/2018 8:05	373.9	6251	Vitrified Clay Pipe	6	Manor Ct.	3	H4-B.MH.044	H4-B.MH.046	7
8/23/2018 9:05	248.1	6248	Vitrified Clay Pipe	6	Spring Ave.	2	H4-B.MH.050	H4-B.MH.049	7
6/25/2019 12:08	136.7	6247	Vitrified Clay Pipe	6	Del Monte	3	H4-B.MH.051	H4-B.MH.050	3
6/25/2019 12:44	103.8	3841	Vitrified Clay Pipe	6	Del Monte	2	H4-B.MH.052	H4-B.MH.051	6
8/14/2018	218.7	6239	Vitrified Clay Pipe	10	16730 Barnell Ave	2	H4-B.MH.054	H4-B.MH.052	8

8/23/2018 12:44	454.4	6239	Reinforced Concrete	10	Barnell Ave.	2	H4-B.MH.054	H4-B.MH.052	9
1/26/2018 13:10	147.9	3840	Concrete Pipe (non-	10	Barnell	2	H4-B.MH.055	H4-B.MH.054	7
6/28/2018 8:49	448.3	6213	Vitrified Clay Pipe	8	Barnell	1	H4-B.MH.040	H4-B.MH.055	8
4/10/2014 12:44	163.4	6216	Polyvinyl Chloride	10	16692 Lone Hill	1	H4-B.MH.060	H4-B.MH.056	3
4/11/2014 8:49	142.3	6237	Reinforced Plastic Pipe	10	335 Spring Ave	1	H4-B.MH.066	H4-B.MH.180	4
8/12/2014 12:42	73.4	3771	Vitrified Clay Pipe	6	John Telfer/W. Dunne Ave	1	23	H4-C.MH.004	9
5/1/2012 14:05	66.3	11182	Vitrified Clay Pipe	8	18510 Hale Ave	2	F4-C.MH.066	H4-C.MH.048	9
3/21/2019 12:03	137.9	3932	Vitrified Clay Pipe	6	Mast	2	240	H5-C.MH.058	3
1/8/2013 10:27	539.3	6459	Vitrified Clay Pipe	6	16210 Keith	1	H5-C.MH.032	I5-A.MH.031	8
1/9/2013 9:46	313.7	3947	Vitrified Clay Pipe	6	Edmundson/Keith	1	I5-A.MH.031	I5-A.MH.032	9
4/10/2018 12:16	438.5	6449	Asbestos Cement	8	Tennant Ave.	2	I5-A.MH.005	I5-A.MH.051	3
4/30/2019 8:57	108.3	6068	Vitrified Clay Pipe	10	Calle Enrique	3	I5-C.MH.036	I5-C.MH.037	4
4/30/2019 13:26	413.6	6066	Vitrified Clay Pipe	10	La Crosse	4	I5-C.MH.037	I5-C.MH.038	7
2/21/2019 13:56	381.9	6052	Vitrified Clay Pipe	10	La Crosse	3	I5-C.MH.038	I5-C.MH.039	8
3/3/2016 14:18	390.1	5079	Vitrified Clay Pipe	8	880 Encino	1	J4-B.MH.020	J4-B.MH.019	7
3/3/2016 13:37	126.9	4112	Vitrified Clay Pipe	8	890 Encino	1	J4-B.MH.021	J4-B.MH.020	8
1/20/2016 12:20	155	4103	Clay Tile	6	La Alameda/Alamo	1	J5-A.MH.047	J5-A.MH.053	6
3/15/2019 10:29	192.8	4113	Vitrified Clay Pipe	6	Roble Dr.	2	97	J5-A.MH.062	5
2/25/2016 13:28	321.3	4191	Vitrified Clay Pipe	8	15415 La Alameda	1	J5-A.MH.061	J5-A.MH.062	5
2/25/2016 13:50	397.6	4190	Vitrified Clay Pipe	8	15415 La Alameda	2	J5-A.MH.062	J5-A.MH.063	5
5/15/2013 13:50	276.4	4159	Clay Tile	6	14530 Atherton	3	K5-B.MH.001	J5-D.MH.020	3

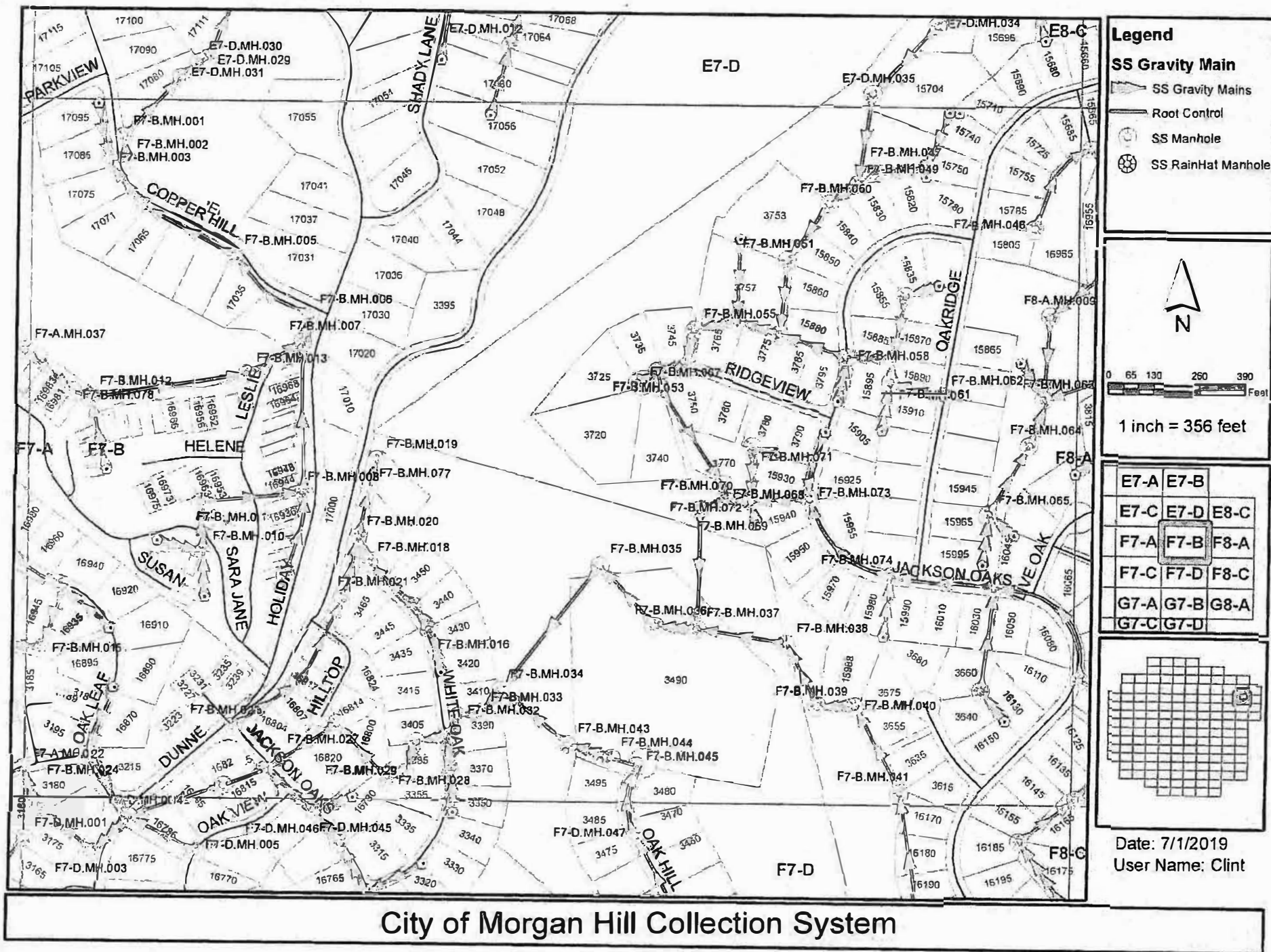


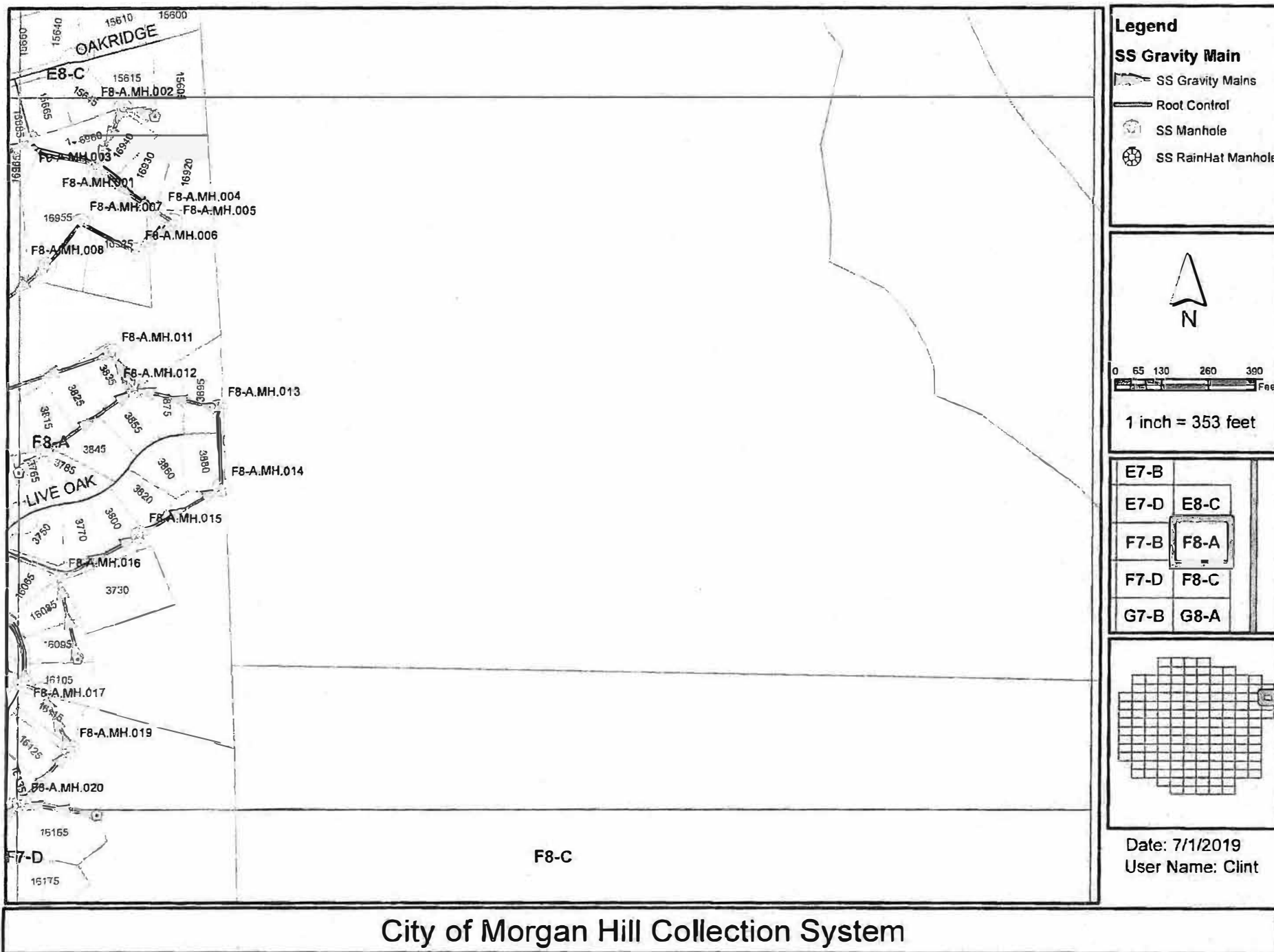
City of Morgan Hill Collection System





Date: 7/1/2019
User Name: Clint





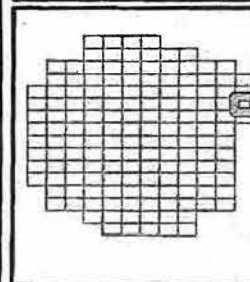
- SS Gravity Mains
- Root Control
- SS Manhole
- SS RainHat Manhole



0 65 130 260 390 Feet

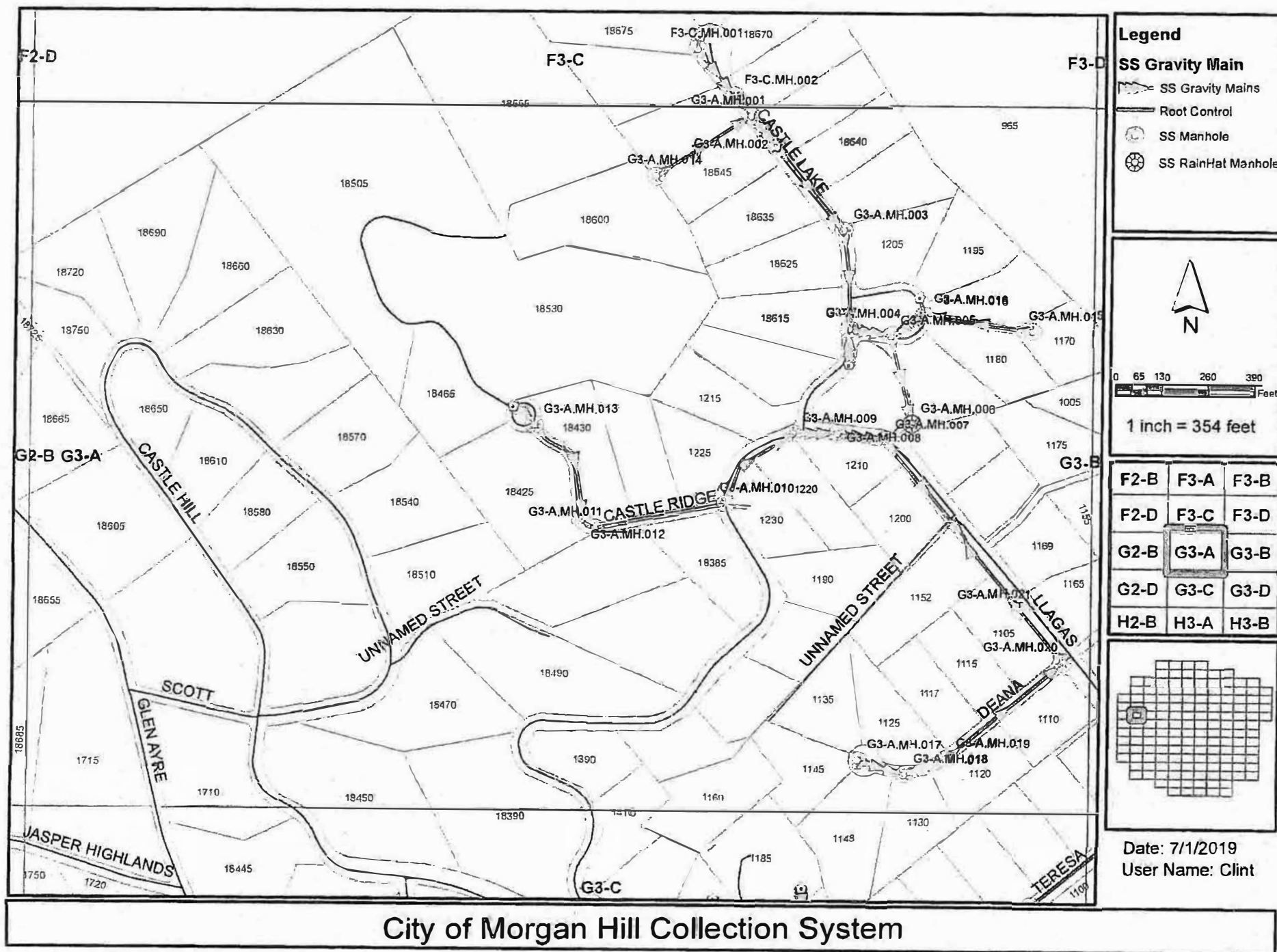
1 inch = 353 feet

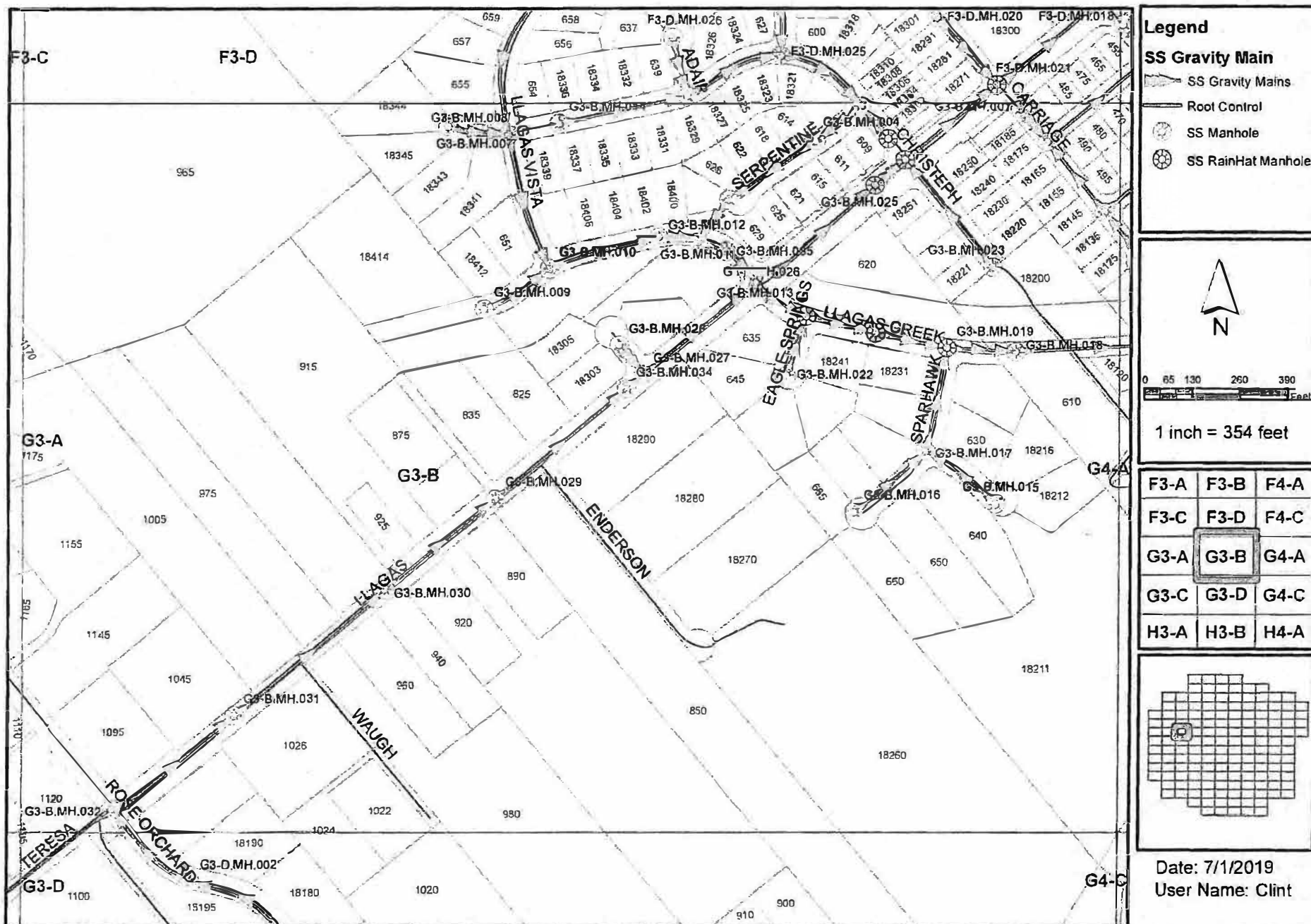
E7-B	
E7-D	E8-C
F7-B	F8-A
F7-D	F8-C
G7-B	G8-A



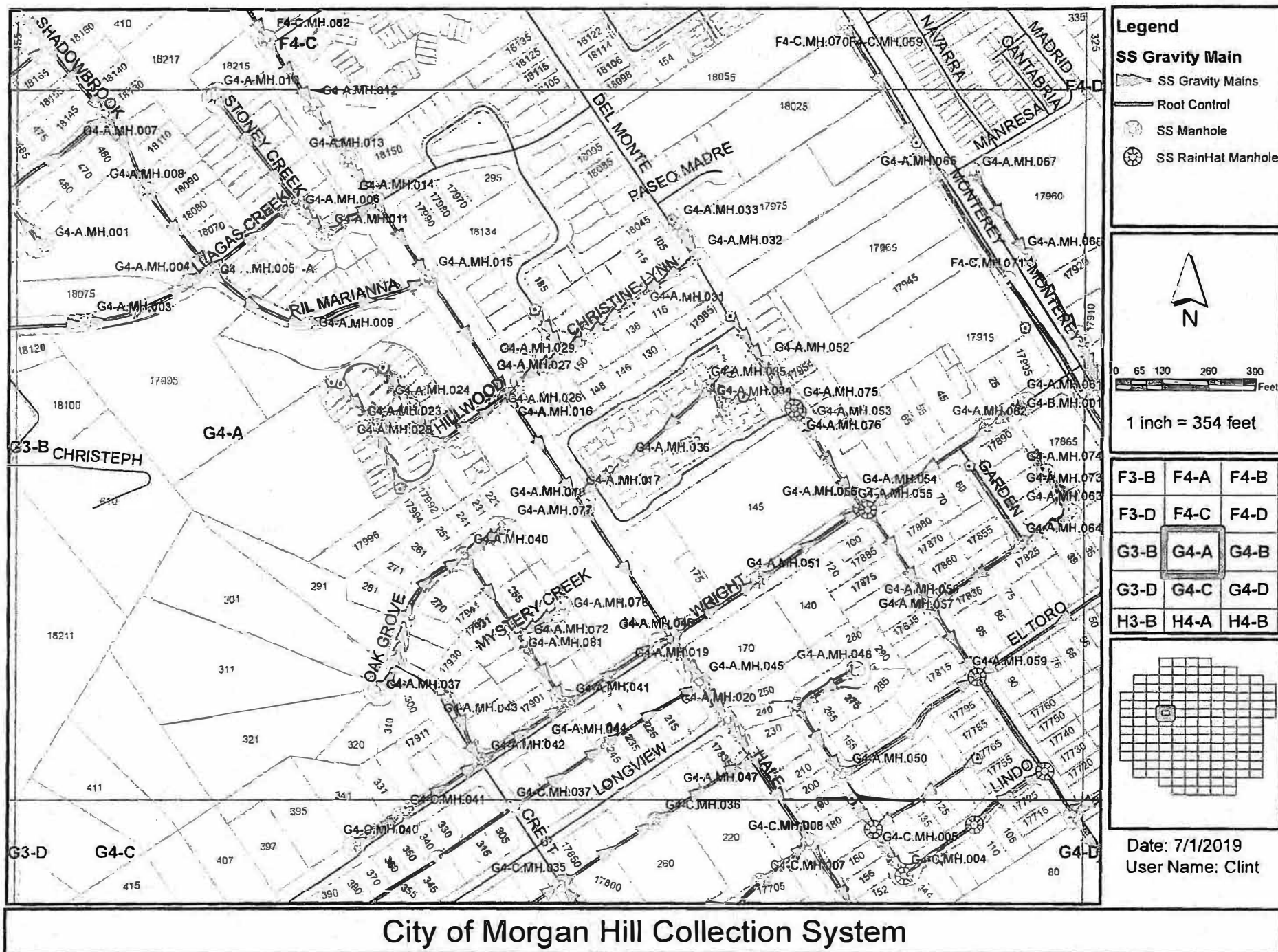
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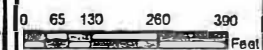




City of Morgan Hill Collection System

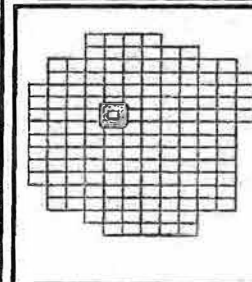


- SS Gravity Mains
- Root Control
- SS Manhole
- SS RainHat Manhole



1 inch = 354 feet

F4-A	F4-B	F5-A
F4-C	F4-D	F5-C
G4-A	G4-B	G5-A
G4-C	G4-D	G5-C
H4-A	H4-B	H5-A



Date: 7/1/2019
User Name: Clint

City of Morgan Hill Collection System

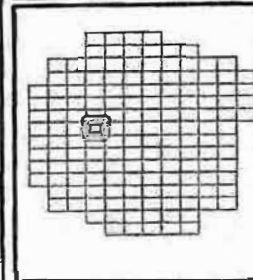
- SS Gravity Mains
- Root Control
- SS Manhole
- SS RainHat Manhole



0 65 130 260 390

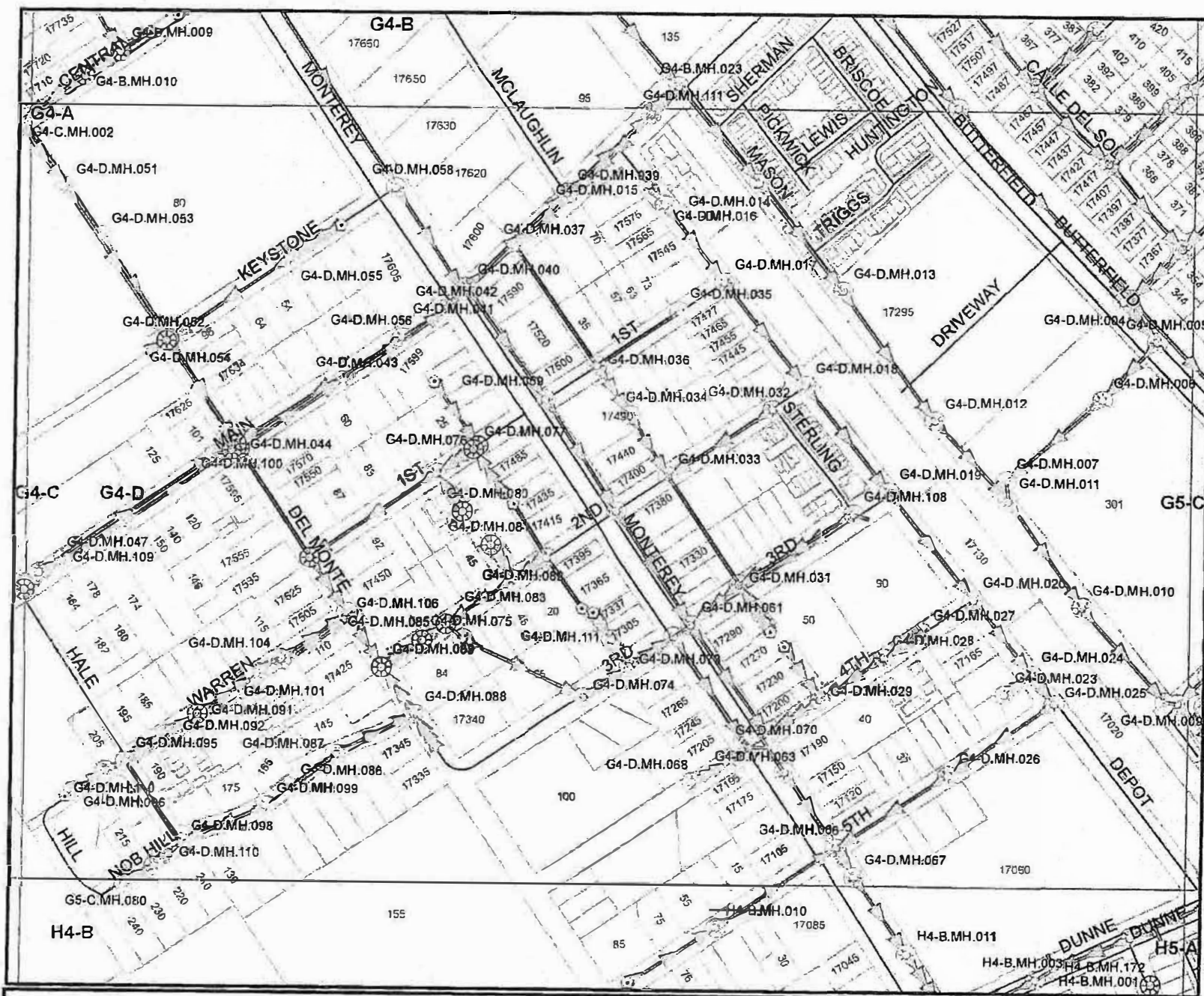
1 inch = 354 feet

F3-D	F4-C	F4-D
G3-B	G4-A	G4-B
G3-D	G4-C	G4-D
H3-B	H4-A	H4-B
H3-D	H4-C	H4-D

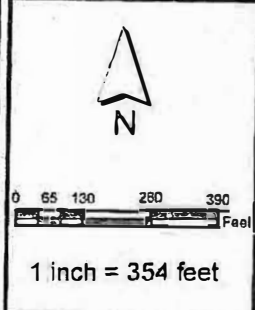


Date: 7/1/2019
User Name: Clint

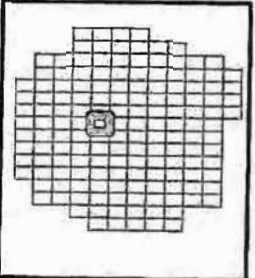
City of Morgan Hill Collection System



- Legend**
- SS Gravity Main
 - Root Control
 - SS Manhole
 - SS RainHat Manhole



F4-C	F4-D	F5-C
G4-A	G4-B	G5-A
G4-C	G4-D	G5-C
H4-A	H4-B	H5-A
H4-C	H4-D	H5-C

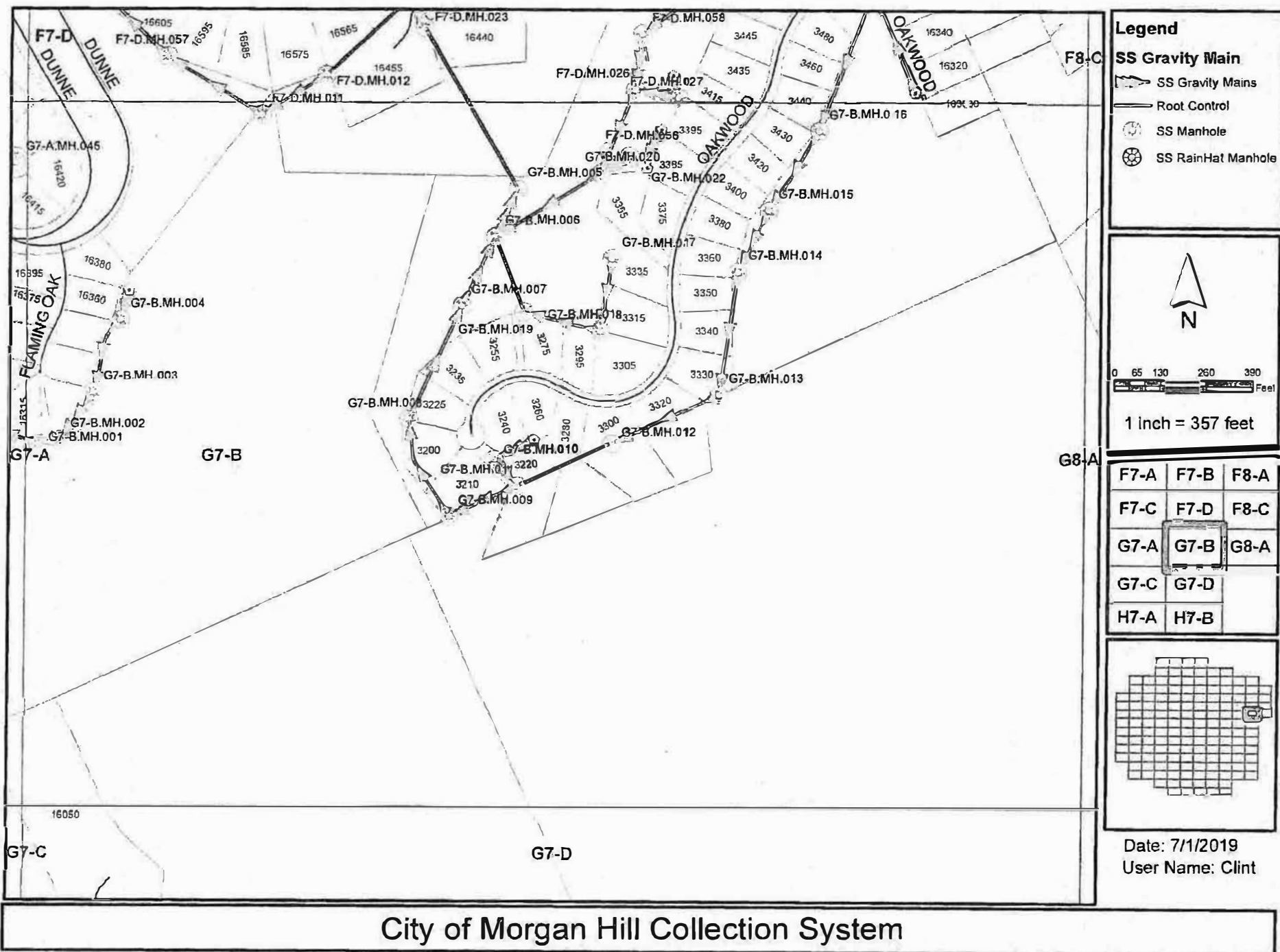


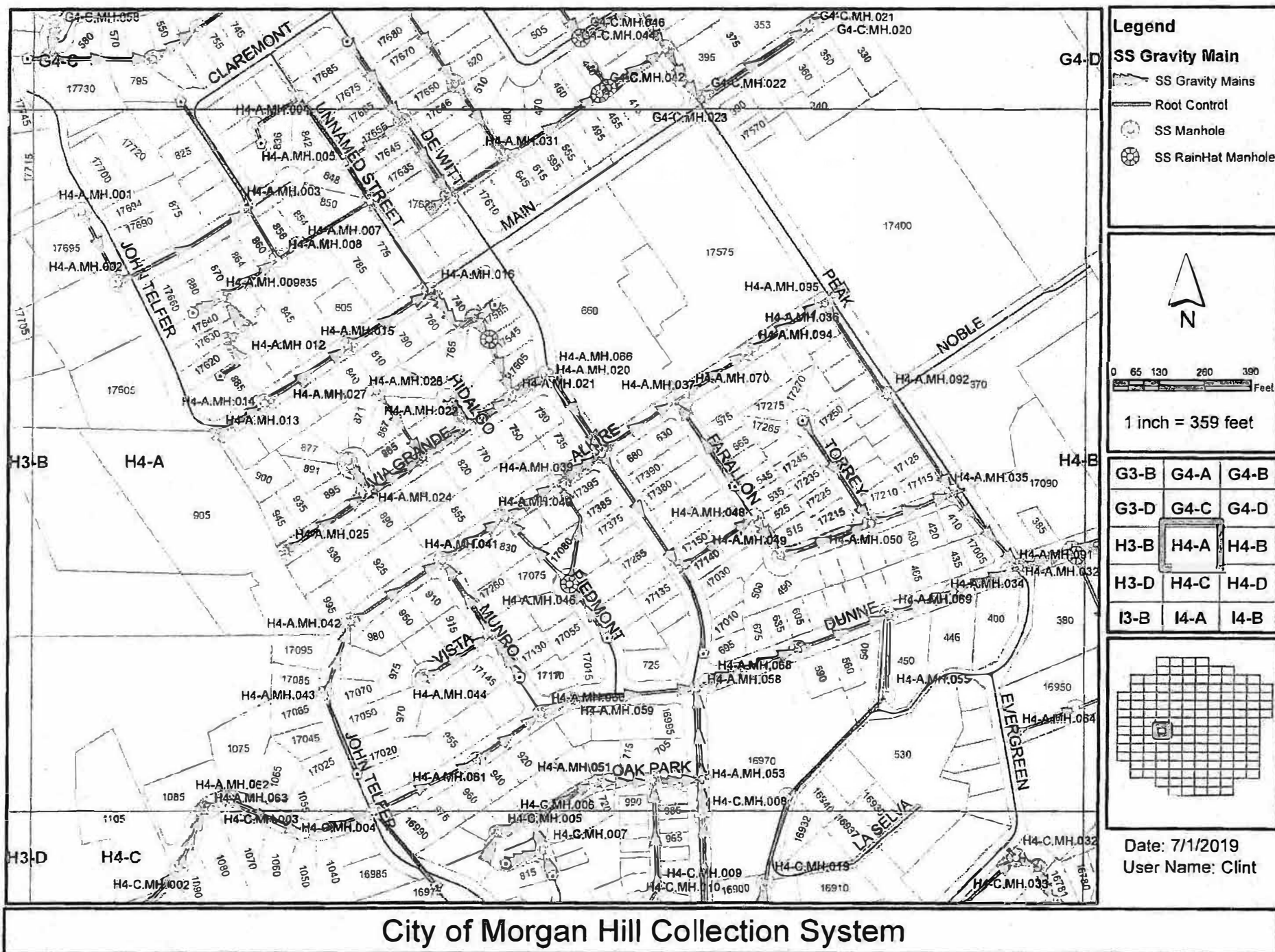
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User Name: Clint

City of Morgan Hill Collection System



City of Morgan Hill Collection System





Legend

SS Gravity Main

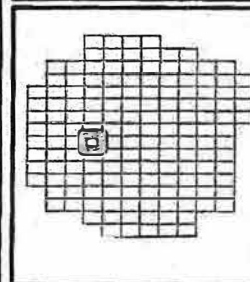
- SS Gravity Mains
- Root Control
- SS Manhole
- SS RainHat Manhole



0 65 130 260 390 Feet

1 inch = 359 feet

G3-B	G4-A	G4-B
G3-D	G4-C	G4-D
H3-B	H4-A	H4-B
H3-D	H4-C	H4-D
I3-B	I4-A	I4-B



Date: 7/1/2019
User Name: Clint

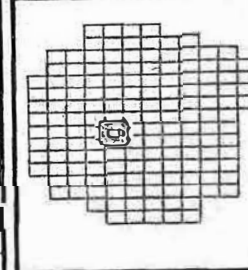
 SS Gravity Mains
 Root Control
 SS Manhole
 SS RainHat Manhole



0 85 130 260 390 Feet

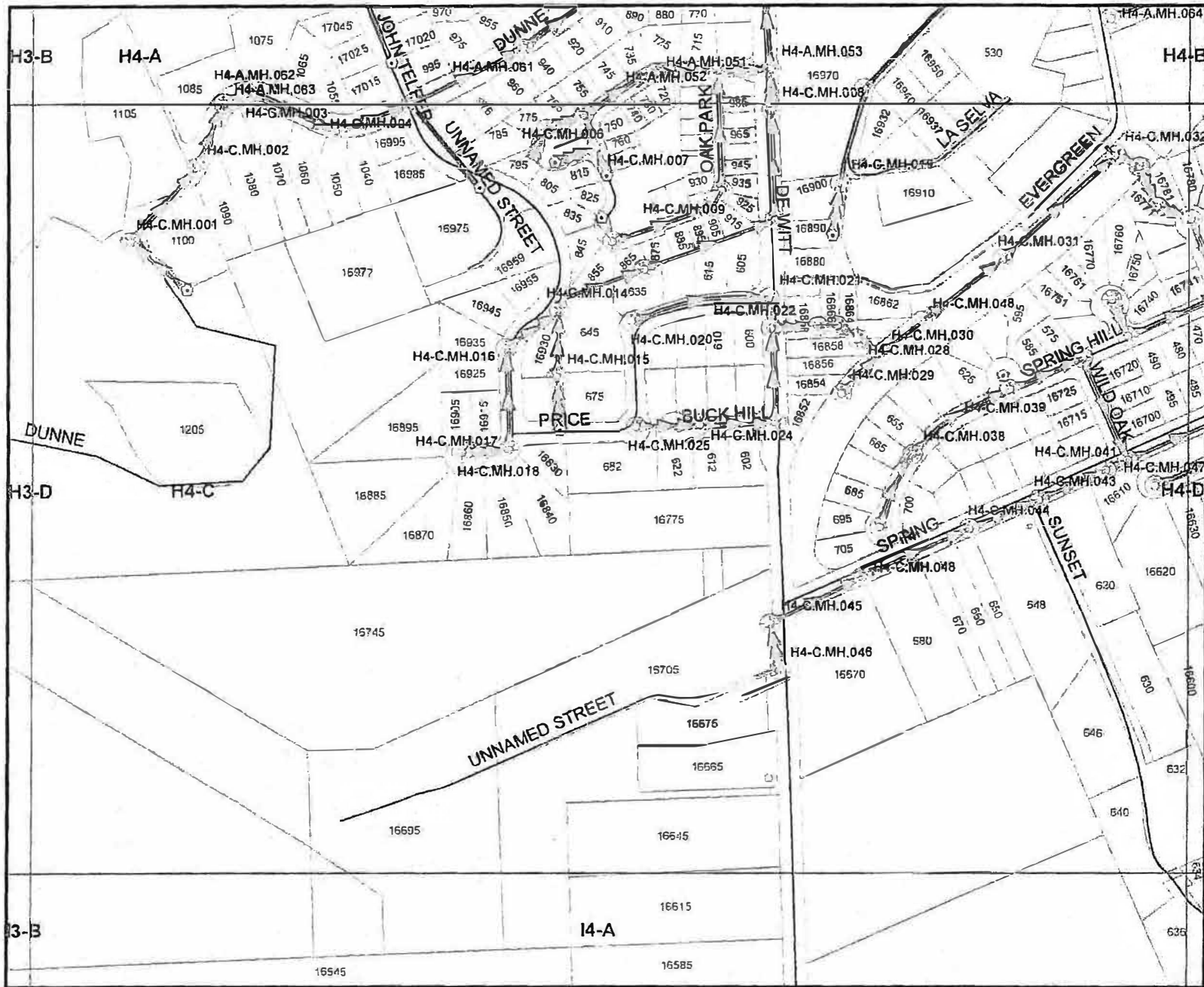
1 inch = 359 feet

G4-A	G4-B	G5-A
G4-C	G4-D	G5-C
H4-A	H4-B	H5-A
H4-C	H4-D	H5-C
I4-A	I4-B	I5-A



Date: 7/1/2019
User Name: Clint

City of Morgan Hill Collection System



Legend

SS Gravity Main

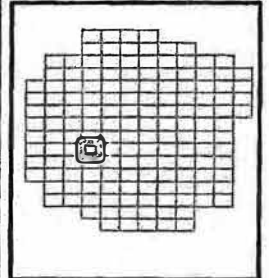
- SS Gravity Mains
- Root Control
- SS Manhole
- SS RainHat Manhole

North Arrow

Scale: 0 65 130 260 390 Feet

1 inch = 359 feet

G3-D	G4-C	G4-D
H3-B	H4-A	H4-B
H3-D	H4-C	H4-D
I3-B	I4-A	I4-B
I3-D	I4-C	I4-D



Date: 7/1/2019
User Name: Clint

City of Morgan Hill Collection System

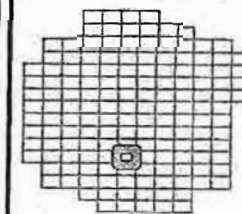
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- Root Control
- SS Manhole
- SS RainHat Manhole



0 65 130 260 390 Feet

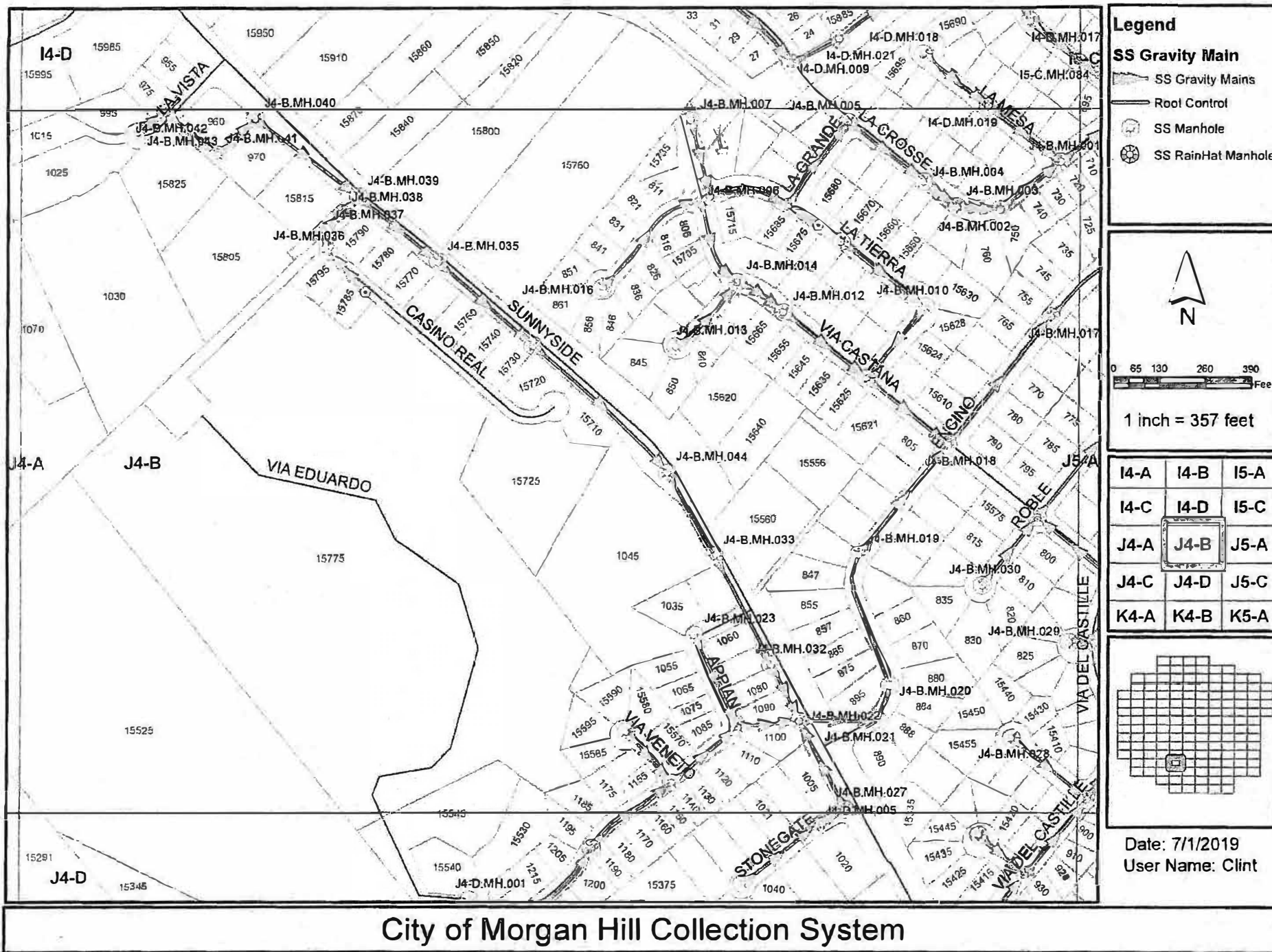
1 inch = 357 feet

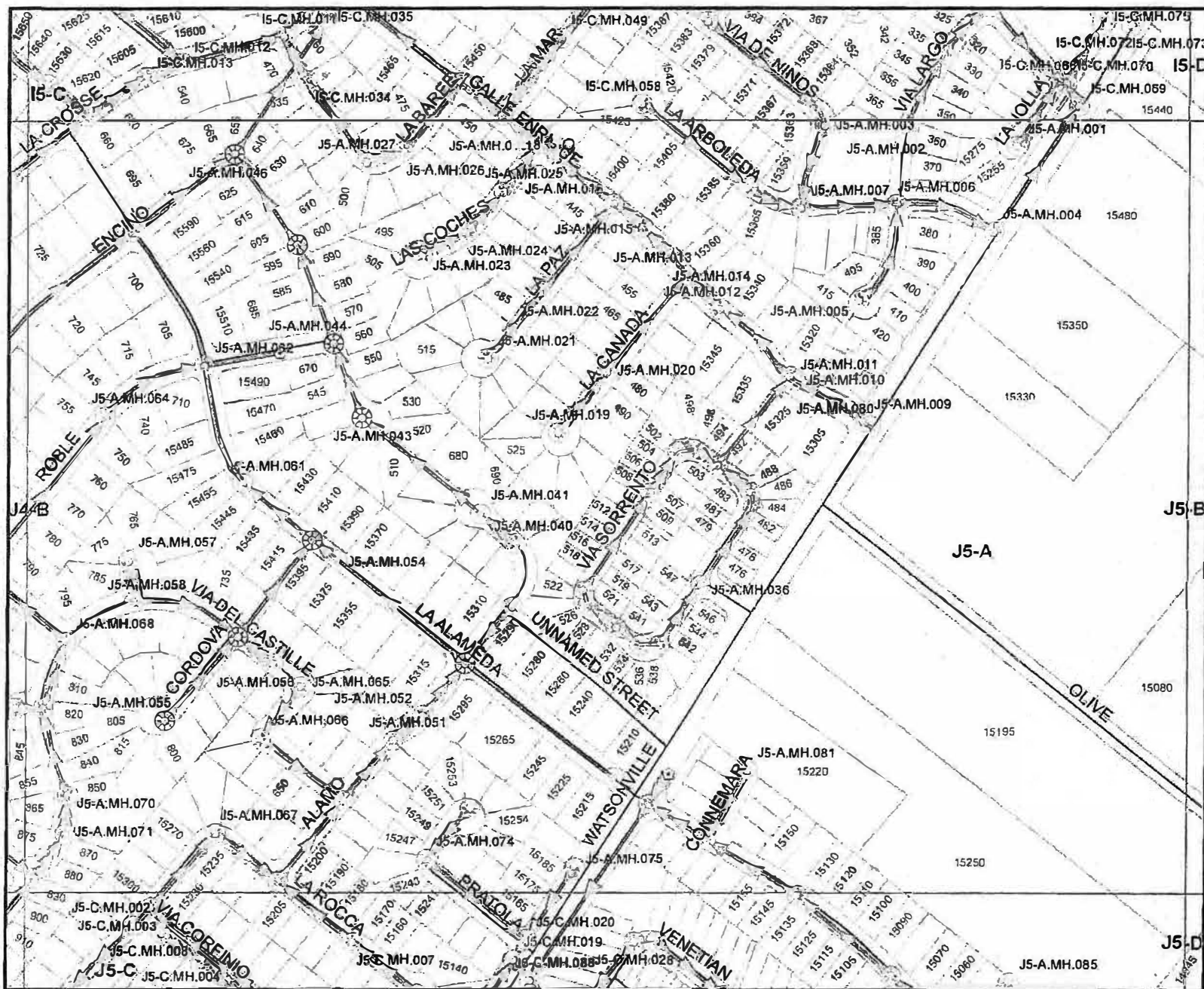
H4-D	H5-C	H5-D
I4-B	I5-A	I5-B
I4-D	I5-C	I5-D
J4-B	J5-A	J5-B
J4-D	J5-C	J5-D



Date: 7/1/2019
User Name: Clint

City of Morgan Hill Collection System





Legend

SS Gravity Main

- SS Gravity Mains
- Root Control
- SS Manhole
- SS RainHat Manhole

N

0 65 130 260 390 Feet

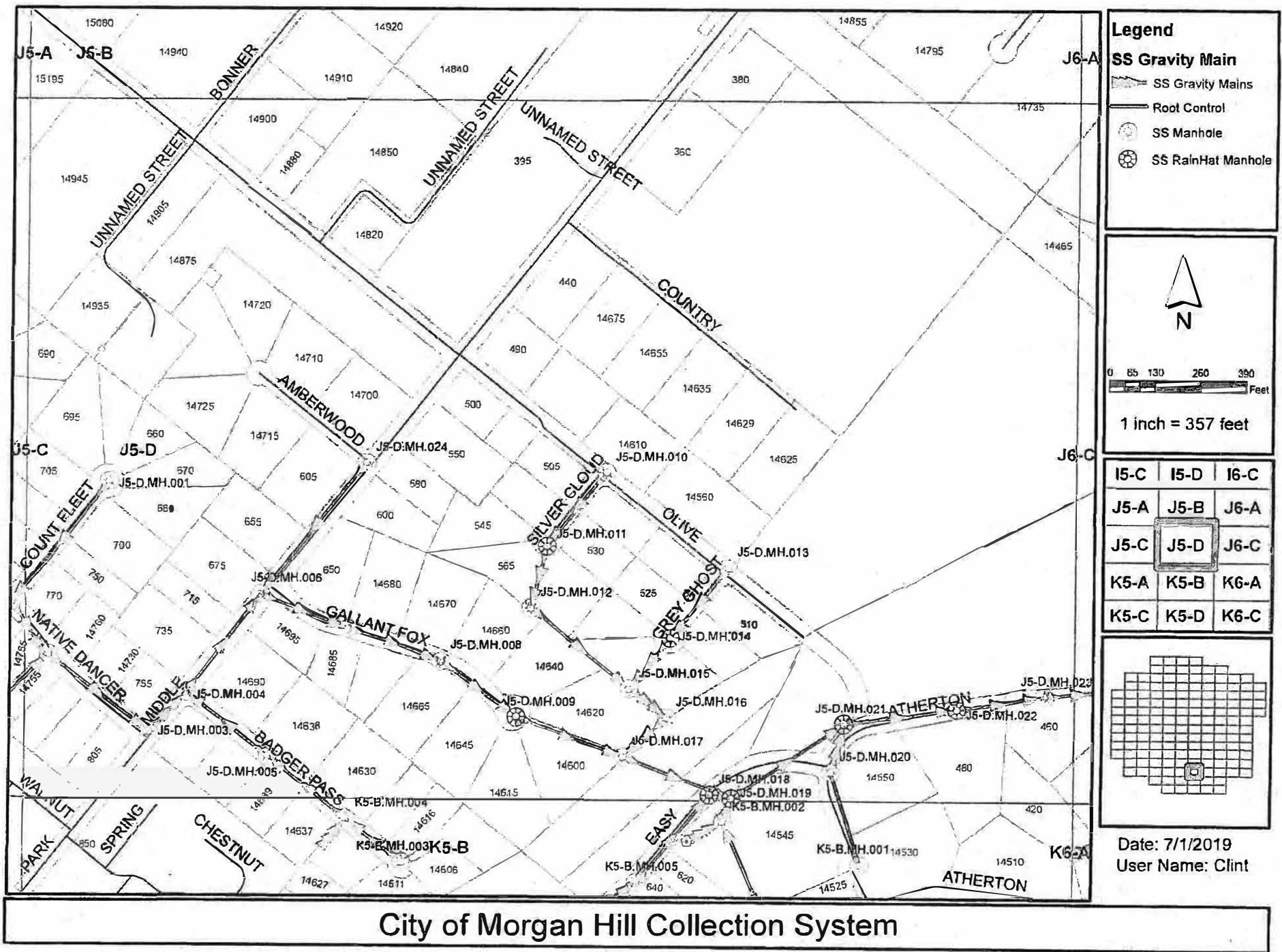
1 inch = 357 feet

I4-B	I5-A	I5-B
I4-D	I5-C	I5-D
J4-B	J5-A	J5-B
J4-D	J5-C	J5-D
K4-B	K5-A	K5-B

Date: 7/1/2019

User Name: Clint

City of Morgan Hill Collection System



COMPANY NAME: DUKE'S ROOT CONTROL, INC.

REVISED EXHIBIT B DATED JANUARY 12, 2022

SCHEDULE OF COMPENSATION RATES

Sanitary Sewer Chemical Root Control Services

Sewer line chemical root control, including all labor, materials, equipment, travel, and associated costs, shall be paid for at the unit price per linear foot of each size pipe. Unit prices are to be computed per linear foot manhole-to-manhole.

PIPE SIZE	UNIT PRICE PER LINEAR FOOT	ESTIMATED FOOTAGE	TOTAL PRICE
6 inch	\$ 1.98	18,104	\$ 35,845.92
8 inch	\$ 1.98	3,668	\$ 7,262.64
10 inch	\$ 2.17	2,031	\$ 4,407.27
12 inch	\$ 2.37	357	\$ 864.09
15 inch*	\$ 5.76	0	\$0
18 inch*	\$ 8.28	0	\$0
21 inch*	\$ 10.16	0	\$0
24 inch*	\$ 13.12	0	\$0
* For future pricing reference only. Please fill in unit price per linear foot only on the items in red.			Sum Total Price (in figures) \$ 48,379.92

CITY COUNCIL STAFF REPORT

MEETING DATE: September 6, 2023

PREPARED BY:

Joey Dinh, Associate Planner

APPROVED BY: City Manager

APPROVE OBJECTIVE DEVELOPMENT STANDARD WAIVERS FOR THE EDES-ALCINI: AFFORDABLE HOUSING PROJECT AT EDES COURT AND MONTEREY ROAD

RECOMMENDATION(S)

Adopt Resolution approving the request for waivers for the Edes-Alcini project.

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Preserving and Cultivating Public Trust

Advancing Regional Initiatives

2022-2023 Strategic Priorities

Affordable Housing and Homelessness

Guiding Documents

Morgan Hill 2035 General Plan

REPORT NARRATIVE:

TTLIC Morgan Hill - Edes, LLC has applied for a Design Permit and Tentative Subdivision Map for the development of a 21-unit townhome-style condominium development to be developed on 1.1-acre parcel located west of the intersection of Edes Court and Monterey Road (APN 767-18-046). This is a for-sale condominium development that is proposing a residential density of 19.1 dwelling units per acre. The property is designated as Mixed-Use Flex by the General Plan which allows a residential density of 7-24 units per acre. This project is not requesting a density bonus; however, projects that include a certain level of affordable housing are entitled under Density Bonus law to receive concessions based on the number of affordable units and level of affordability provided within the project and an unlimited amount of waivers – the law does not require an actual increase in density. The project is committing to provide 15 percent of the units to be restricted for-sale to qualified buyers with moderate incomes (3 moderate income) and paying for the remaining fractional unit with an in-lieu fee. In doing so, the project would be eligible for a density bonus under California Density Bonus Law (DBL) per Government Code Section 65915[b] and Section 65915[f]. By meeting the eligibility requirements of DBL, the project would qualify for one incentive or concession and an unlimited amount of waivers or reductions of

development standards that could have the effect of preventing the project from constructing at its allowed density. A complete list of requested waivers has been provided (Attachment 2).

BACKGROUND:

Under State law, projects that include certain levels of affordable housing are entitled to receive concessions and waivers based on the number of affordable units and level of affordability provided within the project. The Edes - TTLC Morgan Hill project includes 21 townhome-style condominium homes located on the west side of the Edes Court and Monterey Road intersection. As proposed, the project includes fifteen percent (15%) affordable units for persons and families of moderate income and is consistent with the General Plan. Government Code Section 65915(b)(1)(A) requires the City to grant one incentive or concession and an unlimited amount of waivers for projects that include at least ten percent (10%) affordable units, unless specific written findings described below are made by the City. Concessions and waivers must be approved, even if the project is not requesting an increase in density. Waivers are a form of assistance under State law, separate from incentives/concessions. A waiver is a reduction or modification of any “development standards” and other regulations when those requirements potentially make the construction of the project physically infeasible, if not approved. The developer must provide written documentation to justify why the waiver(s) is needed to construct the project. Unlike concessions and incentives, there is no limit to the number of waivers an applicant can request and applicants are entitled to a waiver of any and all development standards that would physically preclude the development at the density permitted and with the incentive(s) granted. [Gov. Code §65915(e)(1) and §65915(e)(2)] “Development standards” include a site or construction condition, including, but not limited to, a height limitation, a setback requirement, a floor area ratio, an onsite open-space requirement, or a parking ratio that applies to a residential development pursuant to any ordinance, general plan element, specific plan, charter, or other local condition, law, policy, resolution, or regulation. [Gov. Code §65915(o)(1)]. This project is entitled to unlimited waivers and is requesting six waivers.

Waiver Request

Waiver: Reduction in Minimum Front Setback. TTLC is requesting a waiver or reduction in the front setback requirements applicable in the Mixed Use Flex (MU-F) zone from 15 to 10 feet. This waiver is necessary because application of a 15 foot front setback requirement would physically prevent the project from being built at its permitted density.

The Mixed Use Flex (MU-F) zone district requires a minimum of 15 feet front setback. The project is requesting a minimum of 10 feet front setback. The fronts of the proposed residential buildings will be approximately 11.5 feet from the front setback line.

Waiver: Reduction in Minimum Rear Setback. TTLC is requesting a waiver or reduction in the rear setback requirement applicable in the MU-F zone from 20 to 15 feet. This waiver is necessary because application of a 20 foot front setback requirement would physically prevent the project from being built at its permitted density.

The Mixed Use Flex (MU-F) zone district requires a minimum of 20 feet rear setback. The project is requesting a minimum of 15 feet rear setback. The rear of the proposed residential buildings will be approximately 17 feet from the rear setback line.

Waiver: On-Site Recreational Amenities. TTLC is requesting a waiver or reduction in the requirements related to on-site recreational amenities (GP Policy CNF-11.10). The proposed project will provide one Tier 1 amenity (park benches). However, no Tier 2 amenities could be accommodated without losing units.

The City's Residential Development Design and Development Standards requires two Tier 1 amenities and two Tier 2 amenities for projects that are proposing 16-50 units. The project will provide one Tier 1 amenity: park benches.

Waiver: Planted Parkway. A 5-foot wide planted parkway does not fit within the City's existing right-of-way for Edes Court, and therefore will not be provided and TTLC is seeking a waiver of this requirement.

The project will construct attached sidewalks along the project's frontage along Edes Court, which currently does not have any sidewalks in the immediate vicinity.

Waiver: Ponding Basin. TTLC requests a waiver pursuant to the protections of the DBL, as application of the requirement will both have the effect of physically precluding the construction of the project at the allowed density (e.g. waiver standard) and will also directly result in identifiable and actual cost increases that will prevent TTLC from providing for affordable housing costs. (Gov. Code §§ 65915(b)(1), (d)(1), (e)(1), k)).

Stormwater runoff from the building's downspouts will be directed into bioretention areas or onto alleys draining directly to permeable pavement prior to discharging into the existing storm drain system in Edes Court. The proposed storm drain system consists of perforated pipes in bioretention areas and under the pervious paver system, landscape area drains, and 12-inch storm drain pipes. In addition, the proposed project would be required to comply with all state and local water quality regulations, which would ensure that significant impacts related to water quality would not occur. The proposed project is requesting a waiver under DBL to the City's Storm Drain Design Standard related to ponding basins since there is not enough room on-site for a detention basin without affecting the project's ability to build at its allowed General Plan density and resulting in cost increases in providing for affordable housing. However, stormwater runoff associated with the site would be required to comply with the Central Coast Regional Water Quality Control Board (CCRWQCB) standards. The applicant has also provided Flood Impact and Project Runoff Studies prepared by Schaaf and Wheeler that demonstrate the project will not have a significant impact on West Little Llagas Creek nor significantly impact the flood risk in the region during a 100-year storm event. The amount of impervious area generated by the project will increase by 0.33 percent, which is considered negligible and is not expected to affect peak flows into the groundwater subbasin and nearby West Little Llagas Creek.

Waiver: Reduced Parking Requirements. TTLC requests application of the reduced parking requirements under the DBL at the ratios and with no guest parking provided.

The project will provide two covered parking spaces in each unit's attached garage. However, due to the requirement of maintaining 26-foot-wide roads for onsite circulation of emergency vehicles such as firetrucks, there would be no additional room on-site to provide for guest parking without reducing the number of units.

Can the Agency Deny a Concession/Incentive or Waiver?

Yes. Nothing in the DBL requires a local government to grant an incentive or waiver that will potentially result in a specific, adverse impact upon public health, safety, the environment or on any property listed in the California Register of Historic Resources. [Gov. Code §65915(d)(1) and §65915(e)(1)]

How Do You Determine Physical Infeasibility? Waiver requests must be accompanied by sufficient documentation to demonstrate that the usual development standards would physically preclude development of the project with a density bonus. Furthermore, while the developer must justify the need for a waiver, a pro-forma (or other similar analysis) is not required. An example of sufficient documentation is a written explanation of the requested waiver(s) and a waiver exhibit showing the developable envelope remaining once all development standards are met. [Gov. Code §65915(a)(2)]. This has been provided as Attachment 2.

Under Government Code 65915(e)(1) the city shall grant the concession or incentive requested by the applicant unless the city, county, or city and county makes a written finding, based upon substantial evidence, of any of the following:

- (A) The waiver would have a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon health or safety, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact.
- (B) The waiver would have an adverse impact on any real property that is listed in the California Register of Historical Resources.
- (C) The waiver would be contrary to state or federal law.

Staff is unable to make any of these findings for this project.

Next steps for the project include administrative review of the Design Permit by the Development Services Director and a public hearing at the Planning Commission on September 12, 2023 to consider the Tentative Subdivision Map.

COMMUNITY ENGAGEMENT:

The proposed project was publicly noticed (mailing to property owners within 300 feet of the project and newspaper legal noticing) for the minimum 10-day period and a sign was posted on the project pursuant to the Planning Division requirements.

ALTERNATIVE ACTIONS:

Council may find the project to not be consistent with Government Code Section 65915(e)(1).

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

In 2002, there was a General Plan Amendment application (GPA 02-06) to request the property's General Plan designation be changed from General Commercial to Multi-Family Medium for the development of 23-units. However, the application was withdrawn shortly after filing.

In 2005, a Conditional Use Permit (UP 05-10) was applied for the development of a Buddhist meditation center. This application was also withdrawn shortly after filing.

In 2016, City Council approved Resolution 16-128 which adopted the "Morgan Hill 2035 General Plan."

In 2018, City Council adopted Ordinance 2277, which approved a comprehensive update to the City's Zoning Ordinance and included an amendment to the City's official zoning map consistent with the Morgan Hill 2035 General Plan. Both of these actions effectively changed the General Plan designation and zoning of the property to Mixed Use Flex.

In August 2021, the applicant applied for a Preliminary Application under Senate Bill 330 - Housing Crisis Act (SB330).

FISCAL AND RESOURCE IMPACT:

Review costs for this project are paid for from development processing fees.

CEQA (California Environmental Quality Act):

A Modified Initial Study pursuant to CEQA Guidelines Section 15183 was prepared to identify and analyze potential environmental impacts of the proposed project. As demonstrated throughout this Initial Study, the proposed project qualifies for exemption under CEQA Guidelines Section 15332, Class 32 In-Fill Development. The proposed project is not subject to any of the exceptions set forth in Section 15300.2 of the CEQA Guidelines including the criteria set forth in Sections 15332(a) through 15532(e). In addition, the checklist portion of this Modified Initial Study demonstrates that the proposed project would not result in a significant impact that is peculiar to the project or the project site, was not identified as a significant effect in the General Plan EIR, or would have a more severe adverse impact than discussed in the General Plan EIR; thus, eliminating the requirement for further environmental review. The Development Services Director has concluded that the project proposed for Edes -Alcini (TTLC Morgan Hill) is categorically exempt pursuant to Section 15332 of the CEQA Guidelines for In-Fill Development.

RESOLUTION NO. 23-XXX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING SIX DEVELOPMENT STANDARD WAIVERS FOR THE 21-UNIT EDES-ALCINI PROJECT CONTAINING FIFTEEN PERCENT AFFORDABLE UNITS LOCATED WEST OF THE INTERSECTION OF EDES COURT AND MONTEREY ROAD (APN 767-18-046).

WHEREAS, TTLC Morgan Hill – Edes, LLC submitted an application for the Edes – TTLC Morgan Hill (Project) a 21-unit residential development project consisting of attached townhome-style condominiums.

WHEREAS, TTLC Morgan Hill – Edes, LLC has requested six waivers for the housing development.

WHEREAS, the Project is a market rate housing development that includes 15 percent of the units to be restricted for-sale to qualified buyers with moderate incomes (3 moderate income).

WHEREAS, pursuant to Government Code Section 65915(d)(2)(A), at least 10 percent of the total units will be available to persons and families of moderate income in a common interest development and therefore, is allowed one concession and unlimited waivers.

WHEREAS, pursuant to the findings required by Government Code Section 65915(e)(1), the city shall grant the waiver requested by the applicant unless the city, county, or city and county makes a written finding, based upon substantial evidence, of any of the following:

This subdivision shall not be interpreted to require a local government to waive or reduce development standards if the waiver or reduction would have a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon health or safety, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact. This subdivision shall not be interpreted to require a local government to waive or reduce development standards that would have an adverse impact on any real property that is listed in the California Register of Historical Resources, or to grant any waiver or reduction that would be contrary to state or federal law.

WHEREAS, the proposed project will provide a public benefit of a minimum of fifteen percent of affordable units, for persons and families of moderate income, incorporated within the Edes-Alcini project located at west of the intersection of Edes Court and Monterey Road and identified by Assessor's Parcel No. 767-18-046.

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

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

Section 2. The project is consistent with the Zoning Ordinance and General Plan.

Section 3. The project is eligible for the proposed waivers per the Municipal Code Section 18.48.030 and 18.48.050 within the Municipal Code.

Section 4. The City Council of the City of Morgan Hill hereby approves the waiver request for the Edes – TTLC Morgan Hill project.

Section 5. This resolution shall take effect immediately upon adoption.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Morgan Hill at a regular meeting held on the 6th day of September 2023 by the following vote:

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

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-XXX, adopted by the City Council at a regular meeting held on September 6, 2023.

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

DATE: _____

MICHELLE BIGELOW, City Clerk

EXHIBIT A

DBL Concessions, Waivers, and Reductions in Parking Standards

As of August 16, 2023

TTLIC is seeking the following concessions, waivers, and parking reductions, and reserves the right to provide additional information supporting these requests prior to and during the City's hearings to consider approval of the Project.

- **Waiver: Reduction in Minimum Front Setback.** TTLIC is requesting a waiver or reduction in the front setback requirements applicable in the Mixed Use Flex (MU-F) zone from 15 to 10 feet. This waiver is necessary because application of a 15 foot front setback requirement would physically prevent the project from being built at its permitted density.
- **Waiver: Reduction in Minimum Rear Setback.** TTLIC is requesting a waiver or reduction in the rear setback requirement applicable in the MU-F zone from 20 to 15 feet. This waiver is necessary because application of a 20 foot front setback requirement would physically prevent the project from being built at its permitted density.
- **Waiver: On-Site Recreational Amenities.** TTLIC is requesting a waiver or reduction in the requirements related to on-site recreational amenities (GP Policy CNF-11.10) as further described in **Exhibit B**.
- **Waiver: Planted Parkway.** A 5-foot wide planted parkway does not fit within the City's existing right-of-way for Edes Court, and therefore will not be provided and TTLIC is seeking a waiver of this requirement.
- **Waiver: Ponding Basin.** If the City continues to assert that an on-site ponding basin is required, (despite Valley Water's concurrence with Shaaf & Wheeler's analysis and despite TTLIC's July 21 letter explaining no detention basin is required), TTLIC requests a waiver pursuant to the protections of the DBL, as application of the requirement will have the effect of physically precluding the construction of the project at the allowed density.
- **Waiver - Reduced Parking Requirements:** TTLIC requests application of the reduced parking requirements under the DBL at the ratios and with no guest parking provided, as explained in **Exhibit B**.

EXHIBIT B

Conformance with City of Morgan Hill RESIDENTIAL DESIGN AND DEVELOPMENT STANDARDS¹ *Updated 6-20-2023*

Regulations	Standard	Proposed Project
INCLUSIONARY HOUSING AND ACCESSORY DWELLING UNITS		
1. Inclusionary Housing	For-Sale Project Outside DTSP Area - 15% moderate-income	Project complies.
2. ADU Requirements	N/A	N/A Project does not propose inclusion of ADUs
SITE PLANNING		
3. Zoning Compliance		
Mixed Use Flex (MU-F) Zoning District Standards – Table 18.22-2 of Mun. Code		
<u>Site Requirements</u>		
Lot Area, Min.	6,000 sq. ft.	6,000 sq. ft.
Lot Width, Min.	60 ft.	60 ft.
Lot Depth, Min.	100 ft.	100 ft.
Floor Area Ratio, Max.	0.5	N/A
Residential Density	7-24 du/ac	19.1 du/ac
Building Coverage, Max.	50%	50%
<u>Structure Requirements</u>		
Front Setback	Min. 15 ft ² Max. None	10 ft.
Rear Setback, Min.	20 ft.	15 ft.
Interior Side Setback, Min.	5 ft.	5 ft.
Street Side Setback, Min. (Public)	10 ft.	10 ft.
Height, Max	35 ft. 45 ft. with 10 ft. devoted to roof element	39 ft. 9 in. Eave Height – 29 ft. 7 in. Roof Element – 10 ft. 2 inches

¹ <https://www.morgan-hill.ca.gov/DocumentCenter/View/35912/Residential-Development-Design-and-Development-Standards--Adopted-12182019-CC-Reso-19-065>

² Residential porches and similar entry features may project five feet into the front setback. (MHMC, Table 18.22-3, FN 2.)

4. Orientation to an Existing Street	
For residential buildings adjacent to a collector or arterial street, the primary entrance of homes (front door) is located along the street unless sound walls are installed. (GP Policy CNF-11.18)	Project complies. The proposed building fronting on Edes Street will orient the primary entrance of the town homes to the street.
5. Intersection Sight Distance/Clear Vision Triangle.	
For projects located adjacent to pedestrian crossings or street intersections, a "Clear Vision Triangle" (see figure below) is provided to comply with the City's Municipal Code Section 18.92.080, Intersection Sight Distance. [...]	Not applicable to Project Site.
6. Sound Walls	
An Acoustical Analysis shall be provided to demonstrate need for noise impact mitigation. Site planning and design techniques shall be utilized to minimize the use of sound walls. Sound wall is allowed if required to meet noise standards and applicant has demonstrated that other forms of mitigation are not available as described herein. [...] (GP Policy CNF-8.14, SSI-8.9, 9.2, 9.3, 9.4, 9.6, and 9.7)	Noise Study is included in submittal package.
7. Agricultural Buffer	
If the project is located adjacent to an active agricultural use, an open space easement has been provided to buffer between the active agricultural use that are adjacent to the proposed project and new development. [...]	Not applicable.
8. On-Site Recreational Amenities. The project has provided on-site recreational amenities to serve residents. (GP Policy CNF-11.10)	
Project Size 16 to 50 units: Tier 1: 2 Tier 2: 2 Tier 3: 0	Project provides one Tier 1 amenity (benches), and no Tier 2 amenities. Requesting waiver. Seeking waiver of, or reduction in, the amenity requirements. The City's requirement that the Project provide 26' wide fire lanes reduced the common area size and Tier 2 amenities cannot be accommodated without losing units.

9. Water Conservation in Landscaping.		
The project has provided landscape and irrigation plans demonstrating compliance with Morgan Hill Municipal Code Chapter 18.148 (Water Conservation in Landscaping). (GP Policies NRE-6.6 and NRE-7.3)		Irrigation Details shown on Sheets L-7.1-L7.3
10. Landscaping Plan		
The Project is required to provide detailed landscape plans in compliance with Section 18.64.040 of the Morgan Hill Municipal Code. Landscape plans must demonstrate compliance with Section 18.64.060 (General landscape requirements) of the Morgan Hill Municipal Code. Pursuant to Morgan Hill Municipal Code section 18.64.050. [...]		Landscape Plan L-1.2
11. Wildland-Urban Interface Fire Area.		
New developments and projects proposed within a locally adopted Wildland-Urban Interface Fire Area shall include a plan for the protection of the community from any unreasonable risks associated with the effects of wildland and urban fires.		Not applicable.
12. Trees		
The project has identified all trees to be removed on the project landscape plan and/or grading plan, has proposed a two-to-one ratio of replacement trees, and has applied for the required Tree Removal Permit in accordance with Chapter 12.32 of the Morgan Hill Municipal Code. All replacement trees must comply with the City’s Master Street Tree Plan adopted by City Council on March 6, 2019.		See enclosed Preliminary Arborist Report by HortScience Bartlett Consulting.
13. Usable Private and Common Open Space		
Each lot must include a private open space area, such as a private yard, porch balcony, roof garden, or patio. Private open space must be contiguous to the unit it serves and accessible and visible from the living area of the unit. Private open space must be open air. Private open space cannot be covered by a roof by more than 50 percent of the area; however, balconies can have up to 100 percent ceiling coverage.		
Single Family Attached - Private Open Space	1,440-1920 sq. ft. Lot = 60 sq. ft./unit ³	Project complies. Plan 1 – 47 sq. ft. deck 32 sq. ft. porch Plan 2 – 66 sq. ft. deck

³ Private open space per unit may be reduced by up to 25 percent if off-set by the equivalent increase in common open space with amenities.

Single Family Attached - Common Open Space	1,440-1920 sq. ft. Lot = 140 sq. ft. /unit	Project complies. 3,484 S.F. provided (165.8 sq. ft. / unit)
PARKING IMPROVEMENTS		
14. Required On-Site Parking Spaces: The project complies with the parking requirements specified in Section 18.72.030 of the Morgan Hill Municipal Code. ⁴		
Single-Family Dwellings, Attached and Detached	2 covered spaces/unit	2 covered spaces/unit (42 spaces)
Guest Parking for Single Family Dwellings	1 per 4 units (5) ⁵	0 spaces proposed Parking Reduction. The City's requirement for a 26' wide fire lane does not leave space for guest parking. DBL parking reduction allows developer to seek a ratio that does not exceed 1.5 spaces per 3 bedroom unit, inclusive of guest parking.
ADA Parking	As required by Title 24	N/A because all parking spaces will be assigned to units.
15. Parking Design and Development Standards: The project complies with the parking design and development standards specified in Section 18.72.060 of the Morgan Hill Municipal Code.		
Garage Spaces	Min. of 10 ft. wide x 20 ft. long	10 ft. x 20 ft.
General Spaces	9 ft. wide x 18 ft. long	Not applicable, no guest stalls proposed.
Driveway Width for Residential Uses	18 ft. at street entrance for two-way driveways	26 ft. – At street entrance and throughout the site. 16 ft. – Individual Building Driveways
Parking Aisle Width	25 ft. for 90 degree stalls	N.A. no guest parking proposed.
16. Parking Lot Layout: For multi-family projects, the parking for the project is dispersed throughout the		Not Applicable. Single family attached development.

⁴ MHMC, § 18.72-2.

⁵ "In determining the number of required parking, fractions of spaces over one-half shall be rounded up to the next whole number." (MHMC, § 18.72.030(D)(4).)

project in smaller segmented parking areas, rather than the creation of a large parking lot. Parking is located interior to or at the back of the site where it is not visible to the street.	
17. Bicycle Parking and Storage: All multi-family developments of five units or more are required to provide bicycle parking in compliance with Section 18.72.080 of the Morgan Hill Municipal Code.	Not Applicable. Single family attached development.
18. Exterior Parking Lot Lighting: For projects with <u>more than</u> six parking spaces, detailed lighting information is provided in compliance with Section 18.72.060.G of the Morgan Hill Municipal Code. Lights shall use cut-off shields and be downward directed.	Not Applicable. Project will have covered garages for resident parking and only 6 guest spaces.
19. Parking Area Landscaping: Projects with <u>six or more</u> parking spaces must demonstrate compliance with the parking lot screening and parking lot landscaping requirements specified in Sections 18.72.060.I (Parking design) and 18.72.070 (Parking lot landscaping) of the Morgan Hill Municipal Code.	Not Applicable. Project will have covered garages for resident parking and 5 guest spaces.
20. Pedestrian Access: Parking lots with <u>more than thirty</u> parking spaces shall include a pedestrian walkway in compliance with ADA requirements specified in Section 18.72.060.H of the Morgan Hill Municipal Code.	Not Applicable. Project will have covered garages for resident parking and only 6 guest spaces.
21. Electric Vehicle Charging Stations: Parking lots with <u>more than twenty-five</u> parking spaces shall incorporate electric vehicle charging stations in compliance with Section 18.72.040.C of the Morgan Hill Municipal Code.	Not Applicable. Project will have covered garages for resident parking and only 6 guest spaces.
ARCHITECTURAL DESIGN FEATURES	
22. Front Porches: 50 percent of homes facing a street or common interior courtyard include a front porch on the ground floor with a minimum size of 6 feet by 5 feet.	Project will comply.
23. Balconies: 25 percent of homes facing a street, alley or common interior courtyard include a balcony overlooking a common area with a minimum size of 6 feet by 4 feet.	Project will comply.
24. Fences. All fences and walls designed for screening purposes shall be of solid material. Chain link or chain link with slats is not permitted.	Project complies.
25. 360 Degree Architecture: The project includes two of the following details: Windows, shutters, awnings, bay windows, trellis features, texture	Project complies. See site plan.

variations, stone, brick or other material enhancements. All facades (sides and rear) must have the level of detail, and materials incorporating at a minimum of two elements of the front façade. There shall be no blank walls. (GP Policy CNF-11.16)	
26. Exterior Treatments and Materials: At least two materials shall be used on any building facade, in addition to glazing and railings. Any one material must comprise at least 20% of any building facade, excluding windows and railings. A change in material must be offset by a minimum of six inches in depth. Exterior finish materials should be chosen and applied to not appear artificial as in the case of brick veneer applied on a single building face so that it is obviously 1/4 inch thick when viewed from the side, or in the case of a trellis made of 2 inch x 2 inch or 2 inch x 4 inch members. Veneers are required to turn corners, avoiding exposed edges.	Project will comply.
27. Roof line Variation for three or more units: Roofs have been designed to incorporate a minimum of two varying roof heights or types (hip, gable, shed, flat, etc.)	Project complies, see site plan.
28. Height and Project Massing: Project design minimizes bulk of the buildings by limiting building length, or designing buildings with the following special features to break up building bulk, including: a. Changes in roof form and height; and, b. Major full-height recesses (At least 10 feet deep for multi-family projects and three feet deep for single-family attached projects) along the length of the building that successfully break the building into smaller discrete masses. (General Plan Policy CNF 11.22)	This standard contains elements that are discretionary and not based on objective criteria. The Project does minimize building length.
29. Separate Structures-Attached Projects: Large projects shall be divided into separate structures. The maximum number of units per structure is as follows: a. Single-family Attached: 7 units maximum per structure (General Plan Policy CNF 11.22) 100 percent affordable projects are exempt from this requirement	Project complies. Buildings include 3 units per structure.
30. Building Colors: The project has provided a sample color palette of complimentary colors compatible with surrounding neighborhood. The number of colors appearing on any building exterior is	Proposed colors provided on site plan, Sheet A06, and will be limited to four. Fluorescent

limited to no more than four colors or tones of the same color, including trim and accent colors. a. The use of fluorescent or neon colors is prohibited.	or neon colors will be excluded. The portion of this standard requiring “complimentary colors . . .” is discretionary and not based on objective criteria and therefore does not apply.
31. Window Design. The window recesses, trim and other window elements have been designed to be substantial in depth to create shadows. The project incorporates at least one of the following window features throughout the project: a. Minimum depth of at least 1 1/2 inches from glass to exterior of trim; b. Minimum depth of at least six inches from glass to wall edge around windows if there is no trim (this is only appropriate for certain architectural styles such as Spanish Revival or Modern); or, c. Decorative trim elements that add detail and articulation, such as window surrounds with at least a two-inch depth. They must be designed as an integral part of the design.	Project will comply.
32. Glazing: Mirrored glass is prohibited in order to minimize off-site glare and maximize transparency.	Project will comply.
33. Exterior Lighting and Illumination: Wall-mounted lights or bollards shall be provided for security purposes. Lights shall be directed down and shielded to avoid glare impacts. The project has demonstrated compliance by submittal of a photometric plan and fixture details.	Project will comply.
34. Equipment Screening: All exterior mechanical and electrical equipment shall be screened or incorporated into the design of buildings so as not to be visible from the public-right-of-way, common areas, or contained within an enclosed structure. Equipment to be screened includes, but is not limited to, all roof mounted equipment, air conditioners, heaters, utility meters, cable equipment, telephone entry boxes, backflow preventions, irrigation control valves, electrical transformers, pull boxes, and all ducting for air conditioning, heating, and blower systems. Screening materials shall be consistent with the exterior colors and materials of the building, and equipment enclosures have been screened with	Project will comply.

landscaping. Chain link fencing with wood inserts shall not be used to screen equipment.	
35. Residential Parking Garages: The project is designed to reduce the prominence of garage doors through one or more of the following strategies: a. Locate the garage door behind the front porch and/or living space, relative to the front lot line; b. Design the second floor to overhang beyond the garage door; c. Locate the garage to the side or rear of building rather than at the center; or d. For garages with three or more non-tandem parked cars, the area of the front wall(s) of garage(s) shall not be more than 25 percent of the cumulative exterior front walls of two story single family residential building; no more than 50 percent of the cumulative exterior front walls of a one story single-family residential building; and at least one front wall of the a three car garage must be separated from the remaining garage front wall by at least two feet. (GP Policy CNF-11.19)	Project will comply.
36. Garage Door Design: The garage doors proposed within the project feature windows or other architectural design features consistent with the main dwelling, approved by the Development Services Director or designee.	Project will comply.
37. Driveway/Vehicle Pavement: For <u>detached single-family projects</u> , paved areas and hard surface for vehicle access and parking does not occupy more than 50 percent of the front and street-side setback area.	Project is composed of attached townhomes. This standard does not apply.
38. Pavement Design: The project has incorporated decorative, pervious paving into paved and landscaped areas by 10 percent to reduce the visual impact of paved surfaces. Decorative paving includes: brick, stamped colored concrete, stone blocks or pavers, interlocking colored pavers, grasscrete, and other comparable materials. Priority locations for decorative paving may include the following: a. The first 20 feet of the driveway closest to the street; b. A four-foot wide pedestrian path along the length of the driveway, if no sidewalk is provided;	Project will comply.

c. Parking maneuvering areas; d. Parking aprons; and e. Parking areas or fire turnarounds that can also occasionally function as outdoor courtyards.	
39. Multi-family Roof Form: The roof element of the multi-family project is designed such that no more than two side-by-side units are covered by one unarticulated roof. [. .]	Not Applicable. Proposed project is an attached single family townhome development.
40. Massing for three story buildings or taller: Buildings three stories or taller shall have major massing breaks at least every 100 feet along any street frontage, adjacent public park, publicly accessible outdoor space, or designated open space, through the use of varying setbacks and/or building entries. Major breaks shall be a minimum of 30 inches deep and four feet wide and extend the full height of the building.	Not applicable, buildings proposed are less than 100' long.
41. Distinct material changes for three story buildings or taller: Buildings three stories or taller must provide a ground floor elevation that is distinctive from the upper stories by providing a material change between the first floor and upper floors along at least 75% of the building façade with frontage upon a street, adjacent public park or public open space.	Project will comply.
42. Trash Enclosure, Solid Waste and Recyclable Materials: Detailed enclosure plans are required for multi-family, new construction and alteration projects, and comply with the following: a. The exterior materials and colors of the enclosure walls shall match the building walls. b. Chain link fencing with or without wooden/plastic slats is prohibited. c. Roofs shall be painted with rust-inhibitive paint. d. Shall not obstruct on-site or off-site pedestrian or vehicle traffic movement. If project requires a consolidated solid waste plan, the project shall comply with the enclosure and development guidelines specified by Recology South Valley. All trash enclosure areas must meet the following structural or treatment control Best Management Practices (BMP) requirements	Not applicable, individual cans in garages.

(individual single-family residences are exempt from these requirements): [. . .]	
ENGINEERING-LAND DEVELOPMENT REQUIREMENTS	
SITE PLANNING	
43. Arterial Design and Landscaping. Development adjacent to arterial streets is designed without fences or walls (unless required for sound mitigation as determined by an Acoustical Analysis) or landscape designed wall not exceeding three feet in height. (GP Policy TR-3.20) [. . .]	Project is not located on an arterial street. Not Applicable.
44. Street Improvements: New public and private streets serving the project are designed to be consistent with the General Plan Transportation Element as well as the Street Standard Details in the City's Standard Details. Minor variations and exceptions to the standards are subject to the approval of the City Engineer. The project installs and dedicates street improvements including, but not limited to, curb and gutter, sidewalk, compaction, street paving, oiling, storm drainage facilities, sewer and water, fire protection, undergrounding of utilities and street lighting.	Project will comply.
45. Utility Location and Easement: New utility transformers are installed underground unless precluded by physical limitations of the project site. Utility locations do not interfere with the viability of tree maturity, function of stormwater treatment facilities, or use of open space. A Public Service Easement (P.S.E.) with a minimum width of 10' is provided adjacent to all public rights-of-way for public and private utilities (including gas, electric, telephone and cable communications conduits or duct banks). When the development standards for any given zoning district conflict with the distance, the zoning standard shall govern. All public utilities for sewer, storm, or water within the project are within a public right-of-way or within a P.S.E. granted to the City and within a minimum width of twenty (20) feet. Exceptions to the easement width are subject to the approval of the City Engineer. For individual water, sewer or storm mains, the pipe is located in the centerline of the P.S.E. An exhibit illustrating the P.S.E. shall be provided.	Project will comply.

46. Undergrounding Utilities: All new utility distribution and service connections are placed underground. This standard does not apply to aerial power transmission lines. All existing overhead utilities adjacent to any site boundary, within the project site, or along any street frontage are placed underground in accordance with City standards and affected utility company guidelines.	Project will comply.
47. Meter Location. Water meters shall be located within City right-of-way or within a recorded Public Service Easement (P.S.E). [. . .] All single-family residential units shall be required to have a separate water service connection and city meter. Any request for a deviation from this standard is subject to City Engineer approval.	Project will comply.
48. Stream Channel and Riparian Setbacks: If the project is located adjacent to a Category 1 or Category 2 stream (as verified by a biologist, hydrologist or other qualified professional) and the required setbacks have been identified on the project plans. (GP Policy NRE-5.6) Category 2 Streams (Water Present During the Wet Season Only During Normal Rain Years) = 35 feet All stream channels and riparian setbacks have been identified on the Site Development Plans. Documentation shall be provided by a biologist, hydrologist or other qualified professional identifying the Category of the waterbody and the required setbacks. The project is also in substantial conformance with the adopted User's Manual of Guidelines and Standards for Land Use Near Streams (a Manual of Tools, Standards, and Procedures to Protect Streams and Streamside Resources in Santa Clara County). A copy of the manual can be viewed at https://www.valleywater.org/contractors/doing-businesses-with-the-district/permits-for-working-on-district-land-or-easement/guidelines-and-standards-for-land-use-near-streams.	Project complies with 35-foot setback requirement.
49. Landscaping-Parkway/Park Strip Design: A minimum 5-foot wide planted parkway (measured from face of curb) with irrigation system shall be provided between the street and sidewalk. Parkways	Requesting waiver. A 5-foot wide planted parkway does not fit within the City's existing right-of-way for Edes Court,

shall be planted with street trees identified within the City of Morgan Hill Master Street Tree Plan. For parkways within a public right-of-way, the City Engineer or designee shall select the species from the applicable planting zone list of the Master Street Tree Plan.	and therefore will not be provided.
PEDESTRIAN, BICYCLE AND TRANSIT IMPROVEMENTS	
50. Projects abutting developed land: The project aligns and connects streets intersecting the project boundary with all adjoining streets. (GP Policy CNF-11.5)	Project abuts on existing public road and no streets intersect the Project Site.
51. Projects abutting undeveloped land: The project extends streets to the adjoining undeveloped land to provide access to undeveloped land in the event of its future development. (GP Policy CNF-11.5) The project has provided a public access easement in private streets for sidewalks, trails, greenways, and other pedestrian and bicycle facilities.	Not applicable. Project abuts on existing public road that extends past the Project Site. In addition, the undeveloped parcel (APN 767-18-055) north of the proposed project has frontage along/access to Monterey Road, making the extension of a street, or provision of an easement for sidewalks, trails, greenways and other pedestrian and bicycle facilities unnecessary.
52. Off-street bicycle and pedestrian connections: The project has provided off-street bicycle and pedestrian connections in accordance with the Bikeways, Trails, Parks and Recreation Master Plan, as well as General Plan Policy CNF-11.5 Outside Connections and General Plan Policy CNF-11.6 Open Space Connections. Connections must be established and maintained through a public access easement, dedication or other similar method to guarantee it remains accessible to the general public. Off-street bicycle and pedestrian accessways are at least 15 feet wide, have no horizontal obstructions, and have a minimum of 9 feet-6 inches high vertical clearance. For off-street bicycle and pedestrian accessways that also serve as emergency vehicle accesses or utility corridors, the minimum accessway width and vertical clearance is subject to approval by the City's designated Fire Marshal.	Bikeways, Trails, Parks and Recreation Master Plan priority connections are not within the project site. The undeveloped parcel (APN 767-18-055) north of the proposed project has frontage along/access to Monterey Road, making the extension of a street, or provision of an easement for sidewalks, trails, greenways and other pedestrian and bicycle facilities unnecessary.

If the off-street bicycle and pedestrian accessway remains in private ownership, recordation of a maintenance agreement is required prior to acceptance of the street improvements. All easements and dedications will be required as Conditions of Approval.	
53. Complete Streets: The project incorporates design elements from three different categories of “Complete Street Design Elements” (shall provide a minimum of three design elements from categories a to e below) that meet the needs of multiple users, including motorists, bicyclists, pedestrians, transit users, and persons of different physical capabilities. (GP Policy CNF-11.8) NOTE: These standards apply to projects with new public streets, new private streets and/or private drives and for projects required to perform major changes to existing public or private streets. Complete Street Design Elements a. Pedestrian infrastructure such as sidewalks; traditional and raised crosswalks; median crossing islands; Americans with Disabilities Act of 1990 compliant facilities including audible cues for people with low vision, pushbuttons reachable by people in wheelchairs, and curb cuts; and curb extensions subject to approval by the City Engineer or designee. b. Traffic calming measures to lower speeds of automobiles and define the edges of automobile travel lanes, including a road diet, center medians, traffic circles, narrow travel lanes, bulbouts, shorter curb corner radii, elimination of free-flow right-turn lanes, angled and face-out parking subject to approval by the City Engineer or designee. c. Bicycle accommodations, such as protected or dedicated bicycle lanes, neighborhood greenways, wide paved shoulders, and bicycle parking subject to approval by the City Engineer or designee. d. Public transit accommodations, such as bus pullouts, transit signal priority, bus shelters, and dedicated bus lanes. Refer to the Santa Clara Valley Transportation Authority (VTA) Bus Stop and Passenger Facilities Standards for the design and placement of bus-related facilities and amenities. Transit improvements within the	Project will comply. Complete street design elements provided are sidewalks, bicycle parking, and permeable paving.

public right-of-way are subject to approval by the City Engineer or designee. e. Green Streets, the natural systems approach (incorporates vegetation and/or permeable pavements) to enhance pedestrian safety, reduce stormwater flow and improve water quality. Green Streets are designed to capture rainwater at its source. Green Street improvements subject to approval by the City Engineer or designee.	
54. Bicycle and Pedestrian Improvements (Multi-family projects) [. .]	Not applicable. Project is an attached single family project.
55. Internal Pedestrian Connections: The project provides pedestrian connections from all entrances to common open space, recreation facilities, and other project amenities.	Project will comply.
56. Continuous Sidewalks. The project provides continuous sidewalks along both sides of the street frontage(s). (GP Policy CNF-11.9) The project shall demonstrate compliance with Chapter 17.34 – Standards for Residential and Private Streets of the Morgan Hill Municipal Code by providing detached sidewalks and park strips, as required for primary residential streets, secondary residential streets and cul-de-sacs.	Project Site fronts on one side of Edes Street and will construct sidewalk along that portion of the street. Waiver Requested. The private drive along the Valley Water District parcel will have a mountable sidewalk on one side only.
MUNICIPAL INFRASTRUCTURE	
57. Water Infrastructure: The project provides local water distribution lines to serve the proposed project and designed in accordance with accepted engineering principles and shall conform to the City's Design Standards and Standard Details. All unused existing water services stubbed to the property shall be abandoned at the water main pursuant to city standards. [. .] The project proposes water infrastructure improvements consistent with the City's Water System Master Plan, approved by the City Engineer or designee.	Project will comply.
58. Wastewater Infrastructure: A sufficient wastewater collection system is provided to serve the proposed project and designed in accordance with accepted engineering principles and shall conform to the City's Design Standards and Standard Details.	Project will comply.

All unused existing sewer laterals stubbed to the property shall be abandoned at the sewer main per city standards. [. . .] The project proposes wastewater infrastructure improvements consistent with the City's Sewer System Master Plan, approved by the City Engineer or designee. (GP Policy NRE-8.4)	
59. Storm Drainage Infrastructure: A sufficient storm drainage collection system is provided to serve the project and designed to be capable of handling a 10-year storm without local flooding. On-site detention facilities shall be designed to a 25-year storm capacity. Streets shall be designed to carry a 100-year storm. (GP Policies SSI-16.2 and SSI-16.3) The project proposes storm drainage infrastructure improvements consistent with the City's Storm Drainage Master Plan. The project has demonstrated compliance by providing a complete storm drainage study showing amount of run-off and existing and proposed drainage structure capacities reviewed and approved by the City Engineer or designee.	Project will comply with RWQCB storm drainage requirements. See the bioretention areas identified on site plan.
60. Storm Water Infrastructure: If the project is creating and/or replacing 2,500 square feet or more of impervious surface, project complies with the California Regional Water Quality Control Board Central Coast Region (Region 3) Resolution No. R3-2013-0032 as described below and as documented by the Stormwater Management Guidance Manual for Low Impact Development and Post-Construction Requirements, and any subsequent amendments thereto. [. . .] Submittal of a Geotechnical Report/Soils Assessment is required to determine if the stormwater system proposed will meet the permit requirements. [. . .]	Project will comply with RWQCB stormwater management requirements.
61. Floodplain Development: If the project is located within an area identified as Special Flood Hazard Areas or Floodway areas as shown on the Federal Emergency Management Agency (FEMA) Flood Insurance Rate Maps (FIRMs), the project is subject to the floodplain management regulations specified in Chapter 15.80 (Flood Damage Prevention) of the	Project is located within a flood zone and will be constructed on 2 feet of engineered fill to remove project buildings from FEMA 100 year flood zone.

Morgan Hill Municipal Code. The project has provided the required development review information for Floodplain Administrator review. (GP Policies SSI-5.1, 5.2, 5.3, 5.6, 5.7 and 5.8) The Floodplain Administrator has reviewed the required development review information and has determined that the project complies with Chapter 15.80 of the Morgan Hill Municipal Code. If the project includes the placement of fill, a flood study is submitted for review and City acceptance. Project is required to file the appropriate conditional/final FEMA Letter of Map Revision (CLOMR/LOMR or CLOMR-F/LOMR-F) as required by the results of the flood study. The project is also in substantial conformance with the adopted User's Manual of Guidelines and Standards for Land Use Near Streams (a Manual of Tools, Standards, and Procedures to Protect Streams and Streamside Resources in Santa Clara County). A copy of the manual can be viewed at https://www.valleywater.org/contractors/doing-businesses-with-the-district/permits-for-working-on-district-land-or-easement/guidelines-and-standards-for-land-use-near-streams.	
62. Broadband Connectivity: The project provides the following broadband connectivity to the project: a. Broadband conduit installed in the public right-of-way(s) to serve the project. The project is required to comply with the City's Broadband Standards for conduits installed in the public right-of-way(s) fronting the project site. A copy of the standards can be viewed from the City's Planning webpage. b. Broadband conduit from the public right-of-way to each home or occupied building in the project. c. Pre-install indoor conduit, wiring and other necessary infrastructure so that broadband service may be provided to each unit. (GP Action Items SSI-18.A and SSI-18.B)	Project will comply.

CITY COUNCIL STAFF REPORT

MEETING DATE: September 6, 2023

PREPARED BY:

George Huang, Fire Chief

APPROVED BY: City Manager

APPROVE THE PURCHASE OF A FIRE APPARATUS FOR THE THIRD FIRE STATION

RECOMMENDATION(S)

1. Approve the purchase of a fire apparatus for the third fire station with Burton's Fire Inc. in the amount of \$949,080 plus a 5% contingency; and
2. Authorize the City Manager to execute and administer the purchase agreement; and
3. Approve a budget amendment to move the approved funding from FY 2024-25 to FY 2023-24; and
4. Authorize an interfund loan to Public Safety Facilities Impact Fund (315) of \$1.0 million from Local Drainage Impact Fund (303).

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Enhancing Public Safety

Maintaining and Enhancing Infrastructure

2022-2023 Strategic Priorities

Fiscal Sustainability

Guiding Documents

Fire Services Standards of Coverage

Public Safety Master Plan

REPORT NARRATIVE:

In 2013 Morgan Hill City Council reestablished the Morgan Hill Fire Department with a Cooperative Agreement through CAL FIRE to provide fire and emergency medical services. CAL FIRE also provides fire and emergency medical services for the South Santa Clara County Fire Protection District (South County) where a full boundary drop agreement has been established to provide the best service for the City and South County with much success.

With the award of the construction of the new Butterfield Fire Station in June 2023, it is

necessary for Morgan Hill City to acquire a fire apparatus for operational use by CAL FIRE for the new fire station and to carry out its contractual obligations. This fire apparatus will be an addition to the City and will be staffed at our new fire station (Fire Station 59) tentatively scheduled for opening summer/fall of 2024. In addition, CAL FIRE is in the process of converting its fleet to Rosenbauer fire apparatus, therefore staff recommends that it is in the City's best interest to purchase Rosenbauer fire apparatus for ease of maintenance, availability of parts, training and safety by CAL FIRE when preparing for and responding to calls.

Section 3.04.150 of the Municipal Code provides that the City Council may find that competitive bidding would not likely result in a lower price to the city from a responsible bidder and would cause unnecessary expense or delay under the circumstances. Staff recommends that the Council make this finding since Merced County Fire Department in Cooperative Agreement with CAL FIRE solicited competitive bids for the acquisition of a Type I Rosenbauer Commander Series 1500 GPM Pumper.

The proposed fire apparatus has been quoted at \$949,080. Staff is recommending an additional 5% contingency for a total amount of \$996,534, which is about \$200,000 less than what has been programmed in FY24-25.

COMMUNITY ENGAGEMENT:

Inform

This staff report serves to inform the community of the proposed purchase of a new fire apparatus for the third fire station.

ALTERNATIVE ACTIONS:

City Council could direct staff to issue a RFP or purchase the fire apparatus from a different vendor. However, staff does not expect any cost savings but rather could potentially delay the delivery of the necessary fire apparatus for the third fire station which is expected to open and be operational in the summer/fall of 2024.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

February 22, 2017 - City Council received and reviewed the Public Safety Master Plan.

December 4, 2019 - City Council received and reviewed the Hazard Risk Assessment and Standards of Coverage Study.

December 1, 2021 - City Council authorized the City Manager to execute and administer an agreement with Jeff Katz Architecture for the design of the Butterfield Fire Station Project.

November 2, 2022 - City Council approved the conceptual design for the Butterfield Fire Station Project

March 15, 2023 - City Council approved acceptance of a grant from Silicon Valley Clean

Energy for \$500,000 to be used towards the project, specifically as an all electric fire station demonstration site.

June 7, 2023 - City Council awarded the Butterfield Fire Station (third fire station) project to the Larry S. Kent, Inc. dba Kent Construction.

FISCAL AND RESOURCE IMPACT:

Funding for the third fire station's apparatus has been programmed in FY24-25 in the amount of \$1.2 million. Staff is recommending the Council approve the budget amendment to move the funding to FY23-24.

The City has always projected the need to borrow money to construct and equip the Fire Station. There is currently not sufficient available funds within the Public Safety Facilities Impact Fund (315) for the fire apparatus. Therefore, staff is proposing an interfund loan of \$1.0 million from the Local Drainage Impact Fund (303). Use of these funds for loans will be reduced should the contingency not be expended or should additional revenue come into the Public Safety Impact Fund during the buildout.

CEQA (California Environmental Quality Act):

Not a Project

Continuing administrative or maintenance activities, such as purchases for supplies, personnel-related actions, general policy and procedure making (except where the policies and procedures may result in a change to the physical environment).

RESOLUTION NO. 23-XXX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO THE CITY'S FISCAL YEAR 2023-2024 BUDGET IN THE PUBLIC SAFETY FACILITIES IMPACT FEE FUND (FUND NO. 315) AND LOCAL DRAINAGE IMPACT FEE FUND (FUND NO. 303) TO APPROPRIATE \$1,000,000 IN EACH FUND AND AN INTERFUND LOAN IN THE AMOUNT OF \$1,000,000 TO THE PUBLIC SAFETY FACILITIES IMPACT FEE FUND FROM THE LOCAL DRAINAGE IMPACT FEE FUND

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 "Approve the Purchase of a Fire Apparatus for the Third Fire Station" submitted for City Council consideration at its meeting of September 6, 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 2023-2024 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 2023-2024 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 2023-2024 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 6th day of September 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-xxx adopted by the City Council at the meeting held on the 6th day of September 2023.

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

DATE: _____

MICHELLE BIGELOW, City Clerk

EXHIBIT A

AGENDA BUDGET SCORECARD

FISCAL YEAR 2023-2024

ADJUSTMENT #

013

FUND:

315 Public Safety Facilities Impact Fund

FUNCTION:

40 Public Services

DEPARTMENT:

40 Public Services

DIVISION:

8080 Mitigation

OBJECT:

86360 CONSTRUCTION

AGENDA DATE:

09/06/23

AGENDA ITEM TITLE:

Purchase of a new fire apparatus

	07/01/23 UN-AUDITED BEGINNING FUND BALANCE	ESTIMATED REVENUES	AMENDED APPROPRI- ATIONS	06/30/24 PROJECTED ENDING FUND BALANCE
ORIGINAL BUDGET	3,008,990	8,551,703	11,682,382	(121,689)
CUMULATIVE REVISIONS PRIOR TO RECOMMENDED ACTION	-	-	-	-
RECOMMENDED ACTION		1,000,000	1,000,000	-
RESULT OF RECOMMENDED ACTION	<u>3,008,990</u>	<u>9,551,703</u>	<u>12,682,382</u>	<u>(121,689)</u>

AGENDA BUDGET SCORECARD

FISCAL YEAR 2023-2024

ADJUSTMENT #

014

FUND:

303 Drainage Impact Fund

FUNCTION:

40 Public Services

DEPARTMENT:

40 Public Services

DIVISION:

8052 Local Drainage

OBJECT:

49230 TRANSFER OUT-PUBLIC SAFETY FAC. IMPACT FUND

AGENDA DATE:

09/06/23

AGENDA ITEM TITLE:

Purchase of a new fire apparatus

	07/01/23 UN-AUDITED BEGINNING FUND BALANCE	ESTIMATED REVENUES	AMENDED APPROPRI- ATIONS	06/30/24 PROJECTED ENDING FUND BALANCE
ORIGINAL BUDGET	11,898,617	447,897	11,761,661	584,853
CUMULATIVE REVISIONS PRIOR TO RECOMMENDED ACTION	-	-	-	-
RECOMMENDED ACTION		-	1,000,000	(1,000,000)
RESULT OF RECOMMENDED ACTION	11,898,617	447,897	12,761,661	(415,147)



August 17, 2023

Morgan Hill Fire Department
15670 Monterey Road
Morgan Hill, CA 95037

James Lopez



Awarded Contract

Member Number:
97407

Thank you for the opportunity to propose the following piece of Rosenbauer custom fire apparatus:

One (1) Type-1 Engine with Commander Custom Chassis

	Base Price	Pre-pay: Chassis
Body Price	\$513,619.00	\$513,619.00
Chassis Price	\$350,773.00	\$337,311.00
Delivery	\$5,769.00	\$5,769.00
Ca State Sales Tax	\$78,918.99	\$77,689.91
9.130%	\$949,079.99	\$934,388.91

Please note: Pre-Con for (2) from Dept. at Factory

No Mid-Point Inspection Required

Final Inspection for (2) from Dept. at Factory

Final Delivery will be made by the Burton's Fire to the Dept.

Performance Bond Not Required

Quoted Delivery is 545 days after receipt of order

(1) Day of Familiarization training by Burton's

Terms:

Final payment due upon delivery.

Pricing as quoted above is valid for 90 days.

Included in the above body price is a \$10,000.00 loose goods contingency

Burton's Fire Inc.
1301 Doker Drive
Modesto, CA 95351
209-544-3161
209-544-1109 Fax
www.burtonsfire.com

South Dakota Division
100 Third Street
Lyons, SD 57041
605-543-5591
605-543-9701 Fax
E-mail: sales@
rosenbaueramerica.com

Minnesota Division
5181 260th Street
P.O. Box 549
Wyoming, MN 55092
651-462-1000
651-462-1700 Fax
E-mail: sales@
rosenbaueramerica.com

Aerial Division
870 South Broad Street
Fremont, NE 68025
402-721-7622
402-721-7622 Fax
E-mail: sales@
rosenbaueramerica.com

Thank you again for this opportunity to work with your department, if you have any questions regarding the above proposal, please contact me at (209) 535-6993 or at Clay@burtonsfire.com

Sincerely,

Clay Hoobler
Burton's Fire Inc.



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, August 23, 2023 5:00 PM

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

SPECIAL/REGULAR MEETING

A special meeting of the City Council was called at 5:00 pm for the purpose of conducting a closed session.

SPECIAL MEETING

5:00 pm Closed Session

CALL TO ORDER

Mayor Turner called the City Council meeting to order at 5:00 pm.

ROLL CALL ATTENDANCE

Deputy City Clerk Kim Mancera called the roll.

PRESENT	Rene Spring, Gino Borgioli, Yvonne Martinez Beltran, Mark Turner, Marilyn Librers
ABSENT	None

DECLARATION OF POSTING AGENDA

Deputy City Clerk Kim Mancera declared the posting of the agenda.

CLOSED SESSION

City Attorney Don Larkin announced the closed session item.

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; Dat Nguyen, Finance 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

Public comment opened at 5:01 pm. There being no requests to speak, public comment closed.

ADJOURN TO CLOSED SESSION

The meeting adjourned to closed session at 5:02 p.m.

REGULAR MEETING

The regular meeting convened at 6:00 pm.

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

RECOGNITIONS

The City of Morgan Hill recognized the Independence Day Celebrations Team for their outstanding success with the 2023 Freedom Fest.

PROCLAMATIONS

Proclaiming the Celebration of Women's Right to Vote and Women's Equality Day

CITY COUNCIL REPORTS

Council Member Martinez Beltran attended the inauguration of the new Speaker of the State Assembly, Robert Rivas, in Sacramento. She also attended a League conference in Pomona for their different policy committees. She attended the Latino Caucus mid-year retreat in Monterey. She also connected with our new Assembly Member Gail Pellerin. She announced that in celebration of Women's Equality Day, the 5th annual South County Women's Equality Series, will take place next week. They will be walking Downtown on August 26th and invited the community to join them under the big oak tree by Coffee Guy's at 1:30 pm. She also announced that on August 29th at 6:00 pm at the Community and Cultural Center they will have a panel on mental health and the impact that it has on families and youth.

CITY MANAGER'S REPORT

City Manager Christina Turner announced that our 4th Saturday Downtown Street Series will start this Saturday, August 26th. The first series is called Doggy Days of Summer from 10 am - 4 pm. She invited the community to bring their dogs and enjoy dog agility courses, a splash zone and pet contest. There will be 40 dog themed vendors to shop while enjoying live music from a few bands. There will also be a kids zone with games and a free movie night on 3rd Street featuring "Pet's 2" from 8 - 10 pm.

CITY ATTORNEY'S REPORT

City Attorney Don Larkin announced that they met in closed session at the end of the June 21, 2023 City Council meeting, as well as tonight, and there was no reportable action from either of the closed session items.

OTHER REPORTS

Council Member Borgioli addressed a comment on Next Door that was not accurate and had misinformation. He noted that these types of comments are extremely harmful to our community.

Mayor Turner announced that the fourth Caltrain to South County will begin on September 25th. Caltrain has also received funding for a demonstration pilot program to run a battery-equipped engine. He announced that LAFCO agreed to allow Gilroy to annex a portion of land that they had requested. He announced that he and Council Member Librers had attended a symposium on affordable housing in San Jose. He also announced that the Bay Area Panthers won the Indoor Football League championship. They have put out an RFP and are looking at other options, including Sacramento, Stockton and Oakland. He is also in contact with the San Jose Mayor Matt Mahan and the President of the Sharks, Jonathan Becher, in order to try to keep them in Morgan Hill and playing at the SAP Center.

PUBLIC COMMENT

Public comment opened at 6:13 pm. The following people were called to speak:

Kathy Chavez Napoli

Chris Tremaine

Judy McAndress

Susan (Davis) Rick

Robert Zepeda

Jennifer Blalack (zoom)

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

ADOPTION OF AGENDA

MOTION:

Adopting the agenda as posted.

RESULT:	Passed
MOVER:	Council Member Borgioli
SECONDER:	Mayor Pro Tem Spring
AYES:	Mayor Pro Tem Spring, Council Member Martinez Beltran, Council Member Borgioli, 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.

MOTION:

Table item 5 until after item 15.

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

MOTION:

Approving consent calendar items 1 through 4, 6, 7, and 9 through 12.

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

ABSTAIN:	None
ABSENT:	None

1. ACCEPT 2020 INFLOW AND INFILTRATION SEWER REPAIR PROJECT IN THE AMOUNT OF \$2,420,982

Recommendation:

1. Accept as complete the 2020 Inflow and Infiltration Sewer Repair Project;
2. Authorize the City Engineer to sign the Notice of Completion; and
3. Direct the City Clerk to file said Notice of Completion with the County Recorder's Office.

2. ACCEPT ANNUAL EVALUATION REPORT FOR THE SANTA CLARA COUNTY MULTI-JURISDICTIONAL PROGRAM FOR PUBLIC INFORMATION (PPI) FOR FY 2022-23 (YEAR 2) RELATING TO THE FEDERAL EMERGENCY MANAGEMENT AGENCY'S NATIONAL FLOOD INSURANCE PROGRAM'S COMMUNITY RATING SYSTEM PROGRAM

Recommendation:

Accept the Annual Evaluation Report for FY 2022-23 (Year 2) for the 2021 Santa Clara County Multi-Jurisdictional Program for Public Information (PPI).

3. ACCEPT PHASE 1 OF HALE AVENUE EXTENSION PROJECT IN THE AMOUNT OF \$15,446,002

Recommendation:

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

4. ADOPT A RESOLUTION AMENDING THE CITY'S COUNTYWIDE SOLID WASTE BUDGET AND APPROVE THE FIRST AMENDMENT TO THE JOINT VENTURE SILICON VALLEY CONSULTANT AGREEMENT FOR THE FY 2023-24 COUNTYWIDE SOLID WASTE PROGRAM

Recommendation:

1. Adopt a Resolution appropriating an additional \$203,182 to the City's Countywide Solid Waste Program (Fund 246);
2. Approve the first amendment to the consultant agreement with Joint Venture Silicon Valley to add Food Recovery Program Infrastructure Enhancements for \$203,182 and the Surplus to Go Program for \$100,000 for a revised total contract amount of \$591,627; and

3. Authorize the City Manager to execute and administer the first amendment to the consultant agreement with Joint Venture Silicon Valley.

6. **APPROVE ACQUISITION OF SEWER EASEMENT (TSAI) APN 841-09-061 FOR THE SEWER RELIEF TRUNK LINE PROJECT**

Recommendation:

1. Adopt resolution approving the purchase of a sewer easement (4,046 square feet), APN 841-09-061 for \$50,000 plus escrow and closing costs from Undine Tsai, Trustee, for the Sewer Relief Trunk Line Project; and
2. Authorize the City Manager to execute all documents and make minor modifications as necessary in order to consummate the transaction.

7. **APPROVE CONTRACTS WITH ANDERSON PACIFIC ENGINEERING CONSTRUCTION AND GOLDEN BAY CONSTRUCTION FOR ON-CALL UNDERGROUND CONSTRUCTION**

Recommendation:

Authorize the City Manager to execute and administer on-call water and sewer repair contracts with Anderson Pacific Engineering Construction with compensation up to \$400,000, and Golden Bay Construction with compensation up to \$400,000.

9. **APPROVE FINAL MAP FOR SAN SEBASTIAN PHASE 4B - TRACT NO. 10604**

Recommendation:

1. Approve the Final Map; and
2. Authorize recordation of the Final Map.

10. **APPROVE PARKS AND RECREATION COMMISSION WORK PLAN**

Recommendation:

Approve the proposed Parks and Recreation Commission FY 2023-24 Work Plan.

11. **APPROVE THE JUNE 21, 2023 CITY COUNCIL MEETING MINUTES**

Recommendation:

Approve the June 21, 2023 City Council Meeting Minutes.

12. **APPROVE UTILITY BOX ART FOR DEPOT STREET AND EAST DUNNE**

AVENUE

Recommendation:

Approve Utility Box Art for Utility Box Located at Depot Street and East Dunne Avenue.

ITEMS PULLED FOR DISCUSSION

5. **ADOPT ORDINANCE 2347, NEW SERIES, AMENDING SECTION 18.24.020 (LAND USE REGULATIONS) OF 18.24 (COMMERCIAL ZONING DISTRICTS) OF TITLE 18 (ZONING) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL IMPLEMENTING MINOR AMENDMENTS TO THE ADMINISTRATIVE OFFICE (CO) ZONING DISTRICT TO ALLOW VEHICLE-RELATED USES AND OTHER COMPATIBLE USES ON MINIMUM ONE-ACRE LOTS**

Recommendation:

Waive the reading, adopt Ordinance No. 2347, 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.

Deputy City Clerk Kim Mancera provided a report.

Public comment opened at 6:49 pm. The following people were called to speak:

Miguel Jimenez

Joe Baranowski

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

SUBSTITUTE MOTION:

Approving the recommended action.

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

MOTION:

Denying the recommended actions and directing staff to return with a proposal for an Ordinance that would limit the amount of land within the two zones that can be dedicated towards car dealerships.

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

8. APPROVE FINAL MAP FOR MANZANITA PARK - TRACT NO. 10585 AND RELATED SUBDIVISION IMPROVEMENTS AGREEMENT AND ENCROACHMENT AGREEMENT

Recommendation:

1. Approve the Final Map;
2. Approve a Subdivision Improvements Agreement with TOLL WEST COAST LLC, a Delaware Limited Liability Company;
3. Approve an Encroachment Agreement with TOLL WEST COAST LLC;
4. Authorize the City Manager to execute the Subdivision Improvements Agreement and Encroachment Agreement; and
5. Authorize the recordation of the Final Map, Subdivision Improvements Agreement, and Encroachment Agreement.

Senior Engineer Maria Angeles provided a report.

Public comment opened at 7:29 pm. The following person was called to speak:
Steve Savage

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

MOTION:

Approving the recommended action.

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

The meeting recessed at 7:31 pm and reconvened at 7:38 pm.

PUBLIC HEARINGS

13. **INTRODUCE ORDINANCE ESTABLISHING CHAPTER 18.29 (MONTEREY CORRIDOR FORM-BASED CODE) OF TITLE 18 (ZONING) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL AND ESTABLISHING THE MONTEREY CORRIDOR FORM-BASED CODE REGULATING PLAN IMPLEMENTING A FORM-BASED CODE ALONG THE MONTEREY ROAD CORRIDOR CREATING A VIBRANT MIXED-USE CORRIDOR THAT ENCOURAGES WALKING AND BIKING AS ENVISIONED WITHIN THE CITY OF MORGAN HILL 2035 GENERAL PLAN**

Recommendation:

1. Open/close public hearing;
2. Waive first and second reading of the Ordinance Amendment; and
3. Introduce Ordinance Amendment.

Principal Planner Adam Paszkowski and Roger Eastman with Lisa Wise Consulting provided a report and presentation.

Public comment opened at 8:21 pm. The following people were called to speak:

Doug Muirhead

Nick Gaich

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

MOTION:

Waiving the first and second reading.

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

MOTION:

Introducing the ordinance.

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

14. ADOPT A RESOLUTION ESTABLISHING CREDIT CARD PAYMENT SERVICE FEES FOR UTILITIES, BUSINESS LICENSES, RECREATION SERVICES, AND ALL OTHER PAYMENTS MADE BY CREDIT CARD

Recommendation:

1. Open/Close public hearing;
2. Adopt a resolution establishing credit card service fees for utilities, business licenses, recreation services, and all other payments made by credit card;
3. Approve an additional 0.50 FTE Accounting Assistant II if the credit card service fee for utilities is established; and
4. Authorize the City Manager to review and adjust the credit service fees annually to offset any potential future increases in bank fees.

Finance Director Dat Nguyen provided a report and presentation.

Public comment opened at 8:52 pm. There being no requests to speak, public comment closed.

MOTION:

Denying all of the recommended actions.

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

OTHER BUSINESS

15. APPROVE DESIGN GUIDELINES FOR VEHICLE DEALERSHIPS

Recommendation:

Approve Design Guidelines for Vehicle Dealerships

Public comment opened at 8:58 pm. The following people were called to speak:

Doug Muirhead

Nick Gaich

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

AMENDED MOTION:

Continue item to a date within this calendar year.

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

16. RECEIVE MONTHLY BUDGET UPDATE; PRELIMINARY FY 22-23 FINANCIAL AND INVESTMENT REPORTS; AND CITY MANAGER AUTHORITY REPORT.

Recommendation:

Accept and file Preliminary Fiscal Year (FY) 2022-2023 Financial and Investment Report and City Manager Authority Report.

Finance Director Dat Nguyen provided a report and presentation.

Public comment opened at 9:12 pm. There being no requests to speak, public comment closed.

Report received.

17. APPOINT VOTING DELEGATES FOR THE 2023 CALCITIES (LEAGUE) ANNUAL CONFERENCE

Recommendation:

1. Appoint a voting delegate and up to two (2) alternate voting delegates to the CalCities Annual Conference; and
2. Direct the Clerk team to complete and forward the voting delegate form to

CalCities.

City Manager Christina Turner provided a report.

MOTION:

Appointing Mayor Turner as the voting delegate and Council Members Librers and Martinez Beltran as alternates.

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

18. APPROVE AMENDMENTS TO POLICIES NO. 97-01 and 18-04, REMOVING REFERENCES TO THE STANDARD CODE OF PARLIAMENTARY PROCEDURE AND ADOPTING ROSENBERG'S RULES OF ORDER

Recommendation:

Approve amendments to City policies removing references to the Standard Code of Parliamentary Procedure and adopting Rosenberg's Rules of Order for the conduct of City Council and Planning Commission meetings.

City Attorney Don Larkin provided a report.

Public comment opened at 9:29 pm. The following person was called to speak:
Doug Muirhead

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

MOTION:

Approving the recommended action.

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

ABSENT:	None
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FUTURE COUNCIL INITIATED AGENDA ITEMS

None.

CLOSED SESSION

City Attorney Don Larkin announced the closed session item.

CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

Significant exposure to litigation pursuant to § 54956.9(b): (One Case)
Claim of Sarita Alanis

OPPORTUNITY FOR PUBLIC COMMENT

Public comment opened at 9:33 pm. There being no requests to speak, public comment closed.

The meeting adjourned to closed session at 9:33 pm.

ADJOURNMENT

There being no further business, Mayor Turner adjourned the meeting at 10:00 pm.

Minutes Prepared by:

Kim Mancera, Deputy City Clerk

CITY COUNCIL STAFF REPORT

MEETING DATE: September 6, 2023

PREPARED BY:

Mariah Dabel, Public Services Administrative Manager

APPROVED BY: City Manager

APPROVE THE CONSULTANT AGREEMENT WITH CIVICPLUS, LLC FOR CIVICREC ENTERPRISE RECREATION SOFTWARE

RECOMMENDATION(S)

1. Approve the consultant agreement with CivicPlus, LLC in the amount of \$472,886 for CivicRec enterprise recreation software; and
2. Adopt a resolution amending the FY 2023-24 General Fund (Fund 010) Budget to appropriate an additional \$108,942; and
3. Authorize the City Manager to execute and administer the consultant agreement with CivicPlus, LLC.

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Supporting our Youth, Seniors, and Entire Community

2023-2024 Strategic Priorities

Fiscal Sustainability

Guiding Documents

Bikeways, Trails, and Recreation Master Plan

Communications, Outreach, and Engagement Plan

REPORT NARRATIVE:

The purpose of this item is to provide the City Council with an opportunity to authorize the City Manager to execute a consultant agreement with CivicPlus, LLC for CivicRec enterprise recreation software. The agreement (Attachment 1) includes software implementation services, licensing, maintenance, technical support, and cloud hosting. The proposed web-based software will allow the Recreation and Community Services Division to provide online and in-person transactions for activity registration, membership management, facility reservations, and point of sale services.

The total cost of the consultant agreement with CivicPlus, LLC for CivicRec for the initial five-year term of this agreement is \$472,886. The FY23/24 amount is \$108,942, which includes a one-time implementation cost of \$67,873 and the first six months of

maintenance and support at \$41,069. The year two annual maintenance and support fee is \$84,602. Annual maintenance and support fees are set to increase 3% annually. Staff is recommending a five-year agreement with five optional one-year extensions.

The cost of the software will be offset by reallocating licensing fees for existing software and through higher projected recreation revenue for activity registration, memberships, and facility rentals. In addition, reduced IT support and automating recreation staff manual processes will result in future cost avoidance. Leveraging improved technology will allow the recreation team to provide quality and responsive customer service as post-pandemic demand increases.

Background

Enterprise recreation management software is a key part of the Recreation and Community Services Division's ability to provide services. Recreation's existing software currently has 25,000 active user accounts and 70 recreation staff users. In FY2022-23, 1,300 classes were offered for registration, 10,500 rental permits were processed, and 5,000 membership transactions were completed for 12,000 CRC members. In total, approximately \$6.0 million in revenue is collected and tracked via the software annually.

In recent years, the City identified a need to upgrade the recreation software to a cloud-based platform that would better meet business needs and evolving customer expectations. The software currently in use is R.C. Systems' RecPro, which has been in place since 2009. RecPro is an aging product that has limited online self-service options for facility rentals and memberships. The software limitations result in staff-intensive manual processes for completing transactions. In addition, because the City hosts the software on City servers, incidents such as power and data outages disable the software and software updates and maintenance require scheduled downtime and City IT support. These incidents and scheduled downtime at recreation facilities disrupt customer service and result in lost revenue.

With the changing operating environment during the pandemic, to continue providing services, recreation leveraged other software tools already in use in the organization to supplement its existing R.C. Systems RecPro software. These processes require the use of multiple platforms, including DocuSign, Laserfiche, CivicPlus forms, and Microsoft Outlook to manage customer requests, complete transactions, secure records, and send communications. To streamline services and reduce redundant processes, the City has identified a critical need to implement a cloud-based enterprise recreation software that can meet all business needs within one tool, deliver seamless online services, and provide secure data protection. Additionally, the need to implement a new enterprise recreation software was accelerated when R.C. Systems was recently acquired by DaySmart Recreation. DaySmart will no longer be making improvements to the RecPro software and is seeking to migrate existing customers onto an alternative software product.

To identify the best product to meet recreation's business needs, staff conducted a market scan of solutions, identified software in use by peer municipal recreation agencies, and met with the City's existing software vendors that offer a recreation

solution. As noted in Section 3.04.240 of the Municipal Code, the competitive bid process is ill-suited for the selection of consultants, which is true for the selection of consultants to provide software for the City's recreation activities. The City relies on the software to manage wide-ranging functions including membership management, class registration, facility rentals, and point of sale. Utilizing the market scan, City staff were able to identify the reputable software solutions available to the industry and test those in detail. Meetings were held with six vendors including, CivicPlus and Tyler, which offer high-level software solutions for recreation and currently provide software solutions for other City services. Staff outlined the City's needs and viewed product demos. Based on the demos, CivicRec was identified as a competitive option. CivicRec is a product of CivicPlus, LLC, the City's current vendor for its website, clerk agenda and streaming system, and SeeClickFix maintenance service requests.

To fully assess the software for possible integration, recreation staff participated in multiple CivicRec demos. In addition, peer agencies Union City, Campbell, Palo Alto, and Gilroy were asked about their experience with functionality, performance, implementation, and support. CivicRec was given high ratings, with agencies reporting that the software meets the majority of business needs, has strong reporting tools, was straightforward to implement, and has an easy user interface. Staff also viewed CivicRec in a live production environment in Campbell and Union City, observing activity registration, point of sale, memberships, facility reservations, reports, and communication modules. Demos, references, and site visits instilled confidence in the CivicRec software solution.

Based on the City's goals and business needs, and informed by a market scan and research, product demos, reference checks, and site visits, staff recommends proceeding with an integration with CivicPlus' CivicRec.

Proposed Solution

CivicPlus was founded in 1998 and the CivicRec enterprise recreation software (previously Rec1) has been in use at public recreation agencies for 16 years and is currently in use by over 1,000 municipalities. CivicRec is a fully-hosted web-based solution allowing City staff and residents to complete transactions from any computer or mobile device with an internet connection. CivicRec includes automated activity registration, league management, facility reservations, membership management, point of sale, and robust financial and data reporting tools. CivicRec has built-in communication tools such as targeted email and text messaging and customer surveys. User self-service features will allow customers to view receipts, update payment types, and view notifications and upcoming activities. Finally, CivicRec has integrated secure payment processing with recreation's current payment processor, CSG Forte, so the City will be able to migrate current membership accounts and payment plans to the new system.

Moving to a hosted, cloud-based solution with CivicPlus as proposed presents a number of benefits to the City. As an established vendor with extensive municipal clients, CivicPlus has the resources and infrastructure to deliver a secure and highly available hosted, cloud-based CivicRec solution. Additionally, their platform offers high

levels of data privacy and information security. These practices will improve overall business continuity. CivicPlus' proposal includes their Enterprise upgrade security and hosting package with dedicated hosting and CloudFlare protection. CivicPlus will store the City's data in Amazon AWS using Industry Standard AES-256 encryption at rest with distributed backup solutions, spanned across multiple Availability Zones. The data center incorporates redundant failovers, providing a very high degree of fault tolerance. CivicPlus will conduct backups of user-level information hourly and system-level information daily. Finally, the CivicRec payment integration is PCI level-1 certified to meet industry standard practices.

Should the City Council approve this agreement, the implementation period would begin in late 2023 and is expected to take four months, with go live tentatively scheduled for April 1, 2024.

COMMUNITY ENGAGEMENT:

Should the Council elect to move forward with this agreement, City staff, as part of the implementation, will develop a full communication plan to inform customers and residents about the new software.

ALTERNATIVE ACTIONS:

This consultant agreement with an existing vendor has been determined to provide the best value to the City. The City Council could decline to approve the consultant agreement and instead direct staff to conduct a request for proposals process and continue to use the RecPro software until another product is selected. This alternative is not expected to identify a better product as the recommendation is based on extensive research, a new purchasing process would be staff intensive requiring additional time and resources, and this would delay the replacement of aging software likely resulting in additional costs to the City.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

There have been no previous actions on this item.

FISCAL AND RESOURCE IMPACT:

The total cost of the consultant agreement with CivicPlus, LLC for CivicRec for the initial five-year term of this agreement is \$472,886. The FY23/24 amount is \$108,942, which includes a one-time implementation cost of \$67,873 and the first six months of maintenance and support at \$41,069. These funds are recommended to be allocated to the Recreation and Community Services Division in the General Fund (010), offset by an increase to budgeted revenue for FY23/24. A budget scorecard and resolution are attached.

The year two annual maintenance and support fee is \$84,602. Annual maintenance and support fees are set to increase 3% annually. The FY24/25 and FY25/26 Budget will be planned to include required funding for the ongoing costs in the Recreation and Community Services Division in the General Fund (010.2140 and 010.2150). These costs will be partially offset by increased projected revenue for activity registration,

facility rentals, and memberships. A portion of the ongoing costs will be also be offset by reduced costs associated with eliminating licensing fees for software that will no longer be used by the Division.

Significant staff resources will be necessary to move this project forward, requiring priority from the Public Services Department administrative team and Recreation and Community Services Division.

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.

CONSULTANT AGREEMENT

Civic Plus, LLC

THIS AGREEMENT is entered into and becomes effective on _____ (Effective Date), by and between the CITY OF MORGAN HILL, a municipal corporation, ("CITY"), and CivicPlus, LLC, a Kansas limited liability company ("CONSULTANT"), duly authorized to do business in California and will remain so during the term of this Agreement, ("CONSULTANT") hereinafter referred to collectively as "Parties." In consideration of the promises and the mutual covenants contained in this Agreement, the Parties agree as follows:

1. **City Authority.** This Agreement is entered into pursuant to the action of the Morgan Hill City Council taken on _____, _____, 2023.
2. **Term of Agreement.** This Agreement shall cover services rendered from the Effective Date of this Agreement and continuing for five years from the Effective Date, at which time CONSULTANT'S services shall be completed. The City Manager is authorized to extend the term of this Agreement for a maximum period of five (5) 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 CONSULTANT shall be software implementation, support, and maintenance of CivicPlus CivicRec software as further described in **Exhibit A**.
4. **Compensation.** CONSULTANT shall be compensated as follows:
 - 4.1. **Amount.** \$472,885.80. Total compensation to CONSULTANT under this Agreement during its initial term set forth in Section 2 above shall not exceed Four Hundred Seventy -Two Thousand Eight Hundred Eighty-Five Dollars and Eighty 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 CONSULTANT, so long as City Council has appropriated sufficient funds therefor, the Parties mutually agree to such amount in a writing signed by both Parties to this Agreement and provided further that in no event shall such maximum compensation allowed for the term exceed the City Manager's authority pursuant to Chapter 3.04 of the Morgan Hill Municipal Code, unless otherwise authorized by City Council.
 - 4.2. **Billing.** CONSULTANT shall provide CITY with an invoice containing the dated, detailed, and itemized descriptions of all services performed, and expenses incurred (if such expenses are reimbursable pursuant to Exhibit B) by CONSULTANT as specified in Exhibit B. All invoices shall be sent to the CITY addressed to the department head or project manager identified below in Section 13 Notices. CITY shall pay for services and expenses (if so, provided in Exhibit B) up to the limit of compensation set forth above. Services for work performed and expenses incurred in excess of the total compensation set forth in paragraph 4.1 above shall be at no cost to CITY.
5. **Termination.** CITY or CONSULTANT shall have the right to terminate this Agreement, without cause, by giving sixty (60) days' written notice or less under urgent circumstances. Upon such termination, CONSULTANT shall submit to CITY an itemized statement of services performed for which compensation has not been paid. The City Manager of CITY is authorized to terminate this Agreement, in whole or in part, on behalf of CITY.
 - 5.1. **Non-Appropriations.** Notwithstanding anything contained in this Agreement to the contrary, if insufficient funds are appropriated, or funds are otherwise unavailable in the budget for CITY for any reason whatsoever in any fiscal year, for payments due under this Agreement, CITY

will immediately notify CONSULTANT of such occurrence, and this Agreement shall terminate after the last day during the fiscal year for which appropriations shall have been budgeted for CITY or are otherwise available for payments.

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

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

7.1. **Insurance Types and Amounts.**

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

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

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

7.1.4. Professional Liability.

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

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

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

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

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

7.2.1. General Liability.

7.2.1.1. "Additionally Insured" - The City of Morgan Hill, its elected or appointed

officials, boards, agencies, officers, agents, employees, and volunteers are named as additional insureds on a form at least as broad as ISO Form CG 20 10 for ongoing operations.

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

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

7.2.2. Workers Compensation.

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

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

7.4. **Certificates.** CONSULTANT shall furnish CITY of Morgan Hill with copies of all certificates as outlined herein, whether new or modified, promptly upon receipt. In the event of a claim or legal action, CONSULTANT shall promptly furnish CITY of Morgan Hill with copies of all policies outlined herein. No policy subject to the CONSULTANT's agreement with the CITY shall be canceled or materially changed except after thirty (30) days' notice by the insurer to CITY. A "material change" is a change that results in non-compliance with any insurance requirements in this section 7. Certificates, including renewal certificates, may be mailed electronically to riskmgmt@morganhill.ca.gov or delivered to the Certificate Holder address provided herein.

Certificate Holder address:

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

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

9. **Compliance with Law.**

9.1. CONSULTANT and its officers, employees, agents, and subcontractors shall comply with all applicable laws, ordinances, administrative regulations, and permitting requirements in carrying out their obligations under this Agreement. CONSULTANT and its officers, employees, agents, and subcontractors covenant there shall be no discrimination based upon any basis prohibited by State or Federal law, including but not limited to, race, color, creed, religion, gender, marital status, age, sexual orientation, national origin, mental disability,

physical disability, medical condition, or ancestry, in any activity pursuant to this Agreement.

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

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

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

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

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

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

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

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

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

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

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

Address of CONSULTANT is as follows:

CivicPlus, LLC
302 South 4th Street, Suite 500
Manhattan, KS 66502

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 Ave.	17575 Peak Avenue
Morgan Hill, CA 95037	Morgan Hill, CA 95037

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

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

16. **Maintenance of Records.**

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

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

16.3. **Ownership of Work Product.** Upon full and complete payment of amounts owed herein, City will own the website graphic designs, webpage or Services content, module content, importable/exportable data, and archived information ("City Content") created by Consultant on behalf of City pursuant to this Agreement. "City Content" also includes any elements of text, graphics, images, photos, designs, artworks, logos, trademarks, services marks, and other materials or content which City provides or inputs into any website, software, or module in connection with any Services. City Content excludes any content in the public domain; and any content owned or licensed by Consultant, whether in connection with providing Services or otherwise.

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

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

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

20. **Defense and Indemnification.**

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

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

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

20.4. **Right to Offset.** CITY shall have the right to offset against any compensation due CONSULTANT under this Agreement any amount due CITY from CONSULTANT as a result of CONSULTANT's failure to pay CITY promptly any indemnification arising under this Section (21) and any amount due CITY from CONSULTANT arising from CONSULTANT's failure either to (i) pay taxes on amounts received pursuant to this Agreement or (ii) comply with applicable workers' compensation laws.

20.5. **Interpretation.** This Section shall constitute an agreement or contract of indemnity,

incorporating the interpretations under California Civil Code Section 2778. It is expressly understood and agreed that the obligation of the CONSULTANT to indemnify the INDEMNITEE shall be as broad and inclusive as permitted by the laws of the State of California and shall survive termination of this Agreement.

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

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

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

24. **Notice of Security and/or Privacy Incident.**

CITY acknowledges that any forms to be used in Document Management Services must be created in Document Management, and such forms cannot be unencrypted or exported to unencrypted modules. CITY is solely responsible for the updating and accuracy of their public-facing privacy policy.

CONSULTANT strongly recommends CITY complete a Privacy Impact Statement ("PIA"), which shall detail the CITY'S privacy practices and policies surrounding the use of, and any data stored within or collected by Services. CITY further warrants appropriate employees have been adequately trained on the use and deployment of Services.

CITY and CONSULTANT each jointly acknowledge that for the duration of the applicable SOW, CONSULTANT shall serve as the "Data Custodian" and is solely responsible for the Security Controls, including safe custody, transport, and storage of data and CITY shall serve as the "Data Owner", and is solely responsible for the Operational and Privacy Specific Controls, including data collection, content, context, and use. Notwithstanding the foregoing, CITY acknowledges that CONSULTANT cannot detect or prevent unauthorized individuals accessing any CONSULTANT system through use of valid log-in credentials as set up by CITY. CITY has sole responsibility for maintaining the security of such log-in credentials and assigning and defining roles and permission to each individual end-user.

CITY acknowledges that due to the nature of the encryption employed in the Services, CONSULTANT staff are unable to access any data submitted or stored within Services.

CITY understands and agrees that the Services are not intended to collect or store any credit card information, or related identifiable or financial information and that CITY shall not collect or store any such information in the Services. For the sake of clarity, the Services are not Payment Card Industry Data Security Standard (PCI DSS) or Health Insurance Portability and Accountability Act (HIPAA) compliant, and CITY shall not use the Services for PCI DSS or HIPAA purposes.

If CONSULTANT, or its subconsultants, discover, obtain evidence, or are notified of a data security incident

or potential breach of security and/or privacy relating to CITY Data, CONSULTANT shall immediately, but in no event later than forty-eight (48) hours from discovery or notification of the incident or potential breach, notify CITY of such incident or potential breach. CONSULTANT shall, upon CITY'S request, investigate such incident or potential breach, inform the CITY of the results of any such investigation, and assist the CITY in maintaining the confidentiality of such information. In addition to the foregoing, CONSULTANT shall provide CITY with any assistance necessary to comply with any state and/or federal laws requiring the provision of notice of any privacy incident or security breach to the affected or impacted individuals and/or organizations, in addition to any notification to applicable state and federal agencies. CONSULTANT agrees that it shall reimburse CITY for all expenses, costs, attorneys' fees, and resulting fines, penalties, and damages associated with such incident, breach, investigation and/or notification.

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

26. **Binding Agreement.** Notwithstanding the provisions of Section 18 above, this Agreement shall bind any and all successors in interest, legal representatives and/or other permitted assignees or transferees of CONSULTANT in the same manner as if those successors in interest, legal representatives or other permitted assignees or transferees had entered into this Agreement originally.

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

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.

29. **Additional Exhibits.** Exhibits E ("Master Service Agreement and Statement of Work Addendum") and F ("Escalated Priority Development Requirements") are incorporated herein.

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[Signatures on Next Page]

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

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

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

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

ATTEST:

CITY OF MORGAN HILL

City Clerk/Deputy City Clerk

City Manager

Michelle Bigelow

Christina J. Turner

Print Name

Print Name

Date: _____

Date: _____

APPROVED AS TO FORM:

CIVICPLUS, LLC

City Attorney

Amy Vikander

By: _____

Donald A. Larkin

Amy Vikander, Senior VP of Customer Success

Print Name

Print Name and Title of Signer.

If Corporate: Chairman, President, or
Vice President

Date: _____

Date: Aug 25, 2023

Cole Cheever

Cole Cheever (Aug 25, 2023 10:40 CDT)

By: _____

Cole Cheever, Senior VP of Operations

Print Name and Title of Signer.

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

Date: Aug 25, 2023

EXHIBIT A SCOPE OF SERVICES

CONSULTANT, as the sole provider of the CivicRec recreation management software and associated services, shall provide the following scope of services to CITY.

CONSULTANT shall grant CITY a non-exclusive license for its users to use, access, and display the web based and hosted CivicRec recreation management software.

CONSULTANT shall provide CivicRec software modules as outlined in this Exhibit including, but not limited to, activity registration, point of sale, league management, park and facility reservations/permits, memberships management, ticketing, document management, brochure export, marketing and email communications, surveys, and financial management and reporting.

CONSULTANT shall provide implementation project management, consultation, client support services, and training, and shall assign a dedicated project manager.

CONSULTANT shall provide hosting, support, and maintenance services for the CivicRec software. Maintenance and technical support to be provided 7am to 7pm (CST) Monday to Friday (excluding holidays) with a 4-hour response time and 24/7 emergency support.

CONSULTANT shall host CITY's data at a network operations center dedicated to the protection of CITY's information.

On the following page is a description of CivicRec modules and related services that CONSULTANT will provide to CITY.

Exhibit A
Scope of Services Continued

QTY	PRODUCT NAME	DESCRIPTION	PRODUCT TYPE
1.00	CivicRec Lighting Integration	CivicRec can schedule lighting at ball fields that are controlled by Skylogix or Musco lighting systems.	One-time
1.00	CivicRec GIS Integration	GIS Integration - Integrate with GIS software to continually provide updated address information into the new system. ArcGIS from ESRI is only option. We do not support other GIS options.	One-time
1.00	CivicRec Ultimate	Ultimate Package -Project Coordination -Branded Public Portal -Help Center Access -Access to Live Project Support -Named Implementation Consultant	One-time
1.00	CivicRec Annual Fee	CivicRec Annual Fee	Renewable
1.00	CivicRec Year 1 Annual Fee Discount	Year 1 Annual Fee Discount	Renewable
8.00	CivicRec Virtual Training (Half Day Block)	Training (Virtual) - half day, up to 4 hours	One-time
2.00	CivicRec Virtual Consulting (Half Day Block)	Consulting (Virtual) - half day, up to 4 hours	One-time
2.00	CivicRec 2 Day On-Site Training	2 Day On-Site Training Package	
4.00	CivicRec On-Site Training Fee	On-Site Training Fee	One-time
8.00	CivicRec Travel Days	On-Site Days	One-time
1.00	Memberships/Passes Import	Memberships/Passes Import	One-time
1.00	CivicRec Custom One Time	Custom configured implementation for organizations with unique operational or staffing requirements.	One-time
1.00	CivicRec Pay - Forte	CivicRec Pay - Forte	

QTY	PRODUCT NAME	DESCRIPTION	PRODUCT TYPE
1.00	CivicRec Pay Annual Fee - Forte	CivicRec Pay Annual maintenance and support fee	Renewable
1.00	CivicRec Pay Implementation - Forte	Includes setting CivicPlus Pay configuration, configuring CivicPlus products for accepting payments, advanced troubleshooting with our partner's support.	One-time
1.00	AudioEye Enterprise	AudioEye Enterprise	Renewable
1.00	CivicRec Year 1 Annual Fee Discount	Year 1 Annual Fee Discount	Renewable
1.00	CivicRec Dedicated Hosting (75k-125k annual transactions)	CivicRec Dedicated Hosting (75k-125k annual transactions)	Renewable
1.00	CivicRec Year 1 Annual Fee Discount	Year 1 Annual Fee Discount	Renewable
1.00	Document Management	Document Management Module: Enabled to allow customers to upload documents and staff to manage records.	Renewable
1.00	CivicRec Year 1 Annual Fee Discount	Year 1 Annual Fee Discount	Renewable
1.00	CivicRec Custom IdP Integration Package	Custom IdP Integration Package Custom IdP Integration Annual Fee Custom IdP Integration Implementation Fee	Renewable
1.00	CivicRec Custom IdP Integration Annual Fee	Custom IdP Integration Annual Fee	Renewable
1.00	CivicRec Custom IdP Integration Implementation Fee	Custom IdP Integration Implementation Fee	One-time
1.00	Premium Department Header Package - CivicEngage	Page specific Site ID, Navigation, Banner, Graphic Links, Colors; follows main site layout.	
1.00	Premium Department Header Annual Fee - CivicEngage	Premium Department Header Annual Fee: Recreation	Renewable
1.00	CivicEngage Year 1 Annual Fee Discount	Year 1 Annual Fee Discount	Renewable
1.00	Premium Department Header Implementation - CivicEngage	Premium Department Header Implementation	One-time

**EXHIBIT B
SCHEDULE OF COMPENSATION RATES**

Year 1: Total shall be invoiced as follows: 50% invoiced on signature date and 50% invoiced 6 months from signature date or completion of implementation, if earlier

Payments to CONSULTANT for the subsequent years' Annual Services shall be made in the form of annual payments on the anniversary date of the Effective Date.

The renewable subscription fee will increase 3% effective Year 2 and at each anniversary date.

CivicPlus, LLC CivicRec Initial Five-Year Schedule of Compensation

Year 1: Initial Set-Up	\$ 67,873.00
Year 1: Annual Recurring Services	\$ 41,069.00
Year 1: Total	\$108,942.00
Year 2: Annual Recurring Services	\$ 84,602.14
Year 3: Annual Recurring Services	\$ 87,140.20
Year 4: Annual Recurring Services	\$ 89,754.41
Year 5: Annual Recurring Services	\$ 92,447.04
Project Contingency (5%)¹	\$ 10,000.00
Total Amount	\$472,885.80

¹ Project contingency is for related project work deemed necessary but not within the scope of service. Use of project contingency must be approved by CITY prior to the commencement of work by CONSULTANT.

EXHIBIT C
SCHEDULE OF PERFORMANCE

CONSULTANT shall prepare an implementation timeline and coordinate with CITY to implement the project schedule. All services will be scheduled with CITY's project manager, Mariah Dabel, Public Services Administrative Manager, or a designee.

CONSULTANT shall provide ongoing services to CITY as described in Exhibit A.

EXHIBIT D

Third Party Data Use Agreement

1. CONSULTANT agrees that it shall not use any information provided by CITY for any purpose other than for work performed pursuant to this Agreement without the prior express written consent of CITY. CONSULTANT also hereby acknowledges that the data delivered by CITY is for use by CONSULTANT only and is not to be released to any other party by any means whatsoever, including the Internet, without prior written consent of CITY. CONSULTANT shall provide written notice to CITY of any subcontractor with whom CivicRec Client Data (CIVICREC DATA) is shared for purposes of performing work under this Agreement.
2. All data and files are intended for the use within the ordinary course of users' business and may not be sold, placed on the internet, or otherwise provided to other parties. All data shall comply with all statutes such as California State Law, Government Code section 7928.205 which prohibits any state or local agency from posting the home address or telephone number of any "elected or appointed official," residing spouse, or child on the internet, and Revenue and Taxation Code sections 408, 408.1, 408.3, and 409 permitting the County Assessor to collect fees for certain information.
3. CITY, as rightful owners, shall retain all rights, title, interest, and copyright of the data. Any products using the CIVICREC DATA must give credit to CITY as the source of the information. Any and all derivative products of the CIVICREC DATA are owned by CITY and may not be used for any purpose other than performing work pursuant to this Agreement without prior written permission of CITY. All derivative products and resulting data shall be provided to CITY Project Manager and CITY Public Services Administrator or CITY Recreation Manager at the completion of the work.
4. CONSULTANT and CITY understand and agree that the information provided pursuant to this Agreement is the product of professional services paid for by CITY and shall remain property of CITY. CONSULTANT may retain copies, including copies stored on magnetic media, only for information and reference, in connection with CONSULTANT'S use for work performed for CITY.
5. All of the above terms and conditions apply to any subcontractor retained by CONSULTANT.
6. In the event of a conflict between the terms and provisions of this Third-Party Data Use Agreement and the terms and provisions of the CONSULTANT AGREEMENT, the terms of the CONSULTANT AGREEMENT shall govern and control.

EXHIBIT E

Master Service Agreement and Statement of Work Addendum

THIS Master Services Agreement and Statement of Work Addendum (“Addendum”) hereby sets forth the (i) additional terms and conditions applicable to the Agreement by and between Morgan Hill (“Client”) and CivicPlus, LLC (“CivicPlus”). The Special Terms shall be deemed to amend, modify, supplement, replace and/or supersede (as applicable) any inconsistent provisions of the Agreements, to the extent of the inconsistency.

ALL TERMS AND CONDITIONS OF THE AGREEMENTS NOT EXPRESSLEY MODIFIED HEREIN SHALL REMAIN IN FULL FORCE AND EFFECT.

Capitalized terms used and not defined herein shall have the meanings assigned to them in the Agreements (to which this Addendum is attached and incorporated).

1. ADDITIONAL TERMS

31. Intellectual Property in the software or other original works created by or licensed to CivicPlus, LLC, including all source code, documents, and materials used in the Services (“Consultant Property”) will remain the property of Consultant. Consultant Property specifically excludes City Content. City shall not (i) license, sublicense, sell, resell, reproduce, transfer, assign, distribute or otherwise commercially exploit or make available to any third party any Consultant Property in any way, except as specifically provided for herein; (ii) adapt, alter, modify or make derivative works based upon any Consultant Property; (iii) create internet “links” to the Consultant Property software or “frame” or “mirror” any Consultant Property administrative access on any other server or wireless or internet-based device that may allow third party entities, other than City, to use the Services; (iv) reverse engineer, decompile, disassemble or otherwise attempt to obtain the source code to all or any portion of the Services; or (v) access any Consultant Property in order to (a) build a competitive product or service, (b) build a product using similar ideas, features, functions or graphics of any Consultant Property, or (c) copy any ideas, features, functions or graphics of any Consultant Property. The Consultant name, the Consultant logo, and the product and module names associated with any Consultant Property are trademarks of Consultant, and no right or license is granted to use them outside of the licenses set forth in this Contract.

32. Provided City complies with the terms and conditions herein, and license restrictions set forth above, Consultant hereby grants City a limited, nontransferable, nonexclusive, license to access and use the Consultant Property as described in this Contract and its Exhibits.

33. Consultant will not be liable for any act, omission of act, negligence, or defect in the quality of service of any underlying carrier, licensor, or other third-party service provider whose facilities or services are used in furnishing any portion of the Service received by the City.

34. Consultant will not be liable for any failure of performance that is caused by or the result of any act or omission by City or any entity employed/contracted on the City’s behalf. During Project Development, City will be responsive and cooperative with Consultant to ensure the Project Development is completed in a timely manner.

35. City agrees that it is solely responsible for any solicitation, collection, storage, or other use of end-user’s personal data on any Service provided by Consultant. City further agrees that Consultant has no responsibility for the use or storage of end-users’ personal data in connection with the Services or the consequences of the solicitation, collection, storage, or other use by City or by any third party of personal data.

36. City is responsible for all activity that occurs under City's accounts by or on behalf of City. City agrees to (a) be solely responsible for all designated and authorized individuals chosen by City ("User") activity, which must be in accordance with this Contract and the Consultant Terms of Use; (b) be solely responsible for City data; (c) obtain and maintain during the term all necessary consents, Contracts and approvals from end-users, individuals or any other third parties for all actual or intended uses of information, data or other content City will use in connection with the Services; (d) use commercially reasonable efforts to prevent unauthorized access to, or use of, any User's log-in information and the Services, and notify Consultant promptly of any User's log-in information and the Services, and notify Consultant promptly of any known unauthorized access or use of the foregoing; and (e) use the Services only in accordance with applicable laws and regulations.

37. Upon completion of the Project Development, City will assume full responsibility for City Content maintenance and administration. City, not Consultant, shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership or right to use of all City Content. City hereby grants Consultant a worldwide, non-exclusive right and license to reproduce, distribute and display the City Content as necessary to provide the Services. City represents and warrants that City owns all City Content or that City has permission from the rightful owner to use each of the elements of City Content; and that City has all rights necessary for Consultant to use the City Content in connection with providing the Services.

38. Consultant shall, at all times, comply with the terms and conditions of its Privacy Policy. Consultant will maintain commercially reasonable administrative, physical, and technical safeguards designed to protect the security and confidentiality of City data. Except (a) in order to provide the Services; (b) to prevent or address service or technical problems in connection with support matters; (c) as expressly permitted in writing by City; or (d) in compliance with our Privacy Policy, Consultant will not modify City data or disclose City data, unless specifically directed by City or compelled by law. Notwithstanding the foregoing, Consultant reserves the right to delete known malicious accounts without City authorization.

39. City acknowledges and agrees that Consultant utilizes third-party service providers to host and provide the Services and store City data and the protection of such data will be in accordance with such third party's safeguards for the protection and the security and confidentiality of City's data.

40. Consultant may offer City the ability to use third-party applications in combination with the Services. Any such third-party application will be subject to acceptance by City. In connection with any such third-party application agreed to by City, City acknowledges and agrees that Consultant may allow the third-party providers access to City data as required for the interoperation of such third-party application with the Services. The use of a third-party application with the Services may also require City to agree to a separate agreement or terms and conditions with the provider of the third-party application, which will govern City's use of such third-party application.

41. Consultant' liability arising out of or related to this Agreement will not exceed the Annual Recurring Services amounts paid by City in the year prior to such claim of liability. In no event will Consultant be liable to City for any consequential, indirect, special, incidental, or punitive damages arising out of or related to this Agreement. The liabilities limited herein apply: (a) to liability for negligence; (b) regardless of the form of action, whether in contract, tort, strict product liability, or otherwise; (c) even if City is advised in advance of the possibility of the damages in question and even if such damages were foreseeable; and (d) even if City's remedies fail of their essential purposes. If applicable law limits the application of the provisions of this Limitation of Liability section, Consultant' liability will be limited to the maximum extent permissible.

42. At any time during the term of this Agreement City will have the ability to download the City Content and export the City data through the Services. City may request Consultant to perform the export of City data and provide the City data to City in a commonly used format at any time, for a fee to be quoted at time of request and approved by City. Upon termination of the applicable AGREEMENT for any reason, whether or not City has retrieved or requested the City data, Consultant reserves the right to permanently and definitively delete the City Content and City data held in the Services thirty (30) days following termination of the Agreement.

During the thirty (30) day period following termination of the AGREEMENT, regardless of the reason for its termination, City will not have access to the Services.

43. The City's Annual Recurring Services Fees agreed upon in the applicable Statement of Work ("AGREEMENT") are based on the City processing volume of revenue per year in the last reportable year prior to the City procuring the Services, as communicated to Consultant at time of purchase ("Predicted Processing Volume"). Starting with the first Renewal Term of this AGREEMENT, Consultant reserves the right (but not the obligation) to audit the City once every twelve (12) months to determine the City's actual processing volume ("Actual Processing Volume"). In the event the City's Actual Processing Volume exceeds the Predicted Processing Volume, Consultant will notify the City within thirty (30) days of the audit of the Actual Processing Volume and the applicable increase in the Annual Fees resulting from such Actual Processing Volume. The increase in the Annual Fees shall be implemented on the first of the month following the notice.
44. CivicRec Pay / Process Automation Pay / Pay
- 44.1. CivicRec Services enables the City to receive online credit card payments for certain services or products the City provides via the City websites or recreation management system supported by Consultant. As such, through the Services, Consultant facilitates an automated process for redirecting credit card payments to the City's chosen payment gateways / merchant account processors ("Gateway"). For card payments, Consultant will redirect any payments processing to the City's Gateway, and the Gateway presents the payment form page and processes the card payment. Consultant does not transmit, process, or store cardholder data and does not present the payment form. Consultant implements and maintains Payment Card Industry (PCI) compliant controls for the system components and applications that provide the redirection services only.
- 44.2. The City will enter into a merchant account agreement with a Gateway provider that is within Consultant's network of integrated Gateways. ("Integrated Partner"). Such agreement's terms and conditions will solely ensure the benefit and obligation of the City; Consultant shall not be a party to such agreement. Consultant will facilitate contact between the City and the selected Integrated Partner for contracting purposes and shall integrate the Integrated Partner's Gateway system into the City's Services. The City agrees to assume responsibility for ensuring execution of a Gateway contract with the City's select Gateway provider, to comply with all terms and conditions of such contract, and pay all fees required to maintain the services. The City acknowledges that the fees set forth in the applicable AGREEMENT do not include any transaction, processing, or other fees imposed by the City's Gateway.
- 44.3. The City is solely responsible for their relationship with their selected Gateway. In no event will Consultant:
- 44.3.1. take part in negotiations,
 - 44.3.2. pay any fees incumbent on the City or merchant account, or
 - 44.3.3. acquire any liability for the performance of services of any chosen Gateway, including those Integrated Partners.
- 44.4. The City acknowledges switching to a different Gateway after signing this AGREEMENT may incur additional fees and require a written and signed modification to this AGREEMENT. The City shall continue to be responsible for negotiating and executing any Gateway agreement as described herein for any additional Gateway changes. The City understands and agrees that Consultant is not liable for any failure of service or breach of security by any Gateway provider selected by the City, whether such provider is an Integrated Partner or not.
45. Document Management
- 45.1. The City acknowledges that any forms to be used in Document Management Services must be created in Document Management, and such forms cannot be unencrypted or exported to unencrypted modules. The City is solely responsible for the updating and accuracy of their public-facing privacy policy.

45.2. Consultant strongly recommends the City complete a Privacy Impact Statement ("PIA"), which shall detail the City's privacy practices and policies surrounding the use of, and any data stored within or collected by Services. The City further warrants appropriate employees have been adequately trained on the use and deployment of Services.

45.3. The City and Consultant each jointly acknowledge that for the duration of the applicable AGREEMENT, Consultant shall serve as the "Data Custodian" and is solely responsible for the Security Controls, including safe custody, transport, and storage of data and the City shall serve as the "Data Owner", and is solely responsible for the Operational and Privacy Specific Controls, including data collection, content, context, and use. Notwithstanding the foregoing, The City acknowledges that Consultant cannot detect or prevent unauthorized individuals accessing any Consultant system through use of valid log-in credentials as set up by the City. The City has sole responsibility for maintaining the security of such log-in credentials and assigning and defining roles and permission to each individual end-user.

45.4. The City acknowledges that due to the nature of the encryption employed in the Services, Consultant staff are unable to access any data submitted or stored within Services.

45.5. The City understands and agrees that the Services are not intended to collect or store any credit card information, or related identifiable or financial information and that the City shall not collect or store any such information in the Services. For the sake of clarity, the Services are not Payment Card Industry Data Security Standard (PCI DSS) or Health Insurance Portability and Accountability Act (HIPAA) compliant, and the City shall not use the Services for PCI DSS or HIPAA purposes.

46. AudioEye Terms

Services are performed hereunder AudioEye, Inc. ("AudioEye"), for whom Consultant is an authorized reseller, and the performance of the services under this Agreement will be conducted in accordance with and be subject to the terms and conditions of this AGREEMENT and the Agreement.

AudioEye Managed

Activation

Upon Activation, AudioEye to begin tracking usage analytics. AudioEye to conduct, at least, monthly ongoing and continuous monitoring based on the usage analytics tracked by AudioEye. This always-on monitoring ensures that the pages being accessed by end-users – the pertinent pages relative to the end-user's experience - are being regularly prioritized and evaluated for accessibility conformance. For the duration of the Term of the agreement between the Parties, AudioEye will maintain the always-on monitoring service.

To ensure compliance with ADA Title II/III, Section 504, Section 508 Information and Communication Technology, and any future changes in conjunction with ADA-related laws & guidelines, and any applicable state laws, AudioEye tests against internationally recognized W3C Web Content Accessibility Guidelines (WCAG) 2.1 Level AA Success Criteria. These tests are conducted through both automated and manual processes, which are facilitated and managed through the Digital Accessibility Platform ("DAP"), AudioEye's proprietary system for facilitating the Ally Managed Service solution.

AudioEye engineers do not make any changes to the web environment that impact the visual display of the website. For any Success Criteria that cannot be met through the application of fixes facilitated through the Digital Accessibility Platform and applied to the frontend website/application through the AudioEye JavaScript, AudioEye collaborates with software/web designers/developers and recommends best practices for effective resolution to be applied at the source and/or through universal design standards. The combination of this collective and collaborative effort helps ensure usability for City's site visitors. AudioEye to provide the necessary tools and/or instruction, allowing Reseller and/or City to implement fixes within the product source ("Source Remediation").

Features/Services	Details
WCAG Accessibility Reports	Reporting available upon request for point-in-time compliance status and WCAG conformance level.
Automated Remediations Global	Certain common issues of accessibility can be programmatically detected and remediated by AudioEye Dynamic Remediation Technology.
Monitoring	Ongoing evaluation and continuous WCAG testing.
Accessibility Toolbar	Web Personalization Tools that allow end-users to customize their user experience to meet their individual needs. The internationally recognized accessibility icon marks the entrance to the AudioEye Toolbar.
Certification Statement	AudioEye Trusted Certification, which is an attestation of a site owner's ongoing commitment to digital inclusion as defined by WCAG Success Criteria. Includes AudioEye Trusted Certification badge.
Accessibility Statement (if applicable)	Standardized accessibility messaging site owners may utilize on their site informing visitors of the digital inclusion efforts underway.
Training (On-Demand Webinar Archive)	User access to an archive of recorded Accessibility Training Seminars covering various topics to encourage digital accessibility best practices and universal design thinking.
Live Training Webinars	User access to Accessibility Training Seminars covering various topics to encourage digital accessibility best practices and universal design thinking.
Manual Assistive Technology (AT) Testing	Site-level technical analysis and functional usability testing (manual testing) conducted by Assistive Technology testers.
Site Remediation	Automated and manual test results provide feedback for AudioEye Engineers to develop custom, site-specific remediations to fix issues of accessibility. Remediations scripts are served via AudioEye Dynamic Remediation Technology.
Sustainable Testing & Remediation Plan	Official accessibility auditor documentation to assist the site owner in addressing any accessibility complaints.

International Language Support

27 Languages/Dialects supported for display within the Ally Toolbar. Valid language attributes must be present in the source. Supported languages include:

- | | |
|--|--|
| <ul style="list-style-type: none"> • Arabic • Cantonese (Hong Kong S.A.R.) • Catalan (Catalan) • Chinese (Taiwan) • Chinese (People's Republic of China) • Czech (Czech Republic) • Danish (Denmark) • Dutch (Netherlands) • English (United States) • English (United Kingdom) • Finnish (Finland) • French (France) • French (Canada) • German (Germany) | <ul style="list-style-type: none"> • Greek (Greece) • Hungarian (Hungary) • Italian (Italy) • Japanese (Japan) • Korean (Korea) • Norwegian (Norway) • Polish (Poland) • Portuguese (Portugal) • Portuguese (Brazil) • Russian (Russia) • Spanish (Spain) • Spanish (Mexico) • Swedish (Sweden) |
|--|--|

AudioEye continually monitors the relevant World Wide Web Consortium's (W3C) Web Content Accessibility Guidelines (WCAG) to improve conformance with WCAG guidelines and to eradicate issues of accessibility that may impede access for persons with disabilities.

AudioEye periodically monitors current law and practice regarding digital accessibility compliance including, but not limited to the Americans with Disabilities Act (ADA) and other similar state and international laws.

AudioEye has and will continue to take steps necessary to help improve and maintain equal access to City website(s).

AudioEye monitors City website(s) and/or the platform hosting City website(s) to take the steps necessary to improve conformance with WCAG standards.

AudioEye evaluates City website(s) and/or the platform hosting City website(s) on a periodic basis to improve conformance with WCAG standards.

AudioEye periodically reviews automated and manual test results to develop remediations to City website(s) and/or the platform hosting City website(s) to increase conformance with WCAG Success Criteria.

AudioEye provides support and training resources and hosts training seminars that promote accessibility best practices including, but not limited to, universal design, WCAG Success Criteria, video captioning, and document remediation.

AudioEye works with and/or takes measures to provide product stakeholders in charge of managing the platform hosting City website(s) with information a) to improve the accessibility of the platform hosting City website(s), the site template, and web components that comprise City website(s), b) to incorporate accessibility into the design process, and c) to better ensure an optimal user experience for individuals with disabilities.

AudioEye supports a 24/7 help desk for site visitors, which enables them to report accessibility issues and grievances should they be encountered. AudioEye prioritizes the remediation of validated issues as submitted via the Help Desk.

AudioEye provides technical analysis and functional usability testing (manual testing) of City website(s) and/or the platform hosting City website(s), which is conducted by assistive technology (AT) testers.

Via proprietary and patented AudioEye Dynamic Remediation Technology, AudioEye remediates issues of accessibility identified within City website(s) and/or the platform hosting City website(s) and conducts retesting of issues to validate usability of remediated content and functionality.

AudioEye provides limited to full implementation of the AudioEye Toolbar, which provides web personalization tools permitting site visitors to customize their user experience to meet individual needs.

To streamline communication during the project, City will be assigned an account manager who will be responsible for the quality and timeliness of all deliverables. The account manager will oversee and track the progress of the entire project and will be available to escalate concerns.

Website/Platform updates or structural changes that impact existing CSS ID/class selector attributes may require re-configuration and subsequent testing that demands a level of effort beyond the typical maintenance included with the AudioEye Services.

AudioEye engineers do not make any changes to the web environment that impact the visual display of the website. Required changes that impact visual display require collaboration with City and any visual changes implemented through the AudioEye Services require sign-off from City . In many cases, these changes are implemented by City at the source. For deficiencies impacting visual display or site structure/features/functions, AudioEye to obtain written permission from City to provision and apply the required fixes. AudioEye shall not be

held liable for delays impacting, if applicable, delivery timelines pertaining to City supplying AudioEye with written approvals.

For any Success Criteria that cannot be met through the application of fixes facilitated through the AudioEye Services and applied to the frontend website/application through the AudioEye JavaScript, AudioEye collaborates, via Consultant, with software/web designers/developers and recommends best practices for effective resolution to be applied at the source and/or through universal design standards. The combination of this collective and collaborative effort helps ensure usability for City's site visitors. AudioEye to provide the necessary tools and/or instruction, allowing Consultant to implement fixes within the CMS product source ("Platform Remediation").

For each project, the start date of Activation is determined by AudioEye.

AudioEye shall issue an AudioEye Trusted Certification indicating that City has a commitment to accessibility and inclusion in striving to maximize and continually improve conformance with the informative guidance supplied through W3C WCAG. If applicable, certification statements may indicate conformance exclusions and/or statements of partial conformance and/or reference to on-demand source feedback reports to inform end-users about features/functions that do not conform to the target standard and/or remain a work in a progress.

Common exclusions resulting in conformance clarifications, as documented through source feedback reports, include flash objects, highly visual/dynamic display widgets/modules, high volume content changes, maps, inaccessible PDFs, videos without captioning and/or audio descriptions, and 3rd party content.

City will identify a project lead to function as a single point of contact for the project.

City will make all reasonable efforts to address conformance exclusions indicated within the source remediation report.

City will make all reasonable efforts to educate AudioEye on the specific technical constraints of its Web environment, including details about its publication and hosting environments. Prior to execution of this Agreement, City to inform AudioEye of anticipated traffic exceeding 20 million monthly impressions. City understands and agrees that AudioEye will charge City the following overage fees, to be billed at the end of the current month, in which the overage occurred: \$52 per million impressions above and beyond the monthly allotment. Please note: some single page requests may make multiple requests to AudioEye, and, therefore, trigger multiple impressions (i.e., frames on the page).

City to provide advanced notification to AudioEye prior to implementing or removing the AudioEye JavaScript within their web environment, including but not limited to City's production, staging, UAT, development, and/or sandbox environment(s).

City will provide AudioEye with feedback, comments, approvals, and acceptance on all deliverables in a timely manner.

If City receives a legal demand letter or is served a legal notice, City may request a sustainable testing and remediation (STAR) plan (aka auditor notification letter) to inform plaintiff of the proactive steps already taken and being taken by City to ensure digital inclusion. Should plaintiff continue to pursue their legal efforts, City may request consulting or legal support services, which may be separate from and in addition to the Services included in this AGREEMENT.

City will make all reasonable efforts to send project and accessibility stakeholders to attend online accessibility training presentations provided by AudioEye.

To make a change to this AGREEMENT, City will submit a written request to Consultant specifying the proposed changes in detail. Consultant will submit to City an estimate of the charges and the anticipated changes in the delivery schedule that will result from the proposed change in the services ("Change Order") stated within this AGREEMENT. AudioEye will continue performing the services in accordance with this AGREEMENT until the

Consultant and City agree in writing on the change in scope of work, scheduling, and fees, therefore. Any Change Order shall be agreed to by the parties in writing prior to implementation. No additional fees shall be incurred without City's prior written authorization.

EXHIBIT F

Escalated Priority Development Requirements

Escalated Priority Development Agreement/Acknowledgement (Tokenization Migration)

This Custom Development Agreement and Acknowledgement (“Acknowledgement”) is agreed to by and between CivicPlus, LLC (“CivicPlus”) and City of Morgan Hill, CA (“Client”) and shall be attached to and incorporated into the CivicRec Statement of Work signed by CivicPlus and Client in August 2023 (the “SOW”).

Each table herein contains the agreed-upon specific custom development feature or module, including the in-scope functionality and items specifically not in scope for the feature or module (“Custom Development Project(s)”). By affixing an authorized approval signature in the appropriate space below each table, the Client and CivicPlus are agreeing to the details of performance and specifications for each Custom Development Project. Client expressly understands and agrees that all Custom Development Projects completed by CivicPlus under this Acknowledgement is the sole property of CivicPlus (“CivicPlus Property”) and Client is granted a nontransferable, royalty free license to access and use the CivicPlus Property for the term of the SOW.

Client understands and agrees that all Custom Development Projects will be completed by CivicPlus using its standard software development processes and in compliance with its software development policies. Client understands that the “Detailed Requirements” listed in each Custom Development Project table is the extent of the scope of services and specifications for the respective Custom Development Project, any further requests by Client not included in the Detailed Requirements are considered out of scope and shall require further negotiation by the parties.

Now, therefore, in consideration of the promises, mutual covenants, and agreements set forth in this Acknowledgement and the SOW, and other good and valuable consideration, the receipt and sufficiency of which are hereby

RESOLUTION NO. 23-XXX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO THE CITY'S FISCAL YEAR 2023-2024 BUDGET IN THE GENERAL FUND (FUND NO. 010) TO APPROPRIATE \$108,942, 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 "Approve the Consultant Agreement with CivicPlus, LLC for CivicRec Enterprise Recreation Software" submitted for City Council consideration at its meeting of September 6, 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 2023-2024 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 2023-2024 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 2023-2024 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 6th day of September 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-xxx adopted by the City Council at the meeting held on the 6th day of September 2023.

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

DATE: _____

MICHELLE BIGELOW, City Clerk

EXHIBIT A

AGENDA BUDGET SCORECARD

FISCAL YEAR 2023-2024

ADJUSTMENT #

012

FUND:

FUNCTION:

DEPARTMENT:

DIVISION:

OBJECT:

010	General Fund
50	Recreation
40	Public Services
2140	Membership Services and Recreation Program
42231	CONTRACT SERVICES

AGENDA DATE:

AGENDA ITEM TITLE:

09/06/23 CivicRec Enterprise Recreation Software

	07/01/23 UN-AUDITED BEGINNING FUND BALANCE	ESTIMATED REVENUES	AMENDED APPROPRI- ATIONS	06/30/24 PROJECTED ENDING FUND BALANCE
ORIGINAL BUDGET	32,301,306	53,338,814	58,725,546	26,914,574
CUMULATIVE REVISIONS PRIOR TO RECOMMENDED ACTION	-	105,824	334,408	(228,584)
RECOMMENDED ACTION		-	108,942	(108,942)
RESULT OF RECOMMENDED ACTION	<u>32,301,306</u>	<u>53,444,638</u>	<u>59,168,896</u>	<u>26,577,048</u>

CITY COUNCIL STAFF REPORT

MEETING DATE: September 6, 2023

PREPARED BY:

spring andrews, Information Technology Director

APPROVED BY: City Manager

AUTHORIZE THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH GRANITE GOVERNMENT SOLUTIONS FOR CONSOLIDATED TELECOMMUNICATION SERVICES

RECOMMENDATION(S)

1. Authorize the City Manager to enter into an agreement with Granite Government Solutions for consolidated telecommunication services; and
2. Authorize the City Manager to execute and administer the consultant agreement with Granite Government Solutions.

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Enhancing Public Safety

Fostering a Positive Organizational Culture

Preserving and Cultivating Public Trust

2022-2023 Strategic Priorities

Fiscal Sustainability

REPORT NARRATIVE:

Currently, Morgan Hill pays Verizon for hosted voice solutions and Frontier for analog services on a monthly basis. The hosted Verizon solution currently being used is end of life and end of service as of December 2023. The current solutions have the following challenges:

- Cumbersome and complex system administration
- Unsupported and failing hardware, such as handsets and VOIP network switches
- Limited functionality
- Limited usage visibility, poor analytics, and minimal report functionality
- Poor customer support
- Decentralized invoicing

The new Granite solution has the following benefits:

- Modern portal for system administration
- Modern hosted solutions that include new desk phone and additional app based soft phones for teammates. These soft phones will facilitate communication when working remotely as a call will be able to be executed on a computer or mobile device.
- New hardware in network closets
- Robust analytics that provide visibility
- Control over line assignment, usage, and termination of unused lines
- Encrypted data transmission between handset and hosted platform
- Secure configurations on all phones, preventing any rogue devices connections
- Full equipment replacement covered by warranty
- 24/7/365 professional support with a dedicated support team
- Single customizable monthly invoice
- E911 building location information provided

Billing will be consolidated into one a month rather than the multiple invoices received at various times throughout the month currently. Monthly bill of about \$11,000/month, a slight increase from existing vendors. However, this is expected as the City is upgrading the system and the increase is expected to be temporary as the savings will be realized as a result of Granite's robust technology offerings and ease of scalability that will help ensure a highly available, resilient, and secure telecommunications solution. Currently, staff do not have visibility of what lines are actively being used. With Granite's analytics, staff will have increased visibility, allowing for quick and easy termination of legacy unused or no longer needed lines, resulting in cost savings.

Staff is proposing to centralize the City's voice and analog services under Granite Government Solutions, utilizing State of California Multiple Award Schedules (CMAS) cooperative purchasing agreement.

COMMUNITY ENGAGEMENT:

This staff report serves to inform the community of the City's desire to consolidate Verizon and Frontier services under Granite.

ALTERNATIVE ACTIONS:

Council could direct staff to seek and contract with an alternative provider; however, this will likely result in additional costs. Additionally, the current Verizon solution will no longer be supported as of December 2023.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

None.

FISCAL AND RESOURCE IMPACT:

This consolidation proposal is operational, and will improve business efficiency by

bringing all of the City's VOIP and analog phone lines under one provider. Telecommunication services have already been budgeted. The initial transition to Granite will be cost neutral for services. In the long term, the City will have the opportunity to analyze phone service and potentially reduce costs.

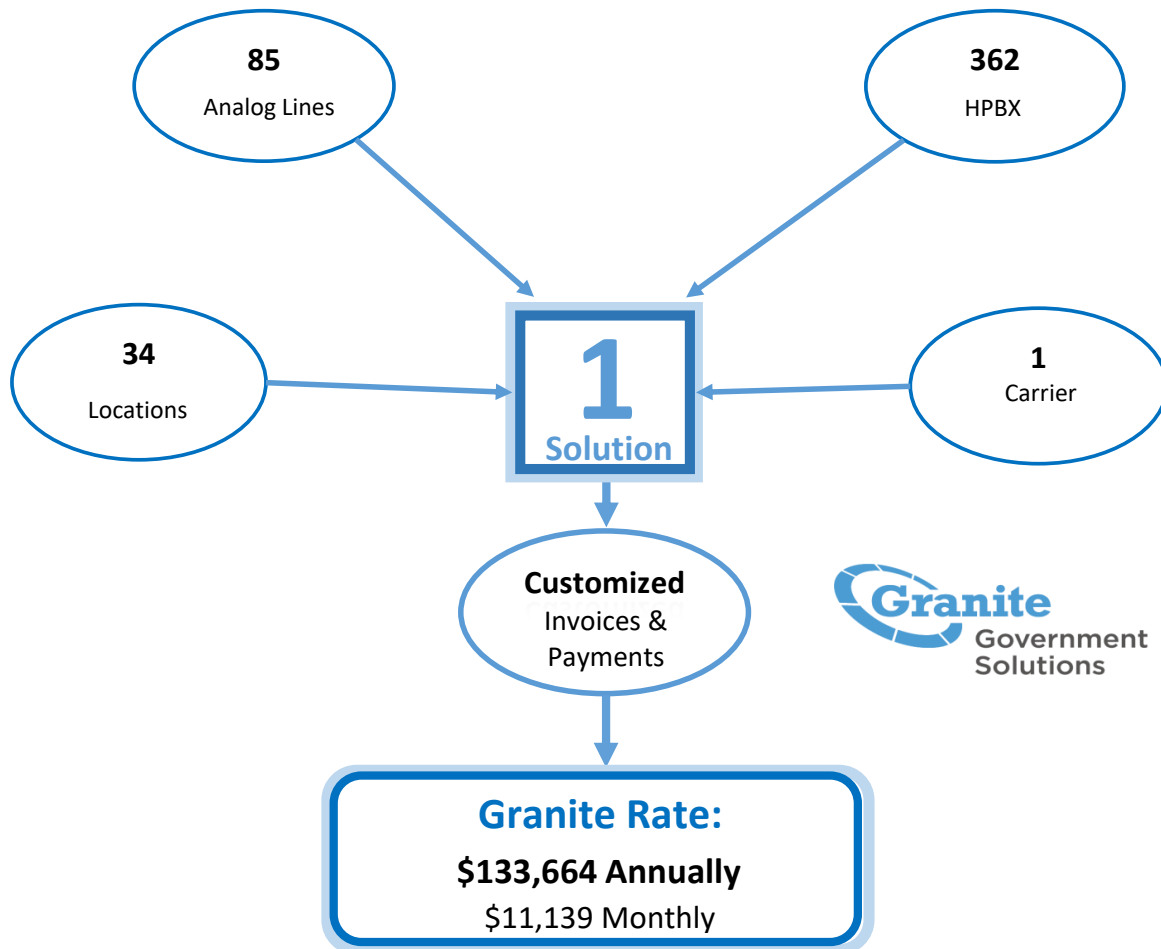
CEQA (California Environmental Quality Act):

Not a project.

This Agreement entails organizational or administrative activities of governments and will not result in direct or indirect physical changes in the environment.

The Value in Partnering with Granite

Granite provides voice, data and other products and services to multi-site businesses and governmental agencies. Granite serves more than two-thirds of the *Fortune* 100 companies, servicing more than 1.75 million voice and data lines. Since 2002, Granite has helped customers simplify and manage local and long-distance phone services, with a single point of contact and one invoice for all locations throughout the United States and Canada. No longer just the industry leader for Plain Old Telephone Services (POTS), Granite provides a full range of advanced communications solutions, including Internet access, SD-WAN, wireless WAN, hosted PBX, SIP trunking, mobile voice and data, mobile device management, managed security and network integration – all in a single, seamless solution.



- ◆ **1 National Account Manager**
- ◆ **1 Customized bill with standard accounting software integration**
- ◆ **1 Customer portal with extensive data analytics**
- ◆ **1 Premier Support Team to manage your account 24x7x365**

◆ Complete Coverage

◆ One Source, One Bill

◆ Support 24/7



Granitenet.com



866.847.1500

Your Customized Solution

Services Consolidated:

Services	Consolidated Units		Current Monthly Cost	Granite Monthly Total
	#	%		
Analog	85	100%	\$4,374	\$3,442

Analog Providers Consolidated:

Provider	Sites	Lines	Provider Cost	Granite Cost
Frontier	85	85	\$4,374	\$3,442
Total	85	85	\$4,374	\$3,442

	Granite Cost	Estimated Taxes	Granite Total w/ Estimated Taxes
Estimated Taxes	\$3,442	\$875	\$4,317



Path to Partnership

City of Morgan Hill

ADS Quote Request Summary

Prepared On: 08/08/2023

Quote Expiration Date: 11/06/2023

Quote Request: 65584

Address	City	State	Zip	NPA	NXX	Granite Service	Granite Amount	Term
17575 Peak Ave	Morgan Hill	CA	95037	408	776	217 HPBX Exec Seats, 145 HPBX Business Seats, 1 E911	\$5,501.37	3 Year
100 Edes St	Morgan Hill	CA	95037	408	776	1 E911	\$0.00	3 Year
16200 Vineyard Blvd	Morgan Hill	CA	95037	408	776	1 E911	\$0.00	3 Year
17555 Peak Ave	Morgan Hill	CA	95037	408	776	1 E911	\$0.00	3 Year
1700 Monterey Highway	Morgan Hill	CA	95037	408	776	1 E911	\$0.00	3 Year
16200 Condit Rd	Morgan Hill	CA	95037	408	776	1 E911	\$0.00	3 Year
171 W Edmundson Ave	Morgan Hill	CA	95037	408	776	1 E911	\$0.00	3 Year
Granite Amount							\$5,501.37	3 Year
Estimated Taxes							\$1,320.33	3 Year
Grand Total							\$6,821.70	3 Year

Equipment	NRC	MRC	Qty	Total NRC	Total MRC
GRP2615 - VoIP Phone	Waived	-	145	-	-
GRP2616 - VoIP Phone	Waived	-	217	-	-

Additional E911s will be charged \$1.50 ea.

Billing starts once DIA circuit loop is dropped.

THIS QUOTE IS AN ESTIMATE. Pricing is subject to availability.

All Services are subject to the General Terms and Conditions of Service set forth at www.granitenet.com.

The information contained herein is confidential and proprietary.

Some taxes, surcharges, regulatory fees and non-recurring charges may be included, additional may apply.



Path to Partnership

City of Morgan Hill

ADS Quote Request Detail

Prepared On: 08/08/2023

Quote Expiration Date: 11/06/2023

Quote Request: 65584

Address	Granite Service	Granite Amount	Term
17575 Peak Ave	Hosted Business Seat	\$1,883.55	3 Year
17575 Peak Ave	Network Access Charge	\$0.00	3 Year
17575 Peak Ave	Advanced Monitoring - VOIP	\$145.00	3 Year
17575 Peak Ave	E911	\$0.00	3 Year
17575 Peak Ave	Hosted Executive Seat	\$3,252.83	3 Year
17575 Peak Ave	Network Access Charge	\$0.00	3 Year
17575 Peak Ave	MLHG	\$2.99	3 Year
17575 Peak Ave	Advanced Monitoring - VOIP	\$217.00	3 Year
1700 Monterey Highway	E911	\$0.00	3 Year
17555 Peak Ave	E911	\$0.00	3 Year
100 Edes St	E911	\$0.00	3 Year
16200 Vineyard Blvd	E911	\$0.00	3 Year
16200 Condit Rd	E911	\$0.00	3 Year
171 W Edmundson Ave	E911	\$0.00	3 Year
Granite Amount		\$5,501.37	3 Year
Estimated Taxes		\$1,320.33	3 Year
Grand Total		\$6,821.70	3 Year

Additional E911s will be charged \$1.50 ea.

Billing starts once DIA circuit loop is dropped.

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All Services are subject to the General Terms and Conditions of Service set forth at www.granitenet.com.

The information contained herein is confidential and proprietary.

Some taxes, surcharges, regulatory fees and non-recurring charges may be included, additional may apply.



Path to Partnership

City of Morgan Hill

Granite Guardian Services

Access Remediation Options

Keep your business safe and productive using optimal network bandwidth and access to your services using Granite's web-based monitoring tool, notifying you in a timely manner and addressing any issues directly to your service provider.

Proactive Ticketing - Access \$10 per Month Min 1 Year Term

24x7 Monitoring and Remediation Service that can be added to any Broadband Circuit with a Public IP Address

Includes:

- 24/7 monitoring via ICMP ping to Static IP
- Automatic ticketing
- Remediation
- Trouble ticket reporting

Advanced Monitoring - Wireless Broadband/IoT Access \$20 per Month Min 2 Year Term

24x7 Monitoring and Remediation Service that can be added to any Cradlepoint or Digi Mobility Device

Includes:

- Proactive Ticketing +
- Portal with Granalytics and reporting

Advanced Monitoring - On-Net Access \$30 per Month Min 2 Year Term

24x7 Monitoring and Remediation Service that can be added to any DIA Circuit on Granite's Network

Includes:

- Proactive Ticketing +
- Portal with Granalytics and reporting

Advanced Monitoring - Off-Net Access \$35 per Month Min 2 Year Term

24x7 Monitoring and Remediation Service that can be added to a 1 Gbps or less DIA or Broadband Circuit that is not on Granite's Network

Includes:

- Proactive Ticketing +
- Portal with Granalytics and reporting
- 1 Gbps throughput network interface hardware provided by Granite



Path to Partnership

City of Morgan Hill

Network Integration Products

Service	NRC	Monthly Payment Option		
		1 Year	2 Year	3 Year
Site Survey	\$199.00	\$18.42	\$10.11	\$7.38
Predictive Heat Mapping (up to 10k Sq Ft)	\$349.00	\$32.30	\$17.73	\$12.93
Installation of a Broadband or DIA circuit, a Router, Managed Service, Cradlepoint &/or Switch	\$199.00	\$18.42	\$10.11	\$7.38
Hosted Voice Installation (Analog Handoff)	\$199.00	\$18.42	\$10.11	\$7.38
Hosted PBX Installation (up to 4 phones)	\$298.00	\$27.58	\$15.14	\$11.04
Hosted PBX Installation - Additional phone	\$25.00	\$2.31	\$1.27	\$0.93
ADS Diagnostic Dispatch - hourly rate	\$125.00	\$11.57	\$6.35	\$4.63
Test & Tone - hourly rate	\$99.00	\$9.16	\$5.03	\$3.67
Additional Hour for On-site Data Technician	\$125.00	\$11.57	\$6.35	\$4.63
Single Cat 5e Plenum Cable Drop	\$299.00	\$27.67	\$15.19	\$11.08
Single Cat 6 Plenum Cable Drop	\$325.00	\$30.08	\$16.51	\$12.05
Dmarc Cat 5e Plenum Cable Drop	\$325.00	\$30.08	\$16.51	\$12.05
Warehouse Cat 5e Plenum Cable Drop	\$449.00	\$41.55	\$22.81	\$16.64
WAN Wireless Antenna Install Short	\$50.00	\$4.63	\$2.54	\$1.85
WAN Wireless Antenna Install Long	\$100.00	\$9.25	\$5.08	\$3.71
PRI Installation	\$199.00	\$18.42	\$10.11	\$7.38
Managed Wi-Fi Installation	\$199.00	\$18.42	\$10.11	\$7.38
Additional WAP Installation	\$49.00	\$4.53	\$2.49	\$1.82
Managed Wi-Fi Peripherals Installation	\$49.00	\$4.53	\$2.49	\$1.82
MPOE Extension - After Site Survey				
***Travel / Dispatch	\$65.00	\$6.02	\$3.30	\$2.41

Prepared On: 08/08/2023

Expires On: 02/04/2024

Potential Additional Charges:

Charge	Charge Type	Rate
Intrastate Usage	Per minute	\$0.069
Interstate Usage	Per minute	\$0.019
Regional/Toll Usage	Per minute	\$0.06
Presubscribed Interexchange Carrier Charge	Per line	\$4.43
Rebill Fee	Per account	\$9.95
Carrier Access	Per line	\$2.05
Early Toll Fraud Detection	Per line	\$0.25
Interexchange Carrier Fee	Per line	\$1.87
Listings	Per listing	\$4.50
Voicemail	Per mailbox	\$7.00
Tag and Locate	Per site install	\$129.00

**Pricing Term. In the event that an underlying carrier or supplier substantially alters the amounts charged to Granite for any Services being provided to the Customer, Granite reserves the right to propose different rates to the Customer.*

**This is the applicable rate unless otherwise specified. Please note that these charges may not apply in all instances, but will be assessed as needed by Granite.*

**This is an estimate, rates are subject to change and are intended to be used for analysis purposes only.*

	GOVERNMENT ACCOUNT FORM AND LETTER OF AGENCY POTS ONLY	Sales Rep:	
		Order Date:	8/8/2023
CUSTOMER INFORMATION			
Government Entity Name ("Customer"):	City of Morgan Hill		
Billing Telephone Number:			
Designated Contact:			
Contact Phone Number:			
Service Address (Street/Suite): See Appendix A-1			
Mailing/Billing Address (Street/Suite):			
City:			
State/Zip Code:			
Additional Comments/Notes (if any):			

AGREEMENT AND AUTHORIZATION
By signing this Government Account Form and Letter of Agency ("<u>LOA</u>"), Customer hereby (a) engages Granite Telecommunications, LLC and/or its affiliates ("<u>Granite</u>") to provide Services as set forth in <u>Appendix A</u>, attached hereto and incorporated herein, and such other Services as Customer may order from time to time after the date hereof and (b) authorizes and appoints Granite to act as its agent solely for the purposes of handling all arrangements for establishing, converting, ordering, changing and/or maintaining such Services, and to take such other actions as are reasonably necessary to provide such Services and as Customer may request from time to time. Customer directs its current service provider(s), if any, to work with Granite to affect these changes. Services under this Agreement shall be on a month-to-month basis. Customer can cancel services at any time given 30 (thirty) days written notice. The Terms of Service, found at www.granitenet.com/legal set forth the rights and responsibilities of Customer and Granite concerning Services to be provided and in regards to other important topics. If Customer does not agree to the Terms of Service, the authorized representative of Customer should not sign this LOA. All terms and conditions of the Terms of Service are incorporated herein by reference. <i>This LOA is confidential and may not be disclosed to third parties except to the extent required by applicable law.</i>
SIGNATURE

The undersigned is authorized to sign on behalf of Customer and Customer agrees to be bound by the Terms of Service. This LOA is effective as of the date of execution below.

Customer:

By:

Print Name:

Title:

Date:

Signing this Government Account Form and Letter of Agency will result in a change of service provider(s).

Appendix A
Services Selected

- ☒ Voice Services (POTS, Long Distance, Local and LD T1 and PRI) (See Note 1)
- ☐ Broadband Services
- ☐ MPLS and/or Dedicated Internet Access Services
- ☐ VoIP Services (Hosted PBX, SIP Trunking, SIP PRI, Hosted Voice, Voice over Cable, Virtual Auto Attendant and Virtual Voicemail Services)
- ☐ Mobility Services (Mobility Data and Mobility Voice)
- ☐ Granite Grid Services
- ☐ Conferencing Services (Audio Conferencing and Web Conferencing)
- ☐ Managed Services
- ☐ Monitoring Services
- ☐ Other Services (List): _____

Note 1: Unless otherwise noted herein, in addition to these rates and charges set forth in this LOA (a) certain other rates and charges may apply, as provided for by tariff, the FCC or other governmental entity, or other regulation or requirements and (b) Customer will pay to Granite all applicable taxes (including sales, use and excise taxes). In the event that Customer elects additional services, additional fees may apply. Customer acknowledges that it will be charged in accordance with the rates and plans listed on Appendix A-1, attached hereto and incorporated herein, plus any and all additional charges as may be set forth in the Terms of Service.

Note 2: See quote and other documents attached hereto as Appendix A-1 for specific details related to Services ordered.

Appendix A-1

Service Locations and Specifics

(Insert Service Locations, quantities, and the Quote)

CITY COUNCIL STAFF REPORT

MEETING DATE: September 6, 2023

PREPARED BY:

Cynthia Iwanaga, Management Analyst

APPROVED BY: City Manager

AWARD SMART IRRIGATION CONTROLLER SYSTEM CONTRACT TO MEDALLION LANDSCAPE MANAGEMENT, INC.

RECOMMENDATION(S)

1. Award contract to Medallion Landscape Management, Inc. in the amount of \$435,398 for the supply, installation and programming of a Citywide Smart Irrigation Controller System with a 5% contingency not to exceed \$21,770;
2. Authorize the City Manager to execute and administer that certain contract with Medallion Landscape Management, Inc; and
3. Adopt a resolution amending the FY 2023-24 Budget appropriating \$457,168, including \$228,584 from the Water Operations Fund (650) and \$228,584 from the General Fund (010).

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Protecting the Environment and Preserving Open Space and Agricultural Land

2023-2024 Strategic Priorities

Fiscal Sustainability

REPORT NARRATIVE:

Over the last three years, the importance of water conservation has continued to grow at the local, regional and state level. The City currently has irrigation systems to water parks, facility landscaping and street median landscaping. These systems are currently primarily programmed at each irrigation controller located at the location of the landscaping which it serves (over 70 locations citywide). The purpose of this item is to provide the City Council with an opportunity to consider upgrading to newer irrigation controller technology to manage the City's irrigation systems on a Citywide basis.

City staff are recommending the award of a contract to Medallion Landscape Management, Inc. in the amount of \$435,398 with a 5% contingency amount of \$21,770. The scope of work for this Citywide Smart Irrigation Controller System Project is the replacement of all Citywide hard-wired irrigation controllers with a centralized cloud-based irrigation controller system. Currently, the City has several types of

irrigation controllers installed site-by-site and individually programmed. Each site must be individually programmed and monitored daily depending on anticipated weather conditions. The new smart irrigation controller system will allow staff to monitor the irrigation system from both a desktop or mobile device in the field or in the office. The system will be able to anticipate rapid fluctuations in environmental conditions and increase/decrease daily output based upon weather prediction data.

The purpose of the system is to help optimize water distribution, and reduce staff time by increasing/decreasing water output from a single or central location. The Public Services Maintenance Team is small and limited in resources. Updating to this advanced technology would allow the City to manage water use on City property more efficiently and effectively, setting the example for water conservation measures. It would allow watering schedules to be changed without driving to the hundreds of individual controllers located throughout the City and ultimately allow other priority maintenance work to continue even when there are significant needs for changes to watering schedules.

The Request for Proposals (RFP) was released on January 23, 2023 and three proposals were received on February 24, 2023. In soliciting proposals for this project, the City advertised in the Morgan Hill Times on January 20, 2023. The RFP was also posted on the City website and Public Purchase. The RFP was also sent directly to the County of Santa Clara Builders Exchange.

Six firms attended the pre-RFP meeting and three proposals were received from the following contractors:

Brightview Landscape Services, Inc.
K & D Landscaping, Inc.
Medallion Landscape Management, Inc.

The City evaluated the proposals using a "Best Value" methodology in which contractors meeting the minimum scoring on the "Qualifications, Experience and References" narrative were then evaluated based on their cost proposals. A team of evaluators from the Maintenance Division independently evaluated and scored the proposals based on the contractors' narrative, qualifications, experience, and references. There were 70 points available for this section and contractors needed to score at least 52.50 out of 70 points (75%) in order to proceed in the process. The final scores for this section were:

Brightview Landscape Services: 61.67
K & D Landscaping: 59.33
Medallion Landscape Management: 65.00

All contractors met the minimum score threshold. In the second step of the evaluation, the contractors' cost proposals were compared and the contractor with the lowest proposed price for each line item was awarded the maximum number of points for that line item.

The final total scoring combining narrative and cost points were:

Brightview Landscape Services: 85.14

K & D Landscaping: 78.49

Medallion Landscape Management: 90.51

If approved, Medallion Landscape Management will install WeatherTRAK controllers that include 10 years of central service, product warranty, and cellular connectivity. This program will save the City considerable funding over future years and will receive product service from a reputable company that is currently servicing numerous municipalities.

COMMUNITY ENGAGEMENT:

Staff will continue to post landscape updates on the City's website, Nextdoor Morgan Hill, Facebook, and Twitter to inform residents of any landscape work done by contractors that will affect the right of way or pedestrian access to facilities and services.

ALTERNATIVE ACTIONS:

An alternative action would be to reject all proposals and release another RFP in an attempt to obtain more proposals. The Council could also choose to reject all proposals and not move forward with this project.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The City Council has not previously taken action on this project because it is the installation of a new system.

FISCAL AND RESOURCE IMPACT:

This project was not budgeted or proposed at mid-cycle due to the unknown costs at that time. Should the City Council approve this project, City staff is recommending an appropriation of \$435,398 for the project along with a 5% contingency of \$21,770 for a total of \$457,168. City staff is recommending 50% of this cost, \$228,584, be appropriated from the Water Operations Fund (650) as it is a water conservation measure and the City has historically helped fund public and private projects with these funds. The City staff are proposing the other 50% of the funding be appropriated from the General Fund (010). The City has been approved for a rebate from Valley Water of \$23,000 on the project, which would be returned equally to both funds, if the project is approved.

Future savings related to water savings and replacement costs for the controllers are estimated in the hundreds of thousands of dollars over the next decade. It is anticipated most of the controllers will eventually require replacement at some point during that time.

CEQA (California Environmental Quality Act):

Categorical Exemption

Maintaining existing landscapes is categorically exempt under CEQA, specifically pursuant to Section 15301 of the CEQA Guidelines (Existing Facilities), as subject work involves negligible or no expansion of use of those facilities.

MAINTENANCE SERVICE AGREEMENT
Medallion Landscape Management, 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 Medallion Landscape Management, Inc. a California corporation ("SERVICE PROVIDER") hereinafter referred to collectively as "Parties." In consideration of the promises and the mutual covenants contained in this Agreement, the Parties agree as follows:

1. **City Authority.** This Agreement is entered into pursuant to 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 December 31, 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 period of one year. Any such extension shall be in writing and signed by both Parties to this Agreement.
3. **Scope of Service.** The services to be performed by SERVICE PROVIDER shall be the supplying, installation and training of staff needed for a Citywide Smart Irrigation Controller System as further described in **Exhibit A.**
4. **Compensation.** SERVICE PROVIDER shall be compensated as follows:
 - 4.1. **Amount.** \$435,398.00. Total compensation to SERVICE PROVIDER under this Agreement during its initial term set forth in Section 2 above shall not exceed Four Hundred Thirty-Five Thousand Three Hundred and Ninety-Eight Dollars and shall be billed based on the rate and basis set forth in **Exhibit B.** If the City Manager extends the term of this Agreement pursuant to the provisions of Section 2 above, the City Manager shall have the authority to increase the maximum compensation allowed to be paid to SERVICE PROVIDER during that extended term period, so long as City Council has appropriated sufficient funds therefor, the Parties mutually agree to such amount in a writing signed by both Parties to this Agreement and provided further that in no event shall such maximum compensation allowed for the extended term exceed 105% of the maximum compensation allowed to be paid to SERVICE PROVIDER for one year of service during the initial term of this Agreement.
 - 4.2. **Billing.** SERVICE PROVIDER shall provide CITY with an invoice containing the dated, detailed, and itemized descriptions of all services performed and expenses incurred (if such expenses are reimbursable pursuant to Exhibit B) by SERVICE PROVIDER on a monthly basis unless otherwise specified in Exhibit B. All invoices shall be sent to the CITY addressed to the department head or project manager identified below in Section 14 Notices. Payment will be made to SERVICE PROVIDER within thirty (30) days of receipt of invoice by CITY. Any rate charged shall be prorated where services are interrupted or not provided for any rate period (for example, any monthly rate charge should be prorated when services were interrupted or provided for only part of the month). For services billed on an hourly rate, the minimum unit of billed time shall not exceed one tenth of one hour. CITY shall pay for services and expenses (if so provided in Exhibit B) up to the limit of compensation set forth above, that in the CITY'S judgment were necessary and reasonable. Services for work performed and expenses incurred in excess of the total compensation set forth in paragraph 4.1 above shall be at no cost to CITY.

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

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

5.2. **Temporary Suspension of Services.** CITY'S need for services may be suspended due to unforeseeable or unavoidable circumstances beyond its control. Such circumstances include, but are not limited to, earthquake, fire, explosion, flood, or other natural catastrophe; governmental legislation, condemnation, acts, orders, or regulation; war or acts of terrorism; strikes or labor difficulties; and quarantine, epidemic, or pandemic. CITY shall provide a 5-days' written notice or less under urgent circumstances to temporarily suspend services at specific CITY facilities. CITY reserves the right to request which CITY facilities are to be serviced or not serviced due to unforeseeable or unavoidable circumstances, and the level of service at each CITY facility. Upon suspension, SERVICE PROVIDER shall submit to CITY an itemized statement of services performed for which compensation has not been paid up to the date of the suspension. No further payments will be made for services provided after the date of the suspension. CITY shall provide 5 days' written notice when the circumstances for the suspension of specific facilities' services are removed for SERVICE PROVIDER to commence providing services.

6. **Performance of Work.** SERVICE PROVIDER represents that it is qualified by virtue of experience, training, education, and expertise to accomplish these services. Services shall be performed by SERVICE PROVIDER in accordance with professional practices in a manner consistent with a level of care, competence and skill exercised by qualified members of SERVICE PROVIDER'S profession. By delivery of completed work, SERVICE PROVIDER certifies that the work conforms to the requirements of this Agreement and all applicable federal, state, and local laws. SERVICE PROVIDER is liable for any property damage caused by SERVICE PROVIDER or its Subcontractors during performance of the services and shall notify the CITY of damage within 24 hours of the occurrence. SERVICE PROVIDER must promptly repair or replace any real or personal property damage, and must promptly restore the property to its original or intended condition. CITY may repair or replace the real or personal property damage if SERVICE PROVIDER fails to do so, and the cost of the repairs or replacement may be deducted or offset from any compensation due to SERVICE PROVIDER.

6.1. **Schedule.** SERVICE PROVIDER shall perform all work and services under this Agreement in conformance with the time schedule set forth on **Exhibit C**, "Schedule of Performance," attached hereto and incorporated herein by this reference. The City Manager is authorized on behalf of CITY to modify the timeframes set forth on the Schedule of Performance within the term of this Agreement.

6.2. **Storage of Service Provider's Equipment.** If SERVICE PROVIDER desires to leave or store any of SERVICE PROVIDER'S equipment at a CITY site while SERVICE PROVIDER is performing work or service pursuant to this Agreement, SERVICE PROVIDER will first obtain the consent of the City Manager, or his/her delegate, to do so, and any such storage shall occur only in the manner and location allowed by such CITY official and entirely at SERVICE PROVIDER'S sole risk.

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

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

8.1. **Insurance Types and Amounts.**

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

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

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

- 8.1.6. Sexual Abuse/Molestation Liability (SML): If the performance of SERVICE PROVIDER'S work or service under this Agreement involves contact with minors, SERVICE PROVIDER shall procure and maintain Sexual Abuse and Molestation insurance in the minimum amount of: (i) two hundred thousand dollars (\$200,000.00) each claim, or (ii) the maximum amount of such insurance available to SERVICE PROVIDER under SERVICE PROVIDER'S combined insurance policies (including any excess or "umbrella" policies), whichever is greater.
- 8.2. **Endorsements**. SERVICE PROVIDER shall provide proof of the following endorsements, listed for each policy for which endorsements are required, as outlined below:
- 8.2.1. General Liability and pollution liability (when pollution liability applies).
- 8.2.1.1. "Additionally Insured" - The City of Morgan Hill, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers are named as additional insureds on a form at least as broad as ISO Form CG 20 10 for ongoing operations.
- 8.2.1.2. "Waiver of Rights of Subrogation" - The insurer waives the right of subrogation against the City of Morgan Hill and CITY'S elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers; and
- 8.2.1.3. "Primary and Non-Contributing" - Insurance shall be endorsed to be primary and non-contributory and will not seek contribution from the City's insurance or self-insurance and shall be at least as broad as ISO Form CG 20 01.
- 8.2.2. Workers Compensation.
- If the performance of SERVICE PROVIDER'S work or service under this Agreement involves access to or activity on any property or premises owned or occupied by the CITY, including, but not limited to, SERVICE PROVIDER'S presence during site visits and meetings, then insurer waives the right of subrogation against the City of Morgan Hill and the CITY'S elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers.
- 8.3. **Qualification of Insurers**. All insurance required pursuant to this Agreement must be issued by a company licensed and admitted, or otherwise legally authorized to carry out insurance business in the State of California, and each insurer must have a current A.M. Best's financial strength rating of "A" or better and a financial size rating of "VII" or better.
- 8.4. **Certificates**. SERVICE PROVIDER shall furnish CITY with copies of all certificates as outlined herein, whether new or modified, promptly upon receipt. In the event of a claim or legal action, SERVICE PROVIDER shall promptly furnish CITY of Morgan Hill with copies of all policies outlined herein. No policy subject to SERVICE PROVIDER'S agreement with CITY shall be canceled or materially changed except after thirty (30) days' notice by the insurer to CITY. A "material change" is a change that results in non-compliance with any insurance requirements in this section 8. Certificates, including

renewal certificates, may be mailed electronically to riskmgmt@morganhill.ca.gov or delivered to the Certificate Holder address provided herein

Certificate Holder address:

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

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

10. **Compliance with Law.**

- 10.1. SERVICE PROVIDER and its officers, employees, agents, and subcontractors shall comply with all applicable laws, ordinances, administrative regulations, and permitting requirements in carrying out their obligations under this Agreement. SERVICE PROVIDER and its officers, employees, agents, and subcontractors covenant there shall be no discrimination based upon any basis prohibited by State or Federal law, including but not limited to, race, color, creed, religion, gender, marital status, age, sexual orientation, national origin, mental disability, physical disability, medical condition, or ancestry, in any activity pursuant to this Agreement.
- 10.2. Without limiting the provisions of Section 10.1 above, each worker performing work under this Agreement shall be paid at a rate not less than the prevailing wage as defined in Sections 1771 and 1774 of the Labor Code. The prevailing wage rates are available online at <http://www.dir.ca.gov/dlsr>. SERVICE PROVIDER shall post a copy of the applicable prevailing rates at the Worksite. Pursuant to Labor Code Section 1775, SERVICE PROVIDER and any Subcontractor shall forfeit to CITY as a penalty up to two hundred dollars (\$200.00) for each calendar day, or portion thereof, for each worker paid less than the applicable prevailing wage rate. SERVICE PROVIDER shall also pay each worker the difference between the applicable prevailing wage rate and the amount actually paid to that worker.
- 10.3. DIR Registration. CITY will not accept a Bid Proposal from or enter into a contract with a SERVICE PROVIDER, without first receiving proof to the satisfaction of CITY that SERVICE PROVIDER and its subcontractors are registered with the California Department of Industrial Relations to perform public work under Labor Code Section 1725.5, subject to limited legal exceptions. Under Labor Code section 1771.4, this Agreement is subject to compliance monitoring and enforcement by the California Department of Industrial Relations.
- 10.4. Compliance with Wage and Hour Laws: SERVICE PROVIDER, and any subcontractor it employs to complete work under this Agreement, shall comply with all applicable federal, state, and local wage and hour laws. Applicable laws may include, but are not limited to, the Federal Fair Labor Standards Act and the California Labor Code.

Final Judgments, Decisions, and Orders: For purposes of this Section, a “final judgment, decision, or order” refers to one for which all appeals have been exhausted or the time to appeal has expired. Relevant investigatory government agencies include: the federal

Department of Labor, the California Division of Labor Standards Enforcement, or any other governmental entity or division tasked with the investigation and enforcement of wage and hour laws.

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

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

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

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

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

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

12. **Confidentiality.** All data, documents, or other information received by SERVICE PROVIDER from CITY or prepared in connection with SERVICE PROVIDER'S services under this Agreement are

deemed confidential and shall not be disclosed to any third party by SERVICE PROVIDER without prior written consent by CITY.

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

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

Address of SERVICE PROVIDER is as follows:

Medallion Landscape Management, Inc.
10 San Brune Avenue
Morgan Hill, CA 95037

Address of CITY is as follows:

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

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

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

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

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

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

22. **Defense and Indemnification.**

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

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

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

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

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

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

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

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

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

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

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

Signatures on the following 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 Michelle Bigelow Print Name Date:	City Manager Christina J. Turner Print Name Date:
APPROVED AS TO FORM:	MEDALLION LANDSCAPE MANAGEMENT, INC.
City Attorney Donald A. Larkin Print Name Date:	By: Print Name and Title of Signer. If Corporate: Chairman, President or Vice President Date:
	By: Print Name and Title of Signer. If Corporate: Secretary, Assistant Secretary, Chief Financial Officer or Assistant Treasurer Date:
713234 Contractor's License Number(s) (if applicable) Expiration Date(s) 9/30/2023	PW-LR-1001014856 Contractor's DIR Registration Number(s) (if applicable) Expiration Date(s) 6/30/2023

**EXHIBIT B
SCHEDULE OF COMPENSATION RATES**

Please see attached Revised Citywide Smart Irrigation Controller System Cost Schedule.

Exhibit A-Scope of Work

Supply and Installation of Citywide Smart Irrigation Controller System

Background:

The City of Morgan Hill has 71 hard wired irrigation controllers that the City manages for park, median and facility irrigation. Currently the City has several types of irrigation controllers installed site-by-site and individually programmed. Each site must be individually programmed and monitored daily depending on anticipated weather conditions.

Goal: The City's goal is to replace the hard-wired irrigation controllers with a centralized cloud-based irrigation controller system.

An inventory of the City's existing irrigation controllers and map is attached for reference as **Attachment A.**

Scope of Services:

The Contractor will provide all labor, equipment and materials necessary to install and replace all the City's hard-wired irrigation controllers with a centralized cloud-based irrigation controller system, so the City may optimize and effectively manage its water citywide throughout its parks, medians and landscaped areas . **The brand is the HydroPoint Weather TRAK Controller System or approved equivalent.**

Required Features:

The proposed citywide smart irrigation controller system must include the following required features and capabilities:

The system must use weather and evapotranspiration (ET) rate data as the basis for daily water distribution recommendations. The system should be able to anticipate rapid fluctuations in environmental conditions and increase/decrease daily output based upon the same weather prediction data. The purpose of the system is to help optimize water distribution, and reduce staff time by increasing/decreasing water output from a single or central location. The system must be programmable (site by site and systemwide) from both a desktop and mobile device.

- Smart weather controller that takes into account weather to automate water programming
- Cloud based software that can be controlled both on a desktop, and also on a mobile device in the field for both individual controllers and all controllers
- Technical support is available Monday through Friday: 8 a.m. to 5 p.m. Pacific Standard Time

- Daily evapotranspiration (ET) updates to each controller
- System allows remote access (through either an app or website), real-time access to make programming changes, run stations, check master valve operation and turn controller on and off.
- System allows for evapotranspiration (ET) to be set to ON/OFF per station
- System shall be able to automatically turn off all controllers due to an operator set rain amount, communicating on system instantly.
- System shall allow users to view and/or override any changes made at irrigation controllers.
- Station groupings must be highly customizable and allow system operator to make global changes to a variety of irrigation parameters including plant type, system efficiency and precipitation rate.
- System must be able to issue global pauses in order to suspend irrigation for a single controller, group of controllers or all controllers across the City.
- Central control shall include a Master Valve override feature that opens up the closed master valve for a set period to allow for use of quick couplers without triggering a leak alert.
- System shall display an area description for each station including the station location.
- System can track flow rate and use that information to determine when to alarm the operators or how to control stations.
- System can notify multiple parties of alarm notification messages.
- System can escalate any issues which are not taken care of after a certain amount of time from the initial alarm.
- Users shall be able to select specific alerts to be on or off.
- System will display the name of the user that made the last program change.

Weather Data

- Weather data shall be from a nearby weather station or device sensor and shall be uploaded automatically on a daily basis to all field controllers.
- A weather service, which uses both National Oceanic and Atmospheric Administration (NOAA) stations and California Irrigation Management Information System (CIMIS) data that will deliver the evapotranspiration (ET) messages over a wireless communication network.
- Weather data collected must include relative humidity, temperature, wind speed and solar radiation.
- Each individual field controller must automatically calculate station run times based on a true scheduling engine that tracks soil moisture depletion for each watering zone.
- System shall communicate with weather station live or dynamically throughout the day, not just once per day.

Equipment

- Controller must be a complete controller and must be a self-contained functioning device. It may not be an add-on device or require another control board or device to be present.
- Controller must be FCC approved.
- Controller and centralized system shall be able to communicate with each other via cellular frequency. If City staff makes changes to the irrigation schedule in the office, the centralized system must be able to communicate that to the controller in real time.
- Controller must be capable of storing multiple irrigation schedules.
- Controller must be able to be programmed both in the field and through a central system.
- Controller must utilize non-volatile memory to retain all programming information during a power outage.
- Controller must have an intuitive interface that is easy for programming.
- Alerts shall be able to be processed and responded to at both the field controller location and remotely via a web browser or mobile device.
- Controller software must have an easy field-upgradeable solution, so that software can be easily upgraded without having to go to each controller individually and manually plugging equipment into controller to upgrade it.
- Controllers shall have models with both transitional wire and 2 wire capability. 2-wire capability shall be fully integrated.
- Controller must be expandable up to 36 stations, for either conventional wire or 2 wire design in a single controller.
- The controller shall have an irrigation test program or “walk-thru” program that is directly controlled by the user either via a traditional remote-control device or via a downloadable mobile application.
- The controller must be capable of allowing the user to make changes to the irrigation program via either a web-enabled device, or at the field controller without requiring user to go back to the internet management portal to accept the change.
- The controller shall allow for operator-set water window, which prevents irrigation from continuing beyond a set end time.
- The controller shall have the ability to track and report on when an “individual” user is logged into the controller via the internet, what changes were made while there, and when a user logged out of the controller. These shall be date and time stamped. Changes made at the controller must also be logged.
- The controller shall be able to display for the user a detailed water usage report categorizing for each month the usage during scheduled irrigation, test and manual key operation, and for non-controller usage such as bleeding valves on manually, using quick couplers or hose bibs.

- Controller must be able to support a wired or wireless rain sensor.
- System must allow manual irrigation via internet enabled tablet or via a smart-phone app for both iPhone and Android operating system.
- The field controller(s) shall be capable of communicating to the central irrigation system wirelessly. The field controllers shall be capable of directly receiving, storing, and operating commands downloaded from the central irrigation system.
- The field controller shall come with a minimum ten (10) year warranty from the manufacturer.
- Warranty work performed by the Distributor shall be priced to include in-field repair service, and not require customer personnel to handle Return Merchandise Authorizations or shipping.

Controller Enclosure Cabinets

- Contractor to include any modifications needed to the existing cabinet to fit the new controller. Should a new cabinet need to be installed it must be manufactured to be vandal and weather resistant, made entirely of 18 gauge cold rolled steel.

Data and Reports

- The system allows for the uploading and downloading of all programs and log data by controller or groups of controllers.
- Water usage data shall be automatically retrieved daily from each controller and reported on by the Central System or have the ability to be exported to an excel or PDF file.
- System shall track all changes made at the field and Central Controller. Changes shall be recorded with a before and after value for each individual field modified.
- User shall be able to report on user level irrigation setting changes for up to 3 years of changes including selection of specific days or date ranges.
- The system shall allow all program data, log data, summary data and alert data for each controller to be selectively printed by the end user.
- All reports must be exportable into either Adobe PDF format or Microsoft Excel format.
- The system shall be able to provide and print a water management report including graph depicting by the month the amount of irrigation water used compared to a monthly allotment in hundred cubic feet (HCF) or gallons and ET weather demand for the month with a percent savings.
- The system shall keep a history of all program changes for up to 3 years for changes made at the controller or remotely. Changes will be tracked by user and by date and can be viewed any time in a simple audit report.
- System shall allow user to compare and view differences between settings on controller at any 2 dates for the last 3 years.

- All reports must have the ability to be “subscribed” by users and delivered automatically to our users over email and customizable times and dates.

Technology

- The system has the ability to communicate with and control up to 200 controllers.
- The system is accessible from any web browser.
- The cloud-based system is hosted by the vendor providing the centralized cloud-based irrigation controller system.
- The system employs https and SSL/TLS security.
- The system has a mobile phone user friendly web browser or application for both IOS and Android.

Labor

- The Contractor shall provide all labor, equipment and materials necessary to install the Hydro Point Weather TRAK Controller System or approved equivalent. All equipment and components shall be installed in accordance with manufacturer’s specifications, installation instructions and in accordance with all applicable building codes.
- Since the contract will be over \$25,000, a payment and performance bond will also be required.
- The Contractor shall submit a complete project schedule at the time of the pre-construction meeting.
- Prior to beginning work, the City’s Maintenance Manager or assigned designee, shall approve the written schedule of work. Following approval, the Contractor shall adhere to the approved written schedule in the execution of work.
- Any expenses incurred by delays caused by the failure of the Contractor to adhere to the approved schedule shall be borne solely by the Contractor.
- This Project is subject to 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.
- The Contractor is responsible for public safety of his/her work site continually, and not limited to normal working hours.
- The Contractor shall maintain a neat appearance at the work site in all areas visible to the public.
- The Contractor shall be responsible for any and all damages to public and private property, and shall correct any damaged property to the satisfaction of the City.

**Exhibit A:
Morgan Hill Irrigation Controllers Inventory as of 1/23/23**

Uniquel D	Controller Location	ControllerType	# of Stations	Hardwired or Battery	Notes
1	Hamilton Square	Hunter Pro C	16	Hardwired	
2	Oak Creek A	RainMaster Sentar II	24	Hardwired	
3	Oak Creek B	RainMaster Sentar II	30	Hardwired	
4	Excaliber/Native Dancer	Hunter (Off)	6	Hardwired	
5	Excaliber/White Cloud	Irritrol Rain Dial	12	Hardwired	
6	Watsonville Rd/Excaliber	Irritrol MC (Off)	6	Hardwired	
7	Paradise Park	RainMaster Eagle	24	Hardwired	
8	Howard Weicher Park	Weathermatic SL	12	Hardwired	8 stations used
9	Rose Haven Park	Irritrol MC	8	Hardwired	
10	Stone Creek Park	Rain Master Sentar	16	Hardwired	
11	Diana Estates Park	Irritrol MC Plus	6	Hardwired	
12	Mill Creek Park	Irritrol MC	12	Hardwired	
13	Belle Estates Park	Irritrol MC	12	Hardwired	6 stations in use
14	Fox Hollow Cir Island	Weathermatic (off)	4	Hardwired	
15	Fox Hollow Park	Irritrol Rain Dial	6	Hardwired	2 stations in use
16	CRC A	Rainmaster Eagle	30	Hardwired	
17	CRC B	Rainmaster Eagle B	30	Hardwired	
18	Community Park A	Rainmaster Eagle Plus	24	Hardwired	20 stations in use; located inside storage
19	Community Park B	Rainmaster Eagle Plus	40	Hardwired	6 stations in use
20	Community Park Ballfields A	Irritrol MC Plus	24	Hardwired	16 stations in use; located in score booth
21	Community Park Ballfields B	Irritrol MC Plus	24	Hardwired	16 stations used; located in score booth
22	Council Chambers	Rainmaster Eagle Plus	30	Hardwired	
23	Library A	Rainmaster Eagle Plus	30	Hardwired	
24	Library B	Rainmaster Eagle Plus	30	Hardwired	
25	Galvan Park	Rainmaster Eagle Plus	32	Hardwired	24 stations in use
26	Galvan Park Ballfields	Irritrol MC	6	Hardwired	
27	Tennant btw Monterey and Church	Irritrol MC4 Plus	4	Hardwired	2 stations used
28	CCC A	Rainmaster Eagle Plus	48	Hardwired	36 stations used
29	CCC B	Rainmaster Eagle Plus	48	Hardwired	26 stations used
30	Depot St	Rainmaster Eagle Plus	32	Hardwired	all stations used
31	Railroad Park	Hunter I Core	6	Hardwired	3 stations used
32	Courthouse Demo Garden	Rainmaster Eagle Plus (off)/ Irritrol	12	Hardwired	2 controllers irritrol in use
33	Monterey bwt Wright and Hill Haven Mobile Park	Irritrol MC8 Plus (off)	8	Hardwired	3 stations used; everything established
34	Monterey btw Jarvis and Cochrane	Irritrol MC6E	6	Hardwired	3 stations used
35	Fox Hollow Frontage	Irritrol MC4e	4	Hardwired	all stations used
36	Llagas Creek (West side)	Irritrol Rain Dial	6	Hardwired	2 stations used
37	Llagas Creek (East Side)	Irritrol Rain Dial	6	Hardwired	4 stations used
38	Llagas Ct	Irritrol Rain Dail	4	Hardwired	1 station used
39	Sparhwak	Irritrol MC12 Plus	12	Hardwired	8 stations used; controller off
40	E Dunne btw Andalusia and Joleen	Superior Controller (off)	4	Hardwired	Battery
41	E Dunne btw 101 and Condit	Rain Bird ESP	16	Hardwired	6 stations used
42	E Dunne btw Bayo Claros and Hill	Irritrol MC12	12	Hardwired	9 stations used
43	Conte Gardens Park	Irritrol MC-6E	6	Hardwired	4 stations used
44	Sandlewood Park	Irritrol MC-6E (off)	6	Hardwired	established; water off
45	El Dorado	Hunter X-Core	8	Hardwired	5 stations used
46	Aquatics Center	Rainmaster Eagle	36	Hardwired	26 stations used
47	Historical Society	Hunter Pro-C	12	Hardwired	5 stations used
48	Magical Bridge	Hunter I-Core	24	Hardwired	20 stations used
49	Police Department	Rainmaster Eagle	24	Hardwired	20 stations used
50	Monterey Rd Downtown	Rainmaster Eagle	36	Hardwired	32 stations used
51	Diana Park	Hunter ICC	8	Hardwired	all stations used

Exhibit A:
Morgan Hill Irrigation Controllers Inventory as of 1/23/23

Uniquel D	Controller Location	ControllerType	# of Stations	Hardwired or Battery	Notes
52	E Third Btw Monterey and Depot	Rainmaster Eagle	24	Hardwired	18 stations used
53	Third St Creek Park	Hunter ICore	6	Hardwired	3 stations used
54	Monterey btw Vineyard and Tennant	Irritrol MC63	6	Hardwired	4 stations used
55	Monterey btw Cosmo and San Pedro	Irritrol MC8E	8	Hardwired	8 stations used
56	Butterfield btw Main and E Central	Irritrol MC6 Plus (off)	6	Hardwired	2 stations used; off
57	Butterfield btw E Central and Jarvis	Hunter XCore	6	Hardwired	2 stations used
58	Butterfield btw Jarvis and Sutter	Weathermatic - Smartline	24	Hardwired	14 stations; business park not ours
59	Butterfield btw San Pedro and Barrett	Irritrol MC8 Plus	8	Hardwired	7 stations used
60	Butterfield btw Barrett and Tennant	Irritrol MC12 Plus	12	Hardwired	9 stations used
61	Butterfield btw Tennant and Fisher	Irritrol MC24E	24	Hardwired	18 stations used
62	Butterfield btw Bridge and Monterey	Irritrol MC-18E	18	Hardwired	12 stations used
63	Butterfield btw San Pedro and Terracina Appts	Irritrol	4	Hardwired	1 used; established
64	Butterfield btw Terracina Appts and E Dunne	Irritrol (off)	4	Hardwired	1 used; established; no power
65	Butterfield btw Sutter and Jarvis (front of Toray)	Irritrol MC18 Plus	18	Hardwired	14 stations; business park
66	Cochrane btw Monterey and Cochrane Cir	Hunter Xcore	4	Hardwired	
67	Cochrane btw Cochrane Cir and Woodview	Irritrol MC18 Plus	18	Hardwired	15 stations used
68	Cochrane btw Madrone and 101	Irritrol MC6E	6	Hardwired	6 stations used
69	Cochrane btw DePaul and Mission View	Irritrol Raindial 1200R	12	Hardwired	10 stations used
70	Llagas Obata	Rain Bird	6	Hardwired	6 stations used
71	Peak Ave	Sprinkler	1	Hardwired	Test

**EXHIBIT C
SCHEDULE OF PERFORMANCE**

All work shall be scheduled with City Maintenance Manager or designated City staff. All work shall be completed by December 31, 2023.

Attachment B - Schedule fo Compensation

Name of Contractor: Medallion Landscape Management

CITY OF MORGAN HILL

REVISED Citywide Smart Irrigation Controller System Cost Schedule

***Additional Items in Red.**

Item	Cost
Cost to Supply Citywide Smart Irrigation Controller System and technical assistance and/or subscription fees (if any) for the first year of service	\$ 198,198.00
Cost of Subscription Fees for 10 Years of Service	\$ 205,410.00
Installation/Labor Cost to Remove Existing Hardwired Controllers and Install New Citywide Smart Irrigation Controller System	\$ 24,640.00
Cost to Program and Set-Up the Proposed Controller including training of City Staff	\$ 7,150.00
Base Bid Total	\$ 435,398.00

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**EXHIBIT A
SCOPE OF SERVICES**

Please see attached Scope of Services from Request for Proposals dated January 23, 2023.

Morgan Hill: 2023 Smart Irrigation Controller System RFP Scoring Matrix

					NARRATIVE SCORING			
NARRATIVE RESPONSES					Points Available	Brightview Landscape Services, Inc.	K & D Landscaping	Medallion Landscape Management
Item								
Previous Experience supplying, installing, programming smart irrigation controller system for clients with similar scopes of work					20.00	17.33	17.00	19.33
Smart Irrigation Controller System proposed and how system meets the requires scope of services; Proposer's understanding of project and services required					25.00	22.33	20.67	24.00
Qualifications of Staff to be assigned to provide, install and program smart irrigation controller system					15.00	12.33	12.33	13.33
Assessments of work quality, performance and working relationships by current and recent clients that indicate high levels of satisfaction and effectiveness.					10.00	9.67	9.33	8.33
SUBTOTAL- NARRATIVE POINTS					70.00	61.67	59.33	65.00
COST PROPOSAL					COST PROPOSAL SCORING			
Item	Price from Lowest Bidder	Brightview Landscape Services, Inc.	K & D Landscaping	Medallion Landscape Management	Points Available	Brightview Landscape Services, Inc.	K & D Landscaping	Medallion Landscape Management
Cost to Supply SIC & TA & Subscription Fees for 1st Year of Service	198,198.00	256,087.00	299,356.00	198,198.00	15.0	11.61	9.93	15.00
Cost of Subscription Fees for 10 years	131,670.00	131,670.00	199,765.00	205,410.00	5.0	5.00	3.30	3.21
Installation/Labor Cost to Remove Existing Hardwired Controllers and Install New Citywide Smart Irrigation Controller System	24,640.00	44,680.08	32,000.00	24,640.00	7.0	3.86	5.39	7.00
Cost to Program and Set-Up Proposed Controller including City Staff Training	715.92	715.92	4,000.00	7,150.00	3.0	3.00	0.54	0.30
		433,153.00	535,121.00	435,398.00				
SUBTOTAL-COST PROPOSAL POINTS					30.0	23.47	19.15	25.51
GRAND TOTAL POINTS					100.0	85.14	78.49	90.51
						#2	#3	#1

RANKINGS

RESOLUTION NO. 23-XXX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO THE CITY'S FISCAL YEAR 2023-2024 BUDGET IN THE GENERAL FUND (FUND NO. 010) AND WATER OPERATIONS FUND (FUND NO. 650) TO APPROPRIATE \$228,584 IN EACH FUND

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 "Award Smart Irrigation Controller System Contract to Medallion Landscape Management, Inc." submitted for City Council consideration at its meeting of September 6, 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 2023-2024 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 2023-2024 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 2023-2024 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 6th day of September 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-xxx adopted by the City Council at the meeting held on the 6th day of September 2023.

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

DATE: _____

MICHELLE BIGELOW, City Clerk

EXHIBIT A

AGENDA BUDGET SCORECARD

FISCAL YEAR 2023-2024

ADJUSTMENT #

010

FUND:

FUNCTION:

DEPARTMENT:

DIVISION:

OBJECT:

010	General Fund
40	Public Services
40	Public Services
6100	Street Maintenance
42231	CONTRACT SERVICES

AGENDA DATE:

AGENDA ITEM TITLE:

09/06/23
Irrigation Controller System

	07/01/23 UN-AUDITED BEGINNING FUND BALANCE	ESTIMATED REVENUES	AMENDED APPROPRI- ATIONS	06/30/24 PROJECTED ENDING FUND BALANCE
ORIGINAL BUDGET	32,301,306	53,338,814	58,725,546	26,914,574
CUMULATIVE REVISIONS PRIOR TO RECOMMENDED ACTION	-	105,824	105,824	-
RECOMMENDED ACTION		-	228,584	(228,584)
RESULT OF RECOMMENDED ACTION	<u>32,301,306</u>	<u>53,444,638</u>	<u>59,059,954</u>	<u>26,685,990</u>

AGENDA BUDGET SCORECARD

FISCAL YEAR 2023-2024

ADJUSTMENT #

011

FUND:

FUNCTION:

DEPARTMENT:

DIVISION:

OBJECT:

650 Water Operations
80 Water
40 Public Services
5760 Water Conservation
42231 CONTRACT SERVICES

AGENDA DATE:

AGENDA ITEM TITLE:

09/06/23
Irrigation Controller System

	07/01/23 UN-AUDITED BEGINNING FUND BALANCE	ESTIMATED REVENUES	AMENDED APPROPRI- ATIONS	06/30/24 PROJECTED ENDING FUND BALANCE
ORIGINAL BUDGET	4,377,993	19,786,782	20,457,356	3,707,419
CUMULATIVE REVISIONS PRIOR TO RECOMMENDED ACTION	-	-	-	-
RECOMMENDED ACTION		-	228,584	(228,584)
RESULT OF RECOMMENDED ACTION	<u>4,377,993</u>	<u>19,786,782</u>	<u>20,685,940</u>	<u>3,478,835</u>

CITY COUNCIL STAFF REPORT

MEETING DATE: September 6, 2023

PREPARED BY:

Adam Paszkowski, Principal Planner

APPROVED BY: City Manager

ADOPT A CITYWIDE VEHICLE-MILES-TRAVELED (VMT) POLICY INCLUSIVE OF ESTABLISHING VMT AS THE APPROPRIATE METRIC FOR EVALUATING TRANSPORTATION-RELATED IMPACTS UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) AND ESTABLISHING VMT SCREENING CRITERIA, VMT THRESHOLDS OF SIGNIFICANCE, AND TRANSPORTATION DEMAND MANAGEMENT (TDM) STRATEGIES

RECOMMENDATION(S)

1. Open/close public hearing; and
2. Adopt Resolution adopting Screening Criteria and Thresholds of Significance regarding the City's implementation of State Senate Bill 743 (SB 743) transition from Level-of-Service (LOS) to Vehicle-Miles-Traveled (VMT) as the metric for transportation analysis under the California Environmental Quality Act (CEQA) for development projects.

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Protecting the Environment and Preserving Open Space and Agricultural Land
Supporting our Youth, Seniors, and Entire Community
Advancing Regional Initiatives

2022-2023 Strategic Priorities

Transportation

Guiding Documents

Bikeways, Trails, and Recreation Master Plan
Climate Action Plan
Morgan Hill 2035 General Plan
Vision Zero

REPORT NARRATIVE:

A policy is being proposed that would:

- establish a citywide Vehicle Miles Traveled (VMT) policy inclusive of establishing VMT as the appropriate metric for evaluating transportation-related impacts as required under the California Environmental Quality Act (CEQA)
- establish VMT Screening Criteria, VMT Thresholds of Significance, and Transportation Demand Management (TDM) Strategies and
- utilize Level of Service (LOS) thresholds in the review of non-CEQA related impacts for discretionary planning applications in accordance with the General Plan.

Complete details of the proposed VMT policy are provided in the [June 27, 2023 Planning Commission staff report](#) and in the draft Resolution (Attachment 1).

BACKGROUND

In 2013, Senate Bill (SB) 743 was signed into law and required lead agencies to adjust their method of evaluating transportation impacts, from Level of Service (LOS) to Vehicle Miles Traveled (VMT). Where LOS measures the average amount of delay experienced at key intersections during hours of highest congestion, VMT accounts for the number of vehicle trips generated and the distance of those trips. This is a significant methodology change to determine transportation impacts under the California Environmental Quality Act (CEQA), and the intent is to “promote the state’s goals of reducing greenhouse gas emissions and traffic-related air pollution, promoting the development of a multimodal transportation system, and providing clean, efficient access to destinations.” The California Governor’s Office of Planning and Research (OPR) issued a “Technical Advisory on Evaluating Transportation Impacts in CEQA” recommending that adopted thresholds for new projects should reduce VMT by 15%. Provisions under Section 15064.3(c) of the CEQA Guidelines require the application of VMT since July 1, 2020.

Lead agencies have discretion to deviate from OPR’s recommended 15% reduction in VMT by developing and adopting their own, or relying on thresholds recommended by other agencies, “provided the decision of the lead agency to adopt such thresholds is supported by substantial evidence.” (Save Cuyama Valley v. County of Santa Barbara (2013) 213 Cal.App.4th 1059, 1068.) Substantial evidence means “enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached.” (Protect the Historic Amador Waterways v. Amador Water Agency (2004) 116 Cal.App.4th 1099, 1108-1109.)

ANALYSIS

TJKM has prepared the "[Morgan Hill VMT Methodology Memo](#)" and "[Morgan Hill VMT Mitigation Measures Memo](#)" identifying the methodology to establish transportation impact analysis goals, objectives, and recommendations for VMT-based CEQA analysis.

VMT Metrics

CEQA Guidelines Section 15064.3(b)(4) states, “[a] lead agency has discretion to choose the most appropriate methodology to evaluate a project’s , including whether to express the change in absolute terms, per capita, per household or in any other measure.” VMT can be expressed as an efficiency-based metric (e.g., VMT per resident, VMT per employee, or VMT per service population) or as absolute metric (e.g., total VMT).

Therefore, staff and TJKM recommend using the Home-based VMT per Resident and the Home-based VMT per Employee metrics as outlined in the "[Morgan Hill VMT Methodology Memo](#)".

- **Home-based VMT per Resident:** VMT generated from travel between resident’s homes and other destinations, such as for work, school, household errands, in a defined geographic area divided by the total residents. This metric excludes trips between two non-residential locations, such as a trip between a retail center and a school. Home-based VMT per resident reflects all passenger vehicles assigned to the roadway network and is calculated using the production side of the vehicle trip table.
- **Home-based VMT per Employee:** VMT generated from travel between an employee’s home and work in a defined geographic area divided by the number of employees in the geographic area. Home-based work VMT per employee reflects all passenger vehicles assigned to the roadway network and is calculated using the attraction side of the vehicle trip table.

VTM Screening Criteria

The Governor’s Office of Planning and Research (OPR) recommends streamlining CEQA review of projects to identify areas where less detailed environmental review can be presumed. Projects that meet the screening criteria for VMT would most likely reduce VMT in a specific Travel Analysis Zone (TAZ) within Morgan Hill. In addition, a project that meets at least one of the screening criteria would be exempt from further VMT analysis. There are six types of screens recommended by TJKM for the City of Morgan Hill:

1. **Project Size Screening:** Projects that generate less than 110 average daily trips.
2. **Locally Serving Retail Screening:** Retail projects that are less than 50,000 square feet (includes fast-food/quick-serve restaurants).
3. **Low VMT Area Screening:** Residential and employment projects located within a low VMT generating area (15 percent below a region’s home based VMT per resident or home based VMT per employee metric).
4. **Transit Proximity Screening:** Projects located within Transit Priority Areas or High Quality Transit Corridors (located within half a mile radius of an existing or planned major transit stop).
5. **Affordable Housing Screening:** 100 percent affordable residential development (or the residential component of a mixed-use development).
6. **Active Transportation Projects:** Transportation projects that promote active

transportation, such as transit, bicycle, and pedestrian facilities.

Figure 1: Morgan Hill Transit Buffer (Transit Proximity Screen) around Caltrain Station and VTA Route 68



VMT Thresholds of Significance

Given the information provided within the "[Morgan Hill VMT Methodology Memo](#)" and the fact that lead agencies have discretion in setting thresholds, Staff and TJKM recommends the City of Morgan Hill use the city average as the VMT threshold for both residential (VMT per Capita) and employment (VMT per employee) land uses. This ensures that, at a minimum, the city's VMT metrics remain the same. As such, since an impact under CEQA is considered to have occurred when there is an increase in VMT and GHG emissions, a starting level for thresholds can be existing conditions or baseline VMT metrics (Total VMT, VMT per capita, VMT per employee, VMT per service population etc.). Since VMT increases with increase in population and employment, the impact can be calculated by comparing development alternatives to baseline conditions. This assumes that trip patterns generated by new land uses are similar to existing land uses. Therefore, the following are the recommended thresholds for Morgan Hill.

A project would result in a significant project-generated VMT impact if:

1. *For residential projects, its net VMT per capita exceeds Morgan Hill's baseline VMT per capita.*
2. *For office and industrial projects, its net VMT per employee exceeds Morgan Hill's baseline VMT per employee.*
3. *For all other uses, including commercial/retail uses over the 50,000 square foot local threshold, a net increase in total VMT within Morgan Hill would be considered a significant impact.*

VMT Metric Maps

The following maps show TAZs in Morgan Hill which are under the threshold, are mitigable, or unmitigable for VMT per Capita and VMT per Employee metrics. In

addition, a half mile boundary transit buffer zone has been drawn around the Morgan Hill Caltrain station and VTA Route 68 to show transit accessible areas which are exempt from VMT analysis.

Figure 2: VMT per Capita Map (Residential Projects)

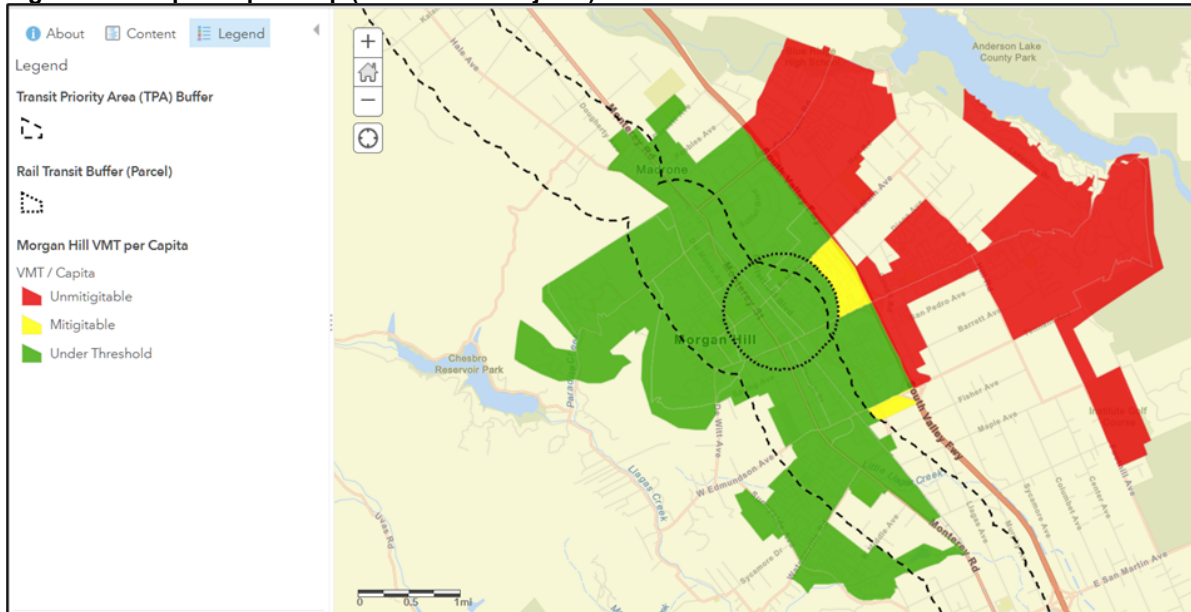
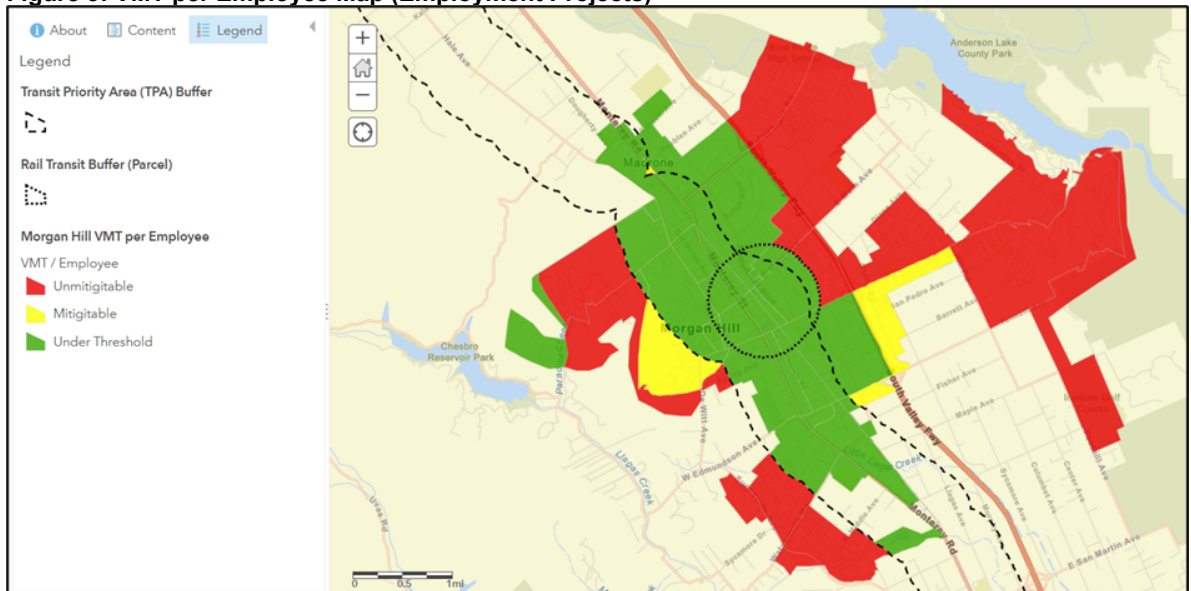


Figure 3: VMT per Employee Map (Employment Projects)



VMT Mitigation

If a proposed land development project does not meet the proposed Screening Criteria or exceeds the proposed Thresholds of Significance outlined above, the proposed project could result in a significant environmental impact and would need to identify mitigation measures to reduce that impact. Therefore, the "[Morgan Hill VMT Mitigation Measures Memo](#)" describes the recommended VMT mitigation strategies that may apply to projects in the City of Morgan Hill. The memo summarizes potential strategies

available at this time to reduce VMT that are suited to the built environment of the City and identifies new mitigation program ideas that the City may consider as part of future planning efforts or projects. The work being done as part of the Transportation Master Plan may also generate mitigation program ideas that can be used with this policy.

PLANNING COMMISSION ACTION:

The Planning Commission reviewed the proposed Citywide VMT Policy on June 27, 2023. Following discussion, the Planning Commission approved [Resolution No. 23-10](#) recommending the City Council adopt Screening Criteria, Thresholds of Significance, and TDM strategies regarding the City's implementation of SB 743 transition from LOS to VMT as the metric for transportation analysis under CEQA for development projects; and that the use of LOS thresholds shall be utilized in the review of non-CEQA related impacts for discretionary planning applications in accordance with the General Plan, separate and distinct from the VMT Thresholds of Significance.

COMMUNITY ENGAGEMENT:

Inform/Engage

The Planning Commission held several public workshops regarding this item on March 10, 2020, April 28, 2020, June 23, 2020, and August 11, 2020. In addition, the City Council held a public workshop regarding this item on June 2, 2021.

On June 27, 2023, the Planning Commission held a public hearing regarding this item in which a 10-day public hearing notice was published in the Friday, June 9, 2023 edition of the Morgan Hill Times.

A 10-day public hearing notice was published in the Friday, August 25, 2023 edition of the Morgan Hill Times pursuant to Government Code Sections 65090-65096.

ALTERNATIVE ACTIONS:

The CEQA Guidelines and OPR encourages local jurisdictions to adopt VMT Screening Criteria and Thresholds of Significance intended for general use by resolution as part of a public process. Lead agencies also have the option to establish thresholds on a project-by-project basis as the City has been conducting VMT analysis since the implementation of SB 743. The location of Morgan Hill within the Bay Area causes large commutes for community members for work, shopping, services, and recreation. The lack of public transportation also impacts people's commuting choices. Requiring development in Morgan Hill to meet the 15% reduction in emissions is very challenging. Therefore, staff proposes adopting the above proposed Screening Criteria and Thresholds of Significance through a public process which improves transparency and can be used to help educate the public and project applicants about the City's expectations. If the City adopts VMT Screening Criteria and Thresholds of Significance, it establishes consistency on when VMT is exempt from review and establishes a set standard to be utilized city-wide. In addition, adopting VMT Screening Criteria or Thresholds of Significance will streamline certain projects that generate low VMT or that are located within low VMT areas of the City. Also, adopting a defined list of VMT Screening Criteria and Thresholds of Significance assists in aligning with state goals for

greenhouse gas reduction, infill development, transit, active transportation, and public health.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On June 6, 2018, the City Council adopted the Biennial FY 2018-19 & FY 2019-20 Operating Budget which included one-time funding of \$200,000 within the Special Revenue Fund 207 for Long Range Planning's work program task to implement SB 743.

On January 15, 2020, the City Council approved a professional services agreement with Nelson\Nygaard Consulting Associates, Inc. to assist with the City's implementation of SB 743 and establishing VMT Screening Criteria and Thresholds of Significance utilizing the VTA Countywide model for a total not-to-exceed amount of \$110,000.

The Planning Commission has held workshops on March 10, 2020, April 28, 2020, June 23, 2020, and August 11, 2020 regarding the City's implementation of SB 743.

The Planning Commission made a recommendation on August 11, 2020 to approve the proposed VMT Screening Criteria on a 4-3 vote; the commission agreed on three of the four proposed screens. The proposed screen the Commission did not have unanimous support on was the proposed location-based screen, titled 'Low VMT Location'. In addition, the motion also recommended the City conduct its own VMT model within an 18 month or sooner timeframe in order to deviate from the VTA Model and revise the adopted screens as necessary once the model is complete. The Commission did not make a recommendation on the proposed Thresholds of Significance, because, although the Commission agreed with the proposed Thresholds of Significance, the Commission did not agree on the VTA Model that the thresholds were based on.

On June 2, 2021, the City Council reviewed the proposed VMT Screening Criteria and Thresholds of Significance as proposed by Nelson\Nygaard Consulting Associates, Inc. utilizing the VTA Countywide model. However, the Screening Criteria and Thresholds of Significance identified by Nelson\Nygaard were not adopted by the City Council, and City staff was directed to pursue its own VMT model, that is more reflective of the City, in order to deviate from the VTA Countywide VMT model, and/or to deviate from OPR's Technical Advisory recommending to reduce VMT of new development by 15%, and revise the proposed screens and thresholds as necessary once the City's model and/or deviation from OPR's Technical Advisory is complete.

On January 19, 2022, the City Council approved a professional services agreement with TJKM Transportation Consultants for assistance with the City's implementation of SB 743 for a total not-to-exceed amount of \$79,835.

On June 27, 2023, the Planning Commission recommended the City Council adopt a Citywide VMT policy inclusive of establishing VMT as the appropriate metric for evaluating transportation-related impacts under CEQA and establishing VMT screening criteria, VMT thresholds of significance, and TDM strategies, as well as to utilize LOS

thresholds in the review of non-CEQA related impacts for discretionary planning applications in accordance with the General Plan.

FISCAL AND RESOURCE IMPACT:

This item is included in the current adopted budget (FY22-23 and FY23-24) and is part of the Long Range Planning workplan and is funded through the Long Range Planning Fund (207). In addition, funds for the professional services agreement with TJKM are budgeted within the Long-Range Planning Fund (207) and included in the adopted Biennial Operating Budget.

CEQA (California Environmental Quality Act):

Not a Project

The adoption of Vehicle-Miles-Traveled (VMT) screening criteria and thresholds of significance under the California Environmental Quality Act (CEQA) in accordance with CEQA Guidelines Section 15064.7 does not require environmental review. This activity is not a project pursuant to State CEQA Guidelines Sections 15060(c)(3) and 15378. The establishment and implementation of a VMT threshold is a state-mandated requirement under SB 743 and Section 15064.3 of the CEQA Guidelines.

RESOLUTION NO. 23-XX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL ADOPTING A CITYWIDE VEHICLE MILES TRAVELED (VMT) POLICY INCLUSIVE OF ESTABLISHING VMT AS THE APPROPRIATE METRIC FOR EVALUATING TRANSPORTATION-RELATED IMPACTS UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) AND ESTABLISHING VMT SCREENING CRITERIA, VMT THRESHOLDS OF SIGNIFICANCE, AND TRANSPORTATION DEMAND MANAGEMENT (TDM) STRATEGIES

WHEREAS, the California Environmental Quality Act (CEQA) was enacted by the State of California in 1970 to ensure the long-term protection of the environment and requires public agencies to analyze and disclose the effects of their actions on the environment; and

WHEREAS, the Governor's Office of Planning and Research (OPR) develops the CEQA Guidelines to interpret CEQA statutes and published court decisions, including several appendices to the CEQA Guidelines that contain forms and guidance for lead agencies when performing environmental review; and

WHEREAS, in 2013, Senate Bill (SB) 743 (Steinberg) was signed into law directing OPR to produce new CEQA guidance that removes automobile Level of Service (LOS) from transportation analysis under CEQA and update the way transportation impacts are analyzed under CEQA for new land use and transportation projects using alternative metrics that promote a reduction in greenhouse gases, the development of multimodal transportation, and a diversity of land uses, all towards achieving the State's climate action goals; and

WHEREAS, in 2018 OPR proposed, and the California Natural Resources Agency adopted, Section 15064.3 of the State's CEQA Guidelines that identifies Vehicle Miles Traveled (VMT) as the most appropriate measure of a project's transportation impacts under CEQA, and states that a project's effect on automobile delay shall not constitute a significant environmental impact; and

WHEREAS, as of July 1, 2020, all lead agencies are required to use VMT to measure transportation impacts, in accordance with Section 15064.3 of the CEQA Guidelines; and

WHEREAS, VMT measures the amount and distance of automobile travel attributable to a project, taking the number of passengers within a vehicle into account. Typically, projects at a greater distance from other uses, located in areas with limited access to non-auto modes of travel, generate more driving than those that are located proximate to other complementary uses and/or where there are transportation options other than the automobile. The information is used

to calculate VMT is already required to calculate and factor air quality and greenhouse gas emissions; and

WHEREAS, OPR released a Technical Advisory on Evaluating Transportation Impacts in CEQA, which includes recommendations for thresholds of significance for evaluating impacts of office, residential, and retail developments, and provides screening criteria for identifying the types of projects that can be presumed to have a less than significant impact; and

WHEREAS, thresholds of significance are identifiable quantitative, qualitative, or performance level measures of a particular environmental effect, non-compliance with which means the effect will normally be determined to be significant, and compliance with which means the effect normally will be determined to be less than significant; and

WHEREAS, the City of Morgan Hill intends to adopt a VMT Policy, inclusive of establishing VMT screening criteria and thresholds of significance, supported by substantial evidence, in order to meet the intent of State legislation; and

WHEREAS, CEQA Guidelines Section 15064.7(b) directs lead agencies to adopt thresholds of significance by ordinance, resolution, rule, or regulation through a public process, and be supported by substantial evidence; and

WHEREAS, such requests were considered by the Planning Commission at its meeting of June 27, 2023 and by the City Council at its meeting of September 6, 2023; and

WHEREAS, the adoption of Vehicle-Miles-Traveled (VMT) policy, consisting of screening criteria and thresholds of significance and are supported by substantial evidence, in accordance with CEQA Guidelines Section 15064.7 does not require environmental review. This activity is not a project pursuant to State CEQA Guidelines Sections 15060(c)(3) and 15378. The establishment and implementation of a VMT threshold is a state-mandated requirement under SB 743 and Section 15064.3 of the CEQA Guidelines; and

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

NOW, THEREFORE, THE MORGAN HILL CITY COUNCIL DOES RESOLVE AS FOLLOWS:

SECTION 1. The City Council has considered the full record before it, which may include but not limited to such things as the staff report, public testimony, and other materials and evidence submitted or provided. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

SECTION 2. The City Council adopts a citywide policy establishing Vehicle Miles Traveled (VMT), consisting of screening criteria and thresholds of significance and are supported by substantial evidence, as the standard of measurement for analysis of

potential environmental impacts from vehicular traffic under the California Environmental Quality Act (CEQA), which is attached hereto as Exhibit A.

SECTION 3. The City Council further finds that the use of Level of Service (LOS) thresholds shall be utilized in the review of non-CEQA related impacts for discretionary planning applications in accordance with the General Plan, separate and distinct from the VMT Thresholds of Significance described herein.

PASSED AND ADOPTED THIS 6th DAY OF SEPTEMBER 2023, AT A REGULAR MEETING OF THE CITY COUNCIL BY THE FOLLOWING VOTE:

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

APPROVED:

ATTEST:

MARK TURNER, Mayor

MICHELLE BIGELOW, City Clerk

CERTIFICATE OF THE CITY CLERK

I, MICHELLE BIGELOW, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Resolution No. , adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 6th day of September, 2023.

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

DATE: _____

MICHELLE BIGELOW, City Clerk

EXHIBIT "A"

CITY POLICY ESTABLISHING SCREENING CRITERIA AND THRESHOLDS OF SIGNIFICANCE USING VEHICLE MILES TRAVELLED (VMT) TO MEASURE TRANSPORTATION IMPACTS UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Morgan Hill VMT Screening Criteria

Screen Type	Screening Criteria
Project Size	Projects that generate less than 110 average daily trips (when estimating trips generated by a project, Institute of Transportation Engineers (ITE) guidelines or local surveys of trip generations need to be reviewed and approved by the City of Morgan Hill; such analysis will need to account for trip generation of all uses on the project site when calculating the total number of daily trips)
Locally Serving Retail	Retail projects that are less than 50,000 square feet (includes fast-food/quick-serve restaurants)
Low VMT Area	Residential and employment projects located within a low VMT generating area (the Low VMT Area screen is equal to the City of Morgan Hill's average home-based VMT per resident or VMT per employee, depending on the type of project)
Transit Proximity	Projects located within Transit Priority Areas or High Quality Transit Corridors (located within half a mile radius of an existing or planned major transit stop)
Affordable Housing	100% affordable residential development (or the residential component of a mixed-use development)
Active Transportation Projects	Transportation projects that promote active transportation (such as transit, bicycle, and pedestrian facilities)

Morgan Hill VMT Thresholds of Significance

Land Use	Thresholds of Significance
Residential	VMT per capita does not exceed the City of Morgan Hill's baseline VMT per capita
Office & Industrial	VMT per employee does not exceed the City of Morgan Hill's baseline VMT per employee
All Other Uses (includes commercial/retail uses over 50,000 square feet)	No net increase in total VMT within the City of Morgan Hill

Morgan Hill VMT Methodology and Thresholds

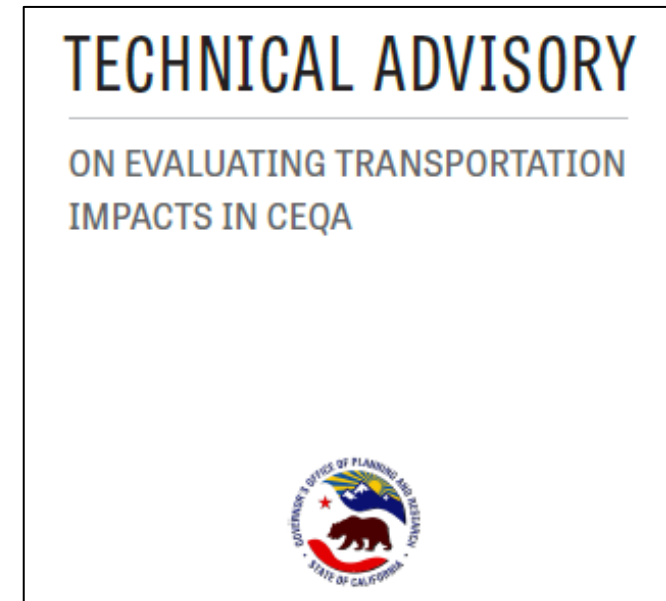
TJKM

September 6, 2023



SB743 – VMT Thresholds

- Governor's Office of Planning and Research (OPR) setup guidelines on how to evaluate project impact
- Changes how transportation impacts are measured for CEQA
- VMT will now be used to measure impact. LOS no longer applicable
- Implementation Deadline – July 1, 2020



SB743 – What is VMT

- What is Vehicle Miles Traveled (VMT)?
 - It is measure of vehicle travel where number of vehicles is multiplied by distance travelled (see table)
- VMT has been used as an input to CEQA to calculate Air Quality and GHG emissions
- How is VMT estimated?
 - Travel models can estimate VMT by multiplying traffic volume with distance travelled.
 - Models can estimate VMT by city, County, region etc.

No	Vehicles	Distance	VMT
1	1	10	10
2	10	1	10
3	4	10	40

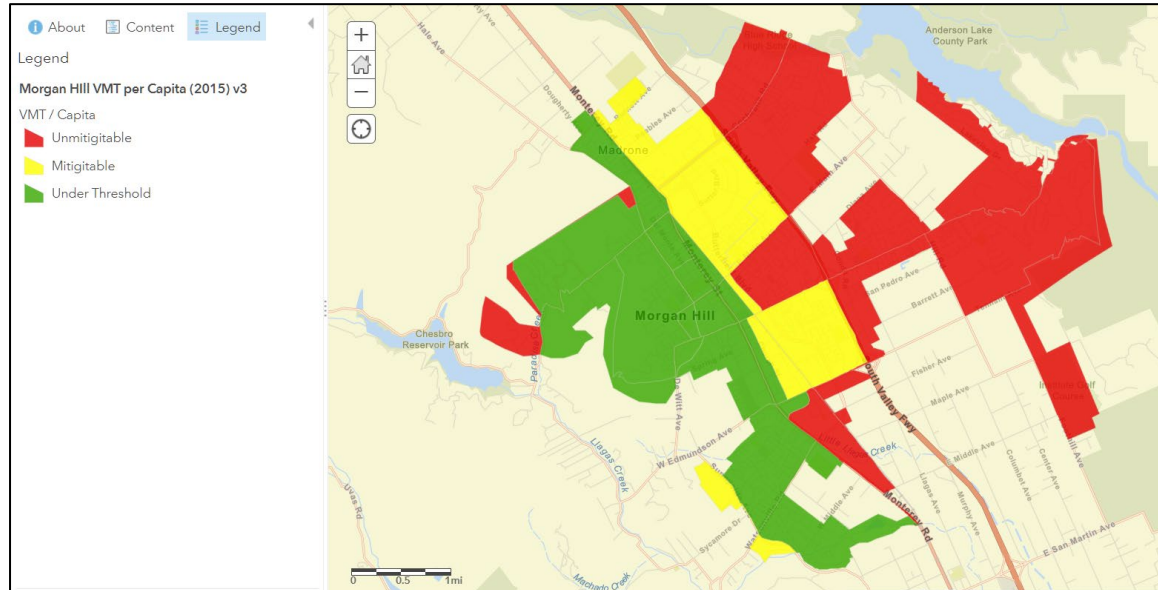


Purpose of VMT Methodology

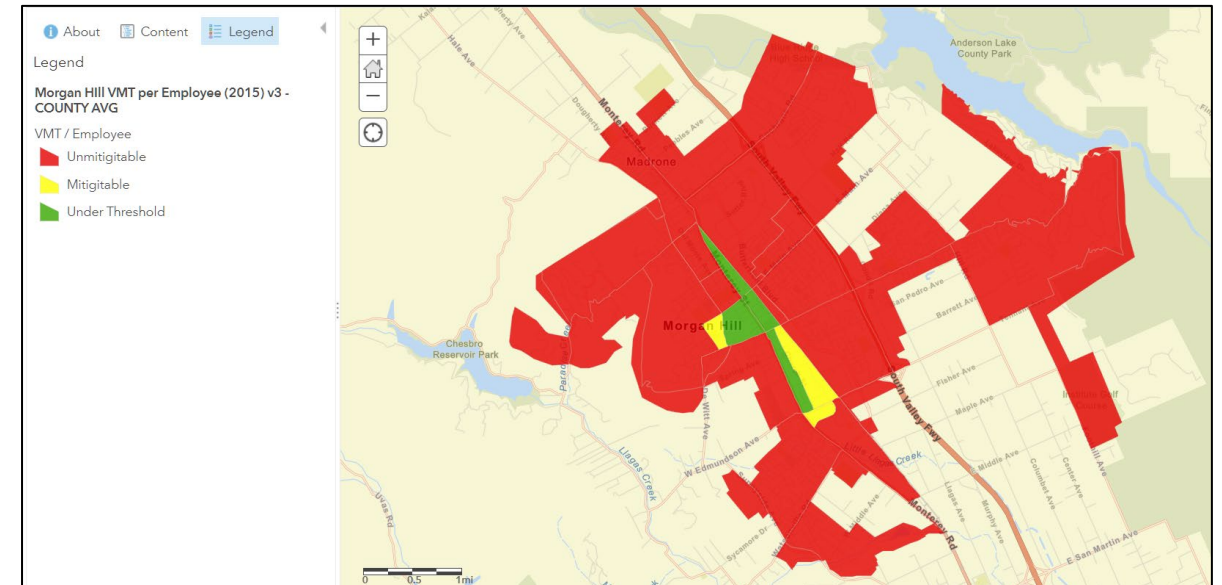
- Currently, Morgan Hill evaluates VMT impacts for development projects on a case-by-case basis, requiring an EIR/Overriding Considerations throughout most of Morgan Hill.
- By setting a methodology Morgan Hill is:
 - Compliant with SB 743;
 - Consistent with its VMT policy (reduces potential lawsuits);
 - Transparent (developers and residents will have a concrete document to refer to);
 - Removes barriers to infill development;
 - Maintaining local control on how to implement VMT within the City.



VMT Maps (OPR Guidelines)



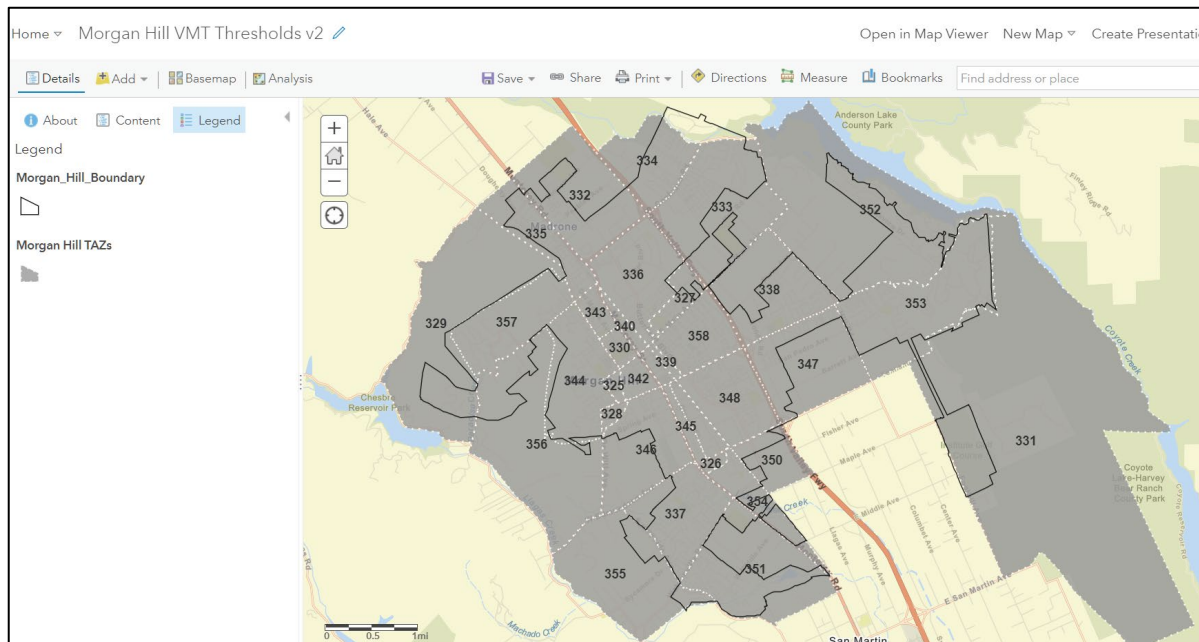
VMT per Capita (OPR Guidelines)



VMT per Employee (OPR Guidelines)

VMT Methodology

- TJKM in coordination with the City of Morgan Hill identified 34 travel analysis zones from the VTA travel demand model to assist in VMT thresholds setting.



Morgan Hill TAZ Map

	VMT Metrics	
	Home-Based VMT per Resident	Home-Based VMT per Employee
2015 Base Year Model	24.64	21.42
2040 Forecast Year Model	25.46	22.65



VMT Thresholds

- City Average as VMT Threshold for both residential (VMT per Capita) and employment (VMT per employee) land uses.
- 71% of TAZs within Morgan Hill meets threshold for VMT per Capita.
- 38% of TAZs within Morgan Hill meets threshold for VMT per Employee.

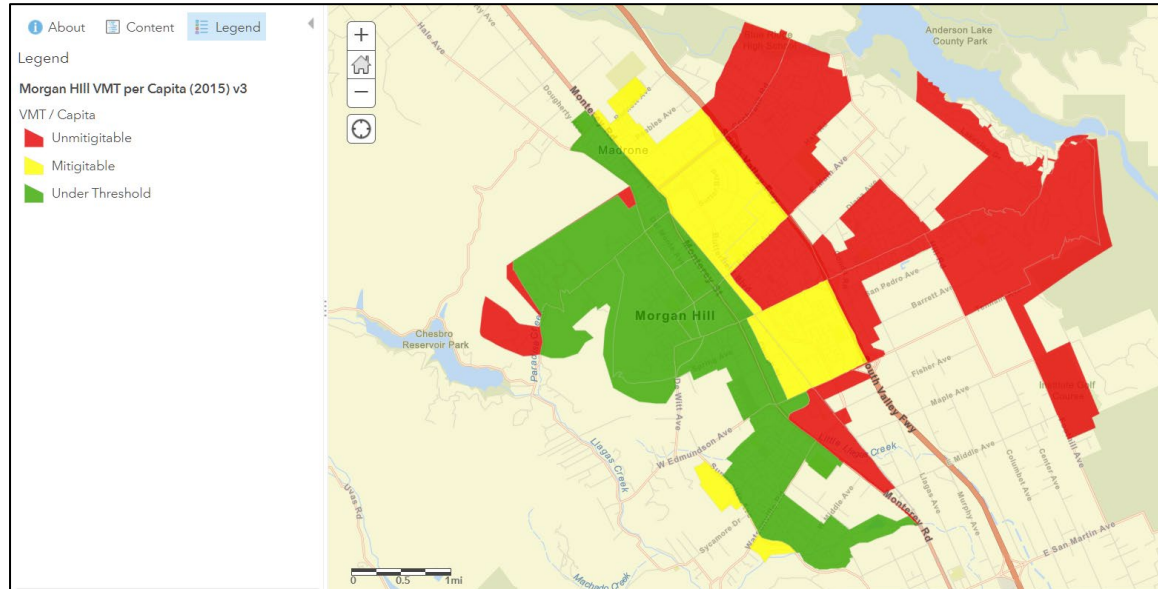


VMT Screening Criteria

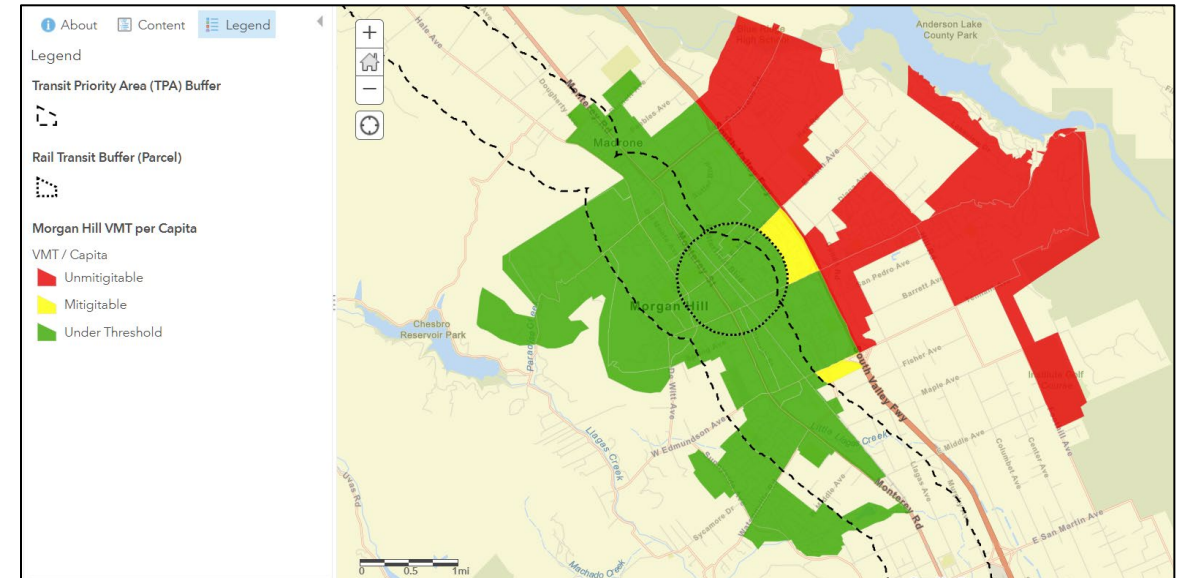
- Project Size – Fewer than 110 average daily trips.
- Locally Serving Retail – Retail development under 50,000 square feet (about the size of an average Safeway supermarket).
- Low VMT Area Screening – Areas where the existing VMT is already lower than the thresholds.
- Transit Proximity Screening – Half a mile away from a major transit stop.
- Affordable Housing Screening – Residential projects with 100% affordable housing.
- Active Transportation Projects – Transit, bicycle, pedestrian facilities.



VMT Maps (VMT/Capita Comparison)

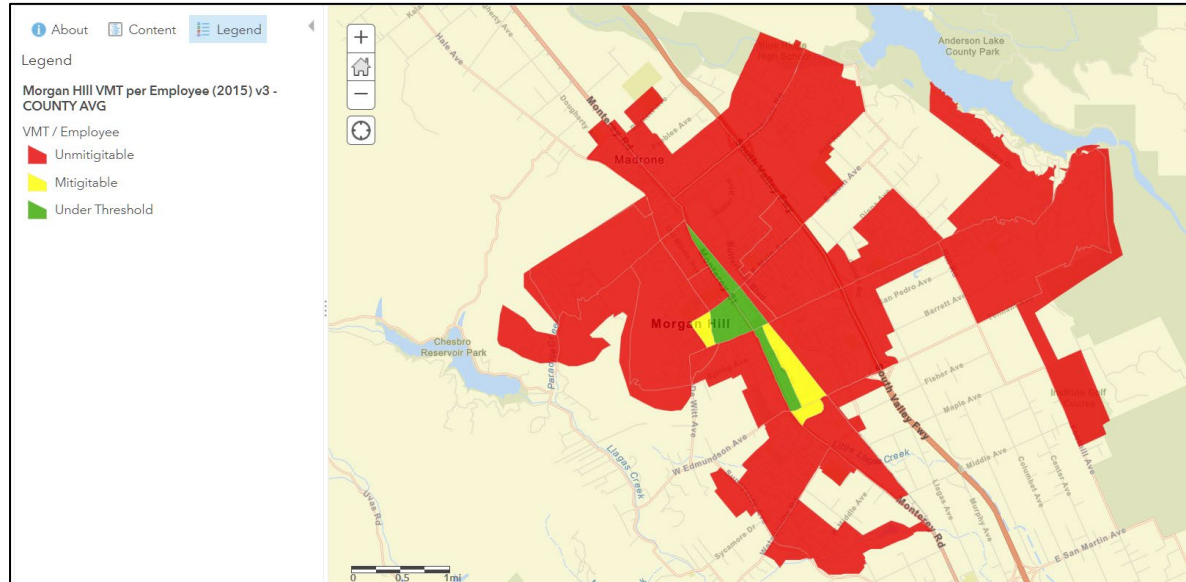


VMT per Capita (OPR Guidelines)

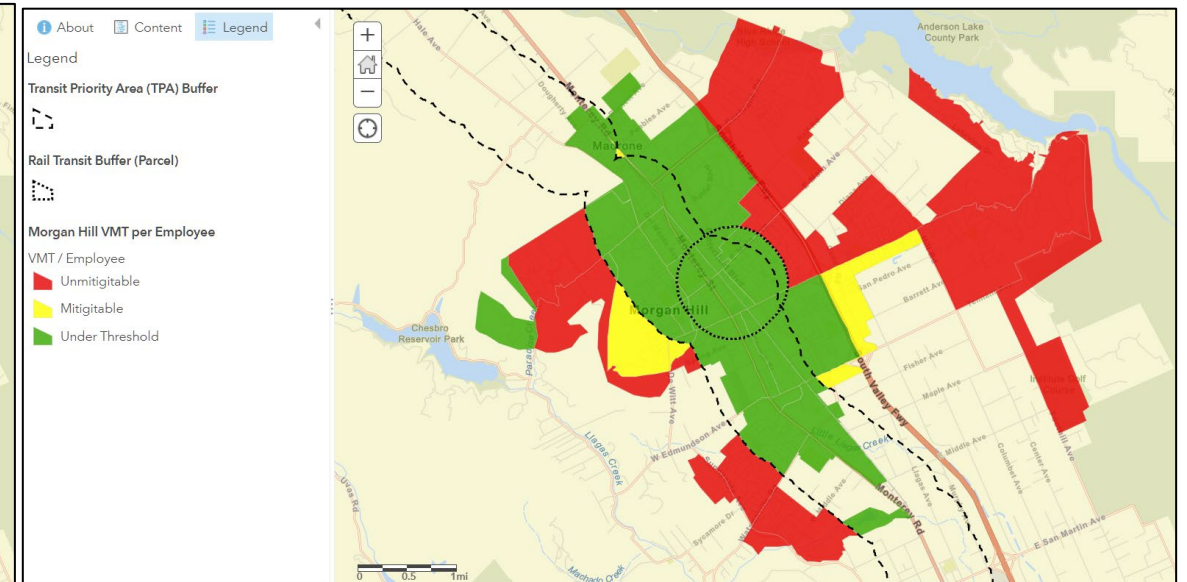


VMT per Capita (Morgan Hill Threshold)

VMT Maps (VMT/Employee Comparison)



VMT per Employee (OPR Guidelines)



VMT per Employee (Morgan Hill Threshold)

CITY COUNCIL STAFF REPORT

MEETING DATE: September 6, 2023

PREPARED BY:

Matthew Mahood, Economic Development Director

APPROVED BY: City Manager

ADOPT RESOLUTION AMENDING AND RESTATING THE CITY OF MORGAN HILL'S STATEWIDE COMMUNITY INFRASTRUCTURE PROGRAM ("SCIP")

RECOMMENDATION(S)

1. Open and Close Public Hearing; and
2. Adopt amended and restated resolution

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Maintaining and Enhancing Infrastructure

2022-2023 Strategic Priorities

Fiscal Sustainability

Affordable Housing and Homelessness

Economic Development

Guiding Documents

Economic Blueprint

Morgan Hill 2035 General Plan

REPORT NARRATIVE:

Background:

California Statewide Communities Development Authority (CSCDA) is a joint powers authority sponsored by the League of California Cities and the California State Association of Counties. 530 cities, counties and special districts throughout California are members of CSCDA, including the City of Morgan Hill. Statewide Community Infrastructure Program (SCIP) was instituted by CSCDA in 2002 to allow owners of property in participating cities and counties to finance the development impact fees that would be payable by property owners upon receiving development entitlements or building permits through a pooled special assessment districts program. SCIP was expanded to include financing of public capital improvements directly, in addition to just fees, and has now been further expanded to include community facilities districts ("CFDs"), as provided for in the proposed Amended and Restated Resolution. Since its

inception, SCIP has issued over \$1 billion in land secured special assessment and CFD bonds for development projects in California.

The City of Morgan Hill initially joined SCIP in July 2013. City staff is recommending that the City Council adopt modifications to its original SCIP participation to allow financing of fees and facilities through the formation of CFDs in addition to the current assessment district program. By adding CFDs, developers can finance a broader range of City fees, such as the police, fire, library, general city fee and the housing in-lieu fee. It will also allow the developer more flexibility in adjusting tax rates by specific product type, assist in forming separate improvement areas when projects need to be phased, and provide for more facilities to be financed similar in type to the fees.

If a property owner chooses to participate, and the City approves the application, the selected public capital improvements, facilities and/or development impact fees owed to the City will be financed by the issuance of tax-exempt bonds by CSCDA. CSCDA will form the district and impose an assessment or special tax, as applicable, on the owner's property to repay the portion of the bonds issued to finance the fees paid with respect to the property (no one developer within the SCIP pool is responsible for the payment related to any other project). With respect to impact fees, the property owner will either pay the impact fees at the time of permit issuance, and will be reimbursed from the SCIP bond proceeds when the SCIP bonds are issued, or the fees will be funded directly from the proceeds of the SCIP bonds. In both cases, the fees are subject to requisition by the City at any time to make authorized fee expenditures, and the City is never at risk for payment of its fees. If improvements or facilities are contemplated, the proposed Amended and Restated Resolution includes a form of acquisition agreement, which outlines how a developer will be reimbursed for improvements as they are certified complete by the City.

The benefits to the property owner/developer include:

- Only property owners who choose to participate in the program will have assessments or special taxes imposed on their property.
- Instead of paying cash for public capital improvements and/or development impact fees, the property owner receives low-cost, long-term tax-exempt financing of those fees, freeing up capital for other purposes.
- The property owner can choose to pay off the assessments or special taxes at any time.
- For home buyers, paying for the costs of public infrastructure through an assessment or special tax is superior to having those costs "rolled" into the cost of the home. Although the tax bill is higher, the amount of the mortgage is smaller, making it easier to qualify. Moreover, because the assessment/special tax financing is at tax-exempt rates, it typically comes at a lower cost than mortgage rates.
- Owners of smaller projects, both residential and commercial, can have access to tax-exempt financing of infrastructure. Before the inception of SCIP, only projects large enough to justify the formation of an assessment or community facilities district had access to tax-exempt financing. SCIP can finance projects

as low as \$500,000, which would not be economical on a stand-alone basis.

The benefits to the City include:

- As in conventional assessment district and CFD financing, the City is not liable to repay the bonds issued by CSCDA or the assessments or special taxes, as applicable, imposed on the participating properties.
- CSCDA handles all district formation, district administration, bond issuance and bond administration functions. A participating city, county or special district can provide tax-exempt financing to property owners through SCIP while committing virtually no staff time to administer the program.
- Providing tax-exempt financing helps participating cities and counties cushion the impact of rising public capital improvements costs and development impact fees on new development. Many developers rely on assessment district or CFD financing through SCIP in making the decision to purchase land thereby improving a City's competitive advantage in attracting new development.
- The availability of financing will encourage developers to pull permits and pay fees in larger blocks, giving the participating city, county or special district immediate access to revenues for public infrastructure, rather than receiving a trickle of revenues stretched out over time. As part of the entitlement negotiation process, the possibility of tax-exempt financing of fees can be used to encourage a developer to pay fees up front.
- In some cases, the assessments or special taxes on successful projects can be refinanced through refunding bonds. Savings achieved through refinancing may be directed back to the participating city, county or special district for use on public infrastructure, or lower property taxes subject to applicable federal tax limitations.

The proposed Amended and Restated Resolution authorizes CSCDA to accept applications from owners of property within our planning jurisdiction to apply for tax-exempt financing of public capital improvements and development impact fees through SCIP. It also authorizes CSCDA to form assessment districts and community facilities districts within our City's boundaries, conduct assessment and special tax proceedings and levy assessments and special taxes against the property of participating owners. The authorization of CSCDA to form assessment districts within the City's boundaries, conduct assessment proceedings, and levy assessments against the property of participating owners previously approved by the City Council would remain in effect. It approves the form of an acquisition agreement, attached to the Amended and Restated Resolution as Exhibit B, to be entered into between the City and the participating property owner/developer, if applicable, to provide the terms and conditions under which financing for public capital improvements will be provided and to establish the procedure for disbursement of bond proceeds to pay for completed facilities. It also authorizes miscellaneous related actions and makes certain findings and determinations required by law.

The attached exhibits A through E are for background and information only. They are for use by CSCDA with the applicant.

COMMUNITY ENGAGEMENT:

Inform

The public notice was posted and noticed in the Morgan Hill Times on August 25, 2023.

ALTERNATIVE ACTIONS:

The City Council could choose not to amend and restate the City of Morgan Hill's Statewide Community Infrastructure Program ("SCIP") Resolution, resulting in the previous Resolution remaining in effect.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

In July 2013, the City Council adopted a resolution approving the City of Morgan Hill's participation in the Statewide Community Infrastructure Program ("SCIP").

FISCAL AND RESOURCE IMPACT:

There is no fiscal impact on the City. The City has no risk of default.

CEQA (California Environmental Quality Act):

Not a Project



CITY COUNCIL STAFF REPORT

MEETING DATE: July 17, 2013

Agenda Item # 25

Prepared and
Approved By:

Assistant City Manager

Submitted By:

City Manager

STATEWIDE COMMUNITY INFRASTRUCTURE PROGRAM ("SCIP")

RECOMMENDED ACTION(S):

1. Conduct Public Hearing
2. Approve participation by the City of Morgan Hill in the Statewide Community Infrastructure Program of the California Statewide Communities Development Authority
3. Approve Resolution
4. Direct Staff to take necessary steps to assist Morgan Hill property owners in submitting the SCIP Application
5. Authorize the City Manager to execute an Acquisition Agreement

EXECUTIVE SUMMARY:

Discussion: This item authorizes City participation in the Statewide Community Infrastructure Program ("SCIP"), which is sponsored by the California Statewide Communities Development Authority ("CSCDA"). The City Council is requested to hold a public hearing and receive public testimony on SCIP and consider adopting a resolution making certain findings and authorizing certain matters necessary to participate in SCIP.

Background: The California Statewide Communities Development Authority ("CSCDA") is a joint powers authority sponsored by the League of California Cities and the California State Association of Counties. The member agencies of CSCDA include approximately 356 cities and 57 counties throughout California, including the City of Morgan Hill (the "City").

SCIP was instituted by CSCDA in 2002 to allow owners of property in participating cities and counties to finance the development impact fees that would be payable by property owners upon receiving development entitlements or building permits. The program has since been expanded to include financing of public capital improvements directly. If a property owner chooses to participate, the selected public capital improvements and the development impact fees owed to the City will be financed by the issuance of tax-exempt bonds by CSCDA. CSCDA will impose a special assessment on the owner's property to repay the portion of the bonds issued to finance the fees paid with respect to the property. With respect to impact fees, the property owner will either pay the impact fees at the time of permit issuance, and will be reimbursed from the SCIP bond proceeds when the SCIP bonds are issued; or the fees will be funded directly from the proceeds of the SCIP bonds. In the former case, the City is required to pay the fees over to SCIP, and in the latter case, SCIP holds the bond proceeds representing the fees. In both cases the fees are subject to requisition by the City *at any time* to make authorized fee expenditures. But by holding and investing the money until it is spent, SCIP is able to monitor the investment earnings (which come to the City) for federal tax law arbitrage purposes. SCIP encourages the

which financing for public capital improvements will be provided and to establish the procedure for disbursement of bond proceeds to pay for completed facilities. It also authorizes miscellaneous related actions and makes certain findings and determinations required by law.

Authorization of this resolution is consistent with the 2013 City Council Priorities, Goals and Strategies, specifically “stimulating economic development” by leveraging resources and programs available statewide and regionally to advance projects within the City.

Attached to the resolution as Exhibit A is a “Form of Resolution of Intention to be adopted by CSCDA”; this is for informational purposes and does not require action by this Council.

FISCAL/RESOURCE IMPACT: The only out-of-pocket cost for the City will be the \$1,500 application fee, which will be paid from Fund 206 Community Development. After the program is in place, staff resources from both Community Development and Finance will be required to work with developers and the California Statewide Communities Development Authority to execute each individual financing, and to monitor and account for each individual financing for up to 30 years thereafter.

Attachment:

1. Resolution
2. SCIP Overview & FAQ's

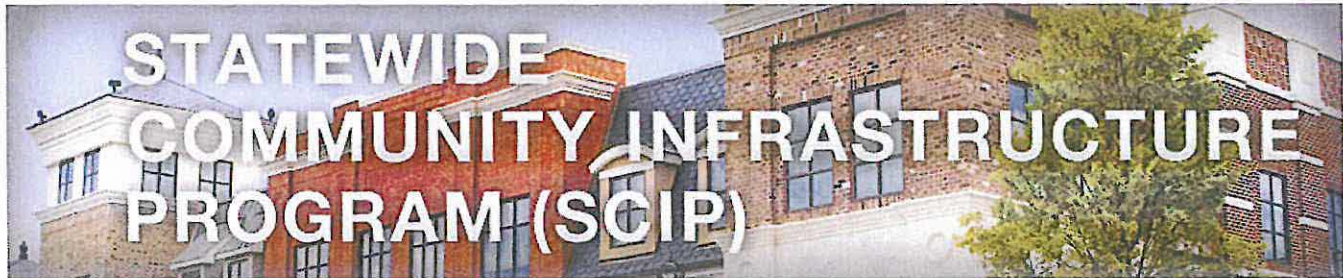
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STATEWIDE COMMUNITY
INFRASTRUCTURE
PROGRAM (SCIP)

SCIP FAQs

SCIP Finance Team

SCIP Newsletter



Statewide Community Infrastructure Program (SCIP)

Overview

In response to the increasing local agency staff time and budget pressures caused by new commercial, industrial or residential development, California Communities® offers the Statewide Community Infrastructure Program ("SCIP"). SCIP is a financing program that enables developers to pay most impact fees and finance public improvements through an acquisition agreement that qualify under the 1913/1915 Act (excluding school fees) via tax-exempt bond issuance proceeds. The SCIP program has assisted communities and developers throughout California to finance over \$150.2 million in impact fees since 2003.

This highly versatile program has been molded to the needs of each local agency participant of SCIP. As most local agencies require developers to pay impact fees prior to obtaining a permit, SCIP can be used to directly prepay these fees or, alternatively, to reimburse the developer after fee payment. The program can be used to enable developers to pay for, or be reimbursed for, all eligible impact fees or for a single impact fee. Moreover, the program may alleviate the need for a fee deferral program by providing the local agency with necessary funds and eliminating the risk of nonpayment by the developer.

SCIP has been designed to minimize local agency staff involvement by using an experienced team of finance professionals to administer the program, thereby freeing valuable local agency resources for other functions. To participate, a local agency need only be a member of California Communities® and pass a resolution approving the program. Please refer to the SCIP FAQ's and the SCIP Manual for details.

To apply, please complete the online application and return the completed Landowner Information Form (including required attachments) along with the \$1,500 application fee.

For more information, please contact **Scott Carper** at (925) 765-8525.

Online Application

To complete the on-line SCIP Application form:

APPLY NOW →

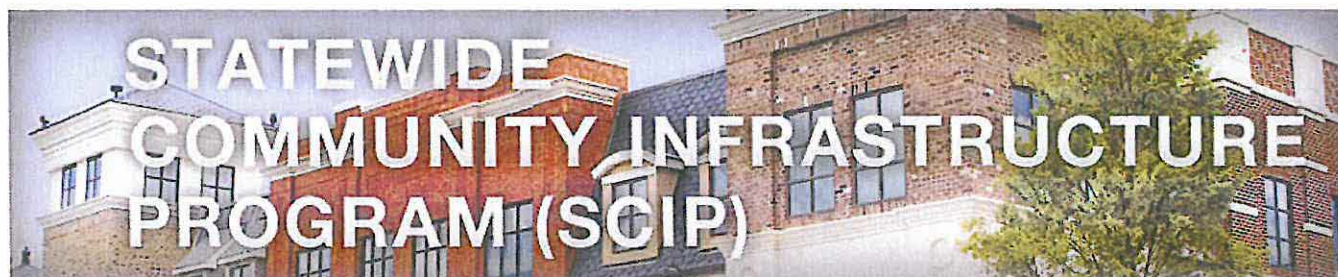
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SCIP FAQs

Frequently Asked Questions about **Statewide Community Infrastructure Program (SCIP)**

- What is CSCDA?
- Who are the participants of CSCDA?
- What are eligible development impact fees?
- How can impact fees be made to be paid in advance?
- If we use SCIP and become a member of CSCDA, are we in any way liable for payments or defaults of other participants?
- What is the difference between an assessment lien and an assessment bond?
- Is voter approval required?
- Is a local agency participant of the pool liable to make any bond payments?
- How is SCIP administered?
- What are the duties of a local agency participant after the bonds are issued?
- How does SCIP meet the benefit test?
- Do commercial projects qualify?
- How do you join SCIP?

What is CSCDA?

The California Statewide Communities Development Authority (CSCDA) is a joint powers authority sponsored by the League of California Cities and the California State Association of Counties.

Who are the participants of CSCDA?

Over 350 cities, counties and special districts in the State are members of CSCDA.

What are eligible development impact fees?

Fees paid to a local agency to mitigate the impact of development and which will ultimately be used by the local agency to pay for the costs of public infrastructure.

How can impact fees be made to be paid in advance?

The local agency can negotiate with the developer to have the fees paid upon approval of a specific plan, development agreement or vesting tentative map and then fund the fees through SCIP.

If we use SCIP and become a member of CSCDA, are we in any way liable for payments or defaults of other participants?

Absolutely not. If one participant were to default, there would be no effect on the other participants. There is no cross-collateralization of payments or assessments.



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What is the difference between an assessment lien and an assessment bond?

The assessment lien is imposed on the parcel of land pursuant to the Municipal Improvement Act of 1913. The Act authorizes an issuer to impose an assessment lien on benefited property to finance various public improvements. The Bonds are Limited Obligation Improvement Bonds authorized under the Improvement Bond Act of 1915 and secured by the liens imposed under the 1913 Act.

Is voter approval required?

No. There is no requirement for a general election. CSCDA will conduct a hearing and landowner ballot protest procedure. Since a condition of participation in SCIP is landowner consent, protests are not expected.

Is a local agency participant of the pool liable to make any bond payments?

No. The bonds are limited obligation bonds, and under no circumstance is a local agency pool participant liable from its general fund or from any other revenue source.

How is SCIP administered?

SCIP is administered by highly trained and experienced consultants selected by CSCDA who prepare the tax roll, disseminate continuing disclosure reports, and handle delinquencies.

What are the duties of a local agency participant after the bonds are issued?

The only duties required are to provide SCIP consultants with information concerning the development such as recordation of subdivisions and changes in property ownership.

How does SCIP meet the benefit test?

The benefit test is met by the fact that the each property must pay the impact fee in order to develop. This differs from typical assessment proceedings in that the benefit test is tied to the improvement.

Do commercial projects qualify?

Yes, in fact the permit fee program is ideal for commercial projects which can pay substantial impact fees but normally do not participate in bond financing. Examples would be shopping centers or high-rise buildings.

How do you join SCIP?

The local agency's governing Council or Board must pass two SCIP resolutions. From that point, project questionnaires are filled out and submitted to the financing team for individual funding requests.

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RESOLUTION NO. _____

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL
AUTHORIZING THE CITY TO JOIN THE STATEWIDE COMMUNITY
INFRASTRUCTURE PROGRAM; AUTHORIZING THE CALIFORNIA
STATEWIDE COMMUNITIES DEVELOPMENT AUTHORITY TO ACCEPT
APPLICATIONS FROM PROPERTY OWNERS, CONDUCT SPECIAL
ASSESSMENT PROCEEDINGS AND LEVY ASSESSMENTS WITHIN THE
TERRITORY OF THE CITY OF MORGAN HILL; APPROVING FORM OF
ACQUISITION AGREEMENT FOR USE WHEN APPLICABLE; AND
AUTHORIZING RELATED ACTIONS

WHEREAS, the California Statewide Communities Development Authority (the "Authority") is a joint exercise of powers authority the members of which include numerous cities and counties in the State of California, including the City of Morgan Hill (the "City"); and

WHEREAS, the Authority has established the Statewide Community Infrastructure Program ("SCIP") to allow the financing of certain development impact fees (the "Fees") levied in accordance with the Mitigation Fee Act (California Government Code Sections 66000 and following) and other authority providing for the levy of fees on new development to pay for public capital improvements (collectively, the "Fee Act") through the levy of special assessments pursuant to the Municipal Improvement Act of 1913 (Streets and Highways Code Sections 10000 and following) (the "1913 Act") and the issuance of improvement bonds (the "Local Obligations") under the Improvement Bond Act of 1915 (Streets and Highways Code Sections 8500 and following) (the "1915 Act") upon the security of the unpaid special assessments; and

WHEREAS, SCIP will also allow the financing of certain public capital improvements to be constructed by or on behalf of property owners for acquisition by the City or another public agency (the "Improvements"); and

WHEREAS, the City desires to allow the owners of property being developed within its jurisdiction ("Participating Developers") to participate in SCIP and to allow the Authority to conduct assessment proceedings under the 1913 Act and to issue Local Obligations under the 1915 Act to finance Fees levied on such properties and Improvements, provided that such Participating Developers voluntarily agree to participate and consent to the levy of such assessments; and

WHEREAS, in each year in which eligible property owners within the jurisdiction of the City elect to be Participating Developers, the Authority will conduct assessment proceedings under the 1913 Act and issue Local Obligations under the 1915 Act to finance Fees payable by such property owners and Improvements and, at the conclusion of such proceedings, will levy special assessments on such property within the territory of the City;

WHEREAS, there has been presented to this meeting a proposed form of Resolution of Intention to be adopted by the Authority in connection with such assessment proceedings (the "ROI"), a copy of which is attached hereto as Exhibit A, and the territory within which

assessments may be levied for SCIP (provided that each Participating Developer consents to such assessment) shall be coterminous with the City's official boundaries of record at the time of adoption of each such ROI (the "Proposed Boundaries"), and reference is hereby made to such boundaries for the plat or map required to be included in this Resolution pursuant to Section 10104 of the Streets and Highways Code; and

WHEREAS, there has also been presented to this meeting a proposed form of Acquisition Agreement (the "Acquisition Agreement"), a copy of which is attached hereto as Exhibit B, to be approved as to form for use with respect to any Improvements to be constructed and installed by a Participating Developer and for which the Participating Developer requests acquisition financing as part of its SCIP application; and

WHEREAS, the City will not be responsible for the conduct of any assessment proceedings; the levy or collection of assessments or any required remedial action in the case of delinquencies in such assessment payments; or the issuance, sale or administration of the Local Obligations or any other bonds issued in connection with SCIP; and

WHEREAS, pursuant to Government Code Section 6586.5, notice was published at least five days prior to the adoption of this resolution at a public hearing, which was duly conducted by this Council concerning the significant public benefits of SCIP and the financing of the Improvements and the public capital improvements to be paid for with the proceeds of the Fees;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Morgan Hill as follows:

Section 1. The City hereby consents to the conduct of special assessment proceedings by the Authority in connection with SCIP pursuant to the 1913 Act and the issuance of Local Obligations under the 1915 Act on any property within the Proposed Boundaries; provided, that

- (1) Such proceedings are conducted pursuant to one or more Resolutions of Intention in substantially the form of the ROI; and
- (2) The Participating Developers, who shall be the legal owners of such property, execute a written consent to the levy of assessment in connection with SCIP by the Authority and execute an assessment ballot in favor of such assessment in compliance with the requirements of Section 4 of Article XIID of the State Constitution.

Section 2. The City hereby finds and declares that the issuance of bonds by the Authority in connection with SCIP will provide significant public benefits, including without limitation, savings in effective interest rate, bond preparation, bond underwriting and bond issuance costs and the more efficient delivery of local agency services to residential and commercial development within the City.

Section 3. The Authority has prepared and will update from time to time the "SCIP Manual of Procedures" (the "Manual"), and the City will handle Fee revenues and funds for Improvements for properties participating in SCIP in accordance with the procedures set forth in

the Manual.

Section 4. The form of Acquisition Agreement presented to this meeting is hereby approved, and the Mayor is authorized to execute and the City Clerk is authorized to attest the execution of a completed Acquisition Agreement in substantially said form and pertaining to the Improvements being financed on behalf of the applicable Participating Developer.

Section 5. The appropriate officials and staff of the City are hereby authorized and directed to make SCIP applications available to all property owners who are subject to Fees for new development within the City and/or who are conditioned to install Improvements and to inform such owners of their option to participate in SCIP; provided, that the Authority shall be responsible for providing such applications and related materials at its own expense. The staff persons listed on the attached Exhibit C, together with any other staff persons chosen by the City Manager from time to time, are hereby designated as the contact persons for the Authority in connection with the SCIP program.

Section 6. The appropriate officials and staff of the City are hereby authorized and directed to execute and deliver such closing certificates, requisitions, agreements and related documents, including but not limited to such documents as may be required by Bond Counsel in connection with the participation in SCIP of any districts, authorities or other third-party entities entitled to own Improvements and/or to levy and collect fees on new development to pay for public capital improvements within the jurisdiction of the City, as are reasonably required by the Authority in accordance with the Manual to implement SCIP for Participating Developers and to evidence compliance with the requirements of federal and state law in connection with the issuance by the Authority of the Local Obligations and any other bonds for SCIP. To that end, and pursuant to Treasury Regulations Section 1.150-2, the staff persons listed on Exhibit C, or other staff person acting in the same capacity for the City with respect to SCIP, are hereby authorized and designated to declare the official intent of the City with respect to the public capital improvements to be paid or reimbursed through participation in SCIP.

Section 7. This Resolution shall take effect immediately upon its adoption. The City Clerk is hereby authorized and directed to transmit a certified copy of this resolution to the Secretary of the Authority.

PASSED AND ADOPTED THIS ____ DAY OF _____, 2013 BY THE FOLLOWING VOTE:

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

ATTEST:

APPROVED:

IRMA TORREZ, City Clerk

STEVE TATE, Mayor

❧ 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. _____, New Series, adopted by the City Council of the City of Morgan Hill, California at its regular meeting held on the _____ day of _____, 2013.

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

DATE: _____

IRMA TORREZ, City Clerk

EXHIBIT A TO THE RESOLUTION

FORM OF RESOLUTION OF INTENTION TO BE ADOPTED BY CSCDA

RESOLUTION OF INTENTION OF THE CALIFORNIA STATEWIDE COMMUNITIES DEVELOPMENT AUTHORITY TO FINANCE IMPROVEMENTS AND/OR THE PAYMENT OF DEVELOPMENT IMPACT FEES FOR PUBLIC CAPITAL IMPROVEMENTS IN THE PROPOSED ASSESSMENT DISTRICT NO. _____ (COUNTY OF SANTA CLARA, CALIFORNIA), APPROVING A PROPOSED BOUNDARY MAP, MAKING CERTAIN DECLARATIONS, FINDINGS AND DETERMINATIONS CONCERNING RELATED MATTERS, AND AUTHORIZING RELATED ACTIONS IN CONNECTION THEREWITH

WHEREAS, under the authority of the Municipal Improvement Act of 1913 (the "1913 Act"), being Division 12 (commencing with Sections 10000 and following) of the California Streets and Highways Code, the Commission (the "Commission") of the California Statewide Communities Development Authority (the "Authority") intends to finance, through its Statewide Community Infrastructure Program, the payment of certain development impact fees for public capital improvements as described in Exhibit A attached hereto and by this reference incorporated herein (the "Fees") and to finance certain public capital improvements to be constructed by or on behalf of the property owner(s) and to be acquired by the City or another local agency (the "Improvements"), all of which are of benefit to the property within the proposed Assessment District No. _____ (County of Santa Clara, California) (the "Assessment District"); and

WHEREAS, the Commission finds that the land specially benefited by the Fees and the Improvements is shown within the boundaries of the map entitled "Proposed Boundaries of Assessment District No. _____ (County of Santa Clara, California)," a copy of which map is on file with the Secretary and presented to this Commission meeting, and determines that the land within the exterior boundaries shown on the map shall be designated "Assessment District No. _____ (County of Santa Clara, California)"

NOW, THEREFORE, BE IT RESOLVED that the Commission of the California Statewide Communities Development Authority hereby finds, determines, and resolves as follows:

1. The above recitals are true and correct, and the Commission so finds and determines.
2. Pursuant to Section 2961 of the Special Assessment Investigation, Limitation and Majority Protest Act of 1931 (the "1931 Act"), being Division 4 (commencing with Section 2800) of the California Streets and Highways Code, the Commission hereby declares its intent to comply with the requirements of the 1931 Act by complying with Part 7.5 thereof.
3. The Commission has or will designate a registered, professional engineer as Engineer of Work for this project, and hereby directs said firm to prepare the report containing the matters required by Sections 2961(b) and 10204 of the Streets and Highways Code, as supplemented by Section 4 of Article XIID of the California Constitution.

4. The proposed boundary map of the Assessment District is hereby approved and adopted. Pursuant to Section 3111 of the California Streets and Highways Code, the Secretary of the Authority is directed to file a copy of the map in the office of the County Recorder of the County of Santa Clara within fifteen (15) days of the adoption of this resolution.
5. The Commission determines that the cost of the Fees and Improvements shall be specially assessed against the lots, pieces or parcels of land within the Assessment District benefiting from the payment of the Fees and the provision of the Improvements. The Commission intends to levy a special assessment upon such lots, pieces or parcels in accordance with the special benefit to be received by each such lot, piece or parcel of land, respectively, from the payment of the Fees and the provision of the Improvements.
6. The Commission intends, pursuant to subparagraph (f) of Section 10204 of the California Streets and Highways Code, to provide for an annual assessment upon each of the parcels of land in the proposed assessment district to pay various costs and expenses incurred from time to time by the Authority and not otherwise reimbursed to the Authority which result from the administration and collection of assessment installments or from the administration or registration of the improvement bonds and the various funds and accounts pertaining thereto.
7. Bonds representing unpaid assessments, and bearing interest at a rate not to exceed twelve percent (12%) per annum, will be issued in the manner provided by the Improvement Bond Act of 1915 (Division 10, Streets and Highways Code), and the last installment of the bonds shall mature not to exceed thirty (30) years from the second day of September next succeeding twelve (12) months from their date.
8. The procedure for the collection of assessments and advance retirement of bonds under the Improvement Bond Act of 1915 shall be as provided in Part 11.1, Division 10, of the Streets and Highways Code of the State of California.
9. Neither the Authority nor any member agency thereof will obligate itself to advance available funds from its or their own funds or otherwise to cure any deficiency which may occur in the bond redemption fund. A determination not to obligate itself shall not prevent the Authority or any such member agency from, in its sole discretion, so advancing funds.
10. The amount of any surplus remaining in the improvement fund after payment of the Fees, acquisition of the Improvements and payment of all claims shall be distributed in accordance with the provisions of Section 10427.1 of the Streets and Highways Code.
11. To the extent any Fees are paid to the Authority in cash with respect to property within the proposed Assessment District prior to the date of issuance of the bonds, the amounts so paid shall be reimbursed from the proceeds of the bonds to the property owner or developer that made the payment.

[End of Form of Resolution of Intention]

EXHIBIT B TO THE RESOLUTION
FORM OF ACQUISITION AGREEMENT

CALIFORNIA STATEWIDE COMMUNITIES DEVELOPMENT AUTHORITY
STATEWIDE COMMUNITY INFRASTRUCTURE PROGRAM

ACQUISITION AGREEMENT

BY AND BETWEEN

CITY OF MORGAN HILL

AND

[DEVELOPER]

Dated as of _____, 20__

ACQUISITION AGREEMENT

Recitals

- A. The parties to this Acquisition Agreement (the "Agreement") are the CITY OF MORGAN HILL, (the "Local Agency"), and [DEVELOPER], a [here indicate type of legal entity] (the "Developer").
- B. The effective date of this Agreement is _____, 2013.
- C. The Developer has applied for financing of certain public capital improvements (the "Acquisition Improvements") and capital facilities fees through the Statewide Community Infrastructure Program ("SCIP") administered by the California Statewide Communities Development Authority (the "Authority") and such application has been approved by the Local Agency.
- D. Under SCIP, the Authority intends to issue bonds to fund, among other things, all or a portion of the costs of the Acquisition Improvements, and the portion of the proceeds of such bonds allocable to the cost of the Acquisition Improvements to be constructed and installed by the Developer, together with interest earned thereon prior to such acquisition, is referred to herein as the "Available Amount".
- E. SCIP will provide financing for the acquisition by the Local Agency of the Acquisition Improvements and the payment of the Acquisition Price (as defined herein) of the Acquisition Improvements from the Available Amount. Attached hereto as Exhibit A are descriptions of the Acquisition Improvements, which descriptions are subject to modification by written amendment of this Agreement, subject to the approval of the Authority.
- F. The parties anticipate that, upon completion of the Acquisition Improvements and subject to the terms and conditions of this Agreement, the Local Agency will acquire such completed Acquisition Improvements with the Available Amount.
- G. Any and all monetary obligations of the Local Agency arising out of this Agreement are the special and limited obligations of the Local Agency payable only from the Available Amount, and no other funds whatsoever of the Local Agency shall be obligated therefore.
- H. In consideration of Recitals A through G, inclusive, and the mutual covenants, undertakings and obligations set forth below, the Local Agency and the Developer agree as stated below.

Agreement

ARTICLE I

DEFINITIONS; ASSESSMENT DISTRICT
FORMATION AND FINANCING PLAN

Section 1.01. Definitions. As used herein, the following capitalized terms shall have the meanings ascribed to them below:

“Acceptable Title” means free and clear of all monetary liens, encumbrances, assessments, whether any such item is recorded or unrecorded, and taxes, except those items which are reasonably determined by the Local Agency Engineer in his sole discretion not to interfere with the intended use and therefore are not required to be cleared from the title.

“Acquisition Improvements” shall have the meaning assigned to such term in Recital C and are described in Exhibit A.

“Acquisition Price” means the amount paid to the Developer upon acquisition of all of the Acquisition Improvements as provided in Section 2.03.

“Actual Cost” means the cost of construction of all of the Acquisition Improvements, as documented by the Developer to the satisfaction of the Local Agency, as certified by the Local Agency Engineer in an Actual Cost Certificate.

“Actual Cost Certificate” shall mean a certificate prepared by the Developer detailing the Actual Cost of all of the Acquisition Improvement to be acquired hereunder, as revised by the Local Agency Engineer pursuant to Section 2.03.

“Agreement” means this Acquisition Agreement, dated as of _____, 20__.

“Assessment District” means the assessment district established by the Authority pursuant to SCIP which includes the Developer's property for which the Acquisition Improvements are being funded.

“Authority” means the California Statewide Communities Development Authority.

“Available Amount” means the amount of funds deposited in the Developer Acquisition Account by the Authority pursuant to SCIP, together with any interest earnings thereon.

“Code” means the Streets and Highways Code of the State of California.

“Developer” means [Developer], a [here indicate type of legal entity].

“[Developer] Acquisition Account” means the account by that name established by the Authority pursuant to SCIP for the purpose of paying the Acquisition Price of the Acquisition

Improvements.

"Local Agency" means the City of Morgan Hill.

"Local Agency Engineer" means the Director of Public Works of the Local Agency (the "Director") or the designee of the Director, who will be responsible for administering the acquisition of the Acquisition Improvements hereunder.

"Project" means the land development program of the Developer pertaining to the Developer's property in the Assessment District, including the design and construction of the Acquisition Improvements and the other public and private improvements to be constructed by the Developer within or adjacent to the Assessment District.

"SCIP" means the Statewide Community Infrastructure Program of the Authority.

"SCIP Requisition" means a requisition for payment of funds from the [Developer] Acquisition Account in substantially the form attached hereto as Exhibit B.

"SCIP Trust Agreement" means the Trust Agreement entered into by the Authority and the SCIP Trustee in connection with the financing for the Acquisition Improvements.

"SCIP Trustee" means Wells Fargo Bank, National Association, as trustee under the SCIP Trust Agreement.

"Title Documents" means, for each Acquisition Improvement acquired hereunder, a grant deed or similar instrument necessary to transfer title to any real property or interests therein (including easements) necessary or convenient to the operation, maintenance, rehabilitation and improvement by the Local Agency of that Acquisition Improvement (including, if necessary, easements for ingress and egress) and a Bill of Sale or similar instrument evidencing transfer of title to that Acquisition Improvement (other than said real property interests) to the Local Agency, where applicable.

Section 1.02. Participation in SCIP. Developer has applied for financing thorough SCIP of the Acquisition Improvements, and such application has been approved by the Local Agency. Developer and Local Agency agree that until and unless such financing is completed by the Authority and the Available Amount is deposited in the Developer Acquisition Account, neither the Developer nor the Local Agency shall have any obligations under this agreement. Developer agrees to cooperate with the Local Agency and the Authority in the completion of SCIP financing for the Acquisition Improvements.

Section 1.03. Deposit and Use of Available Amount.

(a) Upon completion of the SCIP financing, the Available Amount will be deposited by the Authority in the [Developer] Acquisition Account.

(b) The Authority will cause the SCIP Trustee to establish and maintain the

[Developer] Acquisition Account for the purpose of holding all funds for the Acquisition Improvements. All earnings on amounts in the [Developer] Acquisition Account shall remain in the [Developer] Acquisition Account for use as provided herein and pursuant to SCIP. The amounts in the [Developer] Acquisition Account shall be withdrawn by the Local Agency in accordance with SCIP procedures upon completion of the Acquisition Improvements within 30 days (or as soon thereafter as reasonably practicable) of receipt by the Local Agency of the certification of the Local Agency Engineer required by Section 2.03 of this Agreement, and subject to satisfaction of all other conditions precedent to such acquisition pursuant to Section 2.04 of this Agreement, to pay the Acquisition Price of such completed Acquisition Improvements, as specified in Article II hereof. Upon completion of all of the Acquisition Improvements and the payment of all costs thereof, any remaining funds in the [Developer] Acquisition Account (less any amount determined by the Local Agency as necessary to reserve for claims against such account) (i) shall be applied to pay the costs of any additional improvements eligible for acquisition with respect to the Project as approved by the Authority and, to the extent not so used, (ii) shall be applied by the Authority as provided in Section 10427.1 of the Code to pay a portion of the assessments levied on the Project property in the Assessment District.

Section 1.04. No Local Agency Liability; Local Agency Discretion; No Effect on Other Agreements. In no event shall any actual or alleged act by the Local Agency or any actual or alleged omission or failure to act by the Local Agency with respect to SCIP subject the Local Agency to monetary liability therefore. Further, nothing in this Agreement shall be construed as affecting the Developer's or the Local Agency's duty to perform their respective obligations under any other agreements, public improvement standards, land use regulations or subdivision requirements related to the Project, which obligations are and shall remain independent of the Developer's and the Local Agency's rights and obligations under this Agreement.

ARTICLE II

DESIGN, CONSTRUCTION AND ACQUISITION OF ACQUISITION IMPROVEMENTS

Section 2.01. Letting and Administering Design Contracts. The parties presently anticipate that the Developer has awarded and administered or will award and administer engineering design contracts for the Acquisition Improvements to be acquired from Developer. All eligible expenditures of the Developer for design engineering and related costs in connection with the Acquisition Improvements (whether as an advance to the Local Agency or directly to the design consultant) shall be reimbursed at the time of acquisition of such Acquisition Improvements. The Developer shall be entitled to reimbursement for any design costs of the Acquisition Improvements only out of the Acquisition Price as provided in Section 2.03 and shall not be entitled to any payment for design costs independent of or prior to the acquisition of Acquisition Improvements.

Section 2.02. Letting and Administration of Construction Contracts. State law requires that all Acquisition Improvements shall be constructed as if they were constructed under the direction and supervision of the Local Agency. In order to assure compliance with those provisions, except for any contracts entered into prior to the date hereof, Developer agrees to

comply with the guidelines of the Local Agency for letting and administering said contracts. The Developer agrees that all such contracts shall call for payment of prevailing wages as required by the Labor Code of the State of California.

Section 2.03. Sale of Acquisition Improvements. The Developer agrees to sell to the Local Agency the Acquisition Improvements to be constructed by Developer (including any rights-of-way or other easements necessary for the operation and maintenance of the Acquisition Improvements, to the extent not already publicly owned) when such Acquisition Improvements are completed to the satisfaction of the Local Agency for an amount not to exceed the lesser of (i) the Available Amount or (ii) the Actual Cost of the Acquisition Improvements. Exhibit A, attached hereto and incorporated herein, contains a list of each Acquisition Improvement. At the time of completion of each Acquisition Improvement, the Developer shall deliver to the Local Agency Engineer a written request for acquisition, accompanied by an Actual Cost Certificate and executed Title Documents for the transfer of the Acquisition Improvement, where necessary. In the event that the Local Agency Engineer finds that the supporting paperwork submitted by the Developer fails to demonstrate the required relationship between the subject Actual Cost and the related Acquisition Improvement, the Local Agency Engineer shall advise the Developer that the determination of the Actual Cost (or the ineligible portion thereof) has been disallowed and shall request further documentation from the Developer. If such further documentation is still not adequate, the Local Agency Engineer may revise the Actual Cost Certificate to delete any disallowed items, and such determination shall be final and conclusive.

In the event that the Actual Cost is in excess of the Available Amount, the Local Agency shall withdraw the Available Amount from the [Developer] Acquisition Account and transfer said amount to the Developer. In the event that the Actual Cost is less than the Available Amount, the Local Agency shall withdraw an amount from the [Developer] Acquisition Account equal to the Actual Cost, and shall transfer said amount to the Developer. Any amounts then remaining in the [Developer] Acquisition Account shall be applied as provided in Section 1.03.

In no event shall the Local Agency be required to pay the Developer more than the amount on deposit in the [Developer] Acquisition Account at the time such payment is requested.

Section 2.04. Conditions Precedent to Payment of Acquisition Price. Payment by the Local Agency to the Developer from the [Developer] Acquisition Account of the Acquisition Price for an Acquisition Improvement shall be conditioned first upon the determination of the Local Agency Engineer, pursuant to Section 2.03, that such Acquisition Improvement is all complete and ready for acceptance by the Local Agency, and shall be further conditioned upon prior satisfaction of the following additional conditions precedent:

(a) The Developer shall have provided the Local Agency with lien releases or other similar documentation satisfactory to the Local Agency as evidence that the property which is subject to the special assessment liens of the Assessment District is not subject to any prospective mechanics lien claim respecting the Acquisition Improvements.

(b) The Developer shall be current in the payment of all due and payable property taxes and installments for the special assessments of the Assessment District on property owned by the Developer or under option to the Developer.

(c) The Developer shall certify that it is not in default with respect to any loan secured by any interest in the Project.

(d) The Developer shall have provided the Local Agency with Title Documents needed to provide the Local Agency with title to the site, right-of-way, or easement upon which the subject Acquisition Improvements are situated. All such Title Documents shall be in a form acceptable to the Local Agency (or applicable governmental agency) and shall convey Acceptable Title. The Developer shall provide a policy of title insurance as of the date of transfer in a form acceptable to the Local Agency Engineer insuring the Local Agency as to the interests acquired in connection with the acquisition of any interest for which such a policy of title insurance is not required by another agreement between the Local Agency and the Developer. Each title insurance policy required hereunder shall be in the amount equal to or greater than the Acquisition Price.

Section 2.05. SCIP Requisition. Upon a determination by the Local Agency Engineer to pay the Acquisition Price of the Acquisition Improvements pursuant to Section 2.04, the Local Agency Engineer shall cause a SCIP Requisition to be submitted to the SCIP Trustee and the SCIP Trustee shall make payment directly to the Developer of such amount pursuant to the SCIP Trust Agreement. The Local Agency and the Developer acknowledge and agree that the SCIP Trustee shall make payment strictly in accordance with the SCIP Requisition and shall not be required to determine whether or not the Acquisition Improvements have been completed or what the Actual Costs may be with respect to such Acquisition Improvements. The SCIP Trustee shall be entitled to rely on the SCIP Requisition on its face without any further duty of investigation.

ARTICLE III

MISCELLANEOUS

Section 3.01. Indemnification and Hold Harmless. The Developer hereby assumes the defense of, and indemnifies and saves harmless the Local Agency, the Authority, and each of its respective officers, directors, employees and agents, from and against all actions, damages, claims, losses or expenses of every type and description to which they may be subjected or put, by reason of, or resulting from or alleged to have resulted from the acts or omissions of the Developer or its agents and employees in the performance of this Agreement, or arising out of any contract for the design, engineering and construction of the Acquisition Improvements or arising out of any alleged misstatements of fact or alleged omission of a material fact made by the Developer, its officers, directors, employees or agents to the Authority's underwriter, financial advisor, appraiser, district engineer or bond counsel or regarding the Developer, its proposed developments, its property ownership and its contractual arrangements contained in the official statement relating to the SCIP financing (provided that the

Developer shall have been furnished a copy of such official statement and shall not have objected thereto); and provided, further, that nothing in this Section 3.01 shall limit in any manner the Local Agency's rights against any of the Developer's architects, engineers, contractors or other consultants. Except as set forth in this Section 3.01, no provision of this Agreement shall in any way limit the extent of the responsibility of the Developer for payment of damages resulting from the operations of the Developer, its agents and employees or agents, for any negligent or wrongful acts or omissions to act of the Local Agency, Authority its officers, employees, agents or any consultants or contractors.

Section 3.02. Audit. The Local Agency shall have the right, during normal business hours and upon the giving of ten days' written notice to the Developer, to review all books and records of the Developer pertaining to costs and expenses incurred by the Developer (for which the Developer seeks reimbursement) in constructing the Acquisition Improvements.

Section 3.03. Cooperation. The Local Agency and the Developer agree to cooperate with respect to the completion of the SCIP financing for the Acquisition Improvements. The Local Agency and the Developer agree to meet in good faith to resolve any differences on future matters which are not specifically covered by this Agreement.

Section 3.04. General Standard of Reasonableness. Any provision of this Agreement which requires the consent, approval or acceptance of either party hereto or any of their respective employees, officers or agents shall be deemed to require that such consent, approval or acceptance not be unreasonably withheld or delayed, unless such provision expressly incorporates a different standard. The foregoing provision shall not apply to provisions in the Agreement which provide for decisions to be in the sole discretion of the party making the decision.

Section 3.05. Third Party Beneficiaries. The Authority and its officers, employees, agents or any consultants or contractors are expressly deemed third party beneficiaries of this Agreement with respect to the provisions of Section 3.01. It is expressly agreed that, except for the Authority with respect to the provisions of Section 3.01, there are no third party beneficiaries of this Agreement, including without limitation any owners of bonds, any of the Local Agency's or the Developer's contractors for the Acquisition Improvements and any of the Local Agency's, the Authority's or the Developer's agents and employees.

Section 3.06. Conflict with Other Agreements. Nothing contained herein shall be construed as releasing the Developer or the Local Agency from any condition of development or requirement imposed by any other agreement between the Local Agency and the Developer, and, in the event of a conflicting provision, such other agreement shall prevail unless such conflicting provision is specifically waived or modified in writing by the Local Agency and the Developer.

Section 3.07. Notices. All invoices for payment, reports, other communication and notices relating to this Agreement shall be mailed to:

If to the Local Agency:

Director of Public Works
City of Morgan Hill
17575 Peak Avenue
Morgan Hill, CA 95037

If to the Developer:
[Developer]
[Address to Come]

Either party may change its address by giving notice in writing to the other party.

Section 3.08. Severability. If any part of this Agreement is held to be illegal or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall be given effect to the fullest extent reasonably possible.

Section 3.09. Governing Law. This Agreement and any dispute arising hereunder shall be governed by and interpreted in accordance with the laws of the State of California.

Section 3.10. Waiver. Failure by a party to insist upon the strict performance of any of the provisions of this Agreement by the other party, or the failure by a party to exercise its rights upon the default of the other party, shall not constitute a waiver of such party's right to insist and demand strict compliance by the other party with the terms of this Agreement.

Section 3.11. Singular and Plural; Gender. As used herein, the singular of any word includes the plural, and terms in the masculine gender shall include the feminine.

Section 3.12. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original.

Section 3.13. Successors and Assigns. This Agreement is binding upon the heirs, assigns and successors-in-interest of the parties hereto. The Developer may not assign its rights or obligations hereunder, except to successors-in-interest to the property within the District, without the prior written consent of the Local Agency.

Section 3.14. Remedies in General. It is acknowledged by the parties that the Local Agency would not have entered into this Agreement if it were to be liable in damages under or with respect to this Agreement or the application thereof, other than for the payment to the Developer of any (i) moneys owing to the Developer hereunder, or (ii) moneys paid by the Developer pursuant to the provisions hereof which are misappropriated or improperly obtained, withheld or applied by the Local Agency.

In general, each of the parties hereto may pursue any remedy at law or equity available for the breach of any provision of this Agreement, except that the Local Agency shall not be liable in damages to the Developer, or to any assignee or transferee of the Developer other than for the payments to the Developer specified in the preceding paragraph. Subject to the foregoing, the

EXHIBIT B TO THE ACQUISITION AGREEMENT

FORM OF SCIP REQUISITION

To: Bond Logistix LLC
SCIP Program Administrator
777 S. Figueroa St., Suite 3200
Los Angeles, California 90017
Attention: Daniel Chang
Fax: 213-612-2499

Re: Statewide Community Infrastructure Program
The undersigned, a duly authorized officer of the CITY OF MORGAN HILL hereby requests a withdrawal from the [DEVELOPER] ACQUISITION ACCOUNT, as follows:

Request Date: [Insert Date of Request]
Name of Developer: [Developer]
Withdrawal Amount: [Insert Acquisition Price]
Acquisition Improvements: [Insert Description of Acquisition Improvement(s) from Ex. A]
Payment Instructions: [Insert Wire Instructions or Payment Address for Developer]

The undersigned hereby certifies as follows:

1. The Withdrawal is being made in accordance with a permitted use of such monies pursuant to the Acquisition Agreement, and the Withdrawal is not being made for the purpose of reinvestment.
2. None of the items for which payment is requested have been reimbursed previously from other sources of funds.
3. If the Withdrawal Amount is greater than the funds held in the [Developer] Acquisition Account, the SCIP Program Administrator is authorized to amend the amount requested to be equal to the amount of such funds.
4. To the extent the Withdrawal is being made prior to the date bonds have been issued on behalf of SCIP, this withdrawal form serves as the declaration of official intent of the CITY OF MORGAN HILL, pursuant to Treasury Regulations 1.150-2, to reimburse with respect expenditures made from the Developer Acquisition Account listed above in the amount listed above.

CITY OF MORGAN HILL

By: _____

Title: _____

EXHIBIT C TO THE RESOLUTION

CITY OF MORGAN HILL CONTACTS FOR SCIP PROGRAM

Primary Contact

Name:

Title:

Mailing Address:

Delivery Address (if different):

E-mail:

Telephone:

Fax:

Secondary Contact

Name:

Title:

Mailing Address:

Delivery Address (if different):

E-mail:

Telephone:

Fax:

[Add additional contacts as needed]

CERTIFICATION OF RESOLUTION

I, the undersigned, the duly appointed and qualified City Clerk of the City of Morgan Hill, do hereby certify that the foregoing Resolution No. _____ was duly adopted at a regular meeting of the City Council of the City of Morgan Hill duly and regularly held at the regular meeting place thereof on the _____ day of _____, 2013, of which meeting all of the members of said City Council had due notice and at which a majority thereof were present.

An agenda of said meeting was posted at least 72 hours before said meeting at _____, a location freely accessible to members of the public, and a brief description of said resolution appeared on said agenda.

I have carefully compared the foregoing with the original minutes of said meeting on file and of record in my office, and the foregoing is a full, true and correct copy of the original resolution adopted at said meeting and entered in said minutes.

Said resolution has not been amended, modified or rescinded since the date of its adoption and the same is now in full force and effect.

Dated: _____, 2013

City Clerk
City of Morgan Hill

By: _____

[Seal]

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RESOLUTION NO. _____

AMENDED AND RESTATED RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AUTHORIZING THE CITY TO JOIN THE STATEWIDE COMMUNITY INFRASTRUCTURE PROGRAM; AUTHORIZING THE CALIFORNIA STATEWIDE COMMUNITIES DEVELOPMENT AUTHORITY TO ACCEPT APPLICATIONS FROM PROPERTY OWNERS, CONDUCT SPECIAL ASSESSMENT PROCEEDINGS AND LEVY ASSESSMENTS AND SPECIAL TAXES AND TO FORM ASSESSMENT DISTRICTS AND COMMUNITY FACILITIES DISTRICTS WITHIN THE TERRITORY OF THE CITY OF MORGAN HILL; EMBODYING A JOINT COMMUNITY FACILITIES AGREEMENT SETTING FORTH THE TERMS AND CONDITIONS OF COMMUNITY FACILITIES DISTRICT FINANCINGS; APPROVING FORM OF ACQUISITION AGREEMENT FOR USE WHEN APPLICABLE; AND AUTHORIZING RELATED ACTIONS

WHEREAS, the California Statewide Communities Development Authority (the “Authority”) is a joint exercise of powers authority, lawfully formed and operating within the State pursuant to an agreement (the “Joint Powers Agreement”) entered into as of June 1, 1988 under the authority of Title 1, Division 7, Chapter 5 (commencing with Section 6500) of the California Government Code (the “JPA Law”), the members of which include numerous cities, counties and local agencies in the State of California, including the City of Morgan Hill (the “City”); and

WHEREAS, the Joint Powers Agreement authorizes the Authority to undertake financing programs under any applicable provisions of State law to promote economic development, the stimulation of economic activity, and the increase of the tax base within the jurisdictional boundaries of its members (such members, the “Program Participants”); and

WHEREAS, as one of the Programs under the Joint Powers Agreement, the Authority has established the Statewide Community Infrastructure Program (“SCIP”) to allow the financing of certain public capital improvements to be constructed by or on behalf of property owners for acquisition by the City or another public agency (the “Improvements”) and improvements eligible for funding from certain development impact fees (the “Fees”) levied in accordance with the Mitigation Fee Act (California Government Code Sections 66000 and following) and other authority providing for the levy of fees on new development to pay for public capital improvements (collectively, the “Fee Act”) through the levy of special assessments pursuant to the Municipal Improvement Act of 1913 (Streets and Highways Code Sections 10000 and following) (the “1913 Act”) and the issuance of improvement bonds (the “Local Obligations”) under the Improvement Bond Act of 1915 (Streets and Highways Code Sections 8500 and following) (the “1915 Act”) upon the security of the unpaid special assessments; and

WHEREAS, the “Mello-Roos Community Facilities Act of 1982,” being Chapter 2.5, Part 1, Division 2, Title 5 (beginning with Section 53311) of the Government Code of the State (the “Mello-Roos Act”) is an applicable provision of State law available to, among other things, finance public improvements necessary to meet increased demands placed upon local agencies as a result of development;

WHEREAS, the Authority also uses SCIP to allow the financing of Fees and Improvements through the levy of special taxes and the issuance of Local Obligations under the Mello-Roos Act upon the security of the special taxes; and

WHEREAS, the City desires to allow the owners of property being developed within its jurisdiction (“Participating Developers”) to participate in SCIP and to allow the Authority to conduct proceedings and to form community facilities districts (“CFDs”) and to issue Local Obligations under the Mello-Roos Act, as well as to conduct assessment proceedings to form assessment districts (“Assessment Districts”) under the 1913 Act and to issue Local Obligations under the 1915 Act, to finance Fees levied on such properties and Improvements, provided that such Participating Developers voluntarily agree to participate and consent to the levy of such assessments or special taxes, as applicable; and

WHEREAS, from time to time when eligible property owners within the jurisdiction of the City elect to be Participating Developers, the Authority will conduct proceedings under the 1913 Act and the Mello-Roos Act and issue Local Obligations under the 1915 Act and the Mello-Roos Act to finance Fees payable by such property owners and Improvements and, at the conclusion of such proceedings, will levy assessments or special taxes, as applicable on such property within the territory of the City;

WHEREAS, both the Authority and the City are “local agencies” under the Mello-Roos Act;

WHEREAS, the Mello-Roos Act permits two or more local agencies to enter into a joint community facilities agreement to exercise any power authorized by the Mello-Roos Act;

WHEREAS, the City desires to enter into such an agreement with the Authority to authorize the Authority to form CFDs from time to time within the territorial limits of the City to finance Fees payable by such property owners and Improvements;

WHEREAS, the City has previously presented Resolution No. 6672 of the City Council of the City of Morgan Hill, authorizing the City to join the Statewide Community Infrastructure Program; authorizing the California Statewide Communities Development Authority to accept applications from property owners, conduct special assessment proceedings and levy assessments within the territory of the City of Morgan Hill; approving a form of acquisition agreement; and authorizing related actions (the “Original Resolution”), and such Original Resolution was adopted on July 17, 2013;

WHEREAS, the City now wishes to amend and restate the Original Resolution;

WHEREAS, there has been presented to this meeting a proposed form of Resolution of Intention to be adopted by the Authority in connection with assessment proceedings (the “ROI”), a copy of which is attached hereto as Exhibit A, and the territory within which assessments may be levied for SCIP (provided that each Participating Developer consents to such assessment) shall be coterminous with the City’s official boundaries of record at the time of adoption of such ROI (the “Proposed Boundaries”), and reference is hereby made to such boundaries for the plat or map required to be included in this Amended and Restated Resolution pursuant to Section 10104 of the Streets and Highways Code; and

WHEREAS, there has also been presented to this meeting a proposed form of Acquisition Agreement (the “Acquisition Agreement”), a copy of which is attached hereto as Exhibit B, to be approved as to form for use with respect to any Improvements to be constructed and installed by a Participating Developer and for which the Participating Developer requests acquisition financing as part of its SCIP application; and

WHEREAS, the City will not be responsible for the conduct of any proceedings; the levy or collection of assessments or special taxes or any required remedial action in the case of delinquencies in such assessment or special tax payments; or the issuance, sale or administration of the Local Obligations or any other bonds issued in connection with SCIP; and

WHEREAS, pursuant to SCIP, the Authority periodically issues Local Obligations on behalf of the local agency participants in SCIP to provide financing for the Fees and Improvements and then concurrently issues its revenue bonds pursuant to the Marks-Roos Local Bond Pooling Act of 1985, consisting of Article 4 (commencing with Section 6584) of Chapter 5, Division 7, Title 1 of the California Government Code (the “Marks-Roos Act”), the proceeds of which are used to purchase the Local Obligations; and

WHEREAS, pursuant to Government Code Section 6586.5, notice was published at least five days prior to the adoption of this Amended and Restated Resolution at a public hearing, which was duly conducted by this City Council concerning the significant public benefits of SCIP and the financing of the Improvements and the public capital improvements to be paid for with the proceeds of the Fees;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Morgan Hill as follows:

Section 1. This Amended and Restated Resolution shall constitute full “local approval,” under Section 9 of the Joint Powers Agreement, and under the Authority’s Local Goals and Policies (defined below), for the Authority to undertake and conduct proceedings in accordance herewith and under the Mello Roos Act to form CFDs with boundaries that shall be coterminous with the City’s official boundaries of record at the time of such proceedings or any portion thereof (the “Proposed Boundaries”), and to authorize a special tax and to issue bonds with respect thereto; provided that the Participating Developers, who shall be the legal owners of such property at the time of formation of the CFD, execute a written consent to the levy of special tax in connection with SCIP by the Authority and execute a ballot in favor of the formation of such CFD and the Mello-Roos Act.

Section 2. The City hereby consents to the conduct of special assessment proceedings by the Authority in connection with SCIP pursuant to the 1913 Act and the issuance of Local Obligations under the 1915 Act on any property within the Proposed Boundaries; provided, that:

(1) Such proceedings are conducted pursuant to one or more Resolutions of Intention in substantially the form of the ROI; and

(2) The Participating Developers, who shall be the legal owners of such property at the time of the formation of the Assessment District, execute a written consent to the levy of assessments in connection with SCIP by the Authority and execute an assessment ballot in favor

of such assessment in compliance with the requirements of Section 4 of Article XIIIID of the State Constitution.

Section 3. The Joint Powers Agreement, together with the terms and provisions of this Amended and Restated Resolution, shall together constitute a separate joint community facilities agreement between the City and the Authority under the Mello-Roos Act for each CFD formed. As, without this Amended and Restated Resolution, the Authority has no power to finance City Fees and/or City Improvements (as such terms are defined herein) in proceedings under the Mello-Roos Act to form the CFD, adoption by the Commission of the Authority of each Resolution of Intention to form a CFD under the Mello-Roos Act to finance City Fees and City Improvements shall constitute acceptance of the terms hereof by the Authority with respect to such CFD.

Section 4. This Amended and Restated Resolution and the agreement it embodies are determined to be beneficial to the residents/customers of the City and are in the best interests of the residents of the City, and of the future residents of the area within the proposed CFDs and Assessment Districts. The City hereby finds and declares that the issuance of revenue bonds by the Authority to purchase Local Obligations in connection with SCIP will provide significant public benefits, including without limitation, savings in effective interest rate, bond preparation, bond underwriting and bond issuance costs, and the more efficient delivery of local agency services to residential and commercial development within the City.

Section 5. The Authority has adopted Local Goals and Policies as required by Section 53312.7 of the Mello-Roos Act. The City approves the use of those Local Goals and Policies in connection with the formation of CFDs. The City hereby agrees that the Authority may act in lieu of the City under those Local Goals and Policies in forming and administering the CFDs.

Section 6. The Authority has prepared and will update from time to time the “SCIP Manual of Procedures” (the “Manual”), and the City will handle Fee revenues and funds for Improvements for properties participating in SCIP in accordance with the procedures set forth in the Manual.

Section 7. Pursuant to the Mello-Roos Act and this Amended and Restated Resolution, the Authority may conduct proceedings under the Mello-Roos Act to form the CFDs and to have such CFDs authorize the financing of any or all of the facilities and Fees set forth on Exhibit C, attached hereto. All of the facilities, whether to be financed directly or through Fees, shall be facilities that have an expected useful life of five years or longer and are facilities that the City or other local public agencies, as the case may be, are authorized by law to construct, own or operate, or to which they may contribute revenue. Exhibit C may be modified from time to time by written agreement between an authorized representative of the Authority and of the City. The facilities are referred to herein as the “Improvements,” and the Improvements to be owned by the City are referred to as the “City Improvements.” The Fees paid or to be paid to the City are referred to as the “City Fees.”

Section 8. For Fees paid or to be paid to another agency by any particular CFD (an “Other Local Agency”), the Authority will obtain the written consent of that Other Local Agency before issuing Local Obligations to fund such Fees, as required by the Mello-Roos Act. For the Improvements to be owned by an Other Local Agency, the Authority will separately identify them in its proceedings, and will enter into a joint community facilities agreement with

such Other Local Agency prior to issuing Local Obligations to finance such Improvements, as required by the Mello-Roos Act. Each joint community facilities agreement with each Other Local Agency will contain a provision that the Other Local Agency will provide indemnification to the City to the same extent that the City provides indemnification to the Other Local Agency under the terms of this Amended and Restated Resolution.

Section 9. At the time of formation of each CFD, the City will certify to the Commission of the Authority that all of the City Improvements including the improvements to be constructed or acquired with the proceeds of City Fees to be funded by such CFD are necessary to meet increased demands placed upon the City as a result of development occurring or expected to occur within the proposed CFDs in the form attached hereto as Exhibit D. Any appropriate officer or staff of the City is authorized to execute and deliver such certificate in substantially the form attached hereto as Exhibit D, with such changes as such signatory shall approve. Joint community facilities agreements with other local agencies will each contain a requirement that each Other Local Agency will make identical certification in connection with respect to the Improvements to be owned by, and Fees paid or to be paid to, such Other Local Agency equivalent to that made by the City in this paragraph.

Section 10. The Authority will apply the special tax collections initially as required by the documents under which any Local Obligations are issued; and thereafter, to the extent not provided in the Local Obligations documents, may pay its own reasonable administrative costs incurred in the administration of the CFDs. The Authority will remit any special tax revenues from any particular CFD remaining after the final retirement of all related Local Obligations to the City and to the other local agencies in the proportions specified in the Authority's proceedings. The City will apply any such special tax revenues it receives for authorized City Improvements or City Fees and its own administrative costs only as permitted by the Mello-Roos Act. The joint community facilities agreements with each Other Local Agency must require the Other Local Agency to apply the special tax revenues they receive for their authorized Improvements and Fees under the CFDs and for their own related administrative costs only as permitted by the Mello-Roos Act.

Section 11. The Authority will administer the CFDs, including employing and paying all consultants, annually levying the special tax and all aspects of paying and administering the Local Obligations, and complying with all State and Federal requirements appertaining to the proceedings, including the requirements of the United States Internal Revenue Code. The City will cooperate fully with the Authority in respect of the requirements of the Internal Revenue Code and to the extent information is required of the City to enable the Authority to perform its disclosure and continuing disclosure obligations with respect to the Local Obligations and any revenue bonds, although the City will not participate in nor be considered to be a participant in the proceedings respecting the CFDs (other than as a party to the agreement embodied by this Amended and Restated Resolution) nor will the City be or be considered to be an issuer of the Local Obligations nor any revenue bonds. The Authority is required to obtain a provision equivalent to this paragraph in all joint community facilities agreements with each Other Local Agency.

Section 12. In the event the Authority completes issuance and sale of Local Obligations, and Local Obligation proceeds become available to finance the Improvements, the Authority shall

establish and maintain a special fund for each development project (the “Acquisition and Construction Fund”). The portion of Local Obligation proceeds which is intended to be utilized to finance the Improvements and Fees shall be deposited in the Acquisition and Construction Fund. The Acquisition and Construction Fund will be available both for City Improvements and City Fees and for the Improvements and Fees pertaining to each Other Local Agency. Subaccounts shall be created as necessary.

Section 13. As respects the Authority and each Other Local Agency, the City agrees to fully administer, and to take full governmental responsibility for, the construction or acquisition of the City Improvements and for the administration and expenditure of the City Fees including but not limited to environmental review, approval of plans and specifications, bid requirements, performance and payment bond requirements, insurance requirements, contract and construction administration, staking, inspection, acquisition of necessary property interests in real or personal property, the holding back and administration of retention payments, punch list administration, and the Authority and each Other Local Agency shall have no responsibility in that regard. The City reserves the right, as respects each Participating Developer, to require the Participating Developer to contract with the City to assume any portion or all of this responsibility. The Authority is required to obtain provisions equivalent to this paragraph in the joint community facilities agreement with each Other Local Agency.

Section 14. The City agrees to indemnify and to hold the Authority, its other members, and its other members’ officers, agents and employees, and each Other Local Agency and their officers, agents and employees (collectively, the “Indemnified Parties”) harmless from any and all claims, suits and damages (including costs and reasonable attorneys’ fees) arising out of the design, engineering, construction and installation of the City Improvements and the improvements to be financed or acquired with the City Fees. The City reserves the right, as respects each Participating Developer, to require the Participating Developer to assume by contract with the City any portion or all of this responsibility. The Authority is required to obtain a provision equivalent to this paragraph in all joint community facilities agreements with each Other Local Agency naming the City and its officers, agents and employees as Indemnified Parties with respect to each Other Local Agency’s respective Improvements and the improvements to be constructed or acquired with each Other Local Agency’s Fees.

Section 15. As respects the Authority and each Other Local Agency, the City agrees – once the City Improvements are constructed according to the approved plans and specifications, and the City and the Participating Developer have put in place their agreed arrangements for the funding of maintenance of the City Improvements – to accept ownership of the City Improvements, to take maintenance responsibility for the City Improvements, and to indemnify and hold harmless the Indemnified Parties to the extent provided in the preceding paragraph from any and all claims, etc., arising out of the use and maintenance of the City Improvements. The City reserves the right, as respects the Participating Developer, to require the Participating Developer by contract with the City to assume any portion or all of this responsibility. The Authority is required to obtain a provision equivalent to this paragraph in all joint community facilities agreements with each Other Local Agency naming the City and its officers, agents and employees as Indemnified Parties.

Section 16. The City acknowledges the requirement of the Mello-Roos Act that if the City Improvements are not completed prior to the adoption by the Commission of the Authority

of the Resolution of Formation of the CFD for each respective development project, the City Improvements must be constructed as if they had been constructed under the direction and supervision, or under the authority of, the City. The City acknowledges that this means all City Improvements must be constructed under contracts that require the payment of prevailing wages as required by Section 1720 and following of the Labor Code of the State of California. The Authority makes no representation that this requirement is the only applicable legal requirement in this regard. The City reserves the right, as respects the Participating Developer, to assign appropriate responsibility for compliance with this paragraph to the Participating Developer.

Section 17. The form of the Acquisition Agreement attached hereto as Exhibit B is hereby approved, and the City Manager or such officer's designee (the "Authorized Officer") is authorized to execute, and deliver to the Participating Developer, the Acquisition Agreement on behalf of the City in substantially that form, with such changes as shall be approved by the Authorized Officer after consultation with the City Attorney and the Authority's bond counsel, such approval to be conclusively evidenced by the execution and delivery thereof.

Section 18. After completion of the City Improvements and appropriate arrangements for the maintenance of the City Improvements, or any discrete portion thereof as provided in Section 53313.51 of the Mello-Roos Act and in the Acquisition Agreement, to the satisfaction of the City, and in conjunction with the City's acceptance thereof, acquisition of the City Improvements shall be undertaken as provided in the Acquisition Agreement.

Section 19. The City hereby consents to the formation of the CFDs in accordance with this Amended and Restated Resolution and consents to the assumption of jurisdiction by the Authority for the proceedings respecting the CFDs with the understanding that the Authority will hereafter take each and every step required for or suitable for consummation of the proceedings, the levy, collection and enforcement of the special tax, and the issuance, sale, delivery and administration of the Local Obligations, all at no cost to the City and without binding or obligating the City's general fund or taxing authority.

Section 20. The terms of the Agreement embodied by this Amended and Restated Resolution may be amended by a writing duly authorized, executed and delivered by the City and the Authority, except that no amendment may be made after the issuance of the Local Obligations by the Authority that would be detrimental to the interests of the bondholders without complying with all of the bondholder consent provisions for the amendment of the bond resolutions, bond indentures or like instruments governing the issuance, delivery and administration of all outstanding Local Obligations.

Section 21. Except to the extent of the indemnifications extended to each Other Local Agency in the Agreement embodied by this Amended and Restated Resolution, and the City's agreement to take responsibility for and ownership of the City Improvements, no person or entity, including the Participating Developer, shall be deemed to be a third party beneficiary of this Amended and Restated Resolution, and nothing in this Amended and Restated Resolution (either express or implied) is intended to confer upon any person or entity other than the Authority and the City (and their respective successors and assigns) any rights, remedies, obligations or liabilities under or by reason of this Amended and Restated Resolution.

Section 22. The City shall be identified as a third-party beneficiary of all joint community facilities agreements between the Authority and each Other Local Agency to the extent of the indemnification provisions and the provisions whereby each Other Local Agency agrees to take responsibility for and ownership of their Improvements.

Section 23. The appropriate officials and staff of the City are hereby authorized and directed to make SCIP applications available to all property owners who are subject to Fees for new development within the City and/or who are conditioned to install Improvements and to inform such owners of their option to participate in SCIP; provided, that the Authority shall be responsible for providing such applications and related materials at its own expense. The staff persons listed on the attached Exhibit E, together with any other staff persons chosen by the City Manager from time to time, are hereby designated as the contact persons for the Authority in connection with SCIP.

Section 24. The appropriate officials and staff of the City are hereby authorized and directed to execute and deliver such closing certificates, requisitions, agreements and related documents, including but not limited to such documents as may be required by bond counsel in connection with the participation in SCIP of any districts, authorities or other third-party entities entitled to own Improvements and/or to levy and collect fees on new development to pay for public capital improvements within the jurisdiction of the City, as are reasonably required by the Authority in accordance with the Manual to implement SCIP and to evidence compliance with the requirements of federal and state law in connection with the issuance by the Authority of the Local Obligations and any other bonds for SCIP. To that end, and pursuant to Treasury Regulations Section 1.150-2, the staff persons listed on Exhibit E, or other staff person acting in the same capacity for the City with respect to SCIP, are hereby authorized and designated to declare the official intent of the City with respect to the public capital improvements to be paid or reimbursed through participation in SCIP.

Section 25. This Amended and Restated Resolution shall take effect immediately upon its adoption. The City Clerk of the City of Morgan Hill is hereby authorized and directed to transmit a certified copy of this Amended and Restated Resolution to the Secretary of the Authority. This Amended and Restated Resolution shall remain in force with respect to any Assessment District and CFD formed until all Local Obligations have been retired and the authority to levy the special tax conferred by any CFD proceedings and to levy the assessment conferred by any assessment proceedings has ended or is otherwise terminated. The Original Resolution shall remain in force with respect to any SCIP application approved by the City and any Assessment District formed pursuant to its authority until all Local Obligations have been retired and the authority to levy the assessment conferred by any assessment proceedings carried out pursuant to the Original Resolution has ended or is otherwise terminated.

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PASSED AND ADOPTED this ____ day of _____, 2023 by the following vote, to wit:

AYES: Council Members

.....

NOES: Council Members

.....

.....

ABSENT: Council Members

.....

.....

ABSTAIN: Council Members

.....

.....

.....

EXHIBIT A TO THE RESOLUTION

**FORM OF RESOLUTION OF INTENTION
TO BE ADOPTED BY CSCDA**

RESOLUTION NO. __SCIP-

**RESOLUTION OF INTENTION OF THE CALIFORNIA STATEWIDE
COMMUNITIES DEVELOPMENT AUTHORITY TO FINANCE CAPITAL
IMPROVEMENTS AND/OR THE PAYMENT OF DEVELOPMENT IMPACT
FEES FOR PUBLIC CAPITAL IMPROVEMENTS IN THE PROPOSED
STATEWIDE COMMUNITY INFRASTRUCTURE PROGRAM ASSESSMENT
DISTRICT NO. __ ([NAME OF PROJECT]) [CITY OF _____], [COUNTY
OF _____], APPROVING A PROPOSED BOUNDARY MAP, MAKING
CERTAIN DECLARATIONS, FINDINGS AND DETERMINATIONS
CONCERNING RELATED MATTERS, AND AUTHORIZING RELATED
ACTIONS IN CONNECTION THEREWITH**

WHEREAS, under the authority of the Municipal Improvement Act of 1913 (the “1913 Act”), being Division 12 (commencing with Sections 10000 and following) of the California Streets and Highways Code (the “Code”), the Commission (the “Commission”) of the California Statewide Communities Development Authority (the “Authority”) intends to finance, through its Statewide Community Infrastructure Program, the payment of certain development impact fees for public improvements (the “Improvement Fees”) and/or to finance certain public capital improvements to be constructed by or on behalf of the property owner(s) and to be acquired by the [City/County] of [_____] or another local agency (the “Improvements”) as described in Exhibit A attached hereto and by this reference incorporated herein, all of which are of benefit to the property within the proposed Statewide Community Infrastructure Program Assessment District No. __ ([name of project]) [City of _____], [County of _____] (the “Assessment District”);

WHEREAS, the Commission finds that the land specially benefited by the Improvements and/or the Improvement Fees is shown within the boundaries of the map entitled “Proposed Boundaries of California Statewide Communities Development Authority Statewide Community Infrastructure Program Assessment District No. __ ([name of project]) [City of _____], [County of _____], State of California,” a copy of which map is on file with the Secretary and presented to this Commission meeting, and determines that the land within the exterior boundaries shown on the map shall be designated “Statewide Community Infrastructure Program Assessment District No. __ ([name of project]) [City of _____], [County of _____], State of California”;

WHEREAS, the [City/County] of [_____] is a member of the Authority and has approved the adoption on its behalf of this Resolution of Intention and has consented to the levy of the assessments in the Assessment District;

NOW, THEREFORE, BE IT RESOLVED that the Commission of the California Statewide Communities Development Authority hereby finds, determines and resolves as follows:

Section 1. The above recitals are true and correct.

Pursuant to Section 2961 of the Special Assessment Investigation, Limitation and Majority Protest Act of 1931 (the “1931 Act”), being Division 4 (commencing with Section 2800) of the Code, the

Commission hereby declares its intent to comply with the requirements of the 1931 Act by complying with Part 7.5 thereof.

The Commission has designated a registered, professional engineer as Engineer of Work for this project, and hereby directs said firm to prepare the report containing the matters required by Sections 2961(b) and 10204 of the Code, as supplemented by Section 4 of Article XIID of the California Constitution.

The proposed boundary map of the Assessment District is hereby approved and adopted. Pursuant to Section 3111 of the Code, the Secretary of the Authority is directed to file a copy of the map in the office of the County Recorder of the [County of _____] within fifteen (15) days of the adoption of this resolution.

The Commission determines that the cost of financing the Improvements and/or the payment of the Improvement Fees shall be specially assessed against the lots, pieces or parcels of land within the Assessment District benefiting from the financing of the Improvements and/or the payment of the Improvement Fees. The Commission intends to levy a special assessment upon such lots, pieces or parcels in accordance with the special benefit to be received by each such lot, piece or parcel of land, respectively, from the financing of the Improvements and/or the payment of the Improvement Fees.

The Commission intends, pursuant to subparagraph (f) of Section 10204 of the Code, to provide for an annual assessment upon each of the parcels of land in the proposed Assessment District to pay various costs and expenses incurred from time to time by the Authority and not otherwise reimbursed to the Authority which result from the administration and collection of assessment installments or from the administration or registration of the improvement bonds and the various funds and accounts pertaining thereto.

Bonds representing unpaid assessments, and bearing interest at a rate not to exceed twelve percent (12%) per annum, will be issued in the manner provided by the Improvement Bond Act of 1915 (Division 10 of the Code), and the last installment of the bonds shall mature not to exceed twenty-nine (29) years from the second day of September next succeeding twelve (12) months from their date.

The procedure for the collection of assessments and advance retirement of bonds under the Improvement Bond Act of 1915 shall be as provided in Part 11.1 thereof.

Neither the Authority nor any member agency thereof will obligate itself to advance available funds from its or their own funds or otherwise to cure any deficiency which may occur in the bond redemption fund. A determination not to obligate itself shall not prevent the Authority or any such member agency from, in its sole discretion, so advancing funds.

The amount of any surplus remaining in the improvement fund after acquisition of the Improvements and/or payment of Improvement Fees and all other claims shall be distributed in accordance with the provisions of Section 10427.1 of the Code.

To the extent any Improvement Fees are paid to the Authority in cash with respect to property within the proposed Assessment District prior to the date of issuance of the bonds, the amounts so paid shall be reimbursed from the proceeds of the bonds to the property owner or developer that made the payment.

PASSED AND ADOPTED by the California Statewide Communities Development Authority this
____ day of _____, 20__.

I, the undersigned, an Authorized Signatory of the California Statewide Communities Development Authority, DO HEREBY CERTIFY that the foregoing resolution was duly adopted by the Commission of the Authority at a duly called meeting of the Commission of the Authority held in accordance with law on
_____, 20__.

By _____
Authorized Signatory
California Statewide Communities
Development Authority

EXHIBIT A TO THE RESOLUTION OF INTENTION

DESCRIPTION OF WORK

The payment of development impact fees levied within the Assessment District and/or public capital improvements to be acquired and owned by the [City/County] of [_____] or another local agency upon or for the benefit of parcels within the Assessment District, for the project known as [Project Name], which are authorized to be financed pursuant to the Municipal Improvement Act of 1913 and as to which the owners of the applicable parcels within the Assessment District have applied for participation in SCIP, as more particularly described below.

PAYMENT OF IMPACT FEES

CAPITAL IMPROVEMENTS*

**Capital improvements includes funding for incidental costs associated with the capital improvements, including but not limited to, contingency, design, engineering, and construction management*

[End of Form of Resolution of Intention]

EXHIBIT B TO THE RESOLUTION
FORM OF ACQUISITION AGREEMENT

CALIFORNIA STATEWIDE COMMUNITIES DEVELOPMENT AUTHORITY
STATEWIDE COMMUNITY INFRASTRUCTURE PROGRAM

ACQUISITION AGREEMENT

BY AND BETWEEN
CITY OF MORGAN HILL
AND
[DEVELOPER]

Dated as of _____, 20__

ACQUISITION AGREEMENT

Recitals

A. The parties to this Acquisition Agreement (the “Agreement”) are the [CITY/COUNTY] OF _____, (the “Local Agency”), and [DEVELOPER], a [*indicate type of legal entity*] (the “Developer”).

B. The effective date of this Agreement is _____, 20__.

C. The Developer has applied for the financing of, among other things, certain public capital improvements to be owned by the Local Agency (collectively, the “Acquisition Improvements”) through the California Statewide Communities Development Authority (the “Authority”) and its Statewide Community Infrastructure Program (“SCIP”). [*For CFDS:*][The Acquisition Improvements are to be owned and operated by the Local Agency, and the financing is to be accomplished through a community facilities district which will be administered by the Authority under and pursuant to the Mello-Roos Community Facilities Act of 1982 – California Government Code Sections 53311 and following (the “Act”). On _____, 20__, the Local Agency entered into a Joint Community Facilities Agreement authorizing the Authority to form a community facilities district (the “District”) within the territorial limits of the Local Agency to finance, among other things, the Acquisition Improvements. On _____, 20__, the Authority formed the District and, on the same date, a landowner election was conducted in which all of the votes were cast unanimously in favor of conferring the District authority on the Authority Commission.] [*For Assessment Districts:*][The Acquisition Improvements are to be owned and operated by the Local Agency, and the financing is to be accomplished through an assessment district (the “District”) which will be administered by the Authority under and pursuant to Municipal Improvement Act of 1913 (Streets and Highways Code Sections 10000 and following) (the “1913 Act”) and the issuance of improvement bonds (the “Local Obligations”) under the Improvement Bond Act of 1915 (Streets and Highways Code Sections 8500 and following) (the “1915 Act” and, together with the “1913 Act” the “Act”).]

D. The administration, payment and reimbursement of the capital facilities fees is agreed to be governed by the provisions of the SCIP Manual of Procedures as it may be amended from time to time. The administration, payment and reimbursement of the Acquisition Improvements shall be as provided herein.

E. Under SCIP, the Authority intends to levy [assessments] [special taxes] and issue bonds, in one or more series, to fund, among other things, all or a portion of the costs of the Acquisition Improvements. The portion of the proceeds of the [special taxes and] bonds allocable to the cost of the Acquisition Improvements, together with interest earned thereon, is referred to herein as the “Available Amount”.

F. The Authority will provide financing for the acquisition by the Local Agency of the Acquisition Improvements and the payment of the Acquisition Price (as defined herein) of the Acquisition Improvements from the Available Amount. Attached hereto as Exhibit A is a description of the Acquisition Improvements, which includes authorized discrete and usable portions, if any, of the public capital improvements, [pursuant to Section 53313.51 of the Act,] to

be acquired from the Developer.

G. The parties anticipate that, upon completion of the Acquisition Improvements and subject to the terms and conditions of this Agreement, the Local Agency will acquire such completed Acquisition Improvements with the Available Amount.

H. Any and all monetary obligations of the Local Agency arising out of this Agreement are the special and limited obligations of the Local Agency payable only from the Available Amount, and no other funds whatsoever of the Local Agency shall be obligated therefor.

I. Attached to this Agreement are Exhibit A (*Acquisition Improvements and the Eligible Portions thereof*) and Exhibit B (*Form of Requisition*), which are incorporated into this Agreement for all purposes.

In consideration of Recitals A through I, inclusive, and the mutual covenants, undertakings and obligations set forth below, the Local Agency and the Developer agree as stated below.

Agreement

DEFINITIONS; DISTRICT FORMATION AND FINANCING PLAN

Definitions. As used herein, the following capitalized terms shall have the meanings ascribed to them below:

“Acceptable Title” means free and clear of all monetary liens, encumbrances, assessments, whether any such item is recorded or unrecorded, and taxes, except those items which are reasonably determined by the Local Agency Engineer not to interfere with the intended use and therefore are not required to be cleared from the title.

“Acquisition and Construction Fund” means the “[*Name of Local Agency*] Acquisition and Construction Fund” established by the Authority pursuant to Section 1.03 hereof for the purpose of paying the Acquisition Price of the Acquisition Improvements and which fund may be held as a subaccount within a fund established under the Authority Trust Agreement and may be commingled with acquisition and construction fund monies available for other public capital improvements.

“Acquisition Improvement” shall have the meaning assigned to such term in the recitals and are further described in Exhibit A.

“Acquisition Price” means the total amount eligible to be paid to the Developer upon acquisition of an Acquisition Improvement as provided in Section 2.03 not to exceed the Actual Cost of the Acquisition Improvement.

“Act” has the meaning ascribed thereto in Recital C.

“Actual Cost” means the total cost of an Acquisition Improvement, as documented by the Developer to the satisfaction of the Local Agency and as certified by the Local Agency Engineer in an Actual Cost Certificate including, without limitation, (a) the Developer’s cost of constructing such Acquisition Improvement including grading, labor, material and equipment costs, (b) the Developer’s cost of designing and engineering the Acquisition Improvement, preparing the plans and specifications and bid documents for such Acquisition Improvement, and the costs of inspection, materials testing and construction staking for such Acquisition Improvement, (c) the Developer’s cost of any performance, payment and maintenance bonds and insurance, including title insurance, required hereby for such Acquisition Improvement, (d) the Developer’s cost of any real property or interest therein that is either necessary for the construction of such Acquisition Improvement (e.g., temporary construction easements, haul roads, etc.), or is required to be conveyed with such Acquisition Improvement in order to convey Acceptable Title thereto to the Local Agency or its designee, (e) the Developer’s cost of environmental evaluation or mitigation required for such Acquisition Improvement, (f) the amount of any fees actually paid by the Developer to governmental agencies in order to obtain permits, licenses or other necessary governmental approvals and reviews for such Acquisition Improvement, (g) the Developer’s cost for construction and project management, administration and supervision services for such Acquisition Improvement, (h) the Developer’s cost for professional services related to such Acquisition Improvement, including engineering, accounting, legal, financial, appraisal and similar professional services, and (i) the costs of construction financing incurred by the Developer with respect to such Acquisition Improvement.

“Actual Cost Certificate” means a certificate prepared by the Developer detailing the Actual Cost of an Acquisition Improvement, or an Eligible Portion thereof, to be acquired hereunder, as may be revised by the Local Agency Engineer pursuant to Section 2.03.

“Agreement” means this Acquisition Agreement, dated as of [_____], 20[___].

“Authority” means the California Statewide Communities Development Authority.

“Authority Trust Agreement” means a Trust Agreement entered into by the Authority and an Authority Trustee in connection with the issuance of bonds.

“Authority Trustee” means the financial institution identified as trustee in an Authority Trust Agreement.

“Available Amount” shall have the meaning assigned to the term in Recital E.

“Bonds” means bonds or other indebtedness issued by the Authority as tax-exempt or taxable bonds or other indebtedness, in one or more series, that is to be repaid by the District.

“Code” means the Streets and Highways Code or the Government Code of the State of California, as applicable.

“Developer” means [*Developer*], its successors and assigns.

“Disbursement Request Form” means a requisition for payment of funds from the Acquisition and Construction Fund for an Acquisition Improvement, or an Eligible Portion thereof

in substantially the form contained in Exhibit B hereto.

“District” shall have the meaning assigned to the term in Recital C.

“Eligible Portion” shall have the meaning ascribed to it in Section 2.03 below.

“Installment Payment” means an amount equal to ninety percent (90%) of the Actual Cost of an Eligible Portion.

“Local Agency” means the City of Morgan Hill.

“Local Agency Engineer” means the Engineer of the Local Agency or his/her designee who will be responsible for administering the acquisition of the Acquisition Improvements hereunder.

“Project” means the Developer’s development of the property in the District, including the design and construction of the Acquisition Improvements and the other public and private improvements to be constructed by the Developer within the District.

[“Special Taxes” means annual special taxes, and prepayments thereof, authorized by the District to be levied by the Commission of the Authority.]

“Title Documents” means, for each Acquisition Improvement acquired hereunder, a grant deed or similar instrument necessary to transfer title to any real property or interests therein (including easements), or an irrevocable offer of dedication of such real property with interests therein necessary to the operation, maintenance, rehabilitation and improvement by the Local Agency of the Acquisition Improvement (including, if necessary, easements for ingress and egress) and a bill of sale or similar instrument evidencing transfer of title to the Acquisition Improvement (other than said real property interests) to the Local Agency, where applicable.

Participation in SCIP. [For CFDs:] [The Local Agency has entered into a Joint Community Facilities Agreement with the Authority for the purpose of accepting applications from time to time of developers within the Local Agency’s jurisdictional boundaries.] Developer has applied for financing through SCIP of the Acquisition Improvements, and such application has been approved by the Local Agency. Developer and Local Agency agree that until and unless such financing is completed by the Authority and the Available Amount is deposited in the Acquisition Account (as defined in Section 1.03 below), neither the Developer nor the Local Agency shall have any obligations under this agreement. Developer agrees to cooperate with the Local Agency and the Authority in the completion of SCIP financing for the Acquisition Improvements.

Deposit and Use of Available Amount.

Upon completion of the SCIP financing, the Available Amount will be deposited by the Authority in the Acquisition Account.

The Authority will cause the SCIP Trustee to establish and maintain an account (the “Acquisition Account”) for the purpose of holding all funds for the Acquisition Improvements. All earnings on amounts in the Acquisition and Construction Fund shall remain in the Acquisition and

Construction Fund for use as provided herein and pursuant to the Authority Trust Agreement. Money in the Acquisition and Construction Fund shall be available to respond to delivery of a Disbursement Request Form and to be paid to the Developer or its designee to pay the Acquisition Price of the Acquisition Improvements, as specified in Article II hereof. Upon completion of all of the Acquisition Improvements and the payment of all costs thereof, any remaining funds in the Acquisition and Construction Fund (less any amount determined by the Local Agency as necessary to reserve for claims against the account) (i) shall be applied to pay the costs of any additional Acquisition Improvements eligible for acquisition with respect to the Project as approved by the Authority and, to the extent not so used, (ii) shall be applied by the Authority [to call Bonds or to reduce Special Taxes as the Authority shall determine][as provided in Section 10427.1 of the Code to pay a portion of the assessments levied on the Project property in the District].

No Local Agency Liability; Local Agency Discretion; No Effect on Other Agreements. In no event shall any actual or alleged act by the Local Agency or any actual or alleged omission or failure to act by the Local Agency with respect to SCIP subject the Local Agency to monetary liability therefor. Further, nothing in this Agreement shall be construed as affecting the Developer's or the Local Agency's duty to perform their respective obligations under any other agreements, public improvement standards, land use regulations or subdivision requirements related to the Project, which obligations are and shall remain independent of the Developer's and the Local Agency's rights and obligations under this Agreement.

DESIGN, CONSTRUCTION AND ACQUISITION OF ACQUISITION IMPROVEMENTS

Letting and Administering Design Contracts. The parties presently anticipate that the Developer has awarded and administered or will award and administer engineering design contracts for the Acquisition Improvements to be acquired from Developer. All eligible expenditures of the Developer for design engineering and related costs in connection with the Acquisition Improvements (whether as an advance to the Local Agency or directly to the design consultant) shall be reimbursed at the time of acquisition of such Acquisition Improvements. The Developer shall be entitled to reimbursement for any design costs of the Acquisition Improvements only out of the Acquisition Price as provided in Section 2.03 and shall not be entitled to any payment for design costs independent of or prior to the acquisition of Acquisition Improvements.

Letting and Administration of Construction Contracts; Indemnification. State law requires that all Acquisition Improvements not completed prior to the formation of the District shall be constructed as if they were constructed under the direction and supervision, or under the authority, of the Local Agency. In order to assure compliance with those provisions, except for any contracts entered into prior to the date hereof, Developer agrees to comply with the requirements set forth in Exhibit C hereto with respect to the bidding and contracting for the construction of the Acquisition Improvements. The Developer agrees that all the contracts shall call for payment of prevailing wages as required by the Labor Code of the State of California. The Developer's indemnification obligation set forth in Section 3.01 of this Agreement shall also apply to any alleged failure to comply with the requirements of this Section, and/or applicable State laws regarding public contracting and prevailing wages.

Sale of Acquisition Improvements. The Developer agrees to sell to the Local Agency each Acquisition Improvement to be constructed by Developer (including any rights-of-way or other easements necessary for the Acquisition Improvements, to the extent not already publicly owned), when the Acquisition Improvement is has been constructed and is complete to the satisfaction of the Local Agency for an amount not to exceed the lesser of (i) the Available Amount or (ii) the Actual Cost of the Acquisition Improvement. Exhibit A, attached hereto and incorporated herein, contains a list of the Acquisition Improvements. Portions of an Acquisition Improvement eligible for Installment Payments prior to completion of the entire Acquisition Improvement are described as eligible, discrete and usable portions in Exhibit A (each, an “Eligible Portion”). At the time of completion of each Acquisition Improvement, or Eligible Portion thereof, the Developer shall deliver to the Local Agency Engineer a written request for acquisition, accompanied by an Actual Cost Certificate, and by executed Title Documents for the transfer of the Acquisition Improvement where necessary. In the event that the Local Agency Engineer finds that the supporting paperwork submitted by the Developer fails to demonstrate the required relationship between the subject Actual Cost and eligible work, the Local Agency Engineer shall advise the Developer that the determination of the Actual Cost (or the ineligible portion thereof) has been disallowed and shall request further documentation from the Developer. If the further documentation is still not adequate, the Local Agency Engineer may revise the Actual Cost Certificate to delete any disallowed items and the determination shall be final and conclusive.

Certain soft costs for the Acquisition Improvements, such as civil engineering, may have been incurred pursuant to single contracts that include work relating also to the private portions of the Project. In those instances, the total costs under such contracts will be allocated to each Acquisition Improvement as approved by the Local Agency Engineer. Where a specific contract has been awarded for design or engineering work relating solely to an Acquisition Improvement, one hundred percent (100%) of the costs under the contract will be allocated to that Acquisition Improvement. Amounts allocated to an Acquisition Improvement will be further allocated among the Eligible Portions of that Acquisition Improvement, if any, in the same proportion as the amount to be reimbursed for hard costs for each Eligible Portion bears to the amount to be reimbursed for hard costs for the entire Acquisition Improvement. Costs will be allocated to each Acquisition Improvement as approved by the Local Agency Engineer. The costs of certain environmental mitigation required to mitigate impacts of the public and private portions of the Project will be allocated to each Acquisition Improvement as approved by the Local Agency Engineer.

In the event that the Actual Cost is in excess of the Available Amount, the Local Agency shall withdraw the Available Amount from the Acquisition Account and transfer said amount to the Developer. In the event that the Actual Cost is less than the Available Amount, the Local Agency shall withdraw an amount from the Acquisition Account equal to the Actual Cost, and shall transfer said amount to the Developer. Any amounts then remaining in the Acquisition Account shall be applied as provided in Section 1.03.

In no event shall the Local Agency be required to pay the Developer more than the amount on deposit in the Acquisition Account at the time such payment is requested.

Conditions Precedent to Payment of Acquisition Price. Payment to the Developer or its designee of the Acquisition Price for an Acquisition Improvement from the Acquisition and Construction Fund shall in every case be conditioned first upon the determination of the Local Agency Engineer,

pursuant to Section 2.03, that the Acquisition Improvement satisfies all Local Agency regulations and ordinances and is otherwise complete and ready for acceptance by the Local Agency, and shall be further conditioned upon satisfaction of the following additional conditions precedent:

The Developer shall have provided the Local Agency with lien releases or other similar documentation satisfactory to the Local Agency Engineer as evidence that none of the property (including any rights-of-way or other easements necessary for the operation and maintenance of the Acquisition Improvement, to the extent not already publicly owned) comprising the Acquisition Improvement, and the property which is subject to the [assessments/Special Taxes] of the District, is not subject to any prospective mechanics lien claim respecting the Acquisition Improvements.

All due and payable property taxes, and installments of [assessments/Special Taxes] shall be current on property owned by the Developer or under option to the Developer that is subject to the lien of the District.

The Developer shall certify that it is not in default with respect to any loan secured by any interest in the Project.

The Developer shall have provided the Local Agency with Title Documents needed to provide the Local Agency with title to the site, right-of-way, or easement upon which the subject Acquisition Improvements are situated. All such Title Documents shall be in a form acceptable to the Local Agency (or applicable governmental agency) and shall convey Acceptable Title. The Developer shall provide a policy of title insurance as of the date of transfer in a form acceptable to the Local Agency Engineer insuring the Local Agency as to the interests acquired in connection with the acquisition of any interest for which such a policy of title insurance is not required by another agreement between the Local Agency and the Developer. Each title insurance policy required hereunder shall be in the amount equal to or greater than the Acquisition Price.

SCIP Requisition. Upon a determination by the Local Agency Engineer to pay the Acquisition Price of the Acquisition Improvements pursuant to Section 2.04, the Local Agency Engineer shall cause a SCIP Requisition to be submitted to the Program Administrator. The Program Administrator will review the SCIP Requisition and forward it with instructions to the SCIP Trustee and the SCIP Trustee shall make payment directly to the Developer of such amount pursuant to the SCIP Trust Agreement. The Local Agency and the Developer acknowledge and agree that the SCIP Trustee shall make payment strictly in accordance with the SCIP Requisition and shall not be required to determine whether or not the Acquisition Improvements have been completed or what the Actual Costs may be with respect to such Acquisition Improvements. The SCIP Trustee shall be entitled to rely on the SCIP Requisition on its face without any further duty of investigation.

MISCELLANEOUS

Indemnification and Hold Harmless. The Developer hereby assumes the defense of, and indemnifies and saves harmless the Local Agency, the Authority, and each of its respective

officers, directors, employees and agents, from and against all actions, damages, claims, losses or expenses of every type and description to which they may be subjected or put, by reason of, or resulting from or alleged to have resulted from the acts or omissions of the Developer or its agents and employees in the performance of this Agreement, or arising out of any contract for the design, engineering and construction of the Acquisition Improvements or arising out of any alleged misstatements of fact or alleged omission of a material fact made by the Developer, its officers, directors, employees or agents to the Authority's underwriter, financial advisor, appraiser, district engineer or bond counsel or regarding the Developer, its proposed developments, its property ownership and its contractual arrangements contained in the official statement relating to the SCIP financing (provided that the Developer shall have been furnished a copy of such official statement and shall not have objected thereto); and provided, further, that nothing in this Section 3.01 shall limit in any manner the Local Agency's rights against any of the Developer's architects, engineers, contractors or other consultants. Except as set forth in this Section 3.01, no provision of this Agreement shall in any way limit the extent of the responsibility of the Developer for payment of damages resulting from the operations of the Developer, its agents and employees. Nothing in this Section 3.01 shall be understood or construed to mean that the Developer agrees to indemnify the Local Agency, the Authority or any of its respective officers, directors, employees or agents, for any negligent or wrongful acts or omissions to act of the Local Agency, Authority its officers, employees, agents or any consultants or contractors.

Audit. The Local Agency shall have the right, during normal business hours and upon the giving of ten days' written notice to the Developer, to review all books and records of the Developer pertaining to costs and expenses incurred by the Developer (for which the Developer seeks reimbursement) in constructing the Acquisition Improvements.

Cooperation. The Local Agency and the Developer agree to cooperate with respect to the completion of the SCIP financing for the Acquisition Improvements. The Local Agency and the Developer agree to meet in good faith to resolve any differences on future matters which are not specifically covered by this Agreement.

General Standard of Reasonableness. Any provision of this Agreement which requires the consent, approval or acceptance of either party hereto or any of their respective employees, officers or agents shall be deemed to require that such consent, approval or acceptance not be unreasonably withheld or delayed, unless such provision expressly incorporates a different standard. The foregoing provision shall not apply to provisions in the Agreement which provide for decisions to be in the sole discretion of the party making the decision.

Third Party Beneficiaries. The Authority and its officers, employees, agents or any consultants or contractors are expressly deemed third party beneficiaries of this Agreement with respect to the provisions of Section 3.01. It is expressly agreed that, except for the Authority with respect to the provisions of Section 3.01, there are no third party beneficiaries of this Agreement, including without limitation any owners of bonds, any of the Local Agency's or the Developer's contractors for the Acquisition Improvements and any of the Local Agency's, the Authority's or the Developer's agents and employees.

Conflict with Other Agreements. Nothing contained herein shall be construed as releasing the Developer or the Local Agency from any condition of development or requirement imposed by

any other agreement between the Local Agency and the Developer, and, in the event of a conflicting provision, such other agreement shall prevail unless such conflicting provision is specifically waived or modified in writing by the Local Agency and the Developer.

Notices. All invoices for payment, reports, other communication and notices relating to this Agreement shall be mailed to:

If to the Local Agency:

City of Morgan Hill
[*Address to come*]

If to the Developer:

[Developer]
[*Address to come*]

Either party may change its address by giving notice in writing to the other party.

Severability. If any part of this Agreement is held to be illegal or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall be given effect to the fullest extent reasonably possible.

Governing Law. This Agreement and any dispute arising hereunder shall be governed by and interpreted in accordance with the laws of the State of California.

Waiver. Failure by a party to insist upon the strict performance of any of the provisions of this Agreement by the other party, or the failure by a party to exercise its rights upon the default of the other party, shall not constitute a waiver of such party's right to insist and demand strict compliance by the other party with the terms of this Agreement.

Singular and Plural; Gender. As used herein, the singular of any word includes the plural, and terms in the masculine gender shall include the feminine.

Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original.

Successors and Assigns. This Agreement is binding upon the heirs, assigns and successors-in-interest of the parties hereto. The Developer may not assign its rights or obligations hereunder, except to successors-in-interest to the property within the District, without the prior written consent of the Local Agency.

Remedies in General. It is acknowledged by the parties that the Local Agency would not have entered into this Agreement if it were to be liable in damages under or with respect to this Agreement or the application thereof, other than for the payment to the Developer of any (i) moneys owing to the Developer hereunder, or (ii) moneys paid by the Developer pursuant to the provisions hereof which are misappropriated or improperly obtained, withheld or applied by the Local Agency.

In general, each of the parties hereto may pursue any remedy at law or equity available for the breach of any provision of this Agreement, except that the Local Agency shall not be liable in damages to the Developer, or to any assignee or transferee of the Developer other than for the payments to the Developer specified in the preceding paragraph. Subject to the foregoing, the Developer covenants not to sue for or claim any damages for any alleged breach of, or dispute which arises out of, this Agreement.

[The remainder of this page intentionally left blank]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year written above.

CITY OF MORGAN HILL

By: _____
[City Manager]

ATTEST:
City Clerk of the City of Morgan Hill

By: _____

[DEVELOPER],
a [here indicate type of legal entity]

By: _____
Signature

Print Name

Exhibit A to the Acquisition Agreement

DESCRIPTION OF ACQUISITION IMPROVEMENTS AND BUDGETED AMOUNTS

[To be completed based on Final Engineer's Report]

Funding includes amounts for incidental costs associated with the capital improvements, including, but not limited to, contingency, design, engineering, and construction management.

ACQUISITION IMPROVEMENTS	TOTAL AMOUNT*
☐	\$ ☐
☐	\$ ☐

* Estimated. Acquisition Price will be determined based on Actual Cost as further described in this Acquisition Agreement.

Exhibit B to the Acquisition Agreement

FORM OF SCIP REQUISITION

To: BLX Group LLC
SCIP Program Administrator
777 S. Figueroa St., Suite 3200
Los Angeles, California 90017
Attention: Vo Nguyen
Fax: 213-612-2499

Re: Statewide Community Infrastructure Program

The undersigned, a duly authorized officer of the CITY OF MORGAN HILL hereby requests a withdrawal from the [DEVELOPER] ACQUISITION ACCOUNT, as follows:

Request Date: [Insert Date of Request]

Name of Developer: [Developer]

Withdrawal Amount: [Insert Acquisition Price]

Acquisition Improvements: [Insert Description of Acquisition Improvement(s) from Ex. A]

Payment Instructions: [Insert Wire Instructions or Payment Address for Developer]

The undersigned hereby certifies as follows:

1. The Withdrawal is being made in accordance with a permitted use of such monies pursuant to the Acquisition Agreement, and the Withdrawal is not being made for the purpose of reinvestment.
2. None of the items for which payment is requested have been reimbursed previously from other sources of funds.
3. If the Withdrawal Amount is greater than the funds held in the Acquisition Account, the SCIP Program Administrator is authorized to amend the amount requested to be equal to the amount of such funds.
4. To the extent the Withdrawal is being made prior to the date bonds have been issued on behalf of SCIP, this withdrawal form serves as the declaration of official intent of the CITY OF MORGAN HILL, pursuant to Treasury Regulations 1.150-2, to reimburse with respect expenditures made from the Acquisition Account listed above in the amount listed above.

CITY OF MORGAN HILL

By: _____

Title: _____

EXHIBIT C TO THE RESOLUTION

ELIGIBLE FACILITIES AND FEES

Eligible facilities and fees that may be financed by a CFD formed by CSCDA through SCIP include all improvements and fees authorized under the Mello-Roos Act, including but not limited to the following:

Transportation Improvements

Eligible roadway improvements include, but are not limited to: acquisition of land and easements; roadway design; project management; bridge crossings and culverts; clearing, grubbing, and demolition; grading, soil import/export, paving (including slurry seal), and decorative/enhanced pavement concrete and/or pavers; joint trenches, underground utilities and undergrounding of existing utilities; dry utilities and appurtenances; curbs, gutters, sidewalks, bike trails (including onsite and off-site), enhanced fencing, and access ramps; street lights, signalization, and traffic signal control systems; bus turnouts; signs and striping; erosion control; median and parkway landscaping and irrigation; entry monumentation; bus shelters, bus and transit improvements including transfer stations and regional public transit improvements; masonry walls; traffic control and agency fees; and other improvements related thereto. Eligible improvements for the roads listed herein also include any and all necessary underground potable and recycled water, sanitary sewer, and storm drainage system improvements.

Water System Improvements

Authorized facilities include any and all water facilities designed to meet the needs of development within the CFD. These facilities include, but may not be limited to: water storage, treatment and distribution facilities including waterlines and appurtenances, gate valves, pressure reducing stations, flow meters, fire hydrants, and other improvements related thereto such as site clearing, grading and paving; curbs and gutters; booster pump stations & power; stand-by generators; site lighting, drainage, sanitary sewer, and water service; landscaping and irrigation; access gates, and fencing; and striping and signage.

Recycled Water System Improvements

Authorized facilities include any and all recycled water system facilities designed to meet the needs of development within the CFD. These facilities include, but may not be limited to: treatment and distribution facilities including pipelines and appurtenances, gate valves, flow meters, booster pump pressurization system, and other improvements related thereto - such as site clearing, grading and paving; curbs and gutters; booster pump stations; stand-by generators; site lighting, drainage, sanitary sewer, and water service; landscaping and irrigation; access gates, and fencing; and striping and signage.

Drainage System Improvements

Authorized facilities include any and all drainage and storm drain improvements designed to meet the needs of development within the CFD. These facilities include, but may not be limited to: excavation and grading, pipelines and appurtenances, outfalls and water quality measures, detention/retention basins, drainage pretreatment facilities, drainage ways/channels, pump stations, landscaping and irrigation; access roads, gates, and fencing; and striping and signage and

other improvements related thereto.

Wastewater System Improvements

Authorized facilities include any and all wastewater facilities designed to meet the needs of development within the CFD. These facilities include, but may not be limited to, pipelines and all appurtenances thereto; manholes; tie-in to existing main lines; force mains; lift stations; upgrades to existing lift stations; odor-control facilities; and permitting related thereto; and related sewer system improvements.

Park, Parkway and Open Space Improvements

Authorized facilities include any and all improvements to parks, parkways and open space required for development within the CFD. These facilities include, but may not be limited to: grading, turf, shrubs and trees, landscaping irrigation, site lighting, drainage, sanitary sewer and water service, pedestrian and bicycle trails, protective fencing (including soundwalls), pedestrian/bicycle bridges, storm drain crossings, wetland mitigation, hawk mitigation for authorized facilities herein, access gates and fencing and related open space improvements. Authorized facilities include acquisition of any and all parkland as well as open space/bike trail/public access easements required for development within the CFD.

School and Educational Facilities

Authorized facilities include classroom renovation, updates to school safety and security systems, technology improvements, energy efficiency improvements, school modernization and retrofitting, and new classroom and school construction as required for development within the CFD.

Development Impact Fees

Authorized facilities include the direct funding of any of the above referenced facility types for which the Local Agency collects a development impact fee.

Other Incidental Expenses and Bond Issuance Costs

In addition to the above facilities, other incidental expenses as authorized by the Mello-Roos Community Facilities Act of 1982, including, but not limited to, the cost of planning and designing the facilities (including the cost of environmental evaluation, remediation and mitigation); engineering and surveying; construction staking; utility relocation and demolition costs incidental to the construction of the public facilities; costs of project/construction management; costs (including the costs of legal services) associated with the formation of the CFD; issuance of bonds (if any); determination of the amount of taxes; collection of taxes; payment of taxes; costs of calculating and providing reimbursements from one-time special tax payments; or costs otherwise incurred in order to carry out the authorized purposes of the CFD; and any other expenses incidental to the formation and implementation of the CFD and to the construction, completion, inspection and acquisition of the authorized facilities.

EXHIBIT D TO THE RESOLUTION

FORM OF INCREASED DEMANDS CERTIFICATE

To: California Statewide Communities Development Authority

Re: Statewide Community Infrastructure Program – Community Facilities District for
[*Project*]

The undersigned, a duly authorized officer of the CITY OF MORGAN HILL (the “Local Agency”) hereby certifies that the public capital improvements and development impact fees identified below are necessary to meet increased demands placed upon the Local Agency as a result of development within the proposed community facilities district for the [*Project*]:

[*List improvements/fees here*]

CITY OF MORGAN HILL

By: _____

Title: _____

EXHIBIT E TO THE RESOLUTION

CITY OF MORGAN HILL CONTACTS FOR SCIP PROGRAM

Primary Contact

Name: Matt Mahood
Title: Economic Development Director
Mailing Address: 17575 Peak Avenue, Morgan Hill, CA 95037
Delivery Address (if different):
E-mail: matt.mahood@morganhill.ca.gov
Telephone: 408-310-4652
Fax: 408-778-1564

Secondary Contact

Name: Dat Nguyen
Title: Finance Director
Mailing Address: 17575 Peak Avenue, Morgan Hill, CA 95037
Delivery Address (if different):
E-mail: dat.nguyen@morganhill.ca.gov
Telephone: 408-776-7379
Fax: 408-778-1564

[Add additional contacts as needed]

CERTIFICATION OF RESOLUTION

I, the undersigned, the duly appointed and qualified City Clerk of the City of Morgan Hill, do hereby certify that the foregoing Resolution No. _____ was duly adopted at a regular meeting of the City Council of the City of Morgan Hill duly and regularly held at the regular meeting place thereof on the _____ day of _____, 2023, of which meeting all of the members of said City Council had due notice and at which a majority thereof were present.

An agenda of said meeting was posted at least 72 hours before said meeting at _____, a location freely accessible to members of the public, and a brief description of said resolution appeared on said agenda.

Notice of public was published in [name of newspaper] at least 5 days prior to the hearing.

I have carefully compared the foregoing with the original minutes of said meeting on file and of record in my office, and the foregoing is a full, true and correct copy of the original resolution adopted at said meeting and entered in said minutes.

Said resolution has not been amended, modified or rescinded since the date of its adoption and the same is now in full force and effect.

Dated: _____, 2023



City Clerk of the City of Morgan Hill

By: _____

CITY COUNCIL STAFF REPORT

MEETING DATE: September 6, 2023

PREPARED BY:

Rebecca Garcia, Housing Director

APPROVED BY: City Manager

APPROVE CONDITIONAL FUNDING FOR THE MAGNOLIAS AFFORDABLE HOUSING DEVELOPMENT BY FIRST COMMUNITY HOUSING AND EDEN HOUSING (FCH-EDEN) FROM DESIGNATED HOUSING FUNDS

RECOMMENDATION(S)

Approve conditional funding for the FCH-Eden Housing Project, "The Magnolias," in the amount of \$600,000, contingent on FCH-Eden's ability to obtain the remaining gap funds, and subject to an agreement negotiated by the City Attorney.

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Enhancing Diversity and Inclusiveness

Advancing Regional Initiatives

2022-2023 Strategic Priorities

Affordable Housing and Homelessness

Guiding Documents

Morgan Hill 2035 General Plan

REPORT NARRATIVE:

POLICY CONSIDERATIONS:

1. Should the City Council invest affordable housing funds to support the creation of housing for farmworkers and families experiencing homelessness?
2. Should the City Council partner with FCH-Eden on the Magnolias project to help the City meet its Regional Housing Needs Allocation (RHNA) requirements?

REPORT NARRATIVE:

In April 2021, First Community Housing, in partnership with Eden Housing, received entitlements to construct 66 units of multifamily housing on a 1.5-acre site located at 17965 Monterey Road, east of the Morgan Hill Adult School. The project is 100% affordable, for households earning 30% to 60% of the Area Median Income (AMI).

The project consists of 16 studios, 16 one-bedroom units, 17 two-bedroom units, and 17 three-bedroom units. Ten units will serve families in need of rapid rehousing, 7 units will serve veterans supported by VASH vouchers receiving services from the VA, and 28 units will be set aside for families of farmworkers. In addition to the VASH vouchers, 16 units will be supported by Section 8 Project-Based Vouchers. The project's common areas will include the Social Service Coordinators' offices, open lounge/seating areas, a central laundry facility, indoor and outdoor play spaces for kids of all ages, secured bicycle storage, pet washing facilities, and a community garden area. Parking will be provided at a rate of one space per unit in a surface lot behind the building.

The project applied for State Housing and Community Development (HCD) Joe Serna funds through HCD's 2023 Super NOFA on July 12, 2023. Assuming the project receives the necessary HCD approvals by late 2023/early 2024, the project will be able to qualify for State tax credits. An application for Federal and State tax credits is expected to be submitted in Q1 2024. The allocation of bonds and tax credits will occur in Q3 2024, with anticipated financial closing and initiation of construction in Fall 2024 and potential completion by early 2026.

Project Funding

The Magnolias project is expected to cost nearly \$69 million. The project has been awarded \$13.2 million of Measure A funds in June 2022 and is seeking an additional \$11.0 million of State HCD Serna funds through the 2023 Super NOFA. If successful with remaining State and City funding requests, the project will close its funding gap and be lined up for construction in Fall 2024. To support this project, staff recommends a local contribution of \$600,000 from the City's Housing Fund, contingent on the developer's ability to obtain a commitment for the remaining gap funding, which would need to occur within approximately 365 days of an executed agreement. Below is a detailed breakdown of the anticipated funding sources:

- Tax-Exempt Construction Loan: \$36,070,286
- Taxable Construction Loan: \$2,695,373
- Santa Clara County Measure A Award: \$13,200,000
- HCD SuperNOFA Serna Award (anticipated): \$11,018,009
- Deferred Costs: \$1,660,004
- Capital Contributions: \$3,541,629
- Morgan Hill Award (pending Council approval): \$600,000
- Total: \$68,785,301

Housing Element

The Housing Element of the City's General Plan is Morgan Hill's comprehensive statement of its housing needs and goals. It identifies actions to meet the housing needs of the full spectrum of city residents at all income levels. The purpose of the Housing Element is to establish specific goals, policies, and objectives relative to the provision of housing for all income levels and an action plan. Additionally, the Housing Element is the guiding policy document used to evaluate housing recommendations to ensure that policies and funding recommendations align. In order to have a Housing Element certified by the State Housing and Community Development Department

(HCD), the City must demonstrate how the community will meet the existing and projected housing needs. The City is required to submit an Annual Progress Report to HCD on the progress made in the creation of housing units by income category in relation to the City-assigned Regional Housing Needs Allocation (RHNA) goals. On January 25, 2023, the Morgan Hill City Council adopted the Housing Element for the Planning Period: January 31, 2023, to January 31, 2031. The City is continuing to work with HCD on certification of the adopted Housing Element. A third round of HCD review will begin in late September.

This project supports the City's Housing Element goals:

- Goal 1: Provide a diversified housing stock to meet the full range of future community housing needs
- Goal 2: Encourage Extremely Low-Income (ELI) housing production, increasing the availability of affordable and workforce housing
- Goal 3: Advance equity and inclusion throughout the City
- Goal 4: Promote Housing for people experiencing homelessness

Farmworker Housing

In 2014, the County of Santa Clara Planning Department conducted a small sampling of focus groups and interviews with South County farmworkers, service providers, the farm bureau, and school liaisons to begin to understand the housing needs that were occurring among the farmworker population. The interviews conducted showed that the farmworkers were living in substandard and overcrowded conditions, demonstrating the need for affordable and livable housing. The County adopted a farmworker housing goal in the County's Housing Element in 2014. In April 2017, the County Planning Department issued an Informal Competitive Procurement for "Preparing a Farmworker Housing Needs Assessment." Due to the cost of the assessment, the County decided to partner with the City of Morgan Hill to begin to complete their research. In January 2018, there was a joint "roundtable" discussion with South County stakeholders at the City of Morgan Hill, which led the County to conduct a broader "Farmworker Housing Survey" specific to South County. The results indicated an unmet demand for approximately 700 permanent family residences and seasonal housing for approximately 1,400 farmworkers. Efforts are needed at both the City and County level to improve housing conditions for farmworkers in both the incorporated and unincorporated areas.

Conclusion:

The Magnolias project supports the strategies outlined in the City's Housing Element. This project is unique in that it will serve two underserved populations, people experiencing homelessness and the City's agricultural workforce. It will also aid the City in achieving Extremely Low Income (ELI), Very Low Income (VLI), and Low Income RHNA units, as 66 units are for households earning 30% to 60% of the area median income (AMI). The City provides financial contributions to projects that advance the City's affordable housing goals. In recent years, the Council approved funding for the Morgan Hill Family Apartments, The Royal Oak Village, and the Crossings. FCH-Eden

is committed to building cost-effective, service-enriched housing development within the City and both developers have been consistent, reliable, and collaborative partners with the City. Staff recommends approval of a \$600,000 contribution to the project as this project will serve farmworker families and people experiencing homelessness or at risk of, and contribute to the City's required RHNA allocation for the 6th Cycle (2023-2031).

COMMUNITY ENGAGEMENT:

This staff report serves to inform the community of the proposed pledge to fund a portion of the FCH-Eden affordable housing project.

ALTERNATIVE ACTIONS:

The Council may choose not to pledge \$600,000 and reconsider the City's contribution once the remaining gap funds have been secured or pledge a different amount.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The City Council approved four concessions for the 100 percent affordable project on January 20, 2021.

The Planning Commission approved a Conditional Use Permit and Design Permit on November 23, 2021.

FISCAL AND RESOURCE IMPACT:

The City's Housing In-Lieu Fee is collected pursuant to the Inclusionary Housing Ordinance, whereby housing developers contribute funds to support the City's provision of affordable housing. The fund supports acquisition, construction, development assistance, rehabilitation, financing, rent subsidies, or other efforts that support the administration of such programs. Funding for this purpose was programmed in FY22-23 Housing Mitigation Fund (236). With the Council approval, \$600,000 will be reappropriated to FY23-24.

CEQA (California Environmental Quality Act):

The project is for funding purposes only and therefore, the project is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3), as there no possibility that funding the project will cause a significant effect on the environment. Further CEQA review will be performed on the site as part of the entitlement application process.

CITY COUNCIL STAFF REPORT

MEETING DATE: September 6, 2023

PREPARED BY:

Michelle Bigelow, City Clerk

APPROVED BY: City Manager

PROVIDE DIRECTION REGARDING CITY COUNCIL TERM LIMITS

RECOMMENDATION(S)

Provide direction to staff regarding the drafting of an ordinance creating term limits that would be submitted to the voters in November 2024.

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Fostering a Positive Organizational Culture

Preserving and Cultivating Public Trust

Enhancing Diversity and Inclusiveness

REPORT NARRATIVE:

At the June 7, 2023 City Council meeting, the Council voted to direct staff to research term limits. The City of Morgan Hill does not have term limits for the Council or commissions. Should the City Council want to put term limits in place for the elected positions of Mayor and Council Member, it would require voter approval.

Government Code Section 36502(b) specifies that the City Council or the residents of the City may propose, by initiative, a proposal to limit the number of terms a member of the City Council may serve on the City Council or the number of terms an elected mayor may serve. Any proposal to limit the number of terms a member of the city council may serve on the city council, or the number of terms an elected mayor may serve, shall apply prospectively only and shall not become operative unless the proposition is submitted to the electors of the City at a regularly scheduled election and a majority of the votes cast favor its adoption. Limitations may be placed on the number of consecutive terms that Council Members may serve and may also be placed on the number of terms that a person may serve during their lifetime.

There are a few term-limit ordinances currently being used throughout the state, and they generally fall within four models:

- Two or three consecutive terms of four years for Council Members and two or more terms of two years for the Mayor, followed by a hiatus of a specified duration (typically 1, 2, or 4 years) before the incumbent is eligible to seek election to additional terms.
- Two or three consecutive terms of four years for Council Members and two or more terms of two years for the Mayor.

- Eight or ten-year maximum consecutive terms for Council Members and the Mayor, followed by a hiatus of a specified duration (typically 1, 2, or 4 years) before the incumbent is eligible to seek election to additional terms.
- Eight or ten-year maximum consecutive terms for Council Members and the Mayor.

In addition, pursuant to Government Code Section 36502(b), a term limit ordinance applies prospectively only. This means that any term of office that commenced prior to the effective date of a term limit ordinance would not count as a term served for purposes of implementing the ordinance.

For purposes of discussion, the Council is asked to consider the following points:

- The number of terms a Council Member/Mayor may serve consecutively
- Whether to allow a hiatus between terms when the imposed limit has been reached or create a lifetime term limit
- The period of hiatus between terms, if desired, when the imposed limit has been reached
- Whether to limit terms for Commissioners

If the City Council wishes to put terms limits in place, it is asked to provide direction to staff on the specific model of term limits it wants to move forward with (examples outlined above) and to direct staff to bring back a staff report for adoption of a resolution placing a term limit ordinance on the November 2024 ballot.

COMMUNITY ENGAGEMENT:

This report serves to inform the community of the City Council's discussion regarding term limits.

ALTERNATIVE ACTIONS:

The City Council may direct staff to take no further action.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On May 3, 2023, the Council directed staff to bring back this topic for Council consideration. On June 7, 2023, the Council directed staff to research term limits and bring information back to the City Council to review and provide direction.

FISCAL AND RESOURCE IMPACT:

There is no fiscal impact associated with seeking direction from the Council on this item. Should the City Council move forward with placing a measure on the ballot the estimated cost would be \$60,000.

CEQA (California Environmental Quality Act):

Not a Project.

Organizational or administrative activities of governments will not result in direct or indirect physical changes in the environment.



State of California

GOVERNMENT CODE

Section 36502

36502. (a) A person is not eligible to hold office as councilmember, city clerk, or city treasurer unless he or she is at the time of assuming the office an elector of the city, and was a registered voter of the city at the time nomination papers are issued to the candidate as provided for in Section 10227 of the Elections Code.

If, during his or her term of office, he or she moves his or her place of residence outside of the city limits or ceases to be an elector of the city, his or her office shall immediately become vacant.

(b) Notwithstanding any other provision of law, the city council of a general law or charter city may adopt or the residents of the city may propose, by initiative, a proposal to limit or repeal a limit on the number of terms a member of the city council may serve on the city council, or the number of terms an elected mayor may serve. Any proposal to limit the number of terms a member of the city council may serve on the city council, or the number of terms an elected mayor may serve, shall apply prospectively only and shall not become operative unless it is submitted to the electors of the city at a regularly scheduled election and a majority of the votes cast on the question favor the adoption of the proposal. Notwithstanding the provisions of this subdivision, the provisions of any city charter that, on January 1, 1996, impose limitations on the number of terms a member of the city council may serve on the city council, or the number of terms an elected mayor may serve, shall remain in effect. Unless otherwise prohibited by a city charter, any city charter may be amended pursuant to this section or pursuant to the procedures specified in the charter, to include the limitation authorized in this subdivision.

(Amended by Stats. 1995, Ch. 432, Sec. 5. Effective January 1, 1996.)

CITY COUNCIL STAFF REPORT

MEETING DATE: September 6, 2023

PREPARED BY:

Hilary Holeman, Administrative Analyst

APPROVED BY: City Manager

APPROVE CODE OF CONDUCT FOR PUBLIC MEETINGS IN THE COUNCIL CHAMBER AND CONFERENCE ROOMS

RECOMMENDATION(S)

Approve City Council Policy, "Code of Conduct for Public Meetings in the Council Chamber and Conference Rooms"

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Enhancing Public Safety

Fostering a Positive Organizational Culture

Preserving and Cultivating Public Trust

REPORT NARRATIVE:

On August 22, 2022, Governor Gavin Newsom signed into law SB 1100, authored by Senator Dave Cortese, designed to address disruptions at public local government meetings. SB 1100 amends the Ralph M. Brown Act (Brown Act) to provide clarification regarding the authority of a local agency's governing body to remove a disruptive member of the public from an open meeting, in order to maintain order during the meeting. The California Legislature enacted SB 1100 partially in response to an escalation of threats made against public officials during open meetings, as agencies sought to enact restrictions designed to slow the spread of the coronavirus. SB 1100 aims to protect the public and public officials from threats and ensure that public access is not impeded by disruptive behavior.

The City of Morgan Hill is not immune to disruptive behavior and SB 1100 is in line with best practice and industry standards to ensure diversity, equity and inclusion in participation while maintaining a safe and respectful public meeting. Staff recommends the City Council approve the attached "Code of Conduct for Public Meetings in the Council Chamber and Conference Rooms" to ensure the public's business can continue in a safe, orderly, and open fashion.

COMMUNITY ENGAGEMENT:

Inform

This report serves to inform the community about City Council's consideration of a Code of Conduct Policy for public meetings.

ALTERNATIVE ACTIONS:

The City Council could choose to make changes to the draft policy or not approve a policy.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

None.

FISCAL AND RESOURCE IMPACT:

There is no fiscal impact associated with approving this policy.

CEQA (California Environmental Quality Act):

Not a Project

Organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment.

CITY OF MORGAN HILL

CITY COUNCIL POLICIES AND PROCEDURES

CP-xx-xx

SUBJECT: CODE OF CONDUCT FOR PUBLIC MEETINGS IN THE COUNCIL CHAMBER AND CONFERENCE ROOMS

EFFECTIVE DATE: XXXXXXXX, 2023

ORIGINATING DEPARTMENT: CITY ATTORNEY

PURPOSE

The purpose of this policy is to establish rules of decorum for members of the public attending, bringing signs or other objects to, and/or addressing the legislative or policy body at meetings held in the Council Chamber and Conference Rooms, including meetings of the City Council and Commissions. The policy is intended to facilitate the conduct of public meetings in an open and orderly manner and in an environment safe for all persons in attendance.

SCOPE

This policy applies to persons attending public meetings in the Council Chamber and Conference Rooms.

POLICY

The Code of Conduct is intended to promote open meetings that welcome debate of public policy issues being discussed by the City Council and Commissions in an atmosphere of fairness, courtesy, and respect for differing points of view.

1. Public Meeting Decorum:

- a) Persons in the audience will refrain from behavior which will disrupt the public meeting. This includes making loud noises, clapping, shouting, booing, hissing, or engaging in any other activity in a manner that disturbs, disrupts, or impedes the orderly conduct of the meeting.
- b) Persons in the audience will refrain from creating, provoking, or participating in any type of disturbance involving unwelcome physical contact.
- c) Persons in the audience will refrain from speaking to others in person and/or on the phone in the Council Chamber or Conference Rooms while the meeting is in session.
- d) Appropriate attire, including shoes and shirts are always required in the Council Chamber and Conference Rooms.
- e) Persons in the audience will not place their feet on the seats in front of them.

2. Signs, Objects, or Symbolic Material:

- a) Objects and symbolic materials, such as signs or banners, will be allowed in the Council Chambers and Conference Rooms, with the following restrictions:
 - i. No objects will be larger than 2 feet by 3 feet.
 - ii. No sticks, posts, poles, or other such items will be attached to the signs or other symbolic materials.
 - iii. The items cannot create a building maintenance problem or a fire or safety hazard.
- b) Persons with objects and symbolic materials such as signs must remain seated when displaying them and must not raise the items above shoulder level, obstruct the view or passage of other attendees, or otherwise disturb the business of the meeting.
- c) Objects that are deemed a threat to persons at the meeting or the facility infrastructure are not allowed. City staff is authorized to remove items and/or individuals from the Council Chamber and Conference Rooms if a threat exists or is perceived to exist. Prohibited items include, but are not limited to: firearms (including replicas and antiques), toy guns, explosive material, and ammunition; knives and other edged weapons; illegal drugs and drug paraphernalia; laser pointers, scissors, razors, scalpels, box cutting knives, and other cutting tools; letter openers, corkscrews, can openers with points, knitting needles, and hooks; hairspray, pepper spray, and aerosol containers; tools; glass containers; and large backpacks and suitcases that contain items unrelated to the meeting.

3. Addressing the Council or Commission:

- a) Please see Section 6. Public Comment of City Council Policy 97-01, for information on addressing the City Council or Commission.
- b) Speakers should discuss topics related to City business on the agenda unless they are speaking during public comment for items not on the agenda.
- c) Speakers' comments should be addressed to the full body. Requests to engage the Mayor, Council Members, Commissioners, or staff in conversation will not be honored. Abusive language is inappropriate and subject to removal from meeting.
- d) Speakers will not bring to the podium any items other than a prepared written statement, writing materials, or objects that have been inspected by security staff.
- e) If an individual wishes to submit written information, he or she may give it to the City Clerk or other administrative staff at the meeting.
- f) Speakers and any other members of the public will not approach the dais at any time without prior consent from the Chair of the meeting.

Failure to comply with this Code of Conduct which may disturb, disrupt, or impede the orderly conduct of the meeting may result in removal from the meeting and/or possible arrest.

This policy shall remain in effect until modified by the City Council.

APPROVED:

MARK TURNER, MAYOR

DRAFT

CITY COUNCIL STAFF REPORT

MEETING DATE: September 6, 2023

PREPARED BY:

Christina Turner, City Manager

APPROVED BY: City Manager

PROVIDE DIRECTION TO STAFF ON PROPOSED FUTURE COUNCIL INITIATED AGENDA ITEMS

RECOMMENDATION(S)

Determine if the majority of the City Council want the following items agendized at a future meeting for discussion:

1. Consider prohibiting pedestrians on median islands; and
2. Consider restoring the use of natural gas in new construction.

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Enhancing Public Safety and Quality of Life

Supporting our Youth, Seniors, and Entire Community

REPORT NARRATIVE:

Section 4.2 of City Council Policy 97-01 (Attachment 1) allows members of the City Council to request items be added to an upcoming City Council agenda by requesting an item during the "Future Council Initiated Agenda Items" section of the agenda. A City Council report will then be placed on an upcoming agenda for Council discussion and consideration.

Below are brief descriptions of the items proposed on June 7, 2023 for Council consideration.

Consider prohibiting pedestrians on median islands (requested by Mayor Turner, Attachment 2)

Pedestrians in the center medians for panhandling and fundraising purposes has become more common and presents several public safety hazards. The presence of a pedestrian in a center median can distract motorists as their attention could be drawn to the pedestrian and away from vehicle traffic on the roadway. This distraction could lead to collisions and potential injuries. Also, if the pedestrian were to leave the median and enter the roadway, the pedestrian could be involved in a collision resulting in serious injuries.

Some cities have enacted an ordinance prohibiting persons remaining on public medians for purposes other than the purpose of assisting pedestrians to safely cross the street, although many of the ordinances regulating pedestrians in medians have been, or are being challenged on constitutional grounds. Additionally, the adoption of such an ordinance would require enforcement staffing resources.

Staff is seeking direction on whether the City Council would like this item agendaized to discuss prohibiting pedestrians on median islands for panhandling and fundraising purposes.

The estimated staff time to prepare a full City Council Staff Report on this topic is approximately 1 hour.

Consider restoring the use of natural gas in new construction (requested by Mayor Turner, Attachment 3)

On November 6, 2019, the City Council adopted an Ordinance (No. 2306, Attachment 4) adding Chapter 15.63 (Prohibition of Natural Gas Infrastructure in New Buildings) to Title 15 (Buildings and Construction) to the Morgan Hill Municipal Code prohibiting natural gas infrastructure in new buildings effective March 1, 2020 in an effort to reduce climate impacts by requiring new buildings to be all electric.

Repealing Ordinance No. 2306 N.S., § 1, 11-6-2019, would remove the requirement completely from the Municipal Code and would be inconsistent with the City's Climate Action Plan (CAP). Alternatively, the Council could pass an Ordinance updating the Municipal Code to set an effective date for the Code to begin at a future date, giving PG&E time to improve its infrastructure, and remain consistent with our CAP. Another option could be to direct the City Manager to provide a blanket public interest exemption for all projects requesting the use of natural gas for a certain amount of time with the intent to reduce the impact on the electric grid.

Staff is seeking direction on whether the City Council would like this item agendaized to discuss options for restoring the use of natural gas in new construction.

The estimated staff time to prepare a full City Council Staff Report on this topic is approximately 2 hours.

COMMUNITY ENGAGEMENT:

This report is seeking direction from the City Council on whether or not to further agendaize these topics for Council consideration.

ALTERNATIVE ACTIONS:

Not Applicable

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On June 7, 2023, the Council directed staff to bring back these topics for Council consideration.

FISCAL AND RESOURCE IMPACT:

There is no fiscal impact associated with seeking direction from the Council on this item.

CEQA (California Environmental Quality Act):

Not a Project.

Organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment.

CITY OF MORGAN HILL

CITY COUNCIL POLICIES AND PROCEDURES

CP-97-01

SUBJECT: RULES FOR THE CONDUCT OF CITY COUNCIL MEETINGS, PLACEMENT OF ITEMS ON THE AGENDA, AND MATTERS TO BE RECONSIDERED

EFFECTIVE DATE: May 7, 1997

REVISED DATE: March 15, 2023

ORIGINATING DEPARTMENT: CITY MANAGER

SECTION 1 - SCOPE

- 1.1** These rules shall establish the procedures for the conduct of all meetings of the City Council of the City of Morgan Hill. The purpose of these rules is to provide procedures consistent with the Ralph M. Brown Act, establish procedures which will be convenient for the public, be fair to all members of the City Council, and contribute to the orderly conduct of City business.

SECTION 2 - MEETINGS

- 2.1** Open to Public: All meetings of the City Council, whether regular or special, shall be open to the public, unless a closed session is scheduled as authorized by law.
- 2.2** Regular Meetings: The City Council shall conduct its regular meetings at the time and place established by ordinance, if specified in the ordinance or resolution.
- 2.3** Review Status of Agenda at 9:00 p.m.: The City Council may review the agenda at 9:00 p.m. to determine if it will be able to conclude its business by 10:00 p.m. If, at 10:00 p.m., the City Council has not concluded its business, before continuing the meeting it shall review and discuss the status of the remaining agenda items and determine by majority vote whether to continue any remaining items to a future regular or special meeting, adjourn the meeting to another date and time, or extend the meeting beyond 10:00 p.m. as needed. The meeting may be extended beyond 10:00 p.m. one time. Additional extensions of time will be at the Mayor's discretion.
- 2.4** Special Meetings/Workshops: A special meeting and/or workshop may be called at any time by the Mayor or Presiding Officer of the City Council or by three members of the City Council. Written notice of any such meeting must specify the purpose of the meeting. Notice of the meeting must be made in accordance with the law.
- 2.5** Closed Sessions: The City Council may hold closed sessions during a regular or special meeting, or at any time authorized by law, to consider or hear any matter which is authorized by law. At times, Closed Sessions may have to be held in an order different than presented due to the timeliness of the matter, to save the City money when an outside attorney has been retained or due to the need for extra time to discuss and deliberate an

important closed session item. Closed session items may be continued to the conclusion of the agenda.

- 2.6 Quorum:** Three (3) members of the City Council shall constitute a quorum and shall be sufficient to transact business. If less than three Council members appear at a regular meeting, the Mayor, Mayor Pro Tempore in the absence of the Mayor, any member of the City Council, or in the absence of all Council members, the City Clerk or Deputy City Clerk shall adjourn the meeting to a stated day and hour.
- 2.7 Adjourned Meetings:** The City Council may adjourn any regular, adjourned regular, special, or adjourned special meeting to a time and place specified in the order of adjournment and permitted by law.

SECTION 3 - POSTING NOTICE AND AGENDA

- 3.1 Posting of Notice and Agenda:** For every regular or special meeting, the City Clerk or other authorized person, shall post a notice of the meeting specifying the time and place at which the meeting will be held and an agenda containing a brief description of all items of business to be discussed at the meeting. The notice and agenda may be combined in a single document.
- a. Posting for Regular Meetings:** For any regular meeting of the City Council, the notice and agenda shall be posted no later than seventy-two (72) hours prior to the time set for the meeting consistent with all Brown Act requirements.
 - b. Posting for Special Meetings:** For any special meetings of the City Council, the notice and agenda shall be posted no later than twenty-four (24) hours prior to the time set for the meeting consistent with all Brown Act requirements.
- 3.2 Location of Posting:** The notice and agenda shall be posted on the City's website and in a place to which the public has unrestricted access during at least normal business hours and where the notice and agenda are not likely to be removed or obscured by other posted materials.
- 3.3 Availability of the Agenda to the Public:** The agenda for any regular or special meeting shall be made available to the public as soon as is practical after delivery to the members of the City Council.

SECTION 4 - AGENDA CONTENTS

- 4.1 Description of Matters:** All items of business to be discussed at a meeting of the City Council shall be briefly described on the agenda. The description of the item and the proposed action to be considered should be set forth as clearly as practical so that members of the public will know the nature of the action under review and consideration.
- 4.2 Placement of items on the agenda:** The Mayor, City Manager, or City Attorney may place items on the agenda. Members of the City Council may request items to be added to an upcoming City Council agenda by requesting an item during the "Future Council Initiated Agenda Items" Section of the agenda. When a Future Council Initiated Agenda Item is requested, the Council Member making the request will send the City Manager a brief

City Council Policy 97-01
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summary outlining the request and any relevant background. If the requested item is not included in the current Strategic Priorities Workplan, the team will bring forward the item at a future Council Meeting within 30-45 days of the request via a brief staff report, including the brief summary provided by the requesting Council Member. At that meeting, the City Council will review the request and determine if the majority of the City Council wants the items agendaized at a future meeting for discussion.

- 4.3 Limitation to Act on Only Items on the Agenda:** No action shall be taken by the City Council on any item not on the posted agenda, subject only to the exceptions listed below:
- a. Upon a majority determination that an "emergency situation" (as defined by State Law) exists; and
 - b. Upon a determination by a 4/5 vote of the City Council that there is a need to take immediate action and that the need to take the action came to the attention of City officials subsequent to posting of the agenda.
- 4.4 Change in Order of Business:** The Mayor or Presiding Officer may decide to take matters listed on the agenda out of the prescribed order unless a majority of members present object to this variation.
- 4.5 City Council Reports:** On an alternating basis, at each Regular City Council meeting, with a time limit of three minutes, a Council Member has the opportunity to share with the Council and community any pertinent updates or information in regard to their appointments to outside agencies, upcoming events, or relevant City business. These are non-action items.
- 4.6 City Manager Report:** These are updates on current City activities, reports on issues raised at previous Council meetings, or recognitions. These are non-action items.
- 4.7 City Attorney Report:** These are updates on current City activities, reports on issues raised at previous Council meetings, or reportable actions of the City Council in Closed Sessions and/or current litigation. These are non-action items.
- 4.8 Other Reports:** These are pertinent updates or information on upcoming activities or events relevant to City business with a time limit of one minute. These are non-action items.
- 4.9 Public Comment for items not on the agenda:** This refers to those matters not scheduled on the agenda where a member of the public wants to address a matter of importance to the City Council. Since the matter is not on the agenda, no action by Council can be taken. If a member of Council so desires, the matter can be placed on the agenda of a future Council meeting for review and consideration.
- 4.10 Consent Calendar:** These are items of a routine or generally uncontested nature. Any member of the Council or member of the public may request to have an item pulled from the consent calendar and acted on individually by the Council. Items pulled will be discussed after action is taken on the balance of the consent calendar. The Mayor shall decide if the items are heard before or after moving on to public hearing and other business items.
- 4.11 Public Hearings:** These are matters that are duly noticed and published in a newspaper of general circulation and where required by law, written notice is given to the affected

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residents who have the opportunity to speak in favor or against a matter or ask questions about the matter.

4.12 Other Business: These are other matters of City business which are not appropriately placed on the consent calendar and do not require published notices and require Council action and direction.

4.13 Future Business: These are items that members of the City Council wish to discuss to potentially take action on or have placed on future agendas.

SECTION 5. ORDER OF BUSINESS

5.1 The order of business at meetings of the City Council shall be as follows:

- a. CALL TO ORDER
- b. ROLL CALL ATTENDANCE
- c. DECLARATION OF POSTING AGENDA
- d. WORKSHOP (if needed; 5:00-6:00 p.m., or as deemed appropriate)
- e. CLOSED SESSION (if needed; 6:00-7:00 p.m., or as deemed appropriate)
- f. SILENT INVOCATION
- g. PLEDGE OF ALLEGIANCE
- h. PRESENTATIONS
- i. PROCLAMATIONS
- j. RECOGNITIONS
- k. CITY COUNCIL REPORTS
- l. CITY MANAGER'S REPORT
- m. CITY ATTORNEY'S REPORT
- n. OTHER REPORTS
- o. PUBLIC COMMENT FOR ITEMS NOT ON THE AGENDA
- p. ADOPTION OF AGENDA
- q. CONSENT CALENDAR
- r. PUBLIC HEARINGS
- s. OTHER BUSINESS
- t. FUTURE COUNCIL INITIATED AGENDA ITEMS

u. CLOSED SESSION

v. ADJOURNMENT

SECTION 6. PUBLIC COMMENT

- 6.1 Public Comment:** Persons present at meetings of the City Council may comment on individual items on the agenda at the time the items are scheduled to be heard. In addition, comments may be offered on items not on the agenda under that portion of the agenda. In accordance with State law, matters not scheduled on the agenda cannot be acted upon by the City Council, but items raised by the public during public comment may be referred to a future City Council agenda at the request of the Mayor or City Council.
- 6.2 Limitations:** The public comment period may be 3 minutes for items on the agenda or items not listed on the agenda. Speakers are called in the order the speaker cards are submitted. Project applicants or appellants will be allowed more than the designated 3 minutes in accordance with City Council Policy 03-01. Consistent with this policy, the Mayor or Presiding Officer may recall an applicant or appellant to address questions after the public comment is heard. In addition, applicants will be given time at the end of the public hearing to address any questions or comments.

The Mayor or Presiding Officer may allow speakers who wish to speak under public comment for items not on the agenda to concede a portion of their time, specifically, one speaker may concede a portion of their time to one other speaker. For all other business items, the Mayor or Presiding Officer may allow speakers more time and/or allow speakers to concede a portion of their time to a designated speaker of a group, specifically up to two speakers may concede their time to one speaker, unless a majority of the City Council objects. Speakers that wish to designate a group speaker shall notify the City Clerk before discussion on the item begins. Additionally, any speaker that concedes their time must be present at that City Council meeting. Speaker who would like to share documents or presentations may do so by submitting said document to the City Clerk by noon on the day of the City Council Meeting. Speaker may not share videos or presentations with videos embedded within them.

- 6.3 Procedure:** To address the City Council, each speaker is requested to fill out a Speaker Card and turn it in to the City Clerk before discussion on the agenda item begins. The speaker is requested to provide their name, contact information, and the subject(s) upon which the speaker wishes to address the City Council. Speakers who do not wish to provide their name should provide an alternative designation so that they can be called to speak by the City Clerk.

Public comment may be provided in writing for items on the agenda, as well as for items not on the agenda. 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. Public

comments submitted to the City Clerk after noon 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.

SECTION 7. PROCEDURES FOR THE CONDUCT OF MEETINGS

7.1 Role of the Mayor/Presiding Officer:

- a. The Presiding Officer of the City Council, who shall be the Mayor or in the Mayor's absence shall be the Mayor Pro Tempore, or in their absence any other designated member of the City Council, shall be responsible for maintaining the order and decorum of meetings. It shall be the duty and responsibility of the Presiding Officer to ensure that the rules of operation and decorum contained herein are observed. The Presiding Officer shall maintain control of communication between Council Members and between the Council, staff, and public.
- b. Communication with Council Members:
 1. Council Members should request the floor from the Presiding Officer before speaking.
 2. When one member of the Council has the floor and is speaking, other Council Members shall not interrupt or otherwise disturb the speaker.
 3. During both questions, when one Council Member has the floor, they are limited to 5 minutes. During discussion, the Mayor and Council Members as a whole are limited to 15 minutes. The time limit may be extended at the Mayor's discretion.
 4. With the concurrence of the Mayor, a Council Member holding the floor may address a question to another Council Member. The Council Member being questioned may or may not respond while the floor is still held by the Council Member asking the question. The reply shall be limited to the question asked.
- c. The Mayor or Presiding Officer may declare that an item within the meeting will be conducted in "workshop" format, which means that the procedures described in section 7.1B do not strictly apply. This is to allow for a more open discussion without strict formalities. The Mayor or Presiding Officer may end the workshop format for the item at his/her discretion.
- d. Communication with Members of the Public Addressing the Council
 1. The Mayor or Presiding Officer shall open the floor for public testimony as appropriate.
 2. After a witness or subject matter expert has addressed the City Council during public comment, Council members may only ask questions of witnesses or

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subject matter experts. Such questions should be directed to the person through the Presiding Officer unless the Presiding Officer grants the Council Member permission to directly question the person.

3. Staff members, through the City Manager, shall be a resource to the City Council to answer questions arising during discussions between Council Members and between Council Members and members of the public. Communications in this regard shall be through the Presiding Officer.
4. Members of the public shall direct their questions and comments through the Presiding Officer.
- 7.2 Rules of Order: The City Council adopts no specific rules of order except those listed herein. The City Council shall refer to The Standard Code of Parliamentary Procedure by Alice Sturgis (McGraw Hill) as a guide for the conduct of meetings. The Sturgis guideline regarding not requiring seconds for governmental bodies' motions, resolutions or ordinances is not adopted as the rule in the City. The Mayor or Presiding Officer has the discretion to impose reasonable rules at any particular meeting based upon facts and circumstances found at any particular meeting. These latter rules will be followed unless objected to by a majority of the City Council members present.
- 7.3 Motions: The Mayor or any member of the City Council may bring a matter of business on the agenda before the Council by making a motion. Before the matter can be considered or debated it must be seconded. Once the motion has been properly made and seconded, the Presiding Officer shall open the matter for full debate offering the first opportunity to debate to the moving party and, thereafter, to any Council Member recognized by the Mayor or Presiding Officer. Debate shall be closed upon consent of a majority of the Council.
- 7.4 Reconsideration: Immediately after a vote on a matter, any member of the City Council may request to have his/her vote changed on a matter before the Council moves on to the next item. Such a request will be granted by the Mayor or Presiding Officer unless a majority of the Council objects.

A matter may be reconsidered by the City Council if a member on the prevailing side of the vote requests reconsideration. Such a motion may be made at a meeting where such action is taken or at a subsequent meeting of the Council, however, nothing in this policy precludes the majority of members of the City Council from requesting reconsideration of any item.

7.5 Debate:

- a. The discussions and deliberations at meetings of the City Council are to secure the informed judgement of Council members on proposals submitted for decision. This purpose is best served by the exchange of thought through discussion and debate.

Debate is regulated by these rules in order to assure every member a reasonable and equal opportunity to be heard.

- b. Obtaining the Floor for Debate:

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As soon as a debatable motion has been stated to the Council by the Mayor or Presiding Officer, any member of the Council has a right to discuss it after obtaining the floor. The member obtains the floor by seeking recognition from the Mayor or Presiding Officer. A member who has been recognized is entitled to be heard so long as he/she observes the rules of debate.

c. Speaking More Than Once:

To encourage the full participation of all members of the Council, no member or members shall be permitted to monopolize the discussion of the question. If a Council member has already spoken and other members wish to speak, the latter members should be recognized in preference to the member who has already spoken. However, if no other members seek recognition, the Mayor or Presiding Officer may recognize the member who has already spoken.

d. Relevancy of Debate:

All discussion must be relevant to the motion before the City Council. A member is given the floor only for the purpose of discussing the pending question; discussion which departs is out of order. The Mayor or Presiding Officer should then direct the speaker to limit discussion to the question before the City Council.

A motion-its nature or consequences-may be attacked vigorously. But it is never permissible to attack the motives, character, or personality of a member either directly or by innuendo or implication. It is the duty of the Mayor or Presiding Officer instantly to stop any member who engages in personal attacks. It is the motion, not its proposer, that is the subject of debate. Meetings must discuss measures and ideas, not people.

Arguments, for or against a measure, should be stated as concisely as possible.

Debate must be fundamentally impersonal. All discussion is addressed to the Mayor or Presiding Officer and must never be directed to any individual.

e. Mayor's Duties During Debate:

The Mayor or Presiding Officer has the responsibility of controlling and expediting debate. A Council member who has been recognized to speak on a question has a right to the undivided attention of the Council.

It is the duty of the Mayor or Presiding Officer to keep the subject clearly before the members, to rule out irrelevant discussion, and to restate the question whenever necessary.

SECTION 8. DECORUM

- 8.1 Council Members: Members of the City Council value and recognize the importance of the trust invested to them by the public to accomplish the business of the City. Council Members shall accord the utmost courtesy to each other, to City employees, and to the public appearing before the City Council.

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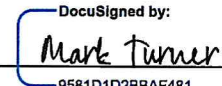
- 8.2** City Employees: Members of City staff shall observe the same rules of order and decorum applicable to the City Council. City staff shall act at all times in a business and professional manner towards Council Members and members of the public.
- 8.3** Public: Members of the public attending City Council meetings shall observe the same rules of order and decorum applicable to the City Council.
- 8.4** Noise in the Chamber: Noise emanating from the audience within the Council Chamber or lobby area, which disrupts City Council meetings, shall not be permitted.
- 8.5** Sergeant-at-Arms: The Chief of Police, or his/her designated representative shall be ex-officio Sergeant-at-Arms of the City Council.

SECTION 9. VIOLATIONS OF PROCEDURES

- 9.1** Nothing in these policies and procedures shall invalidate a properly noticed and acted upon action of the City Council in accordance with State Law.

This policy shall remain in effect until modified by the City Council.

APPROVED:

DocuSigned by:

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MARK TURNER, MAYOR

Pedestrians Prohibited on Median Islands.

Pedestrians using the medians for panhandling and fundraising purposes are becoming more frequent, especially at Monterey Rd. and Dunne Ave. This creates a distraction for drivers, as well as a safety concern for pedestrians doing the panhandling and drivers passing through the intersection during a (left-hand turn) green light. Residents, employees who work in Morgan Hill, and visitors alike, deserve to be free of panhandling and fundraising efforts while sitting in their vehicles in traffic.

Turlock, CA Municipal Code: 4-7-904 Pedestrians prohibited on median islands.

Pedestrians are prohibited from stepping, standing, sitting, or lying upon any divisional island or median island, as defined, except for the express purpose of crossing the divisional island or median island at a marked crosswalk or walking upon a sidewalk contained within the divisional island or median island, constructed and maintained for that purpose. City employees in the course of their duties; contractors who are hired by the City to construct, repair, or maintain the divisional island or median island; emergency personnel or other persons who must temporarily use the divisional island or median island because of an accident or vehicular emergency; or those who are otherwise authorized by State law are exempt from the provisions of this section.



Restore Use of Natural Gas in New Construction

PG&E has proven they are incapable of providing consistent, uninterrupted electrical service to the residents of Morgan Hill. They have also failed to provide adequate answers for the massive electrical failures suffered by Morgan Hill residents during last September's heat event. Morgan Hill was disproportionately affected by the power outages and when confronted by the City Council's concerns, PG&E representatives failed to provide assurances a similar outage could be avoided during a similar heat event. Allowing natural gas to be provided in new construction does, in no way, punish PG&E, however, future residents of Morgan Hill should not be punished due to PG&E's inability to provide consistent, uninterrupted electrical power. As more and more state and federal requirements push PG&E beyond their limits, we should make sure during rolling brown outs and other power outages, residents can at least cook their meals.

ORDINANCE NO. 2306, NEW SERIES

**AN ORDINANCE OF THE CITY OF MORGAN HILL
ADDING CHAPTER 15.63 (PROHIBITION OF NATURAL
GAS INFRASTRUCTURE IN NEW BUILDINGS) TO TITLE
15 (BUILDINGS AND CONSTRUCTION) TO THE MORGAN
HILL MUNICIPAL CODE PROHIBITING NATURAL GAS
INFRASTRUCTURE IN NEW BUILDINGS EFFECTIVE
MARCH 1, 2020**

THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES ORDAIN AS
FOLLOWS:

Section 1. Chapter 15.63 of the Morgan Hill Municipal Code is hereby added to read as follows:

Chapter 15.63

PROHIBITION OF NATURAL GAS INFRASTRUCTURE IN NEW BUILDINGS

Sections:

15.63.010 Findings and Purpose.

15.63.020 Applicability.

15.63.030 Definitions.

15.63.040 Prohibited Natural Gas Infrastructure in Newly Constructed Buildings.

15.63.050 Public Interest Exemption.

15.63.060 Periodic Review of the Ordinance.

15.63.070 Severability.

15.63.080 Effective Date.

15.63.010 Findings and Purpose.

The Council finds and expressly declares as follows:

- A. Scientific evidence has established that natural gas combustion, procurement and transportation produce significant greenhouse gas emissions that contribute to global warming and climate change.
- B. The following addition to the Morgan Hill Municipal Code is reasonably necessary because of local climatic, geologic and topographical conditions as listed below:
 - (1) Morgan Hill is situated along a wildland-urban interface and is extremely vulnerable to wildfires and firestorms, and human activities releasing greenhouse gases into the atmosphere cause increases in worldwide average temperature, drought conditions, vegetative fuel, and length of fire seasons.
 - (2) Morgan Hill relies on water imported into the region for groundwater recharge and climate change is already causing changes in rainfall and snowfall which threaten to interrupt the supply of imported water.
 - (3) Structures in Morgan Hill are located along or near the Calaveras fault and the City is close

- enough to the San Andreas and Hayward faults. All of these faults are capable of producing large earthquakes in the Bay Area.
- C. The following addition to the Morgan Hill Municipal Code is also reasonably necessary because of health and safety concerns as Morgan Hill residents suffer from asthma and other health conditions associated with poor indoor and outdoor air quality exacerbated by the combustion of natural gas.
 - D. Substitute electric heating and cooling infrastructure in new buildings fueled by less greenhouse gas intensive electricity is linked to significantly lower greenhouse gas emissions and is cost competitive because of the cost savings associated with all- electric designs that avoid new gas infrastructure.
 - E. All-electric building design benefits the health, welfare, and resiliency of Morgan Hill and its residents.
 - F. The most cost-effective time to integrate electrical infrastructure is in the design phase of a building project because building systems and spaces can be designed to optimize the performance of electrical systems and the project can take full advantage of avoided costs and space requirements from the elimination of natural gas piping and venting for combustion air safety.
 - G. It is the intent of the council to eliminate obsolete natural gas infrastructure and associated greenhouse gas emissions in new buildings where all-electric infrastructure can be most practicably integrated, thereby reducing the environmental and health hazards produced by the consumption and transportation of natural gas.

15.63.020 Applicability.

- A. The requirements of this Chapter shall apply to Building Permit Applications submitted on or after the effective date of this Chapter for all Newly Constructed Buildings proposed to be located in whole or in part within the City, except that the requirements of this Chapter will not apply to residential projects that are subject to an executed development agreement and that have obtained building permits for more than 10% of their allotted units.
- B. The requirements of this Chapter shall not apply to the use of portable propane appliances for outdoor cooking and heating.
- C. This chapter shall in no way be construed as amending California Energy Code requirements under California Code of Regulations, Title 24, Part 6, nor as requiring the use or installation of any specific appliance or system as a condition of approval.

15.63.030 Definitions.

- A. "Applicant" shall mean an applicant for a Building Permit Application.
- B. "Energy Code" shall mean the California Energy Code as amended and adopted in MHMC Chapter 15.12.
- C. "Greenhouse Gas Emissions" mean gases that trap heat in the atmosphere.
- D. "Natural Gas" shall have the same meaning as "Fuel Gas" as defined in California Plumbing Code and Mechanical Code.
- E. "Natural Gas Infrastructure" shall be defined as fuel gas piping, other than service pipe, in or in connection with a building, structure or within the property lines of premises, extending from the point of delivery at the gas meter as specified in the California Mechanical Code and Plumbing Code.

- F. “Newly Constructed Building” shall be defined as a building that has never before been used or occupied for any purpose.

15.63.040 Prohibited Natural Gas Infrastructure in Newly Constructed Buildings.

- A. Natural Gas Infrastructure shall be prohibited in Newly Constructed Buildings.
1. Exception: Natural Gas Infrastructure may be permitted in a Newly Constructed Building if the Applicant establishes that it is not physically feasible to construct the building without Natural Gas Infrastructure. For purposes of this exception, “physically feasible” to construct the building means either an all-electric prescriptive compliance approach is available for the building under the Energy Code or the building is able to achieve the performance compliance standards under the Energy Code using commercially available technology and an approved calculation method.
- B. To the extent that Natural Gas Infrastructure is permitted, it shall be permitted to extend to any system, device, or appliance within a building for which an equivalent all-electric system or design is not available.
- C. Newly Constructed Buildings shall nonetheless be required at a minimum to have sufficient electric capacity, wiring and conduit to facilitate future full building electrification.
- D. The requirements of this section shall be deemed objective planning standards under Government Code section 65913.4 and objective development standards under Government Code section 65589.5.

15.63.050 Public Interest Exemption.

- A. Notwithstanding the requirements of this Chapter and the Greenhouse Gas Emissions and other public health and safety hazards associated with Natural Gas Infrastructure, minimally necessary and specifically tailored Natural Gas Infrastructure may be allowed in a Newly Constructed Building provided that the entitling body establishes that the use serves the public interest. In determining whether the construction of Natural Gas Infrastructure is in the public interest, the City may consider:
1. The availability of alternative technologies or systems that do not use natural gas;
 2. Any other impacts that the decision to allow Natural Gas Infrastructure may have on the health, safety, or welfare of the public.
- B. If the installation of Natural Gas Infrastructure is granted under a public interest exemption, the Newly Constructed Buildings shall nonetheless be required at the minimum to have sufficient electric capacity, wiring and conduit to facilitate future full building electrification.

15.63.060 Periodic Review of Ordinance.

The City shall review the requirements of this ordinance every 18 months for consistency with the California Energy Code and the Energy Commission’s mid-cycle amendments and triennial code adoption cycle as applicable.

Section 2. This Ordinance shall be submitted to the California Building Standards Commission following adoption as consistent with state law.

Section 3. Severability. Should any provision of this ordinance be deemed unconstitutional or unenforceable by a court of competent jurisdiction, such provision shall be severed from the ordinance, and such severance shall not affect the remainder of the ordinance.

Section 4. This Ordinance shall take effect on March 1, 2020. The City Clerk is hereby directed to publish this Ordinance or a summary thereof pursuant to Government Code Section 36933.

THE FOREGOING ORDINANCE WAS INTRODUCED AT A MEETING OF THE CITY COUNCIL HELD ON THE 23RD DAY OF OCTOBER 2019 AND WAS FINALLY ADOPTED AT A MEETING OF THE CITY COUNCIL HELD ON THE 6TH DAY OF NOVEMBER 2019 AND SAID ORDINANCE WAS DULY PASSED AND ADOPTED IN ACCORDANCE WITH THE LAW BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS: Larry Carr, Rene Spring, Yvonne Martinez Beltran,
NOES: COUNCIL MEMBERS: John McKay, Rich Constantine
ABSTAIN: COUNCIL MEMBERS: None
ABSENT: COUNCIL MEMBERS: None

APPROVED:



RICH CONSTANTINE, Mayor

ATTEST:



IRMA TORREZ, City Clerk

DATE: 11/21/19

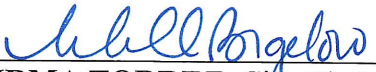
Effective: March 1, 2020

∞ **CERTIFICATE OF THE CITY CLERK** ∞

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 Ordinance No. 2306, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 6th day of November 2019.

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

DATE: 11/21/19


IRMA TORREZ, City Clerk

