CITY OF MORGAN HILL

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, November 1, 2023 6:00 PM

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

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

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

Those members of the community that would like to view the meetings remotely may do so by joining virtually at: https://bit.ly/MHCityCouncilMeeting, by calling (669) 900-9128, then enter the webinar id: 873 3200 8380# or on our website at https://www.morganhill.ca.gov/2101/Agendas-Minutes.

Public comment may only be provided in the following ways:

- In-person at the City Council Meeting;
- In writing
  - Via email to ccpubliccomment@morganhill.ca.gov; or
  - Hard copy hand delivered 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. It is recommended that you do not include any personal information that you do not want to be posted on the web.

CALL TO ORDER

ROLL CALL ATTENDANCE

DECLARATION OF POSTING AGENDA

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

PROCLAMATIONS

Proclaiming the month of November as Native American Heritage Month

CITY COUNCIL REPORTS

Council Member Martinez Beltran

CITY MANAGER'S REPORT

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)

Public Comment Supplement

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 GRANT FROM THE SILICON VALLEY COMMUNITY FOUNDATION (SVCF) ON BEHALF OF DESTINATION HOME

Recommendation:

Accept a $13,000 Grant from the Silicon Valley Community Foundation on behalf of Destination Home to support a public awareness campaign promoting the needs and opportunities of Morgan Hill residents regarding jobs, housing, and a sense of belonging.

2. ACCEPT GRANT FUNDING FROM CALIFORNIA STATE OFFICE OF TRAFFIC SAFETY, SELECTIVE TRAFFIC ENFORCEMENT PROGRAM (STEP) GRANT FOR DUI ENFORCEMENT, EDUCATION & EQUIPMENT

Recommendation:

1. Authorize the City Manager to execute an Agreement with the California State Office of Traffic Safety accepting grant funds from the Selective Traffic Enforcement Program in the amount of $60,000, and
2. Amend the FY 2023-24 budget to recognize grant revenue and appropriate $60,000 in grant fund expenditures.

3. APPROVE AN AMENDMENT TO AGREEMENT WITH AKEL ENGINEERING GROUP FOR ON-CALL WATER AND WASTEWATER SERVICES

Recommendation:

Approve and authorize the City Manager to execute an amendment to the agreement with Akel Engineering Group to increase the not-to-exceed amount from $150,000 to $300,000.

4. **APPROVE SECOND AMENDMENT TO BATTALION ONE FIRE PROTECTION MAINTENANCE SERVICE AGREEMENT FOR FIRE PROTECTION SPRINKLER INSPECTIONS, TESTING, MAINTENANCE AND REPAIR SERVICES AT CITY FACILITIES**

Recommendation:

1. Approve the Second Amendment to the maintenance service agreement with Battalion One Fire Protection, Inc. for an additional year of services for $22,049, for a total contract amount of $82,228 including the addition of the El Toro and Dunne Hill Fire Stations to the scope of work; and
2. Authorize the City Manager to execute and administer two additional one-year extensions of the maintenance service agreement.

5. **APPROVE THE SEPTEMBER 27, 2023 MID-YEAR GOAL REVIEW WORKSHOP MINUTES AND THE OCTOBER 4, 2023 CITY COUNCIL MEETING MINUTES**

Recommendation:
Approve Minutes.

6. **APPROVE REFINANCING FOR ROYAL COURT ASSOCIATES (EDEN HOUSING) AFFORDABLE HOUSING PROJECT**

Recommendation:

1. Authorize the City Manager to approve the re-subordination of an existing City loan in the principal amount of $2,650,000 for Royal Court Associates, L.P., a 55-unit EDEN Housing Affordable Housing Apartment Community, subject to an agreement negotiated by the City Attorney; and
2. Authorize the City Manager to accept a payment of $50,000 towards the accrued interest of the existing City Loan.

PUBLIC HEARINGS

7. **INTRODUCE ORDINANCE TO RENEW THE MORGAN HILL TOURISM BUSINESS IMPROVEMENT DISTRICT (MHTBID)**

Recommendation:

1. Open and close public hearing;
2. Waive the first and second reading of the ordinance; and

3. Introduce ordinance to renew the Morgan Hill Tourism Improvement District (MHTBID).

OTHER BUSINESS

8. RECEIVE MONTHLY BUDGET UPDATE; SEPTEMBER 2023 FINANCIAL AND INVESTMENT REPORTS; AND CITY MANAGER AUTHORITY REPORT

Recommendation:
Accept and file report.

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.

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

OPPORTUNITY FOR PUBLIC COMMENT

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 request an item on the agenda for a future City Council meeting. Council discussion or action may not be taken until your item appears on an agenda. This procedure is in compliance with the California Public Meeting Law (Brown Act) Government Code §54950.

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

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

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

AMERICANS WITH DISABILITIES ACT (ADA)

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

SUSTAINABLE MORGAN HILL

Vision

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

Choose Morgan Hill

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

City Council Ongoing Priorities

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

2022-2023 Strategic Priorities

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

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

CITY OF MORGAN HILL

From: Christina Turner
To: Kim Mancera
Cc: Michelle Bigelow
Subject: FW: Public Comment Submission
Date: Wednesday, October 25, 2023 1:19:47 PM

Public Comment for 11/1/23

From: No Reply <noreply@civicplus.com>
Sent: Wednesday, October 25, 2023 12:58 PM
To: CC Public Comment <CCPublicComment@morganhill.ca.gov>
Subject: Public Comment Submission

Submitted by: Babita Kumari
Email Address: bkumari@bwcmail.org

Commented on event: https://morganhillca.portal.civicclerk.com/event/843/overview
If you are having trouble viewing the URL above, cut and paste the string into your browser window.

User comment: Good evening! My name is Babita Kumari, and I'm the Program Director of Transitional Housing Program with Bill Wilson Center – a local nonprofit here in Santa Clara County that is working to end youth and family homelessness. I'm here this evening to let the community know that November is Runaway and Homeless Youth Prevention Month. This is a nationwide campaign spearheaded each November to increase awareness about homelessness among youth and young adults in our community and to spotlight the resources available for youth in crisis. This is especially critical in our County…despite being a technology hub and home to companies such as Apple, Google and Meta, Santa Clara County has the third highest population of homeless individuals in the entire nation, 12% of who are under 24 years of age. San Jose alone has the highest per capita youth and young adult homelessness in the nation. The longer a person is homeless, the longer it takes, and the costlier it is, to help them transition into permanent housing. Lacking adequate employment and skills for independent living increases the likelihood that homeless youth will become chronically homeless adults as well. Bill Wilson Center has been serving homeless youth and young-parent families in Santa Clara County for 50 years. The homeless clients that we serve typically range from children as young as 12 years who have run away from home to older youth and young adults between the ages of 18-24, some of whom may even have children. Our goal is to provide an integrated system of care that will help our homeless youth clients attain stable housing, either through family reunification or through economic self-sufficiency. We offer not only immediate shelter but other supportive services as well-- health care, mental health services, job training, financial literacy classes, substance abuse treatment, parenting classes, etc. In fact, over half of homeless youth report suffering from a mental health trauma.

CITY OF MORGAN HILL

CITY COUNCIL STAFF REPORT
MEETING DATE: November 1, 2023

PREPARED BY:
Rebecca Garcia, Housing Director
APPROVED BY: City Manager

ACCEPT GRANT FROM THE SILICON VALLEY COMMUNITY FOUNDATION (SVCF) ON BEHALF OF DESTINATION HOME

RECOMMENDATION(S)
Accept a $13,000 Grant from the Silicon Valley Community Foundation on behalf of Destination Home to support a public awareness campaign promoting the needs and opportunities of Morgan Hill residents regarding jobs, housing, and a sense of belonging.

COUNCIL PRIORITIES, GOALS & STRATEGIES
City Council Ongoing Priorities
Supporting our Youth, Seniors, and Entire Community
Fostering a Positive Organizational Culture
Enhancing Diversity and Inclusiveness
Advancing Regional Initiatives

2022-2023 Strategic Priorities
Affordable Housing and Homelessness
Community Outreach, Engagement, and Messaging
Economic Development

Guiding Documents
Communications, Outreach, and Engagement Plan
Economic Blueprint
Morgan Hill 2035 General Plan

REPORT NARRATIVE:
REPORT NARRATIVE:
The City of Morgan Hill, in partnership with International City/County Management Association (ICMA), is advancing an economic mobility program called Elevate Morgan Hill. The goal of the program is to develop a strategy that connects Spanish-speaking and lower-income community members to jobs and housing resources, as well as increasing their sense of belonging to the greater community. ICMA through the Gates Foundation, is supporting this work by funding costs associated with collecting data

necessary to understand the needs of the community, engaging service providers, employers, and educational institutions to develop a strategy to advance the goals of Elevate Morgan Hill. The Elevate Morgan Hill outcomes include the following:

1. Identify Community Needs: Identify community needs through community surveys, focus groups, data collection from local providers and creation of targeted demographic data analysis.
2. Convene a Resource Asset Network: Convene stakeholders such as local employers, service providers, and educational institutions to identify hiring trends and opportunities, apprenticeship, and certification programs as well as resources offered by local services.
3. Develop Elevate Morgan Hill Strategy: Develop a Gap and Opportunity Analysis with specific strategies to further the goals of connecting Spanish-speaking and lower income community members to jobs and housing resources, while also increasing their sense of belonging to the greater community.

To support this work, staff secured a grant from the Silicon Valley Community Foundation on behalf of Destination Home to support the video production that will showcase local stories of people of various socioeconomic backgrounds as community assets living and working in the Morgan Hill community and to celebrate the workforce contributions of a diverse set of residents.

COMMUNITY ENGAGEMENT:
This staff report serves as notification to the community of the $13,000 grant provided to the City from the Silicon Valley Community Foundation on behalf of Destination Home for the use of a videographer.

ALTERNATIVE ACTIONS:
The City Council could decide not to receive the grant funds.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:
The City Council has previously accepted a $450,000 three-year grant from Destination Home in 2021 to fund the Unhoused Specialist position. The budget appropriations for those funds were approved and incorporated into the respective year’s budget.

FISCAL AND RESOURCE IMPACT:
The City will recognize $13,000 as revenue in fund 236 for the cost associated with the development of the belonging video. There is no fiscal impact for accepting the $13,000 grant.

CEQA (California Environmental Quality Act):

This is not a Project.

CITY OF MORGAN HILL

CITY COUNCIL STAFF REPORT
MEETING DATE: November 1, 2023

PREPARED BY:
Mario Ramirez, Police Captain
APPROVED BY: City Manager

ACCEPT GRANT FUNDING FROM CALIFORNIA STATE OFFICE OF TRAFFIC SAFETY, SELECTIVE TRAFFIC ENFORCEMENT PROGRAM (STEP) GRANT FOR DUI ENFORCEMENT, EDUCATION & EQUIPMENT

RECOMMENDATION(S)

1. Authorize the City Manager to execute an Agreement with the California State Office of Traffic Safety accepting grant funds from the Selective Traffic Enforcement Program in the amount of $60,000, and
2. Amend the FY 2023-24 budget to recognize grant revenue and appropriate $60,000 in grant fund expenditures.

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities
Enhancing Public Safety
Maintaining Fiscal Responsibility

REPORT NARRATIVE:

The Police Department has received a $60,000 grant award from the California Office of Traffic Safety (OTS) for the Selective Traffic Enforcement Program (STEP). The STEP grant aims to utilize best practices to reduce the number of persons killed or injured in traffic collisions involving alcohol and other primary collision factors. The Police Department will use a variety of enforcement and education strategies to take impaired drivers off our streets, enhance public awareness in Morgan Hill of the inherent dangers of impaired and/or distracted driving, and work to reduce the number of collisions.

The Police Department will use the grant funds for staffing overtime for enforcement efforts, education, and supplies. The Police Department will conduct the following enforcement activities: two DUI checkpoints, twelve saturation patrols targeting impaired drivers, six traffic enforcement operations in areas with a high number of vehicle collisions, and four quarterly traffic student/school presentations focusing on impaired driving, distracted driving, and speeding.

This grant aligns with and supports the City's commitment to implementing the Vision Zero Traffic Safety Initiative. The grant term begins on October 1, 2023, and ends on

September 30, 2024. Therefore, grant revenues and expenditures will span multiple fiscal years.

COMMUNITY ENGAGEMENT:
This staff report serves to inform the community of the Police Department's grant awarded by OTS, STEP Program.

ALTERNATIVE ACTIONS:
None.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:
MHPD previously received six Selective Traffic Enforcement Program (STEP) grants through the Office of Traffic Safety (OTS). Below are the grant cycles and the amounts 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:
The total amount of this grant award is $60,000. Notification was received after the conclusion of the budget process and therefore was not included in the FY 23-24 mid-cycle budget process. Staff recommends an amendment to the grant revenue and an increase in the Field Operations Patrol Division Overtime budget of $60,000 in FY 23-24.

CEQA (California Environmental Quality Act):
Not a Project - The grant entails organizational or administrative activities of governments and will not result in direct or indirect physical changes in the environment.

1. GRANT TITLE
Selective Traffic Enforcement Program (STEP)

2. NAME OF AGENCY
Morgan Hill Police Department

3. Grant Period
From: 10/01/2023
To: 09/30/2024

4. AGENCY UNIT TO ADMINISTER GRANT
Morgan Hill Police Department

5. GRANT DESCRIPTION
Best practice strategies will be conducted to reduce the number of persons killed and injured in crashes involving alcohol and other primary crash factors. The funded strategies may include impaired driving enforcement, enforcement operations focusing on primary crash factors, distracted driving, night-time seat belt enforcement, special enforcement operations encouraging motorcycle safety, enforcement and public awareness in areas with a high number of bicycle and pedestrian crashes, and educational programs. These strategies are designed to earn media attention thus enhancing the overall deterrent effect.

6. Federal Funds Allocated Under This Agreement Shall Not Exceed: $60,000.00

7. TERMS AND CONDITIONS: The parties agree to comply with the terms and conditions of the following which are by this reference made a part of the Agreement:

- Schedule A – Problem Statement, Goals and Objectives and Method of Procedure
- Schedule B – Detailed Budget Estimate and Sub-Budget Estimate (if applicable)
- Schedule B-1 – Budget Narrative and Sub-Budget Narrative (if applicable)
- Exhibit A – Certifications and Assurances
- Exhibit B* – OTS Grant Program Manual
- Exhibit C – Grant Electronic Management System (GEMS) Access

*Items shown with an asterisk (*), are hereby incorporated by reference and made a part of this agreement as if attached hereto.

These documents can be viewed at the OTS home web page under Grants: www.ots.ca.gov.

We, the officials named below, hereby swear under penalty of perjury under the laws of the State of California that we are duly authorized to legally bind the Grant recipient to the above described Grant terms and conditions.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.

8. Approval Signatures

A. GRANT DIRECTOR

NAME: Shane Palsgrove
TITLE: Police Chief
EMAIL: shane.palsgrove@morganhill.ca.gov
PHONE: (408) 776-7318
ADDRESS: 16200 Vineyard Boulevard
Morgan Hill, CA 95037

(Signature) *(Date)*

B. AUTHORIZING OFFICIAL

ADDRESS: Christina Turner
City Manager
christina.turner@morganhill.ca.gov
(408) 776-7382
16200 Vineyard Boulevard
Morgan Hill, CA 95037

(Signature) *(Date)*

C. FISCAL OFFICIAL

ADDRESS: Dat Nguyen
Finance Director
dat.nguyen@morganhill.ca.gov
(408) 776-7379
16200 Vineyard Boulevard
Morgan Hill, CA 95037

(Signature) *(Date)*

D. AUTHORIZING OFFICIAL OF OFFICE OF TRAFFIC SAFETY

ADDRESS: Barbara Rooney
Director
barbara.rooney@ots.ca.gov
(916) 509-3030
2208 Kausen Drive, Suite 300
Elk Grove, CA 95758

(Signature) *(Date)*

E. ACCOUNTING OFFICER OF OFFICE OF TRAFFIC SAFETY	9. **SAM INFORMATION**
NAME: Carolyn Vu ADDRESS: 2208 Kausen Drive, Suite 300 Elk Grove, CA 95758	SAM #: CG4EJ16FEMD8 REGISTERED ADDRESS: 17575 Peak Avenue CITY: Morgan Hill ZIP+4: 95037-4126

10. PROJECTED EXPENDITURES

FUND	CFDA	ITEM/APPROPRIATION	F.Y.	CHAPTER	STATUTE	PROJECTED EXPENDITURES
164AL-24.1	20.608	0521-0890-101	2022	43/22	BA/22	$13,600.00
402PT-24.1	20.600	0521-0890-101	2022	43/22	BA/22	$6,800.00
164AL-24	20.608	0521-0890-101	2023	12/23	BA/23	$26,400.00
402PT-24	20.600	0521-0890-101	2023	12/23	BA/23	$13,200.00
				AGREEMENT TOTAL		**$60,000.00**

		AMOUNT ENCUMBERED BY THIS DOCUMENT **$60,000.00**
I CERTIFY upon my own personal knowledge that the budgeted funds for the current budget year are available for the period and purpose of the expenditure stated above.		PRIOR AMOUNT ENCUMBERED FOR THIS AGREEMENT **$ 0.00**
OTS ACCOUNTING OFFICER'S SIGNATURE	DATE SIGNED	TOTAL AMOUNT ENCUMBERED TO DATE **$60,000.00**

1. PROBLEM STATEMENT

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 and 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 and 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, crashes 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.

In 2020, the Morgan Hill Police Department had two fatal crashes with two fatalities. There were 55 injury crashes with 69 injured parties. Of the fatal crashes, one involved alcohol. Of the injury crashes, 4 involved alcohol; one was a hit and run; two occurred during nighttime hours of 2100-0259. In 2021, the Morgan Hill Police Department had one fatal crash with one fatality. There were 49 injury crashes with 60 injured parties. The fatal crash was not alcohol involved. Of the injury crashes, 10 involved alcohol; 4 were hit and runs; and 12 occurred during nighttime hours of 2100-0259 injuring 13 parties. In 2022, the Morgan Hill Police Department had no fatal crashes. There were 107 injury crashes with 151 injured parties. Of the injury crashes, 30 involved alcohol; 7 were hit and runs; and 23 occurred during nighttime hours of 2100-0259 injuring 32 parties.
The top three primary crash factors over the three-year period were 1)unsafe speed, 2) driving under the influence, and 3) traffic signals and signs.

In 2022, the Morgan Hill Police Department experienced a 92% increase in vehicle crashes as compared to 2021. When comparing 2022 to the previous five-year average, there was a 38% increase in crashes. In 2022, precisely 25% of all crashes were determined to have a primary crash 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, over 63% of those arrested for DUI are residents of our city or the neighboring jurisdiction. We also noted a 95% prosecution rate for all DUI's (the remaining 5% are drug related and qualify for prosecutorial deferral in Santa Clara County).

OTS grant funds enable the Morgan Hill Police Department to target DUI drivers as well as DUI crashes through active enforcement, education, and outreach.

2. PERFORMANCE MEASURES

A. Goals:

1. Reduce the number of persons killed in traffic crashes.
2. Reduce the number of persons injured in traffic crashes.
3. Reduce the number of pedestrians killed in traffic crashes.
4. Reduce the number of pedestrians injured in traffic crashes.
5. Reduce the number of bicyclists killed in traffic crashes.
6. Reduce the number of bicyclists injured in traffic crashes.
7. Reduce the number of persons killed in alcohol-involved crashes.
8. Reduce the number of persons injured in alcohol-involved crashes.
9. Reduce the number of persons killed in drug-involved crashes.
10. Reduce the number of persons injured in drug-involved crashes.
11. Reduce the number of persons killed in alcohol/drug combo-involved crashes.
12. Reduce the number of persons injured in alcohol/drug combo-involved crashes.
13. Reduce the number of motorcyclists killed in traffic crashes.
14. Reduce the number of motorcyclists injured in traffic crashes.
15. Reduce hit & run fatal crashes.
16. Reduce hit & run injury crashes.
17. Reduce nighttime (2100 - 0259 hours) fatal crashes.
18. Reduce nighttime (2100 - 0259 hours) injury crashes.

B. Objectives:	**Target Number**
1. Issue a press release announcing the kick-off of the grant by November 15. The kick-off press releases and media advisories, alerts, and materials must be emailed to the OTS Public Information Officer at pio@ots.ca.gov, and copied to your OTS Coordinator, for approval 14 days prior to the issuance date of the release.	1
2. Participate and report data (as required) in the following campaigns; Quarter 1: National Walk to School Day, National Teen Driver Safety Week, NHTSA Winter Mobilization; Quarter 3: National Distracted Driving Awareness Month, National Motorcycle Safety Month, National Bicycle Safety Month, National Click it or Ticket Mobilization; Quarter 4: NHTSA Summer Mobilization, National Child Passenger Safety Week, and California's Pedestrian Safety Month.	10
3. Develop (by December 31) and/or maintain a “DUI BOLO” program to notify patrol and traffic officers to be on the lookout for identified repeat DUI offenders with a suspended or revoked license as a result of DUI convictions. Updated DUI BOLOs should be distributed to patrol and traffic officers monthly.	12
4. Send law enforcement personnel to the NHTSA Standardized Field Sobriety Testing (SFST) (minimum 16 hours) POST-certified training.	2
5. Send law enforcement personnel to the NHTSA Advanced Roadside Impaired Driving Enforcement (ARIDE) 16 hour POST-certified training.	2
6. Send law enforcement personnel to the Drug Recognition Expert (DRE) training.	1
7. Conduct DUI/DL Checkpoints. A minimum of 1 checkpoint should be conducted during the NHTSA Winter Mobilization and 1 during the Summer Mobilization. To enhance the overall deterrent effect and promote high visibility, it is recommended the grantee issue an advance press release and conduct social media activity for each checkpoint. For combination DUI/DL checkpoints, departments should issue press releases that mention DL's will be checked at the DUI/DL checkpoint. Signs for DUI/DL checkpoints should read "DUI/Driver's License Checkpoint Ahead." OTS does not fund or support independent DL checkpoints. Only on an exception basis and with OTS pre-approval will OTS fund checkpoints that begin prior to 1800 hours. When possible, DUI/DL Checkpoint screeners should be DRE- or ARIDE-trained.	2
8. Conduct DUI Saturation Patrol operation(s).	6
9. Conduct Traffic Enforcement operation(s), including but not limited to, primary crash factor violations.	8
10. Conduct highly publicized Distracted Driving enforcement operation(s) targeting drivers using hand held cell phones and texting.	2

11. Conduct Traffic Safety educational presentation(s) with an effort to reach community members. Note: Presentation(s) may include topics such as distracted driving, DUI, speed, bicycle and pedestrian safety, seat belts and child passenger safety.	2
12. Conduct Know Your Limit campaigns with an effort to reach members of the community.	2

3. METHOD OF PROCEDURE

A. Phase 1 – Program Preparation (1st Quarter of Grant Year)

- The department will develop operational plans to implement the "best practice" strategies outlined in the objectives section.
- All training needed to implement the program should be conducted in the first quarter.
- All grant related purchases needed to implement the program should be made in the first quarter.
- In order to develop/maintain the "DUI BOLOs," research will be conducted to identify the "worst of the worst" repeat DUI offenders with a suspended or revoked license as a result of DUI convictions. The DUI BOLO may include the driver's name, last known address, DOB, description, current license status, and the number of times suspended or revoked for DUI. DUI BOLOs should be updated and distributed to traffic and patrol officers at least monthly.
- Implementation of the STEP grant activities will be accomplished by deploying personnel at high crash locations.

Media Requirements Issue a press release approved by the OTS PIO announcing the kick-off of the grant by November 15, but no sooner than October 1. The kick-off release must be approved by the OTS PIO and only distributed after the grant is fully signed and executed. If you are unable to meet the November 15 deadline to issue a kick-off press release, communicate reasons to your OTS coordinator and OTS PIO.

B. Phase 2 – Program Operations (Throughout Grant Year)

- The department will work to create media opportunities throughout the grant period to call attention to the innovative program strategies and outcomes.

Media Requirements

The following requirements are for all grant-related activities:

- Send all media advisories, alerts, videos, graphics, artwork, posters, radio/PSA/video scripts, storyboards, digital and/or print educational materials for grant-related activities to the OTS PIO at pio@ots.ca.gov for approval and copy your OTS coordinator. Optimum lead time would be 7 days before the scheduled release but at least 3 business days prior to the scheduled release date for review and approval is appreciated.
- The OTS PIO is responsible for the approval of the design and content of materials. The agency understands OTS PIO approval is not authorizing approval of budget expenditure or cost. Any cost approvals must come from the Coordinator.
- Pre-approval is not required when using any OTS-supplied template for media advisories, press releases, social media graphics, videos or posts, or any other OTS-supplied educational material. However, copy the OTS PIO at pio@ots.ca.gov and your OTS coordinator when any material is distributed to the media and public, such as a press release, educational material, or link to social media post. The OTS-supplied kick-off press release templates and any kickoff press releases are an exception to this policy and require prior approval before distribution to the media and public.
- If an OTS-supplied template, educational material, social media graphic, post or video is substantially changed, the changes shall be sent to the OTS PIO at pio@ots.ca.gov for approval and copy to your OTS Coordinator. Optimum lead time would be 7 days prior to the scheduled release date, but at least 3 business days prior to the scheduled release date for review and approval is appreciated.
- Press releases, social media posts and alerts on platforms such as NextDoor and Nixle reporting immediate and time-sensitive grant activities (e.g. enforcement operations, day of event highlights or announcements, event invites) are exempt from the OTS PIO approval process. The OTS PIO and your Coordinator should still be notified when the grant-related activity is happening (e.g. car seat checks, bicycle rodeos, community presentations, DUI checkpoints, etc.).

- Enforcement activities such as warrant and probation sweeps, court stings, etc. that are embargoed or could impact operations by publicizing in advance are exempt from the PIO approval process. However, announcements and results of activities should still be copied to the OTS PIO at pio@ots.ca.gov and your Coordinator with embargoed date and time or with "INTERNAL ONLY: DO NOT RELEASE" message in subject line of email.
- Any earned or paid media campaigns for TV, radio, digital or social media that are part of a specific grant objective, using OTS grant funds, or designed and developed using contractual services by a subgrantee, requires prior approval. Please send to the OTS PIO at pio@ots.ca.gov for approval and copy your grant coordinator at least 3 business days prior to the scheduled release date.
- Social media posts highlighting state or national traffic safety campaigns (Distracted Driving Month, Motorcycle Safety Awareness Month, etc.), enforcement operations (DUI checkpoints, etc.), or any other grant-related activity such as Bicycle rodeos, presentations, or events, are highly encouraged but do not require prior approval.
- Submit a draft or rough-cut of all digital, printed, recorded or video material (brochures, posters, scripts, artwork, trailer graphics, digital graphics, social posts connected to an earned or paid media campaign grant objective) to the OTS PIO at pio@ots.ca.gov and copy your OTS Coordinator for approval prior to the production or duplication.
- Use the following standard language in all press, media, and printed materials, space permitting: Funding for this program was provided by a grant from the California Office of Traffic Safety, through the National Highway Traffic Safety Administration.
- Space permitting, include the OTS logo on all grant-funded print materials, graphics and paid or earned social media campaign grant objective; consult your OTS Coordinator for specifics, format-appropriate logos, or if space does not permit the use of the OTS logo.
- Email the OTS PIO at pio@ots.ca.gov and copy your OTS Coordinator at least 21 days in advance, or when first confirmed, a short description of any significant grant-related traffic safety event or program, particularly events that are highly publicized beforehand with anticipated media coverage so OTS has sufficient notice to arrange for attendance and/or participation in the event. If unable to attend, email the OTS PIO and coordinator brief highlights and/or results, including any media coverage (broadcast, digital, print) of event within 7 days following significant grant-related event or program. Media and program highlights are to be reflected in QPRs.
- Any press releases, work plans, scripts, storyboards, artwork, graphics, videos or any educational or informational materials that received PIO approval in a prior grant year needs to be resubmitted for approval in the current grant year.
- Contact the OTS PIO or your OTS Coordinator for consultation when changes from any of the above requirements might be warranted.

C. Phase 3 – Data Collection & Reporting (Throughout Grant Year)

1. Prepare and submit grant claim invoices (due January 30, April 30, July 30, and October 30)
2. Prepare and submit Quarterly Performance Reports (QPR) (due January 30, April 30, July 30, and October 30)
    - Collect and report quarterly, appropriate data that supports the progress of goals and objectives.
    - Provide a brief list of activity conducted, procurement of grant-funded items, and significant media activities. Include status of grant-funded personnel, status of contracts, challenges, or special accomplishments.
    - Provide a brief summary of quarterly accomplishments and explanations for objectives not completed or plans for upcoming activities.
    - Collect, analyze and report statistical data relating to the grant goals and objectives.

4. METHOD OF EVALUATION

Using the data compiled during the grant, the Grant Director will complete the "Final Evaluation" section in the fourth/final Quarterly Performance Report (QPR). The Final Evaluation should provide a brief summary of the grant's accomplishments, challenges and significant activities. This narrative should also include whether goals and objectives were met, exceeded, or an explanation of why objectives were not completed.

5. ADMINISTRATIVE SUPPORT

This program has full administrative support, and every effort will be made to continue the grant activities after grant conclusion.

FUND NUMBER	CATALOG NUMBER (CFDA)	FUND DESCRIPTION	TOTAL AMOUNT
164AL-24	20.608	Minimum Penalties for Repeat Offenders for Driving While Intoxicated	$40,000.00
402PT-24	20.600	State and Community Highway Safety	$20,000.00

COST CATEGORY	FUND NUMBER	UNIT COST OR RATE	UNITS	TOTAL COST TO GRANT
A. PERSONNEL COSTS				
Straight Time				$0.00
Overtime				
DUI/DL Checkpoints	164AL-24	$12,378.00	2	$24,756.00
DUI Saturation Patrols	164AL-24	$1,857.00	6	$11,142.00
Know Your Limit	164AL-24	$1,200.00	2	$2,400.00
Traffic Enforcement	402PT-24	$1,500.00	8	$12,000.00
Distracted Driving	402PT-24	$1,857.00	2	$3,714.00
Traffic Safety Education	402PT-24	$310.00	2	$620.00
Category Sub-Total				$54,632.00
B. TRAVEL EXPENSES				
In State Travel	402PT-24	$3,666.00	1	$3,666.00
				$0.00
Category Sub-Total				$3,666.00
C. CONTRACTUAL SERVICES				
				$0.00
Category Sub-Total				$0.00
D. EQUIPMENT				
				$0.00
Category Sub-Total				$0.00
E. OTHER DIRECT COSTS				
DUI Checkpoint Supplies	164AL-24	$1,702.00	1	$1,702.00
Category Sub-Total				$1,702.00
F. INDIRECT COSTS				
				$0.00
Category Sub-Total				$0.00
GRANT TOTAL				**$60,000.00**

BUDGET NARRATIVE
PERSONNEL COSTS DUI/DL Checkpoints - Overtime for grant funded law enforcement operations conducted by appropriate department personnel.
DUI Saturation Patrols - Overtime for grant funded law enforcement operations conducted by appropriate department personnel.
Know Your Limit - Overtime for grant funded traffic safety presentations or campaigns conducted by appropriate department personnel.
Traffic Enforcement - Overtime for grant funded law enforcement operations conducted by appropriate department personnel.
Distracted Driving - Overtime for grant funded law enforcement operations conducted by appropriate department personnel.
Traffic Safety Education - Overtime for grant funded traffic safety presentations or campaigns conducted by appropriate department personnel.
TRAVEL EXPENSES In State Travel - Costs are included for appropriate staff to attend conferences and training events supporting the grant goals and objectives and/or traffic safety. Local mileage for grant activities and meetings is included. Anticipated travel may include the California Traffic Safety Summit (November 7-8, 2023, in Orange County) and the OTS Traffic Safety Law Enforcement Forum. All conferences, seminars or training not specifically identified in the Budget Narrative must be approved by OTS. All travel claimed must be at the agency approved rate. Per Diem may not be claimed for meals provided at conferences when registration fees are paid with OTS grant funds.
CONTRACTUAL SERVICES -
EQUIPMENT -
OTHER DIRECT COSTS DUI Checkpoint Supplies - On-scene supplies needed to conduct sobriety checkpoints. Costs may include 28" traffic cones, MUTCD compliant traffic signs, MUTCD compliant high visibility vests (maximum of 10), traffic counters (maximum of 2), generator, gas for generators, lighting, reflective banners, electronic flares, PAS Device/Calibration Supplies, heater, propane for heaters, fan, anti-fatigue mats, and canopies. Additional items may be purchased if approved by OTS. The cost of food and beverages will not be reimbursed. Each item must have a unit cost of less than $5,000 (including tax and shipping).
INDIRECT COSTS -
STATEMENTS/DISCLAIMERS There will be no program income generated from this grant. Nothing in this “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 here under. The OTS grant funded activities must be separate from the CHP Cannabis Tax Fund Grant Program activities and maintained under separate accounting/tracking/other codes (example: the same DUI checkpoint may not be funded by both the CHP and the OTS).

Certifications and Assurances for Fiscal Year 2024 Highway Safety Grants (23 U.S.C. Chapter 4 or Section 1906, Public Law 109-59, as amended by Section 25024, Public Law 117-58)

The officials named on the grant agreement, certify by way of signature on the grant agreement signature page, that the Grantee Agency complies with all applicable Federal statutes, regulations, and directives and State rules, guidelines, policies, and laws in effect with respect to the periods for which it receives grant funding. Applicable provisions include, but are not limited to, the following:

GENERAL REQUIREMENTS

The State will comply with applicable statutes and regulations, including but not limited to:

- 23 U.S.C. Chapter 4—Highway Safety Act of 1966, as amended;
- Sec. 1906, Public Law 109-59, as amended by Sec. 25024, Public Law 117-58;
- 23 CFR part 1300—Uniform Procedures for State Highway Safety Grant Programs;
- 2 CFR part 200—Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards;
- 2 CFR part 1201—Department of Transportation, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

NONDISCRIMINATION

(applies to all subrecipients as well as States)

The State highway safety agency [and its subrecipients] will comply with all Federal statutes and implementing regulations relating to nondiscrimination ("Federal Nondiscrimination Authorities"). These include but are not limited to:

- *Title VI of the Civil Rights Act of 1964* (42 U.S.C. 2000d *et seq.***,** 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- *49 CFR part 21* (entitled *Non-discrimination in Federally-Assisted Programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964*);
- *28 CFR 50.3* (U.S. Department of Justice Guidelines for Enforcement of Title VI of the Civil Rights Act of 1964);
- *The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970,* (42 U.S.C. 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- *Federal-Aid Highway Act of 1973, (23 U.S.C. 324 et seq.), and Title IX of the Education Amendments of 1972,* as amended (20 U.S.C. 1681-1683 and 1685-1686) (prohibit discrimination on the basis of sex);
- *Section 504 of the Rehabilitation Act of 1973,* (29 U.S.C. 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability) and 49 CFR part 27;
- *The Age Discrimination Act of 1975,* as amended, (42 U.S.C. 6101 *et seq.*), (prohibits discrimination on the basis of age);
- *The Civil Rights Restoration Act of 1987***,** (Pub. L. 100-209), (broadens scope, coverage, and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal aid recipients, subrecipients and contractors, whether such programs or activities are Federally-funded or not);
- *Titles II and III of the Americans with Disabilities Act* (42 U.S.C. 12131-12189) (prohibits discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing) and 49 CFR parts 37 and 38;
- *Executive Order 12898***,** *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (preventing discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations);
- *Executive Order 13166*, *Improving Access to Services for Persons with Limited English Proficiency* (requiring that recipients of Federal financial assistance provide meaningful access for applicants and beneficiaries who have limited English proficiency (LEP));
- *Executive Order 13985*, *Advancing Racial Equity and Support for Underserved Communities through the Federal Government (*advancing equity across the Federal Government); and
- *Executive Order 13988*, *Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation* (clarifying that sex discrimination includes discrimination on the grounds of gender identity or sexual orientation).

The preceding statutory and regulatory cites hereinafter are referred to as the "Acts" and "Regulations," respectively.

GENERAL ASSURANCES

In accordance with the Acts, the Regulations, and other pertinent directives, circulars, policy, memoranda, and/or guidance, the Recipient hereby gives assurance that it will promptly take any measures necessary to ensure that:

"No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity, for which the Recipient receives Federal financial assistance from DOT, including NHTSA."

The Civil Rights Restoration Act of 1987 clarified the original intent of Congress, with respect to Title VI of the Civil Rights Act of 1964 and other non-discrimination requirements (the Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973), by restoring the broad, institutional-wide scope and coverage of these nondiscrimination statutes and requirements to include all programs and activities of the Recipient, so long as any portion of the program is Federally assisted.

SPECIFIC ASSURANCES
More specifically, and without limiting the above general Assurance, the Recipient agrees with and gives the following Assurances with respect to its Federally assisted Highway Safety Grant Program:

1. The Recipient agrees that each "activity," "facility," or "program," as defined in § 21.23(b) and (e) of 49 CFR part 21 will be (with regard to an "activity") facilitated, or will be (with regard to a "facility") operated, or will be (with regard to a "program") conducted in compliance with all requirements imposed by, or pursuant to the Acts and the Regulations.
2. The Recipient will insert the following notification in all solicitations for bids, Requests For Proposals for work, or material subject to the Acts and the Regulations made in connection with all Highway Safety Grant Programs and, in adapted form, in all proposals for negotiated agreements regardless of funding source:
   "The [name of Recipient], in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that in any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award."
3. The Recipient will insert the clauses of appendix A and E of this Assurance (also referred to as DOT Order 1050.2A) in every contract or agreement subject to the Acts and the Regulations.
4. The Recipient will insert the clauses of appendix B of DOT Order 1050.2A, as a covenant running with the land, in any deed from the United States effecting or recording a transfer of real property, structures, use, or improvements thereon or interest therein to a Recipient.
5. That where the Recipient receives Federal financial assistance to construct a facility, or part of a facility, the Assurance will extend to the entire facility and facilities operated in connection therewith.
6. That where the Recipient receives Federal financial assistance in the form of, or for the acquisition of, real property or an interest in real property, the Assurance will extend to rights to space on, over, or under such property.
7. That the Recipient will include the clauses set forth in appendix C and appendix D of this DOT Order 1050.2A, as a covenant running with the land, in any future deeds, leases, licenses, permits, or similar instruments entered into by the Recipient with other parties:
   a. for the subsequent transfer of real property acquired or improved under the applicable activity, project, or program; and
   b. for the construction or use of, or access to, space on, over, or under real property acquired or improved under the applicable activity, project, or program.
8. That this Assurance obligates the Recipient for the period during which Federal financial assistance is extended to the program, except where the Federal financial assistance is to provide, or is in the form of, personal property, or real property, or interest therein, or structures or improvements thereon, in which case the Assurance obligates the Recipient, or any transferee for the longer of the following periods:
   a. the period during which the property is used for a purpose for which the Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits; or
   b. the period during which the Recipient retains ownership or possession of the property.
9. The Recipient will provide for such methods of administration for the program as are found by the Secretary of Transportation or the official to whom he/she delegates specific authority to give reasonable guarantee that it, other recipients, sub-recipients, sub- grantees, contractors, subcontractors, consultants, transferees, successors in interest, and other participants of Federal financial assistance under such program will comply with all requirements imposed or pursuant to the Acts, the Regulations, and this Assurance.
10. The Recipient agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the Acts, the Regulations, and this Assurance.

By signing this ASSURANCE, the State highway safety agency also agrees to comply (and require any sub-recipients, sub-grantees, contractors, successors, transferees, and/or assignees to comply) with all applicable provisions governing NHTSA's access to records, accounts, documents, information, facilities, and staff. You also recognize that you must comply with any program or compliance reviews, and/or complaint investigations conducted by NHTSA. You must keep records, reports, and submit the material for review upon request to NHTSA, or its designee in a timely, complete, and accurate way. Additionally, you must comply with all other reporting, data collection, and evaluation requirements, as prescribed by law or detailed in program guidance.

The State highway safety agency gives this ASSURANCE in consideration of and for obtaining any Federal grants, loans, contracts, agreements, property, and/or discounts, or other Federal-aid and Federal financial assistance extended after the date hereof to the recipients by the U.S. Department of Transportation under the Highway Safety Grant Program. This ASSURANCE is binding on the State highway safety agency, other recipients, sub-recipients, sub-grantees, contractors, subcontractors and their subcontractors', transferees, successors in interest, and any other participants in the Highway Safety Grant Program. The person(s) signing below is/are authorized to sign this ASSURANCE on behalf of the Recipient.

THE DRUG-FREE WORKPLACE ACT OF 1988 (41 U.S.C. 8103)

The Subgrantee will provide a drug-free workplace by:

a. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace, and specifying the actions that will be taken against employees for violation of such prohibition;
b. Establishing a drug-free awareness program to inform employees about:
    1. The dangers of drug abuse in the workplace;
    2. The grantee's policy of maintaining a drug-free workplace;
    3. Any available drug counseling, rehabilitation, and employee assistance programs;
    4. The penalties that may be imposed upon employees for drug violations occurring in the workplace;
    5. Making it a requirement that each employee engaged in the performance of the grant be given a copy of the statement required by paragraph (a);
c. Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will—
    1. Abide by the terms of the statement;
    2. Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction;
d. Notifying the agency within ten days after receiving notice under subparagraph (c)(2) from an employee or otherwise receiving actual notice of such conviction;
e. Taking one of the following actions, within 30 days of receiving notice under subparagraph (c)(2), with respect to any employee who is so convicted—
    1. Taking appropriate personnel action against such an employee, up to and including termination;
    2. Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;
f. Making a good faith effort to continue to maintain a drug-free workplace through implementation of all of the paragraphs above.

POLITICAL ACTIVITY (HATCH ACT)
(applies to all subrecipients as well as States)

The State will comply with provisions of the Hatch Act (5 U.S.C. 1501-1508), which limits the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

CERTIFICATION REGARDING FEDERAL LOBBYING
(applies to all subrecipients as well as States)

CERTIFICATION FOR CONTRACTS, GRANTS, LOANS, AND COOPERATIVE AGREEMENTS

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions;
3. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, subgrants, and contracts under grant, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

RESTRICTION ON STATE LOBBYING
(applies to subrecipients as well as States)

None of the funds under this program will be used for any activity specifically designed to urge or influence a State or local legislator to favor or oppose the adoption of any specific legislative proposal pending before any State or local legislative body. Such activities include both direct and indirect (e.g., "grassroots") lobbying activities, with one exception. This does not preclude a State official whose salary is supported with NHTSA funds from engaging in direct communications with State or local legislative officials, in accordance with customary State practice, even if such communications urge legislative officials to favor or oppose the adoption of a specific pending legislative proposal.

CERTIFICATION REGARDING DEBARMENT AND SUSPENSION
(applies to all subrecipients as well as States)

INSTRUCTIONS FOR PRIMARY TIER PARTICIPANT CERTIFICATION (STATES)

1. By signing and submitting this proposal, the prospective primary tier participant is providing the certification set out below and agrees to comply with the requirements of 2 CFR parts 180 and 1200.
2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective primary tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary tier participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.
3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default or may pursue suspension or debarment.
4. The prospective primary tier participant shall provide immediate written notice to the department or agency to which this proposal is submitted if at any time the prospective primary tier participant learns its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
5. The terms **covered transaction, civil judgment, debarment, suspension, ineligible, participant, person, principal, and voluntarily excluded,** as used in this clause, are defined in 2 CFR parts 180 and 1200. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.
6. The prospective primary tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.
7. The prospective primary tier participant further agrees by submitting this proposal that it will include the clause titled "Instructions for Lower Tier Participant Certification" including the "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions and will require lower tier participants to comply with 2 CFR parts 180 and 1200.
8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any prospective lower tier participants, each participant may, but is not required to, check the System for Award Management Exclusions website (*https://www.sam.gov/*).
9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate the transaction for cause or default.

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS—PRIMARY TIER COVERED TRANSACTIONS

1. The prospective primary tier participant certifies to the best of its knowledge and belief, that it and its principals:
   a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;
   b. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
   c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
   d. Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.
2. Where the prospective primary tier participant is unable to certify to any of the Statements in this certification, such prospective participant shall attach an explanation to this proposal.

INSTRUCTIONS FOR LOWER TIER PARTICIPANT CERTIFICATION

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below and agrees to comply with the requirements of 2 CFR parts 180 and 1200.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms **covered transaction, civil judgment, debarment, suspension, ineligible, participant, person, principal, and voluntarily excluded,** as used in this clause, are defined in 2 CFR parts 180 and 1200. You may contact the person to whom this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Instructions for Lower Tier Participant Certification" including the "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions and will require lower tier participants to comply with 2 CFR parts 180 and 1200.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any prospective lower tier participants, each participant may, but is not required to, check the System for Award Management Exclusions website (*https://www.sam.gov/*).
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension or debarment.

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION—LOWER TIER COVERED TRANSACTIONS

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

BUY AMERICA
(applies to subrecipients as well as States)

The State and each subrecipient will comply with the Buy America requirement (23 U.S.C. 313) when purchasing items using Federal funds. Buy America requires a State, or subrecipient, to purchase with Federal funds only steel, iron and manufactured products produced in the United States, unless the Secretary of Transportation determines that such domestically produced items would be inconsistent with the public interest, that such materials are not reasonably available and of a satisfactory quality, or that inclusion of domestic materials will increase the cost of the overall project contract by more than 25 percent. In order to use Federal funds to purchase foreign produced items, the State must submit a waiver request that provides an adequate basis and justification for approval by the Secretary of Transportation.

CERTIFICATION ON CONFLICT OF INTEREST
(applies to subrecipients as well as States)

GENERAL REQUIREMENTS

No employee, officer, or agent of a State or its subrecipient who is authorized in an official capacity to negotiate, make, accept, or approve, or to take part in negotiating, making, accepting, or approving any subaward, including contracts or subcontracts, in connection with this grant shall have, directly or indirectly, any financial or personal interest in any such subaward. Such a financial or personal interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or personal interest in or a tangible personal benefit from an entity considered for a subaward. Based on this policy:

1. The recipient shall maintain a written code or standards of conduct that provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents.
    a. The code or standards shall provide that the recipient's officers, employees, or agents may neither solicit nor accept gratuities, favors, or anything of monetary value from present or potential subawardees, including contractors or parties to subcontracts.
    b. The code or standards shall establish penalties, sanctions, or other disciplinary actions for violations, as permitted by State or local law or regulations.
2. The recipient shall maintain responsibility to enforce the requirements of the written code or standards of conduct.

DISCLOSURE REQUIREMENTS

No State or its subrecipient, including its officers, employees, or agents, shall perform or continue to perform under a grant or cooperative agreement, whose objectivity may be impaired because of any related past, present, or currently planned interest, financial or otherwise, in organizations regulated by NHTSA or in organizations whose interests may be substantially affected by NHTSA activities. Based on this policy:

1. The recipient shall disclose any conflict of interest identified as soon as reasonably possible, making an immediate and full disclosure in writing to NHTSA. The disclosure shall include a description of the action which the recipient has taken or proposes to take to avoid or mitigate such conflict.
2. NHTSA will review the disclosure and may require additional relevant information from the recipient. If a conflict of interest is found to exist, NHTSA may (a) terminate the award, or (b) determine that it is otherwise in the best interest of NHTSA to continue the award and include appropriate provisions to mitigate or avoid such conflict.
3. Conflicts of interest that require disclosure include all past, present, or currently planned organizational, financial, contractual, or other interest(s) with an organization regulated by NHTSA or with an organization whose interests may be substantially affected by NHTSA activities, and which are related to this award. The interest(s) that require disclosure include those of any recipient, affiliate, proposed consultant, proposed subcontractor, and key personnel of any of the above. Past interest shall be limited to within one year of the date of award. Key personnel shall include any person owning more than a 20 percent interest in a recipient, and the officers, employees or agents of a recipient who are responsible for making a decision or taking an action under an award where the decision or action can have an economic or other impact on the interests of a regulated or affected organization.

PROHIBITION ON USING GRANT FUNDS TO CHECK FOR HELMET USAGE
(applies to all subrecipients as well as States)

The State and each subrecipient will not use 23 U.S.C. Chapter 4 grant funds for programs to check helmet usage or to create checkpoints that specifically target motorcyclists.

POLICY ON SEAT BELT USE

In accordance with Executive Order 13043, Increasing Seat Belt Use in the United States, dated April 16, 1997, the Grantee is encouraged to adopt and enforce on-the-job seat belt use policies and programs for its employees when operating company-owned, rented, or personally-owned vehicles. The National Highway Traffic Safety Administration (NHTSA) is responsible for providing leadership and guidance in support of this Presidential initiative. For information and resources on traffic safety programs and policies for employers, please contact the Network of Employers for Traffic Safety (NETS), a public-private partnership dedicated to improving the traffic safety practices of employers and employees. You can download information on seat belt programs, costs of motor vehicle crashes to employers, and other traffic safety initiatives at www.trafficsafety.org. The NHTSA website (www.nhtsa.gov) also provides information on statistics, campaigns, and program evaluations and references.

POLICY ON BANNING TEXT MESSAGING WHILE DRIVING

In accordance with Executive Order 13513, Federal Leadership On Reducing Text Messaging While Driving, and DOT Order 3902.10, Text Messaging While Driving, States are encouraged to adopt and enforce workplace safety policies to decrease crashes caused by distracted driving, including policies to ban text messaging while driving company-owned or rented vehicles, Government-owned, leased or rented vehicles, or privately-owned vehicles when on official Government business or when performing any work on or behalf of the Government. States are also encouraged to conduct workplace safety initiatives in a manner commensurate with the size of the business, such as establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving, and education, awareness, and other outreach to employees about the safety risks associated with texting while driving.

INSTRUCTIONS FOR ADDING OR UPDATING GEMS USERS

1. Each agency is allowed a total of **FIVE (5) GEMS Users**.
2. GEMS Users listed on this form will be authorized to login to GEMS to complete and submit Quarterly Performance Reports (QPRs) and reimbursement claims.
3. Complete the form if adding, removing or editing a GEMS user(s).
4. The Grant Director must sign this form and return it with the Grant Agreement.

GRANT DETAILS	
Grant Number:	PT24124
Agency Name:	Morgan Hill Police Department
Grant Title:	Selective Traffic Enforcement Program (STEP)
Agreement Total:	$60,000.00
Authorizing Official:	Christina Turner
Fiscal Official:	Dat Nguyen
Grant Director:	Shane Palsgrove

CURRENT GEMS USER(S)

1. Patricia Pretell

Title: Management Analyst — Media Contact: No
Phone: 669-253-4973
Email: patricia.pretell@morganhill.ca.gov

Complete the below information if adding, removing or editing a GEMS user(s)

GEMS User 1 Add/Change ☐ Remove Access ☐	Add as a media contact? Yes ☐ No ☐
Name	Job Title
Email address	Phone number
GEMS User 2 Add/Change ☐ Remove Access ☐	Add as a media contact? Yes ☐ No ☐
Name	Job Title
Email address	Phone number
GEMS User 3 Add/Change ☐ Remove Access ☐	Add as a media contact? Yes ☐ No ☐
Name	Job Title
Email address	Phone number
GEMS User 4 Add/Change ☐ Remove Access ☐	Add as a media contact? Yes ☐ No ☐
Name	Job Title
Email address	Phone number
GEMS User 5 Add/Change ☐ Remove Access ☐	Add as a media contact? Yes ☐ No ☐
Name	Job Title
Email address Form completed by:	Phone number Date:
As a signatory I hereby authorize the listed individual(s) to represent and have GEMS user access.	
Signature	Name Grant Director
Date	Title

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 $60,000

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 "Accept Grant Funding from the State of California Office of Traffic Safety, Selective Traffic Enforcement Program (STEP) Grant for DUI Enforcement, Education & Equipment" submitted for City Council consideration at its meeting of November 1, 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 1st day of November 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**

ꕥ CERTIFICATION ꕥ

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 1st day of November 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 # 015

FUND:	010	General Fund
FUNTION:	020	Public Safety
DEPARTMENT:	020	Police
DIVISION:	3210	Field Operations
OBJECT:	41500	Overtime Safety

AGENDA DATE:	11/01/23
AGENDA ITEM TITLE:	OTS Grant

	07/01/23 UN-AUDITED BEGINNING FUND BALANCE	ESTIMATED REVENUES	AMENDED APPROPRI-ATIONS	06/30/24 PROJECTED ENDING FUND BALANCE
ORIGINAL BUDGET	32,349,777	53,357,482	57,170,899	28,536,360
CUMULATIVE REVISIONS PRIOR TO RECOMMENDED ACTION	-	105,824	443,350	(337,526)
RECOMMENDED ACTION		**60,000**	**60,000**	-
RESULT OF RECOMMENDED ACTION	32,349,777	53,523,306	57,674,249	28,198,834

CITY OF MORGAN HILL

CITY COUNCIL STAFF REPORT
MEETING DATE: November 1, 2023

PREPARED BY:
Inga Alonzo, Management Analyst
APPROVED BY: City Manager

APPROVE AN AMENDMENT TO AGREEMENT WITH AKEL ENGINEERING GROUP FOR ON-CALL WATER AND WASTEWATER SERVICES

RECOMMENDATION(S)

Approve and authorize the City Manager to execute an amendment to the agreement with Akel Engineering Group to increase the not-to-exceed amount from $150,000 to $300,000.

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
Wastewater System Master Plan

REPORT NARRATIVE:

This agreement was part of a competitive Request for Proposals (RFP) conducted in August 2021 to obtain multiple on-call consultants to provide water and wastewater utility planning and engineering services to the City. Typical projects awarded under these agreements include, but are not limited to, master planning, hydrologic and hydraulic modeling, asset condition assessments, water quality assessments, capacity analysis, project engineering and design. Staff utilize these agreements by asking for a proposal from the consultants for a specific service or project as needed and issue a task order under the appropriate agreement.

Akel Engineering has extensive knowledge of the City's infrastructure as they have developed the City's water and wastewater master plans. In addition, Akel Engineering has developed and maintained the City's models for the City's water, wastewater and stormwater systems. Thus, the funds for the Akel agreement have been exhausted but the agreement does not expire until December 2024. Staff recommends increasing the not to exceed amount for this agreement to $300,000 so the expertise of this consultant can be used for more projects up to the expiration of the agreement, at which time, the Public Services Department will again go out for a new RFP for consulting services.

COMMUNITY ENGAGEMENT:
Not Applicable
These consultant services support the ongoing maintenance and operation of the City's water system, which is an expected activity by residents and businesses.

ALTERNATIVE ACTIONS:
The Council could decide not to approve the amendment. This is not recommended as staff would need to go out individually for certain projects instead of using a valid, non-expired agreement that was competitively bid.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:
On December 15, 2021, City Council approved on-call water and wastewater utility planning and engineering services agreement to Akel Engineering Group in the amount of $150,000.

FISCAL AND RESOURCE IMPACT:
Funds for these agreements will come from multiple sources including Water and Sewer Operations Funds and various CIP Projects. On-call work shall only be authorized when budgeted funds are available.

CEQA (California Environmental Quality Act):
Categorical Exemption
Continuing administrative activities and feasibility or planning studies for possible future actions that the agency has not approved, adopted, or funded are not considered projects for environmental review under CEQA.

FIRST AMENDMENT TO AGREEMENT
AKEL ENGINEERING GROUP, INC.

This FIRST AMENDMENT TO AGREEMENT is entered into and becomes effective on ____________________ (Effective Date), by THE CITY OF MORGAN HILL, a municipal corporation, ("CITY") and AKEL ENGINEERING GROUP, INC., a California Corporation ("CONSULTANT"), hereinafter referred to collectively as the "Parties".

RECITALS

The following recitals are a substantive part of this Agreement:

1. This First Amendment to Agreement is entered into pursuant to the action of the Morgan Hill City Council taken on ________________, 2023.

2. The CITY and CONSULTANT entered into that "CONSULTANT AGREEMENT FOR DESIGN PROFESSIONALS" made as of December 22, 2021, for consultant services for a maximum compensation of One Hundred Fifty Thousand Dollars ($150,000.00) ("CONSULTANT AGREEMENT FOR DESIGN PROFESSIONALS"). The CONSULTANT AGREEMENT FOR DESIGN PROFESSIONALS is attached as Exhibit "1" to this Agreement.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

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

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

"4.1. Amount. Compensation under this Agreement shall not exceed THREE HUNDRED THOUSAND DOLLARS ($300,000.00) and shall be billed based on the rate and basis set forth in **Exhibit B**. The fees schedule and the rates in Exhibit B remain the same through December 31, 2024, unless the Parties mutually agree to revise the fees and rates in a writing signed by both Parties to this Agreement."

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[Signatures on the Next Page]

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

3. **Conflicts**. In the event of a conflict between the terms and provisions of this FIRST AMENDMENT to Agreement and the terms and provisions of the CONSULTANT AGREEMENT FOR DESIGN PROFESSIONALS, the terms of this FIRST AMENDMENT to Agreement shall govern and control.

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

ATTEST:	CITY OF MORGAN HILL
______________________	______________________
Michelle Bigelow, City Clerk Date: ______________	Christina Turner, City Manager Date: ______________
APPROVED AS TO FORM:	**AKEL ENGINEERING GROUP, INC.**
______________________	Tony A
Donald A. Larkin, City Attorney Date: ______________	By: Title: TONY AKEL, PRESIDENT Print Name and Title of Signer. If Corporate: Chairman, President or Vice President
	Date: 9/27/23
	Tony A
	By: Title: TONY AKEL, SECRETARY Print Name and Title of Signer. If Corporate: Secretary, Assistant Secretary, Chief Financial Officer or Assistant Treasurer
	Date: 9/27/23

126-04-21-082

EXHIBIT 1

CONSULTANT AGREEMENT FOR DESIGN PROFESSIONALS
AKEL ENGINEERING GROUP, INC.

THIS AGREEMENT is entered into and becomes effective on 12/22/2021 (Effective Date), by and between the CITY OF MORGAN HILL, a municipal corporation, ("CITY"), and Akel Engineering Group, Inc. a California corporation ("CONSULTANT") hereinafter referred to collectively as "Parties." In consideration of the promises and the mutual covenants contained in this Agreement, the Parties agree as follows:

1. <u>City Authority.</u> This Agreement is entered into pursuant to the action of the Morgan Hill City Council taken on December , 15 , 2021.

2. <u>Term of Agreement.</u> This Agreement shall cover services rendered from the Effective Date of this Agreement until December 31, 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 of two one-year extensions. Any such extension shall be in writing and signed by both Parties to this Agreement.

3. <u>Scope of Service.</u> The services to be performed by CONSULTANT shall be Water and Wastewater Utility Planning and Engineering Services as further described in **Exhibit A.**

4. <u>Compensation</u>. CONSULTANT shall be compensated as follows:

   4.1. <u>Amount.</u> $150,000.00. Total compensation to CONSULTANT under this Agreement during its initial term set forth in Section 2 above shall not exceed One Hundred Fifty Thousand dollars and shall be billed based on the rate and basis set forth in **Exhibit B.** If the City Manager extends the term of this Agreement pursuant to the provisions of Section 2 above, the City Manager shall have the authority to increase the maximum compensation allowed to be paid to 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 each subsequent extended one-year term exceed 105% of the maximum compensation allowed to be paid to CONSULTANT for one year of service during the immediately preceding prior year of service, unless otherwise authorized by City Council.

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

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

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

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

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

7.1. **Insurance Types and Amounts.**

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

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

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

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

7.1.5. Professional Liability.

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

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

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

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

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

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

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

7.2.1.3. Insurance shall be primary non-contributing.

7.2.2. Workers Compensation.

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

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

7.4. **Certificates.** CONSULTANT shall furnish CITY of Morgan Hill with copies of all certificates as outlined herein, whether new or modified, promptly upon receipt. In the event of a claim or legal action, CONSULTANT shall promptly furnish CITY of Morgan Hill with copies of all policies outlined herein. No policy subject to the CONSULTANT's agreement with the CITY shall be canceled or materially changed except after thirty (30) days' notice by the insurer to CITY. 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 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:

Akel Engineering Group
7433 North First Street, Suite 103
Fresno, CA 93720

Address of CITY is as follows:

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

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

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

16. Maintenance of Records.

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

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

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

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

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

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

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

21. Defense and Indemnification.

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

21.2. Defense and Indemnification for Non-Design Professional Services. For all services performed under this agreement not covered by Section 21.1 above, CONSULTANT shall, to the fullest extent permitted by law, indemnify, defend and hold harmless CITY, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers ("INDEMNITEES") from and against any and all claims, liabilities, expenses, liens, or damages of any nature, including liability for bodily injury, property damage or personal injury, and including reasonable attorneys' fees and expenses, that arise out of, pertain to, or relate to the performance of this Agreement or the failure to comply with any obligations contained in this Agreement by CONSULTANT, and/or its agents, officers, employees, subcontractors, or independent contractors ("CLAIM").

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

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

21.5. Right to Offset. CITY shall have the right to offset against any compensation due CONSULTANT under this Agreement any amount due CITY from CONSULTANT as a result of CONSULTANT's failure to pay CITY promptly any indemnification arising under this Section (21) and any amount due CITY from CONSULTANT arising from CONSULTANT's failure either to (i) pay taxes on amounts received pursuant to this Agreement or (ii) comply with applicable workers' compensation laws.

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

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

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

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

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

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

legal representatives or other permitted assignees or transferees had entered into this Agreement originally.

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

[Signatures on Next Page]

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

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

AS SET FORTH IN CA. CORP. CODE § 313, TWO SIGNATURES ARE REQUIRED FOR CALIFORNIA CORPORATIONS:
(1) CHAIRPERSON OF THE BOARD, PRESIDENT, OR VICE PRESIDENT; AND
(2) SECRETARY, ASSISTANT SECRETARY, CHIEF FINANCIAL OFFICER OR ASSISTANT TREASURER.

ATTEST:
DocuSigned by:
Michelle Bigelow
City Clerk/Deputy City Clerk

Michelle Bigelow
Print Name

Date: 12/22/2021

APPROVED AS TO FORM:
DocuSigned by:
Donald Larkin
City A...

Donald A. Larkin
Print Name

Date: 12/16/2021

CITY OF MORGAN HILL
DocuSigned by:
Christina Turner
City M...

Christina J. Turner
Print Name

Date: 12/22/2021

Akel Engineering Group

By:

TONY AKEL, PRESIDENT
Print Name and Title of Signer.
If Corporate: Chairman, President or Vice President

Date: 12/7/21

By:

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

Date: 12/7/21

U:\Legal Forms\Consultant Agreements\City Services Agreement For Design Professionals.Docx

EXHIBIT A
SCOPE OF SERVICES

The services for this agreement will be to provide on-call water and wastewater planning and engineering services to the City. The City will ask the consultant to provide a proposals for specific services or projects as needed and will issue a notice to proceed if the proposal is accepted. Services may include but are not limited to the following; master planning, hydrologic and hydraulic modeling, asset condition assessments, water quality assessments, capacity analysis, project engineering and design. Below are the anticipated work tasks that the selected consultant team may complete under this contract. The City reserves the right to expand or exclude scope items, as needed during this contract.

1. Preliminary utility planning including updating comprehensive plans alternative studies, permit document preparation and approval, environmental impact studies, and public hearings and meetings.

2. Coordination and preparation of environmental permitting documents required to receive the necessary environmental approvals to construct the assigned projects.

3. Coordination of all utility relocations, including prior rights negotiations, utility designation and location services, and technical review of proposed relocation plans.

4. Design services for various projects including water pipelines and pump stations, wastewater pipelines and lift stations, and site development with small buildings and parking facilities.

5. Review and develop utility design and construction standards.

6. Provide peer review services for documents designed by other firms or City staff to assure adherence to accepted engineering practices and standards.

7. Water Resources analysis to develop new water supply sources within the City including surface water and groundwater development, and reservoirs to meet projected demand.

8. Water system and wastewater system capacity analysis.

9. Planning and design of water system pump stations, water storage tanks, and water system distribution projects; and wastewater lift stations and wastewater collection system projects.

10. Preparation of Contract Documents for bidding purposes including final plans, specifications, cost estimates, constructability reviews to determine contract duration, and necessary addenda.

11. Construction support services, including review and approval of shop drawings, respond to Request for Information, periodic progress meetings, and field consultation as necessary. Provide specialty construction engineering observations as requested.

12. Search and identify sources for governmental grants that will assist the City in funding utility projects including preparation of grant applications/proposal on an as needed basis.

13. Presentations to and attendance at necessary staff and/ or City Council meetings.

EXHIBIT B
SCHEDULE OF COMPENSATION RATES

Consultant Billing Rates and Fee

AKEL
ENGINEERING GROUP, INC.

FEE SCHEDULE

Effective Through:

June 30, 2022

Category	Hourly Rate
Senior Principal Engineer	$255
Principal Engineer	$230
Senior Engineer	$190
Associate Engineer	$170
Assistant Engineer	$145
Engineering Assistant	$115
Senior GIS Technician	$150
GIS Technician	$125
Word Processing/Secretarial	$100

Other Direct Expenses

Other Direct Cost	Cost plus 5%

** Fee Schedule is subject to an annual increase at the end of the fiscal year*

Sub-consultant Billing Rates and Fee

KASRAIE CONSULTING
Ventura, CA 93003
Phone: (805) 340-4744
Email: kasraie@kasraieconsulting.com | www.KasraieConsulting.com

PUBLIC WORKS PROJECTS RATE SHEET

January 1, 2021 through December 31, 2021

	POSITION TITLE	HOURLY BILLING RATE
1	Principal Project Manager	$205
2	Senior Project Manager	$195
3	Senior Project Engineer	$185
4	Senior Civil Engineer/Senior Hydrologist	$160
5	Civil Engineer / Water Resource Engineer / Hydrologist	$130
6	GIS Specialist	$120
7	Engineering Technician/CAD Operator	$105
8	Office Support/Admin Staff	$72

MISCELENEOUS

Printing, reproduction, postage, delivery and other services	At Cost
Mileage outside Ventura County	At Current IRS Rate
Subconsultant Markup	15 Percent
Litigation/Expert Witness Rate Adjustment	175 Percent

Other direct and miscellaneous charges encountered in performance of services, such as permits, supplies not normally used to perform a specific job, etc. are billed at cost with no additional service charge.

EXHIBIT C
SCHEDULE OF PERFORMANCE

Projects will be on an on-call, as needed basis over the course of this agreement.

CITY OF MORGAN HILL

CITY COUNCIL STAFF REPORT
MEETING DATE: November 1, 2023

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

APPROVE SECOND AMENDMENT TO BATTALION ONE FIRE PROTECTION MAINTENANCE SERVICE AGREEMENT FOR FIRE PROTECTION SPRINKLER INSPECTIONS, TESTING, MAINTENANCE AND REPAIR SERVICES AT CITY FACILITIES

RECOMMENDATION(S)

1. Approve the Second Amendment to the maintenance service agreement with Battalion One Fire Protection, Inc. for an additional year of services for $22,049, for a total contract amount of $82,228 including the addition of the El Toro and Dunne Hill Fire Stations to the scope of work; and
2. Authorize the City Manager to execute and administer two additional one-year extensions of the maintenance service agreement.

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities
Enhancing Public Safety

2022-2023 Strategic Priorities
Fiscal Sustainability

REPORT NARRATIVE:

The purpose of this report is to provide the City Council with an opportunity to consider a Second Amendment to the City's maintenance service agreement with Battalion One Fire Protection, Inc. for fire protection sprinkler inspections, testing, maintenance, and repair services at City facilities.

In October 2020, the City released a Request for Bids (RFB) for these services. Seven proposals were received, and Battalion One Fire Protection, Inc. was the responsible bidder with the lowest cost proposal. Since the original amount of the contract was $42,210, and below the $60,000 City Council approval, it was approved per authority of the City Manager pursuant to Chapter 3.04 of the Morgan Hill Municipal Code on December 8, 2020. Subsequently, the City Council approved the First Amendment to the Maintenance Service Agreement on November 16, 2022, increased the amount of the agreement to $60,179 and extended the term of the agreement for one additional year of service.

Battalion One Fire Protection, Inc. has been providing quarterly, annual, and five-year fire protection sprinkler inspections, testing, and maintenance services at City facilities including the City Hall campus, Community and Cultural Center campus, Centennial Recreation Center, Aquatics Center, Corporation Yard, Downtown Parking Garage, Police Department and the Depot Train Station Building since January 1, 2021. Via this second amendment, the El Toro Fire Station and Dunne Hill Fire Station will be added to the scope of work. The addition of the two fire stations is adding an additional annual cost of $3,680 to the agreement. Repair services are also provided via an extra service allocation of $10,000 per year.

The current agreement with Battalion One Fire Protection, Inc. expires on December 31, 2023. This proposed Second Amendment includes an increase of $22,049 for an additional year of service that would extend the term to December 31, 2024, and increase the total amount of the agreement from $60,179 to $82,228. This amount includes a 5% increase in annual costs and adds maintenance services at the El Toro Fire Station and Dunne Hill Fire Station to the scope of work. This Second Amendment would also authorize the City Manager to execute and administer two (2) additional one-year extensions of the maintenance service agreement in annual amounts that would not increase the price of the contract by more than five (5%) percent annually. The maximum not-to-exceed amount with two additional one-year extensions would be $129,686.

COMMUNITY ENGAGEMENT:
Since fire protection sprinkler inspection, testing, maintenance, and repair services are a regular and expected City maintenance service, no specific engagement activities were conducted to inform the community about this proposed contract amendment.

ALTERNATIVE ACTIONS:
The City Council could decline to approve the Second Amendment and instead direct staff to proceed with a request for proposals (RFP) for fire protection sprinkler inspection, testing, maintenance, and repair services. Since Battalion One Fire Protection's agreement expires on December 31, 2023, the City Council could authorize an extension of the contract to March 31, 2024 allowing staff time to conduct an RFP process and have a new agreement in place by April 30, 2024. This is not recommended as Public Services Maintenance and Fire Department staff continue to be satisfied with the service provided, and do not believe that an RFP would result in improved pricing.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:
The City Council approved the First Amendment to this Maintenance Service Agreement on November 16, 2022 increasing the amount of the agreement to $60,179 and extending the term of the agreement for one additional year of service.

FISCAL AND RESOURCE IMPACT:
The contract is budgeted in and will be funded by the Public Services Department - Maintenance Services Division's budgets for individual facilities (Fund 010-General Fund and Fund 740 - Building Maintenance). The Second Amendment would add $22,049 to the agreement including $12,049 in annual inspection, testing and preventative maintenance costs, and up to $10,000 in extra repair services.

CEQA (California Environmental Quality Act):
Categorical Exemption
The activities described in this staff report are categorically exempt under CEQA, specifically pursuant to Section 15301 (c) of the CEQA Guidelines (Existing Facilities), as the subject work involves the repair, maintenance or minor alteration of existing City facilities involving negligible or no expansion of use of those facilities.

SECOND AMENDMENT TO AGREEMENT
BATTALION ONE FIRE PROTECTION, 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 BATTALION ONE FIRE PROTECTION, INC., a California Corporation ("SERVICE PROVIDER"), hereinafter referred to collectively as the "Parties".

RECITALS

The following recitals are a substantive part of this Agreement:

1. This 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 December 8, 2020, for services for a maximum compensation of Forty-Two Thousand Two Hundred and Ten Dollars ($42,210.00) ("MAINTENANCE SERVICE AGREEMENT").

3. The CITY and SERVICE PROVIDER then entered into a "First Amendment to Agreement" made as of November 18, 2022, under which the maximum compensation under the MAINTENANCE SERVICE AGREEMENT, as amended, was increased to Sixty Thousand, One Hundred Seventy-Nine Dollars ($60,179.00) and the term was extended. 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 December 8, 2020, until December 31, 2024. 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."

B. Paragraph 3 shall be amended to include the additional services set forth below, and in the Revised Exhibit A, as of the Effective Date of this Amendment, attached hereto:

"The services to be performed by SERVICE PROVIDER shall consist of the additional maintenance services at the El Toro Fire Station located at 18300 Old Monterey Road, Morgan Hill, California, and at the Dunne Hill Fire Station located at 2100 East Dunne Avenue, Morgan Hill, California."

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

"4.1. Amount. Compensation under this Agreement shall not exceed Eighty-Two Thousand Two Hundred Twenty-Seven Dollars and Forty-Eight Cents, ($82,227.48) and shall be billed based on the rate and basis set forth in the Revised Exhibit B effective January 1, 2024, attached hereto. 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 the immediately preceding prior year of service."

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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:

____
Michelle Bigelow, City Clerk
Date: ____________________

APPROVED AS TO FORM:

____
Donald Larkin, City Attorney
Date: ____________________

CITY OF MORGAN HILL

____
Christina Turner, City Manager
Date: ____________________

BATTALION ONE FIRE PROTECTION, INC.

By: ____________________
Title: Jon Zang CEO
Print Name and Title of Signer.
If Corporate: Chairman, President, or Vice President

Date: October 11, 2023

By: ____________________
Title: Alia Jackson CFO
Print Name and Title of Signer.
If Corporate: Secretary, Assistant Secretary, Chief Financial Officer, or Assistant Treasurer

Date: October 11, 2023

REVISED EXHIBIT A

BATTALION ONE FIRE PROTECTION , INC.

2024 ADDITIONS TO SCOPE OF SERVICES

The following scope of services are being added to the Battalion One Fire Protection, Inc. Maintenance Service Agreement via the execution of the Second Amendment:

1. **El Toro Fire Station** located at 18300 Old Monterey Road, Morgan Hill, CA 95037
   a. One (1) Annual Fire Protection Inspection
   b. Three (3) Quarterly Fire Protection Inspections to be performed with other buildings in the City

2. **Dunne Hill Fire Station** located at 2100 E. Dunne Avenue, Morgan Hill, CA 95037
   c. One (1) Annual Fire Protection Inspection
   d. Three (3) Quarterly Fire Protection Inspections to be performed with other buildings in the City

All work is to be performed during normal business hours of Monday through Friday, 7:00 a.m. to 3:30 p.m.

Revised Exhibit B-Schedule of Compensation Rates

Fire Protection Services (Fire Sprinklers)

Effective January 1, 2024

Battalion One Fire Protection

Quarterly Inspections				**5% Increase**
Bid Item	**Location**	**2020-2022 Per Quarterly Inspection**	2023 Per Quarterly Inspection	**2024 Per Quarterly Inspection**
1	Corporation Yard	92.50	97.13	101.98
2	City Hall Campus	185.00	194.25	203.96
3	Police Department	92.50	97.13	101.98
4	Centennial Rec Center	92.50	97.13	101.98
5	Aquatics Center	92.50	97.13	101.98
6	CCC, Gavilan College, MH Playhouse, Children's Pavilion	185.00	194.25	203.96
7	Downtown Parking Garage	185.00	194.25	203.96
8	Depot Train Station	92.50	97.13	101.98
9	El Toro Fire Station			460.00
10	Dunne Hill Fire Station			460.00
9	**Subtotal: One Quarterly Inspections (All Facilities)**	1,017.50	1,068.38	2,041.79
10	**QUARTERLY INSPECTIONS TOTAL (3 per year)**	6,105.00	3,205.13	6,125.38

Annual Inspections				
Bid Item	**Location**	**2020-2022 Per Annual Inspection**	2023 Per Annual Inspection	**2024 Per Annual Inspection**
1	Corporation Yard	375.00	393.75	413.44
2	City Hall Campus	925.00	971.25	1,019.81
3	Police Department	555.00	582.75	611.89
4	Centennial Rec Center	462.50	485.63	509.91
5	Aquatics Center	462.50	485.63	509.91
6	CCC, Gavilan College, MH Playhouse, Children's Pavilion	832.50	874.13	917.83
7	Downtown Parking Garage	555.00	582.75	611.89
8	Depot Train Station	370.00	388.50	407.93
9	El Toro Fire Station			460.00
10	Dunne Hill Fire Station			460.00
9	**Subtotal: One Annual Inspection for All Facilities**	4,537.50	4,764.38	5,922.59
10	**ANNUAL INSPECTIONS TOTAL (1 per year)**	9,075.00	4,764.38	5,922.59

Five Year Inspections

Bid Item	Location	2020-2022 Per Five-Year Inspection	2023 Per Five-Year Inspection	2024 Per Five-Year Inspection
1	Corporation Yard	555.00	-	n/a
2	City Hall Campus	1,110.00	-	n/a
3	Police Department	740.00	-	n/a
4	Centennial Rec Center	555.00	-	n/a
5	Aquatics Center	555.00	-	n/a
6	CCC, Gavilan College, MH Playhouse, Children's Pavilion	2,220.00	-	n/a
7	Downtown Parking Garage	740.00	-	n/a
8	Depot Train Station	555.00	-	n/a
9	**Subtotal: One Five-Year Inspection**	7,030.00	-	n/a
10	**FIVE YEAR INSPECTIONS TOTAL (Once every 5 years)**	7,030.00	-	n/a

	Original Contract	1st Amendment -5% increase Year 3	2nd Amendment - 5% Increase Year 4
Subtotal Original Contract: Inspections	22,210.00		
Subtotal Second Amendment: Inspections		7,969.50	**12,047.98**
Extra Services $10,000 Per Year	20,000.00	10,000.00	**10,000.00**
Total: Original Contract	**42,210.00**		
Total: First Amendment		**17,969.50**	
Total: Second Amendment			**22,047.98**
GRAND TOTAL: Original Contract + First Amendment + Second Amendment			**82,227.48**

128-04-20-092

EXHIBIT 1

FIRST AMENDMENT TO AGREEMENT
BATTALION ONE FIRE PROTECTION, INC.

This FIRST AMENDMENT TO AGREEMENT is entered into and becomes effective on 11/18/2022 (Effective Date), by THE CITY OF MORGAN HILL, a municipal corporation, ("CITY") and BATTALION ONE FIRE PROTECTION, INC., a California Corporation ("SERVICE PROVIDER") hereinafter referred to collectively as the "Parties".

RECITALS

The following recitals are a substantive part of this Agreement:

1. This First Amendment to Agreement is entered into pursuant to the action of the Morgan Hill City Council taken on November, 16, 2022.

2. The CITY and SERVICE PROVIDER entered into that "Maintenance Service Agreement" made as of December 8, 2020, for services for a maximum compensation of Forty-Two Thousand Two-Hundred Ten Dollars ($42,210.00) ("MAINTENANCE SERVICE AGREEMENT"). The MAINTENANCE SERVICE AGREEMENT is attached as Exhibit "1" to this Agreement.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

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

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

"2. **Term of Agreement.** This Agreement shall be effective and cover services rendered from December 8, 2020, until December 31, 2023. The City Manager is authorized to extend the term of this Agreement for up to two additional one-year periods. Any such extension shall be in writing and signed by both parties to this Agreement."

B. Paragraph 3 shall be amended by adding the revised Exhibit "A" dated September 28, 2022, attached hereto and incorporated herein by this reference.

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

"4.1. Amount. Compensation under this Agreement shall not exceed SIXTY THOUSAND ONE-HUNDRED SEVENTY-NINE AND NO/100 DOLLARS ($60,179.00) and shall be billed based on the rate and basis set forth in Exhibit B of the "MAINTENANCE SERVICE AGREEMENT and Exhibit B dated September 28, 2022, as of the Effective Date of this Amendment. 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 the immediately preceding prior year of service."

D. Paragraph 6 shall be amended by adding the revised Exhibit "C" dated September 28, 2022, attached hereto and incorporated herein by this reference.

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

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

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

ATTEST:

DocuSigned by:
Michelle Bigelow

Michelle Bigelow, City Clerk
Date: 11/18/2022

APPROVED AS TO FORM:

DocuSigned by:
Donald Larkin

Donald Larkin, City Attorney
Date: 11/17/2022

CITY OF MORGAN HILL

DocuSigned by:
Christina Turner

Christina Turner, City Manager
Date: 11/18/2022

BATTALION ONE FIRE PROTECTION, INC.

By: Jon Zang
Title: Chief Executive Officer and Vice President
Print Name and Title of Signer.
If Corporate: Chairman, President or Vice President

Date: October 6, 2022

By: Alia Jackson
Title: Chief Financial Officer
Print Name and Title of Signer.
If Corporate: Secretary, Assistant Secretary, Chief Financial Officer or Assistant Treasurer

Date: October 6, 2022

EXHIBIT 1

MAINTENANCE SERVICE AGREEMENT
Battalion One Fire Protection, Inc.

THIS AGREEMENT is entered into and becomes effective on 12/8/2020 (Effective Date), by and between the CITY OF MORGAN HILL, a municipal corporation, ("CITY"), and Battalion Fire Protection, 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 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 December 31, 2022 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 fire protection services as further described in **Exhibit A.**

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

   4.1. Amount. $42,210. Total compensation to SERVICE PROVIDER under this Agreement during its initial term set forth in Section 2 above shall not exceed Forty-two thousand two hundred ten 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, CONSULTANT 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. 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.

11/11/2020

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:

Battalion One Fire Protection, Inc.
14755 Catalina Street
San Leandro, CA 94577

Address of CITY is as follows:

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

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

16. **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: 12/9/2020

APPROVED AS TO FORM:

DocuSigned by: Donald Larkin

City Attorney

Donald A. Larkin
Print Name

Date: 11/23/2020

CITY OF MORGAN HILL

DocuSigned by: Christina Turner

City Ma...

Christina J. Turner
Print Name

Date: 12/8/2020

BATTALION ONE FIRE PROTECTION, INC.

By:

Jon Zang, Vice President
Print Name and Title of Signer.
If Corporate: Chairman, President or Vice President

Date: 11/11/2020

By:

Alla Jackson - Corporate Secretary
Print Name and Title of Signer.
If Corporate: Secretary, Assistant Secretary, Chief Financial Officer or Assistant Treasurer

Date: 11/11/2020

919683
Contractor's License Number(s) *(if applicable)*

1000003615
Contractor's DIR Registration Number(s) *(if applicable)*

Expiration Date(s) 7/31/2022

Expiration Date(s) 6/30/2022

Seal:

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

EXHIBIT A
SCOPE OF SERVICES

Contractor will provide fire protection sprinkler inspection, testing and maintenance services designed to maximize performance, safety, and life span of the City's fire protection systems for the City of Morgan Hill facilities referenced below and any other city facilities as requested by City staff.

Contractor shall provide all work and materials as described in this Scope of Services, which shall include all labor, transportation, supplies, materials, parts, tools, machinery, employee safety equipment, equipment, supervision, applicable taxes, and all other work and materials required under this Agreement. All work shall be done in a first class, complete and clean workmanlike manner, conforming with best industry practices, and in conformance with all applicable original manufacturer's specifications. Contractor shall facilitate proactive preventive maintenance, maximize equipment life and maximize beneficial usage of the fire protection systems covered by this Agreement.

Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with said services and shall comply with all applicable safety laws, good industry standards, take all reasonable precautions for safety of the public, property tenants, and employees, City employees, and other persons on or about the property sites.

The selected contractor will perform the inspections in a sweeping manner, that is, going from one location to the next until they are completed.

The Scope of Services for the testing is to be performed under the 2013 edition of NFPA 25 (California Edition) as amended in Chapter 80 of the 2019 California Fire Code.

The City Facilities to be serviced include, but are not limited to:

Facility	Address
1. Corporation Yard	100 Edes Court
2. City Hall Campus Including City Hall, Council Chambers and The Villas	17555 Peak Avenue., 17575 Peak Avenue, 535 Alkire Avenue.
3. Police Department	16200 Vineyard Blvd
4. Centennial Recreation Center (CRC)	171 W. Edmundson Ave
5. Aquatics Center (AC)	16200 Condit Road
6. Community and Cultural Center (CCC) Including Gavilan College building, MH Playhouse and Children's Pavilion	CCC-17000 Monterey Road Gavilan College- 17060 Monterey Road MH Playhouse- 17090 Monterey Road Children's Pavilion-17000 Monterey Road
7. Downtown Parking Garage	50 E. Third Street
8. Depot Train Station	17300 Depot Street

Quarterly Inspections

- Visual Inspection of the following:

- Automatic sprinkler system
- Control values – identification sign
- Control valves – inspection
- Waterflow alarm devices
- Supervisory devices
- Gauges (wet pipe system)
- Enter water supply pressure below riser check
- Enter water supply pressure above riser check
- Pressure readings acceptable
- Hydraulic design information sign
- General information sign
- Heat tap
- Spare sprinkler
- Fire department connections
- Alarm valves – exterior inspection
- Pressure reducing valves
- Backflow preventers
- Small hose connections – hose valve
- PRV – Fire sprinkler system

Annual Inspections

- Everything on the quarterly inspection
- Visual inspection of the following:
  - Sprinklers
  - Buildings freeze protection
  - Pipe and fittings
  - Hangers
  - Seismic braces
- Testing of the following:
  - Field service test
  - Recall sprinklers
  - Water flow alarm devices
  - Main train test
  - Control valve position
  - Control valve operation
  - Supervisory devices
  - Backflow preventer assemblies*
  - Small hose connections with PRV hose valves / partial flow test
- Maintenance of the following:
  - Control valves
  - Small hose connections
  - Obstruction Investigation**

- System returned to service

*Annual testing of the backflows for the fire backflows only. The City retains other certified backflow personnel who test the other backflow devices.

** This is not the internal obstruction investigation that is only required during the 5-year service.

5 Year Inspections

- Everything on the quarterly service
- Everything on the annual service
- Testing of the following:
  - Pressure gauges – calibration
  - Small hose connections
- Maintenance of the following:
  - Check valves – Internal inspection
  - FDC – Backflush
  - Internal pip inspection

EXHIBIT B
SCHEDULE OF COMPENSATION RATES

Bid Item	Location	Per Quarterly Inspection	Per Annual Inspection	Per Five-Year Inspection
1	Corp Yard	92.50	375.00	555.00
2	City Hall Campus: City Hall, Council Chamber, The Villas	185.00	925.00	1,110.00
3	Police Dept.	92.50	555.00	740.00
4	Centennial Rec Center	92.50	462.50	555.00
5	Aquatics Center	92.50	462.50	555.00
6	Community and Cultural Center Including Gavilan, MH Playhouse & Children's Pavilion	185.00	832.50	2,220.00
7	Downtown Parking Garage	185.00	555.00	740.00
8	Depot Train Station	92.50	370.00	555.00
9	SUBTOTALS	1,017.50	4,537.50	7,030.00
10	TOTAL: 6 Quarterly Inspections	6,105.00		
11	TOTAL: 2 Annual Inspections		9,075.00	
12	TOTAL: 1 Five-Year Inspection			7,030.00
13	TOTAL: INSPECTIONS			22,210.00
14	TOTAL: EXTRA SERVICES @ $10,000 per year for two years			20,000.00
15	GRAND TOTAL CONTRACT AMOUNT:			42,210.00
	Standard Hours: 8 a.m. to 5 p.m.: $185 per hour/4 hour minimum			
	After Hours: 5 p.m. to 8 a.m.: $277.50 per hour/4 hour minimum			
	Weekends-Saturdays: $277.50 per hour/4 hour minimum			
	Sundays and Holidays: $370.00 per hour/4 hour minimum			

EXHIBIT C
SCHEDULE OF PERFORMANCE

The quarterly, annual and five-year inspections are to be scheduled in coordination with the City of Morgan Hill maintenance staff per the scope of work.

REVISED EXHIBIT A
2023 SCOPE OF SERVICES
DATED SEPTEMBER 28, 2022

The Five-Year Inspections are removed from the scope of services because they were completed in 2022.

SEPTEMBER 28, 2022

Revised Exhibit B-Schedule of Compensation Rates

Battalion One Fire Protection

Quarterly Inspections			5% increase
Bid Item	**Location**	**2020-2022 Per Quarterly Inspection**	**2023 Per Quarterly Inspection**
1	Corporation Yard	92.50	**97.13**
2	City Hall Campus	185.00	**194.25**
3	Police Department	92.50	**97.13**
4	Centennial Rec Center	92.50	**97.13**
5	Aquatics Center	92.50	**97.13**
6	CCC, Gavilan College, MH Playhouse, Children's Pavilion	185.00	**194.25**
7	Downtown Parking Garage	185.00	**194.25**
8	Depot Train Station	92.50	**97.13**
9	**Subtotal: One Quarterly Inspections (All Facilities)**	1,017.50	**1,068.38**
10	**Subtotal: Quarterly Inspections (3 per year)**	6,105.00	**3,205.13**

Annual Inspections			
Bid Item	**Location**	**2020-2022 Per Annual Inspection**	**2023 Per Annual Inspection**
1	Corporation Yard	375.00	**393.75**
2	City Hall Campus	925.00	**971.25**
3	Police Department	555.00	**582.75**
4	Centennial Rec Center	462.50	**485.63**
5	Aquatics Center	462.50	**485.63**
6	CCC, Gavilan College, MH Playhouse, Children's Pavilion	832.50	**874.13**
7	Downtown Parking Garage	555.00	**582.75**
8	Depot Train Station	370.00	**388.50**
9	**Subtotal: One Annual Inspection for All Facilities**	4,537.50	**4,764.38**
10	**Annual Inspections (1 per year)**	9,075.00	4,764.38

Five Year Inspections			
Bid Item	**Location**	**2020-2022 Per Five-Year Inspection**	**2023 Per Five-Year Inspection**
1	Corporation Yard	555.00	-
2	City Hall Campus	1,110.00	-
3	Police Department	740.00	-
4	Centennial Rec Center	555.00	-

5	Aquatics Center	555.00	-
6	CCC, Gavilan College, MH Playhouse, Children's Pavilion	2,220.00	-
7	Downtown Parking Garage	740.00	-
8	Depot Train Station	555.00	-
9	**Subtotal: One Five-Year Inspection**	7,030.00	-
10	**Five-Year Inspections (1 every 5 years)**	7,030.00	-
	Subtotal Original Contract: Inspections	22,210.00	
	Subtotal First Amendment: Inspections		**7,969.50**
	Extra Services $10,000 Per Year	20,000.00	**10,000.00**
	Grand Total: Original Contract	**42,210.00**	
	Grand Total: First Amendment		**17,969.50**
	Grand Total: Original Contract + First Amendment	**60,179.50**	

REVISED EXHIBIT C
2023 SCHEDULE OF PERFORMANCE

DATED SEPTEMBER 28, 2022

The Five-Year Inspections are removed from the scope of services because they were completed in 2022.

The quarterly and annual inspections are to be scheduled in coordination with the City of Morgan Hill maintenance staff per the scope of services.

CITY OF MORGAN HILL

City Council Mid-Year Goal Review

Workshop Minutes

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

Wednesday, September 27, 2023 5:00 PM

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

CALL TO ORDER

Mayor Turner called the City Council workshop 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.

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

PUBLIC COMMENT

Public comment opened at 5:02 pm. There being no requests to speak, public comment closed.

AGENDA

CITY COUNCIL MID-YEAR GOAL REVIEW WORKSHOP

Review and discuss:

1. Team Morgan Hill Department Updates
2. 2022-2023 Sustainable Morgan Hill, including Vision, Ongoing Priorities, and Strategic Priorities
3. 2022-2023 Strategic Priorities Workplan
4. Future Council Initiated Agenda Items
5. City Council Norms and Ethics Policy
6. Code of Conduct for Public Meetings
7. Rosenberg's Rules of Order

City Manager Christina Turner started the workshop with an overview of the agenda for the evening.

The leadership team introduced themselves and provided department updates.

City Manager Christina Turner gave an overview of the Sustainable Morgan Hill document, the Strategic Priorities Workplan, and the Future Council Initiated Agenda Items.

The meeting recessed at 6:03 pm and reconvened at 6:10 p.m.

Public comment opened at 6:12 pm. The following people were called to speak:
Sean Fry
Lukas Marcheschi
Brandon Bieganski
Ivan Rybenko
Armando Benavides (zoom)
There being no further requests to speak, public comment closed.

The City Council reviewed the Strategic Priorities Workplan and the Future Council Initiated Agenda Items.

Public comment opened at 6:39 pm. The following people were called to speak:
Doug Muirhead
Justin Coughlan
Brandon Bieganski
There being no further requests to speak, public comment closed.

The City Council reviewed the City Council Norms, Ethics Policy and Code of

Conduct for Public Meetings.

Public comment opened at 7:23 pm. The following people were called to speak:
Doug Muirhead
Armando Benavides (zoom)
There being no further requests to speak, public comment closed.

City Attorney Don Larkin provided a report on Rosenberg's Rules of Order.

City Manager Christina Turner discussed the Sustainable Morgan Hill document.

FUTURE COUNCIL INITIATED AGENDA ITEMS

Mayor Turner would like a conversation regarding youth sports and recreation tourism at the Sports Complex and the Aquatics Center. He would also like to discuss some options for funding public art.

Council Member Martinez Beltran would like to revisit the Economic Blueprint and discuss tourism. She would also like to discuss murals on buildings off of Highway 101.

ADJOURNMENT

There being no further business, Mayor Turner adjourned the meeting at 7:51 pm.

Minutes Prepared by:

Kim Mancera, Deputy City Clerk

CITY OF MORGAN HILL

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, October 4, 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

Council Member Yvonne Martinez Beltran arrived at 5:05 pm.

DECLARATION OF POSTING AGENDA

Deputy City 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 5:00 pm. There being no requests to speak, public comment closed.

ADJOURN TO CLOSED SESSION

The meeting adjourned to closed session at 5:01 pm.

REGULAR MEETING

The regular meeting convened at 6:00 pm.

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

RECOGNITIONS

Recognizing South Valley Symphony's 50th anniversary

PROCLAMATIONS

Proclamation Recognizing the Festival of Deepavali
Proclaiming September 17-23, 2023 as Constitution Week
Proclaiming October 1, 2023 as Latino Physician Day
Proclaiming October 4, 2023 as Clean Air Day
Proclaiming the month of October 2023 as Dementia and Brain Health Awareness Month

PRESENTATIONS

SVCE Presentation

CITY COUNCIL REPORTS

Council Member Borgioli reported that the Lllagas Creek Flood Control Project is going well. He mentioned that project completion is scheduled for 2024 and residents in the Downtown area will no longer be required to obtain flood insurance, which will save a lot of money. He reported that federal funding for the Anderson Dam project is going well. He attended the Cal Cities Conference in September. He spoke about a session he attended called "Managing Difficult Conversations with Constituents".

CITY MANAGER'S REPORT

City Manager Christina Turner provided information on the new SeeClickFix app. It provides a new way to report maintenance issues. She spoke about Clean Air Week from October 2-8, 2023. There are several activities listed on our website. She announced that the Parks and Recreation team has a new spooky tradition called Morgan Hill Haunt. It gives people and neighborhoods the opportunity to decorate their houses. The deadline is October 20, 2023. We have lots of entries already and there will be judging. Our Library Cultural and Arts Commission is having a Global Groove Experience on Sunday, October 8, 2023, from 3:00 - 7:00 pm at the Community and Cultural Center. They will be celebrating a mosaic of cultures and will have dance performances, educational demonstrations, and fusion food trucks.

CITY ATTORNEY'S REPORT

City Attorney Don Larkin shared that there was no reportable action from the closed session item. He also reminded Council Members that attended the League Conference and have not reported on it they are required to report if they attended and speak briefly about something that they did there.

OTHER REPORTS

Council Member Spring attended the League Annual Conference in Sacramento. He mentioned there was a lot of networking happening and enjoyed seeing his colleagues. He noted that he is happy to be a part of this Council. He received a lot of valuable information that he shared with City Manager Christina Turner.

Council Member Librers attended the League Annual Conference in Sacramento. She attended many sessions. The highlight for her was speaking at the Women's Caucus which she was a founding member of years ago.

Council Member Martinez Beltran attended the League Annual Conference in Sacramento. She attended the Latino Caucus business meeting and was elected to their executive board. She was also elected to the Cal Cities Peninsula Division Board. Her highlight was listening to Brandon Flemming, author of Miss Educated, speak.

Mayor Turner attended the League Annual Conference in Sacramento. He enjoyed the opportunities to learn and networking. He also announced that the Bay Area Panthers have decided to stay local. They will remain in San Jose, playing at the SAP Center and will be headquartered in Morgan Hill. They will be practicing at the Outdoor Sports Center. He announced that he and the Mayor of San Jose will be putting on a youth football clinic on Saturday, November 4, 2023 from 5:30 - 7:30 pm at the Spartan Stadium. He will be challenging the Mayor of San Jose to a football toss.

PUBLIC COMMENT

Public comment opened at 6:28 pm. The following people were called to speak:
Kathy Chavez Napoli

Tom Gates (zoom)
Leonard Frank (zoom)
Lev Tronstein (zoom)
Gabe Stutman (zoom)
There being no further requests to speak, public comment closed.

ADOPTION OF AGENDA

MOTION:

Adopting the agenda, moving item 12 ahead of item 11.

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.

Suman Ganapathy requested to speak on item 1 on the agenda.

MOTION:

Approving consent calender.

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

1. **ADOPT RESOLUTION DECLARING THE SECOND MONDAY IN OCTOBER EACH YEAR AS INDIGENOUS PEOPLES' DAY**

Recommendation:
Adopt resolution declaring the second Monday in October of each year as Indigenous Peoples' Day.

2. **APPROVE AND ADOPT A RESOLUTION DECLARING THE SUMMARY VACATION OF A PORTION OF DEPOT STREET RIGHT-OF-WAY, ESTABLISHING NEW DEPOT STREET RIGHT-OF-WAY, AND ADDING A PUBLIC UTILITY EASEMENT AT THE MORGAN HILL COMMUNITY AND CULTURAL CENTER (CCC)**

Recommendation:

1. Adopt a Resolution declaring the Summary Vacation of a portion of Depot Street right-of-way, from approximately 340 feet south of East 5th Street to East Dunne Avenue;
2. Approve the establishment of a Public Street Right-of-Way over the realigned portion of Depot Street;
3. Approve a Grant of Public Utility Easement along the southern portion of the Community and Cultural Center (CCC) that is parallel and adjacent to the area of Depot Street proposed to be vacated;
4. Approve the inclusion of the above Depot Street Public Street Right-of-Way and Grant of Public Utility Easement actions in the Summary Vacation Resolution;
5. Direct the City Clerk to file a certified copy of the Resolution in the Office of the Recorder of Santa Clara County; and
6. Authorize the City Manager to sign a Quitclaim Deed of the vacated portion of Depot Street and a separate Grant of Public Utility Easement on behalf of the City and direct the City Clerk to file in the Office of the Recorder of Santa Clara County.

3. **APPROVE A THREE-YEAR MAINTENANCE SERVICE AGREEMENT WITH HB RESTORATION, INC. FOR WELL SITE AND BOOSTER STATION PAINTING**

Recommendation:

1. Award a Maintenance Service Agreement to HB Restoration, Inc. in the not-to-exceed amount of $180,000 for annual painting of the City’s well sites and booster stations; and
2. Authorize the City Manager to execute and administer a three-year agreement with HB Restoration, Inc.

4. **APPROVE HEATING, VENTILATION, AND AIR CONDITIONING (HVAC) MAINTENANCE SERVICE AGREEMENT**

Recommendation:

1. Award a Maintenance Service Agreement to Environmental Systems, Inc. in the total amount of $662,944 for preventative HVAC maintenance ($62,944) and repair services (not-to-exceed $600,000) for a two-year period; and
2. Authorize the City Manager to execute and administer that certain Maintenance Service Agreement with Environmental Systems, Inc.

5. **APPROVE THE SEPTEMBER 6, 2023 CITY COUNCIL MEETING MINUTES**

Recommendation:
Approve the September 6, 2023 City Council Meeting Minutes.

6. **ADOPT RESOLUTION OF INTENTION TO RENEW THE MORGAN HILL TOURISM BUSINESS IMPROVEMENT DISTRICT**

Recommendation:
Adopt Resolution of Intention to Renew the Morgan Hill Tourism Business Improvement District (TBID).

7. **AWARD COMMUNITY PARK PICKLEBALL COURTS PROJECT TO EF&S CONCRETE, INC.**

Recommendation:

1. Approve Community Park Pickleball Courts plans and specifications;
2. Award contract to EF&S Concrete, Inc. in the amount of $307,120;
3. Authorize expenditure of construction contingency funds not-to-exceed $61,424; and
4. Authorize the City Manager to execute and administer the construction contract with EF&S Concrete, Inc.

8. **APPROVE SUBORDINATION AGREEMENT FOR CITY OPEN SPACE EASEMENT WITH THE SANTA CLARA VALLEY HABITAT AGENCY**

Recommendation:
Authorize the City Manager to execute a subordination agreement for a City Open Space Easement with the Santa Clara Valley Habitat Agency.

9. **CARRYING A CONCEALED WEAPON LICENSE UPDATE**

Recommendation:

Accept report.

10. SECOND AMENDMENT TO PROFESSIONAL SERVICE AGREEMENT WITH HARRIS & ASSOCIATES, INC. FOR ON-CALL ENGINEERING PLAN REVIEW AND TECHNICAL SUPPORT SERVICES FOR LAND DEVELOPMENT ENGINEERING

Recommendation:

1. Approve the Second Amendment to the professional service agreement with Harris & Associates, Inc. for on-call engineering plan review and technical support services for Land Development Engineering to add $180,000 to contract amount for a total not-to-exceed amount of $631,000 with the term of the agreement unchanged; and
2. Authorize the City Manager to execute the Second Amendment.

OTHER BUSINESS

12. APPROVE OR DENY COMMUNITY FUNDING REQUESTS FOR DIA DE LOS MUERTOS AND HOLIDAY POSADA EVENTS

Recommendation:
The City Council may approve or deny the requests.

Public Services Director Chris Ghione provided a report. The applicant, Delia Gomez with Nueva Esperanza, answered questions.

The meeting recessed at 7:11 pm and reconvened at 7:20 pm.

Public comment opened at 7:31 pm. The following people were called to speak:
Joe Baranowski (zoom)
Kathy Chavez Napoli
Delia Gomez
There being no further requests to speak, public comment closed.

MOTION:
Approving the City to cover the fees associated with the rental and permit fees for the Dia De Los Muertos.

RESULT:	Passed
MOVER:	Council Member Borgioli
SECONDER:	Council Member Librers
AYES:	Mayor Pro Tem Spring, Council Member Borgioli, Council Member Martinez Beltran, Mayor Turner, Council Member Librers

NAYS:	None
ABSTAIN:	None
ABSENT:	None

MOTION:
Approving staff recommendation covering all Holiday Posada Fees.

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

11. ACCEPT MORGAN HILL TOURISM BUSINESS IMPROVEMENT DISTRICT (MHTBID) OWNERS ASSOCIATION ANNUAL REPORT (DBA VISIT MORGAN HILL)

Recommendation:
Accept and file the Visit Morgan Hill Annual Report.

Economic Development Director Matt Mahood and Krista Rupp with Visit Morgan Hill provided a report.

Report received.

FUTURE COUNCIL INITIATED AGENDA ITEMS

Council Member Borgioli requested a review of policy CP 21-02 City Council Funding Requests.

Mayor Turner would like to discuss a funding mechanism for public art. He would also like to discuss the prioritization of youth sports and recreation tourism.

Council Member Martinez Beltran requested that the community funding requests application also be in Spanish. She would also like to bring back the Economic Development Blueprint and focus on tourism.

ADJOURNMENT

There being no further business, Mayor Turner adjourned the meeting at 8:52 pm.

Minutes Prepared by:
Kim Mancera, Deputy City Clerk

CITY OF MORGAN HILL

CITY COUNCIL STAFF REPORT
MEETING DATE: November 1, 2023

PREPARED BY:
Rebecca Garcia, Housing Director
APPROVED BY: City Manager

APPROVE REFINANCING FOR ROYAL COURT ASSOCIATES (EDEN HOUSING) AFFORDABLE HOUSING PROJECT

RECOMMENDATION(S)

1. Authorize the City Manager to approve the re-subordination of an existing City loan in the principal amount of $2,650,000 for Royal Court Associates, L.P., a 55-unit EDEN Housing Affordable Housing Apartment Community, subject to an agreement negotiated by the City Attorney; and
2. Authorize the City Manager to accept a payment of $50,000 towards the accrued interest of the existing City Loan.

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities
Supporting our Youth, Seniors, and Entire Community
Enhancing Diversity and Inclusiveness
Advancing Regional Initiatives

2022-2023 Strategic Priorities
Affordable Housing and Homelessness

Guiding Documents
Morgan Hill 2035 General Plan

REPORT NARRATIVE:
REPORT NARRATIVE:

In 2005, the Redevelopment Agency of the City of Morgan Hill (the “Agency”) provided a loan of $4,350,000 (City Loan) to Royal Court Associates, a California Limited Partnership (the “Developer”) which its sole member Eden South Bay Inc, is under the control of the board of directors of Eden Housing, Inc. for the development of Royal Court Apartments.

Royal Court Apartments is located at 17925 Monterey Road, Morgan Hill. The project is 100% affordable for households earning 30% to 60% of the Area Median Income (AMI).

The project consists of 55 units, 6 one-bedroom units, 28 two-bedroom units, and 21 three-bedroom units, and currently serves 196 residents.

The City Loan was initially provided to South County Housing (SCH); however, upon the dissolving of SCH, Royal Court was transferred to Eden Housing on July 6, 2015.
The City Loan and Regulatory Agreement has an initial term of 55 years from completion of the Project. The remaining principal balance of $2,650,000 and accrued interest balance will be due in full to the City by June 2037. Through the refinance process, the Developer seeks to secure a new loan with The Housing Trust Silicon Valley of $3,000,000 at an interest rate of 5.00%, which requires monthly payments of $17,538 and a 5-year term with a 25-year amortization.

As a lender to Royal Court Associates, the City must consent to the transaction before the Developer may take steps to refinance. Through the refinance process, the Developer will be able to pay off the current first mortgage with Citibank, which has a balloon payment of approximately $2 million with maturity extended to 1/1/2024. The new loan's interest rate will reduce from 7.24% to 5.00%, bringing in savings of approximately $16,000 per year from debt service payments. The Developer will capitalize on a replacement reserve from the remaining loan proceeds of approximately $800,000, which will be retained at the property to address the physical needs; providing the project with a reserve that will bridge the capital needs while re-syndication opportunities are not available currently due to the competitiveness of allocations, as one of the common challenges for rehabilitating existing affordable housing.

Project Funding:
The table below reflects the proposed breakdown of the Developer's new financing. All numbers are preliminary and subject to change due to potential changes in financing terms.

Sources:	**Amount**
Housing Trust Silicon Valley	$3,000,000
Uses:	
Citibank Loan Payoff (as of 7/2023)	$2,013,905
Citibank Loan accrued interest (as of 7/2023)	$12,191
Payment to City Loan	$50,000
Loan Processing Fee	$37,500
Transaction Fee (Legal and 3rd party reports)	$40,000
Title and Survey	$25,000
Borrower Legal Counsel	$15,000

Estimate Loan Proceeds to Capitalized Replacement Reserve	$806,404

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 on its goals, policies, and promised implementation items. 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 began in October 2023. Refinancing of the project supports two of the City's Housing Element goals:

Goal 1. Provide a diversified housing stock to meet the full range of future community housing needs.
Goal 4: Preserve and rehabilitate existing housing supply.

Conclusion:
The Royal Court project supports the goals and strategies outlined in the City's Housing Element. This project serves 55 families or 196 people at an affordability level needed for households earning 30% to 60% of the area median income (AMI). The rents range from $678 to $2,293. The City has historically supported nonprofit affordable housing developers as they seek to preserve the property and enhance their financial position so that they have replacement reserves for necessary repairs and replacement, including property-wide improvement such as roof repairs. The outstanding principal balance of the City's RDA loan is $2,650,000 with 3% simple interest. The outstanding accrued interest payable is $1,496,768. The loan is due in 2038. City staff supports the Developer's intent to refinance and to allow the City Housing Program to receive a payment of $50,000 to be paid at the close of escrow.

COMMUNITY ENGAGEMENT:
This staff report serves to inform the community of the proposed recommendation to support the refinance of the Royal Court Apartments and subordination of the City's loan of $2,650,000.

ALTERNATIVE ACTIONS:

The Council may choose not to approve the subordination of refinancing of the Royal Court and not to accept a $50,000 loan repayment.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:
The City Council previously considered the terms of the loans for the Project and consented to the assignment from entities controlled by South County Housing and its affiliates and to assumption entities controlled by Eden Housing and its affiliates.

FISCAL AND RESOURCE IMPACT:
Pending City Council approval and the closing of the refinancing, a payment of $50,000 will be paid to the City's Low to Moderate Income Housing Fund 255.

CEQA (California Environmental Quality Act):
This transaction is not a project.

CITY OF MORGAN HILL

CITY COUNCIL STAFF REPORT
MEETING DATE: November 1, 2023

PREPARED BY:
Matthew Mahood, Economic Development Director
APPROVED BY: City Manager

INTRODUCE ORDINANCE TO RENEW THE MORGAN HILL TOURISM BUSINESS IMPROVEMENT DISTRICT (MHTBID)

RECOMMENDATION(S)

1. Open and close public hearing;
2. Waive the first and second reading of the ordinance; and
3. Introduce ordinance to renew the Morgan Hill Tourism Improvement District (MHTBID).

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities
Maintaining and Enhancing Infrastructure
Advancing Regional Initiatives

2022-2023 Strategic Priorities
Fiscal Sustainability
Economic Development

Guiding Documents
Bikeways, Trails, and Recreation Master Plan
Economic Blueprint
Morgan Hill 2035 General Plan

REPORT NARRATIVE:

Background
The MHTBID is a benefit assessment district proposed to continue a revenue source to help fund marketing and sales and sports facility marketing and development programs for Morgan Hill lodging businesses. This approach has been used successfully in other destination areas throughout the state to improve tourism and drive demand for additional room nights to assessed lodging businesses. The renewed MHTBID includes all lodging businesses, existing and in the future, available for public occupancy located within the boundaries of the City of Morgan Hill.

Lodging business owners decided to pursue renewal of the MHTBID in order to continue a revenue source devoted to marketing Morgan Hill as a tourist, meeting and event destination. If renewed, the MHTBID would generate approximately $341,000 on an annual basis for promotion of travel and tourism specific to Morgan Hill.

Tourism Business Improvement Districts
Tourism Business Improvement Districts (TBIDs) utilize the efficiencies of private sector operation in the market-based promotion of tourism. These special assessment districts allow lodging business owners to organize their efforts to increase tourism. Lodging business owners within the TBID fund the TBID, and those funds are used to provide services that are desired by and benefit the lodging businesses within the TBID.

TBID benefits:

- Funds cannot be diverted for other government programs;
- They are customized to fit the needs of each destination;
- They allow for a wide range of services; including: destination marketing, tourism promotion, and sales lead generation;
- They are designed, created and governed by those who will pay the assessment; and
- They provide a stable funding source for tourism promotion.

In California, TBIDs are primarily formed pursuant to the Property and Business Improvement District Law of 1994 (94 Law). This law allows for the creation of special benefit assessment districts to raise funds within a specific geographic area. The key difference between TBIDs and other special benefit assessment districts is that funds raised are returned to the private non-profit corporation governing the TBID.

Management District Plan
The Management District Plan (Attachment 1) includes the proposed boundary of the MHTBID, a service plan, budget and a proposed means of governance. The MHTBID will include all lodging businesses, existing and in the future, available for public occupancy located within the boundaries of the City of Morgan Hill.

The annual assessment rate is one and one half percent (1.5%) of gross short-term sleeping room rental revenue. During the MHTBID's term, the assessment rate may be increased annually by the Owner's Association upon approval from the Board of Directors by a maximum of one half of one percent (0.5%) of gross short-term sleeping room rental revenue per year. The maximum assessment rate may not exceed three percent (3%) of gross short-term sleeping room rental revenue. If the assessment rate is increased, it may subsequently be decreased by a maximum of one half of one percent (0.5%) each year, but shall not be decreased below a minimum of one- and one-half percent (1.5%) of gross short-term sleeping room rental revenue. Any proposed assessment rate increase or decrease shall be included in the MHTBID annual report and shall not be effective until approved by the Morgan Hill City Council. Based on the benefit received, assessments will not be collected on: stays of more than thirty (30) consecutive days or stays by any officer or employee of a foreign government who is exempt by reason of express provision of federal law or international treaty.

The renewed MHTBID will have a ten (10) year life, beginning March 1, 2024 or as soon as possible thereafter, and ending ten (10) years from its start date. The assessment will be implemented beginning March 1, 2024. Once per year beginning on the anniversary of MHTBID renewal there is a thirty (30) day period in which business owners paying fifty percent (50%) or more of the assessment may protest and begin proceedings to terminate the MHTBID.

The City of Morgan Hill will be responsible for collecting the assessment on a monthly basis (including any delinquencies, penalties and interest) from each lodging business located in the boundaries of the MHTBID. The City of Morgan Hill shall take all reasonable efforts to collect the assessments from each lodging business. The City of Morgan Hill shall forward the assessments to Visit Morgan Hill, which will have the responsibility of managing MHTBID programs as provided in this Management District Plan. The City of Morgan Hill shall be paid a fee equal to two percent (2%) of the amount of assessment collected to cover its costs of collection and administration.

MHTBID renewal PROCESS

October 4, 2023 RESOLUTION OF INTENTION HEARING

Upon the submission of a written petition, signed by the lodging business owners in the renewed MHTBID who will pay more than fifty percent (50%) of the assessments proposed to be levied, the City Council may initiate proceedings to renew the MHTBID by the adoption of a resolution expressing its intention to renew the MHTBID.

Petition Status: Petitions in favor of MHTBID renewal were submitted by ten (10) lodging businesses, which represent 84.21% of the total MHTBID assessment. This majority petition allows the Council to initiate proceedings for MHTBID renewal at the October 4, 2023 meeting.

By October 21, 2023 NOTICE

The 94 Law requires the City to mail written notice to the owners of all lodging businesses proposed to be assessed within the MHTBID. Mailing the notice begins a mandatory forty-five (45) day period in which owners may protest MHTBID renewal.

November 1, 2023 PUBLIC MEETING AND INTRODUCTION/FIRST READING OF ORDINANCE

Allow public testimony on the renewal of the MHTBID and levy of assessments.

At the public meeting, the City Council shall introduce and conduct the first reading of the ordinance renewing the MHTBID and continue levying the assessment.

December 6, 2023 FINAL PUBLIC HEARING AND SECOND READING/ADOPTION OF THE ORDINANCE

If written protests are received from the owners of lodging businesses in the renewed MHTBID which will pay more than fifty percent (50%) of the assessments proposed to be levied and protests are not withdrawn so as to reduce the protests to less than fifty percent (50%), no further proceedings to levy the proposed assessment against such businesses shall be taken for a period of one (1) year from the date of the finding of a majority protest by the Council.

If the Council, following the public hearing, decides to establish the renewed MHTBID, the Council shall adopt the ordinance, along with a resolution of formation. The ordinance shall go into effect thirty (30) days after successful passage of the ordinance.

COMMUNITY ENGAGEMENT:

Inform

Over the course of the last six months, the Visit Morgan Hill staff has been conducting outreach to the hospitality industry to inform them of the intention to renew the Tourism Business Improvement District, gather input and feedback.

On October 4, 2023, the City Council approved a resolution of intention to renew the MHTBID. The meeting was properly noticed.

On October 16, 2023, a Public Notice was mailed to all affected property and business owners informing them of the intention to renew the MHTBID. The notice was also published on the City's Website and included in the 411.

ALTERNATIVE ACTIONS:

The Council could choose not to renew the MHTBID. Staff does not recommend this option.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

In 2019, by adopting Resolution No. 19-004, the City Council created the Morgan Hill Tourism Improvement District (MHTBID) for a term of five (5) years.

On October 4, 2023, the City Council adopted the Resolution of Intention, Resolution No. 23-044 to hold a public meeting and hearing to consider renewal of the MHTBID. (Attached)

FISCAL AND RESOURCE IMPACT:
None immediately. The City will receive a fee of two percent (2%) of the amount collected to cover its costs of administration. Because the MHTBID programs are intended to increase visitation to the City, there may be an increase in transient occupancy tax and sales tax collection.

CEQA (California Environmental Quality Act):
Not a Project
Pursuant to CEQA organization or administrative activities of governments that will not result in direct or indirect physical changes in the environment are therefore exempt activities.

2024-2034

MORGAN HILL TOURISM BUSINESS IMPROVEMENT DISTRICT

MANAGEMENT DISTRICT PLAN

Prepared pursuant to the Property and Business Improvement District Law of 1994, Streets and Highways Code section 36600 et seq.

September 15, 2023

Contents

VISIT MORGAN HILL

Prepared by
Civitas

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I. OVERVIEW

Developed by the City of Morgan Hill (City) and Morgan Hill lodging businesses, the Morgan Hill Tourism Business Improvement District (MHTBID) is an assessment district proposed to continue to provide specific benefits to payors, by funding sales & marketing and sports facility marketing & development programs for assessed lodging businesses. This approach has been used successfully in other destination areas throughout the country to provide the benefit of increased demand for room night sales directly to payors. The MHTBID was initially created in 2019 for a five (5) year term. The City and Morgan Hill lodging businesses now wish to renew the MHTBID for a ten (10) year term.

Location: The Morgan Hill MHTBID includes all lodging businesses, existing and in the future, available for public occupancy located within the boundaries of the City of Morgan Hill, as shown on the map in Section IV.

Services: The MHTBID is designed to provide specific benefits directly to payors by increasing awareness and demand for room night sales. Sales & marketing and sports facility marketing & development programs will increase demand for overnight tourism and market payors as tourist, meeting and event destinations, thereby increasing demand for room night sales for assessed lodging businesses.

Budget: The total MHTBID annual assessment budget for the initial year of its ten (10) year operation is anticipated to be approximately $341,000. A similar budget is expected to apply to subsequent years, but this budget is expected to fluctuate as room sales do, as lodging businesses open and close, and if the assessment rate is increased or decreased pursuant to this Plan.

Cost: The annual assessment rate is one and one half percent (1.5%) of gross short-term sleeping room rental revenue. During the MHTBID's term, the assessment rate may be increased annually by the Owner's Association upon approval from the Board of Directors by a maximum of one half of one percent (0.5%) of gross short-term sleeping room rental revenue per year. The maximum assessment rate may not exceed three percent (3%) of gross short-term sleeping room rental revenue. If the assessment rate is increased, it may subsequently be decreased by a maximum of one half of one percent (0.5%) each year, but shall not be decreased below a minimum of one- and one-half percent (1.5%) of gross short-term sleeping room rental revenue. Any proposed assessment rate increase or decrease shall be included in the MHTBID annual report and shall not be effective until approved by the Morgan Hill City Council. Based on the benefit received, assessments will not be collected on: stays of more than thirty (30) consecutive days or stays by any officer or employee of a foreign government who is exempt by reason of express provision of federal law or international treaty.

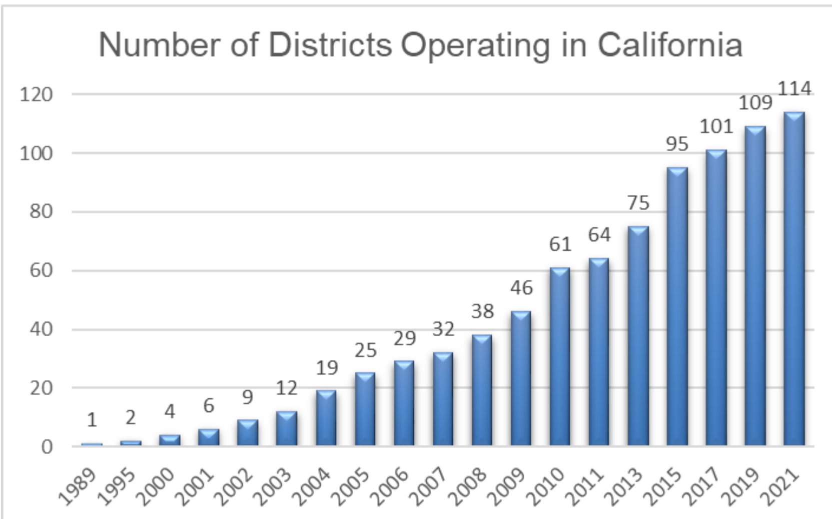
Collection: The City will be responsible for collecting the assessment on a monthly basis (including any delinquencies, penalties and interest) from each lodging business located in the boundaries of the MHTBID. The City shall take all reasonable efforts to collect the assessments from each lodging business.

Duration: The MHTBID will have a ten (10) year life, beginning March 1, 2024 or as soon as possible thereafter, and ending ten (10) years from its start date. After ten (10) years, the MHTBID may be renewed pursuant to Streets and Highways Code section 36660, if lodging business owners support continuing the MHTBID programs.

Management: Visit Morgan Hill (VMH) shall continue to serve as the MHTBID's Owners' Association. The Owners' Association is charged with managing funds and implementing programs in accordance with this Plan, and must provide annual reports to the City Council within one-hundred and twenty (120) days of the MHTBID's fiscal year (June 30).

II. BACKGROUND

TBIDs are an evolution of the traditional Business Improvement District. The first TBID was formed in West Hollywood, California in 1989. Since then, over 100 California destinations have followed suit. In recent years, other states have begun adopting the California model – Massachusetts, Montana, South Dakota, Washington, Colorado, Texas and Louisiana have adopted TBID laws. Several other states are in the process of adopting their own legislation. The cities of Wichita, Kansas and Newark, New Jersey used an existing business improvement district law to form a TBID . Additionally, some cities, like Portland, Oregon and Memphis, Tennessee have utilized their home rule powers to create TBIDs without a state law.



California's TBIDs collectively raise over $300 million annually for local destination marketing. With competitors raising their budgets, and increasing rivalry for visitor dollars, it is important that Morgan Hill lodging businesses continue to invest in stable, commerce-specific marketing programs.

TBIDs utilize the efficiencies of private sector operation in the market-based promotion of tourism districts. TBIDs allow tourism business owners to organize their efforts to increase commerce. Tourism business owners within the TBID pay an assessment and those funds are used to provide services that increase commerce.

In California, most TBIDs are formed pursuant to the Property and Business Improvement District Law of 1994. This law allows for the creation of a benefit assessment district to raise funds within a specific geographic area. *The key difference between TBIDs and other benefit assessment districts is that funds raised are returned to the private non-profit corporation governing the district.*

There are many benefits to TBIDs:

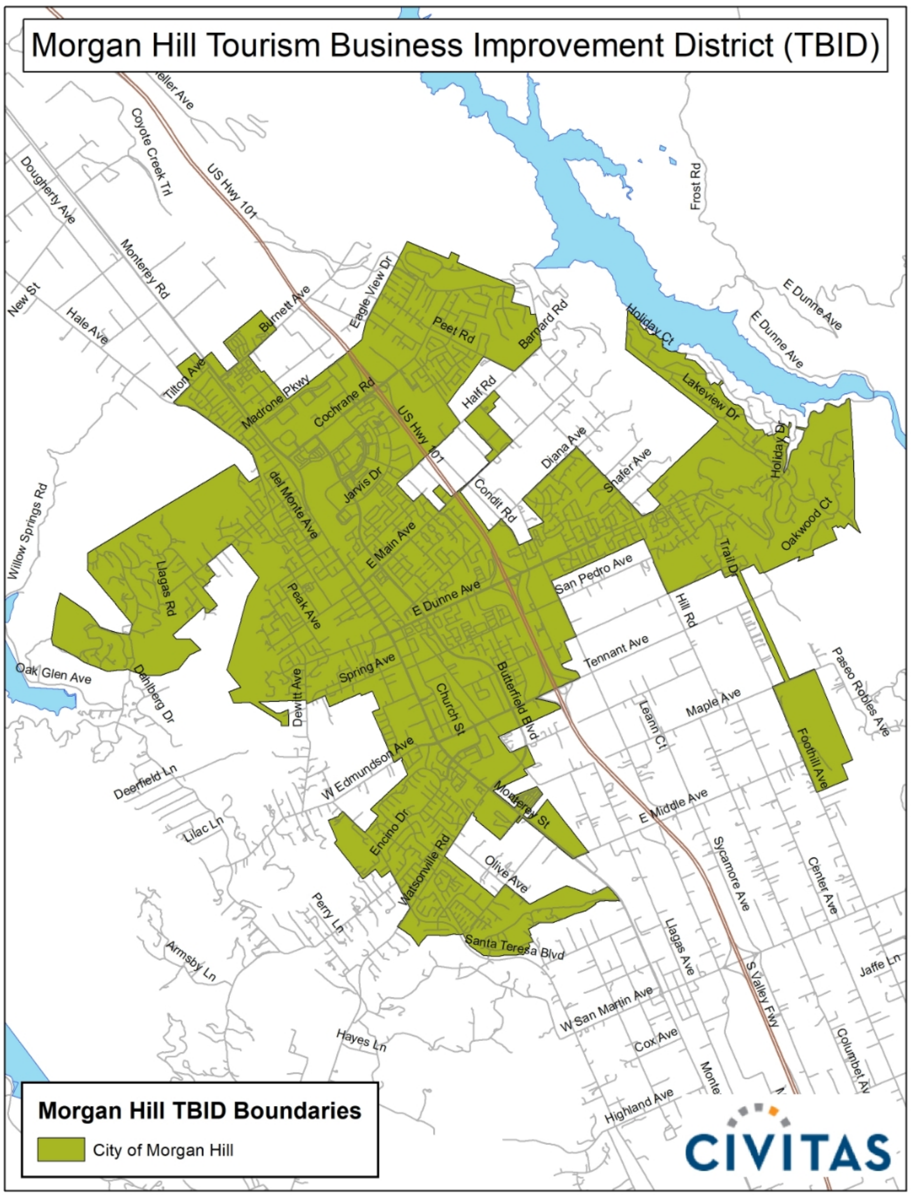
- Funds must be spent on services and improvements that provide a specific benefit only to those who pay;
- Funds cannot be diverted to general government programs;
- They are customized to fit the needs of payors in each destination;
- They allow for a wide range of services;
- They are ***designed, created and governed by those who will pay*** the assessment; and
- They provide a stable, long-term funding source for tourism promotion.

III. BOUNDARY

The MHTBID will include all lodging businesses, existing and in the future, available for public occupancy within the boundaries of the City of Morgan Hill, as shown in the map below.

Lodging business means: any structure, or any portion of any structure, which is occupied or intended or designed for occupancy by transient for dwelling, lodging, or sleeping purposes, and includes any hotel, inn, tourist home or house, dormitory, public or private club, recreational vehicle park, mobile home or house trailer at a fixed location located outside a mobile home park and not occupied by employees, operator or owner of said mobile home park, or other similar structure or portion thereof.

A complete listing of lodging businesses within the MHTBID can be found in Appendix 2.

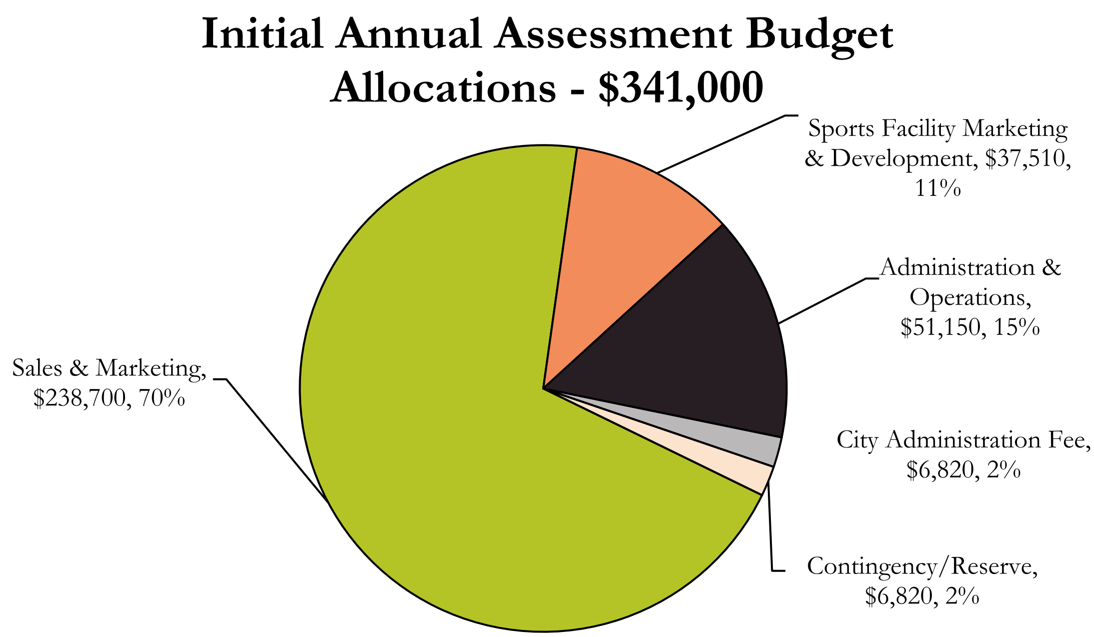


IV. ASSESSMENT BUDGET AND SERVICES

A. Annual Service Plan

Assessment funds will be spent to provide specific benefits conferred or privileges granted directly to the payors that are not provided to those not charged, and which do not exceed the reasonable cost to the City of conferring the benefits or granting the privileges. The privileges and services provided with the MHTBID funds are sales & marketing and sports facility marketing & development programs available only to assessed lodging businesses.

A service plan assessment budget has been developed to deliver services that benefit the assessed businesses. A detailed annual assessment budget will be developed and approved by VMH. The table below illustrates the initial annual assessment budget allocations. These activities and allocations will also apply in subsequent years. The total initial assessment budget is estimated to be $341,000.



Although actual revenues will fluctuate due to market conditions, the proportional allocations of the budget shall remain the same. However, the City and the VMH board shall have the authority to adjust budget allocations between the categories by no more than fifteen percent (15%) of the total budget per year. A description of the proposed improvements and activities for the initial year of operation is below. The same activities are proposed for subsequent years. In the event of a legal challenge against the MHTBID, any and all assessment funds may be used for the costs of defending the MHTBID.

Each budget category includes all costs related to providing that service. For example, the sales & marketing budget includes the cost of staff time dedicated to overseeing and implementing the sales & marketing program. Staff time dedicated purely to administrative tasks is allocated to the administrative portion of the budget. The costs of an individual staff member may be allocated to multiple budget categories. The staffing levels necessary to provide the services below will be determined by VMH on an as-needed basis.

Sales and Marketing
A sales and marketing program will promote assessed lodging businesses as tourist, meeting, and event destinations. The sales and marketing program will have a central theme of promoting Morgan Hill as a desirable place for overnight visits. The program will have the goal of increasing demand for overnight visitation and room night sales at assessed lodging businesses, and may include the following activities:

- Internet marketing efforts to increase awareness and optimize internet presence to drive overnight visitation and room sales to assessed lodging businesses;
- Print ads in magazines and newspapers, television ads, and radio ads targeted at potential visitors to drive overnight visitation and room sales to assessed lodging businesses;
- Regional tourism promotion and marketing to benefit assessed lodging businesses;
- Attendance of trade shows to promote assessed lodging businesses;
- Sales blitzes for assessed lodging businesses;
- Familiarization tours of assessed lodging businesses;
- Preparation and production of collateral promotional materials such as brochures, flyers and maps featuring assessed lodging businesses;
- Owners' Association/Visit Morgan Hill staff attendance of professional industry conferences and affiliation events to promote assessed lodging businesses;
- Lead generation activities designed to attract tourists and group events to assessed lodging businesses;
- Director of Sales and General Manager meetings to plan and coordinate tourism promotion efforts for assessed lodging businesses; and
- Development and maintenance of a website designed to promote assessed lodging businesses.

Sports Facility Marketing and Development
The sports facility marketing and development portion of the budget shall be utilized for the promotion and improvement of sports facilities, with a particular focus on supporting the sales and marketing efforts of lodging businesses in the MHTBID. The primary objective is to increase the desirability of the City of Morgan Hill as a place for overnight visits for sports opportunities, and may include the following activities:

- Sports marketing and promotions designed to increase demand for overnight visitation and room night sales at assessed lodging businesses;
- Financial incentives to maintain and attract new sporting events that have a significant impact on lodging business room night generation;
- Implementing improvements to existing sports facilities, specifically those utilized by overnight visitors, to create a visitor experience that will bring repeat visits to assessed lodging businesses.

Sports facility marketing and development funds shall not be used for ongoing maintenance and operations costs of existing and new sports facilities.

Administration and Operations
The administration and operations portion of the budget shall be utilized for administrative staffing costs, office costs, and other general administrative costs such as insurance, legal, and accounting fees.

City Administration Fee
The City of Morgan Hill shall be paid a fee equal to two percent (2%) of the amount of assessment collected to cover its costs of collection and administration.

Contingency/Reserve
The budget includes a contingency line item to account for uncollected assessments, if any. If there are contingency funds collected, they may be held in a reserve fund or utilized for other program, administration or renewal costs at the discretion of the VMH Board. Policies relating to contributions to the reserve fund, the target amount of the reserve fund, and expenditure of monies from the reserve fund shall be set by the VMH Board. Contingency/reserve funds may be spent on District programs or administrative and renewal costs in such proportions as determined by the VMH Board. The reserve fund may be used for the costs of renewing the MHTBID.

B. Annual Budget

The total ten (10) year assessment budget is projected at approximately $341,000 annually, or $6,138,000 through 2034 if the maximum assessment rate increases are adopted. A similar budget is expected to apply to subsequent years, but this budget is expected to fluctuate as room sales do, as lodging businesses open and close, and if the assessment rate is increased or decreased pursuant to this Plan.

The annual assessment rate is one and one half percent (1.5%) of gross short-term sleeping room rental revenue. During the MHTBID's term, the assessment rate may be increased annually by the Owner's Association upon approval from the Board of Directors by a maximum of one half of one percent (0.5%) of gross short-term sleeping room rental revenue per year. The maximum assessment rate may not exceed three percent (3%) of gross short-term sleeping room rental revenue. If the assessment rate is increased, it may subsequently be decreased by a maximum of one half of one percent (0.5%) each year, but shall not be decreased below a minimum of one- and one-half percent (1.5%) of gross short-term sleeping room rental revenue. Any proposed assessment rate increase or decrease shall be included in the MHTBID annual report and shall not be effective until approved by the Morgan Hill City Council.

The table below demonstrates the estimated annual budget with the assumption that the rates will not be increased during the MHTBID's term.

Estimated Annual Budget if Maximum Assessment Rates Are Not Adopted*

Year	Sales & Marketing	Sports Facility Marketing & Development	Administration & Operations	City Administrative Fee	Contingency/ Reserve	Total
2024/2025	$238,700	$37,510	$51,150	$6,820	$6,820	$341,000
2025/2026	$238,700	$37,510	$51,150	$6,820	$6,820	$341,000
2026/2027	$238,700	$37,510	$51,150	$6,820	$6,820	$341,000
2027/2028	$238,700	$37,510	$51,150	$6,820	$6,820	$341,000
2028/2029	$238,700	$37,510	$51,150	$6,820	$6,820	$341,000
2029/2030	$238,700	$37,510	$51,150	$6,820	$6,820	$341,000
2030/2031	$238,700	$37,510	$51,150	$6,820	$6,820	$341,000
2031/2032	$238,700	$37,510	$51,150	$6,820	$6,820	$341,000
2032/2033	$238,700	$37,510	$51,150	$6,820	$6,820	$341,000
2033/2034	$238,700	$37,510	$51,150	$6,820	$6,820	$341,000
Total	**$2,387,000**	**$375,100**	**$511,500**	**$68,200**	**$68,200**	**$3,410,000**

* A similar budget is expected to apply to subsequent years, but this budget is expected to fluctuate as room sales do, as lodging businesses open and close, and if the assessment rate is increased or decreased pursuant to this Plan.

The table below demonstrates the estimated annual budget with the assumption that the assessment rate will be increased at the earliest opportunity. This estimation is a required disclosure and is not the anticipated course of action. Alternate courses of action may be taken in regard to implementing the assessment rate increase other than what is demonstrated in the chart below, within the parameters of this Plan.

Estimated Annual Budget if Maximum Assessment Rates are Adopted*

Year	Sales & Marketing	Sports Facility Marketing & Development	Administration & Operations	City Administrative Fee	Contingency/ Reserve	Total
2024/2025	$238,700	$37,510	$51,150	$6,820	$6,820	$341,000
2025/2026	$318,267	$50,013	$68,200	$9,093	$9,093	$454,667
2026/2027	$397,833	$62,517	$85,250	$11,367	$11,367	$568,333
2027/2028	$477,400	$75,020	$102,300	$13,640	$13,640	$682,000
2028/2029	$477,400	$75,020	$102,300	$13,640	$13,640	$682,000
2029/2030	$477,400	$75,020	$102,300	$13,640	$13,640	$682,000
2030/2031	$477,400	$75,020	$102,300	$13,640	$13,640	$682,000
2031/2032	$477,400	$75,020	$102,300	$13,640	$13,640	$682,000
2032/2033	$477,400	$75,020	$102,300	$13,640	$13,640	$682,000
2033/2034	$477,400	$75,020	$102,300	$13,640	$13,640	$682,000
Total	**$4,296,600**	**$675,180**	**$920,700**	**$122,760**	**$122,760**	**$6,138,000**

* A similar budget is expected to apply to subsequent years, but this budget is expected to fluctuate as room sales do, as lodging businesses open and close, and if the assessment rate is increased or decreased pursuant to this Plan.

C. California Constitutional Compliance

The MHTBID assessment is not a property-based assessment subject to the requirements of Proposition 218. Courts have found Proposition 218 limited the term 'assessments' to levies on real property.[1] Rather, the MHTBID assessment is a business-based assessment, and is subject to Proposition 26. Pursuant to Proposition 26 all levies are a tax unless they fit one of seven exceptions. Two of these exceptions apply to the MHTBID, a "specific benefit" and a "specific government service." Both require that the costs of benefits or services do not exceed the reasonable costs to the City of conferring the benefits or providing the services.

1. Specific Benefit

Proposition 26 requires that assessment funds be expended on, "a specific benefit conferred or privilege granted directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of conferring the benefit or granting the privilege."[2] The services in this Plan are designed to provide targeted benefits directly to assessed businesses, and are intended only to provide benefits and services directly to those businesses paying

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[1] *Jarvis v. the City of San Diego* 72 Cal App. 4th 230

[2] Cal. Const. art XIII C § 1(e)(1)

the assessment. These services are tailored not to serve the general public, businesses in general, or parcels of land, but rather to serve the specific businesses within the MHTBID. The activities described in this Plan are specifically targeted to increase demand for room night sales for assessed lodging businesses within the boundaries of the MHTBID, and are narrowly tailored. MHTBID funds will be used exclusively to provide the specific benefit of increased demand for room night sales directly to the assessees. Assessment funds shall not be used to feature non-assessed lodging businesses in MHTBID programs, or to directly generate sales for non-assessed businesses. The activities paid for from assessment revenues are business services constituting and providing specific benefits to the assessed businesses. Nothing in this Plan limits the ability of the Owners' Association to enter into private contracts with non-assessed lodging businesses for the provision of services to those businesses.

The assessment imposed by this MHTBID is for a specific benefit conferred directly to the payors that is not provided to those not charged. The specific benefit conferred directly to the payors is an increase in demand for room night sales. The specific benefit of an increase in demand for room night sales for assessed lodging businesses will be provided only to lodging businesses paying the district assessment, with marketing & sales and sports facility marketing & development programs promoting lodging businesses paying the MHTBID assessment. The marketing & sales and sports facility marketing & development programs will be designed to increase demand for room night sales at each assessed lodging businesses. Because they are necessary to provide the marketing & sales and sports facility marketing & development programs that specifically benefit the assessed lodging businesses, the administration and contingency services also provide the specific benefit of increased demand for room night sales to the assessed lodging businesses.

Although the MHTBID, in providing specific benefits to payors, may produce incidental benefits to non-paying businesses, the incidental benefit does not preclude the services from being considered a specific benefit. The legislature has found that, "A specific benefit is not excluded from classification as a 'specific benefit' merely because an indirect benefit to a nonpayor occurs incidentally and without cost to the payor as a consequence of providing the specific benefit to the payor."[3]

2. *Specific Government Service*

The assessment may also be utilized to provide, "a specific government service or product provided directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of providing the service or product."[4] The legislature has recognized that marketing and promotions services like those to be provided by the MHTBID are government services within the meaning of Proposition 26[5]. Further, the legislature has determined that "a specific government service is not excluded from classification as a 'specific government service' merely because an indirect benefit to a nonpayor occurs incidentally and without cost to the payor as a consequence of providing the specific government service to the payor."[6]

3. *Reasonable Cost*

MHTBID services will be implemented carefully to ensure they do not exceed the reasonable cost of such services. The full amount assessed will be used to provide the services described herein. Funds will be managed by VMH, and reports submitted on an annual basis to the City. Only assessed lodging businesses will be featured in marketing materials, receive sales leads generated from MHTBID-

[3] Government Code § 53758(a)
[4] Cal. Const. art XIII C § 1(e)(2)
[5] Government Code § 53758(b)
[6] Government Code § 53758(b)

funded activities, be featured in advertising campaigns, and benefit from other MHTBID-funded services. Non-assessed lodging businesses will not receive these, nor any other, MHTBID-funded services and benefits.

The MHTBID-funded programs are all targeted directly at and feature only assessed lodging businesses. It is, however, possible that there will be a spill over benefit to non-assessed businesses. If non-assessed lodging businesses receive incremental room nights, that portion of the promotion or program generating those room nights shall be paid with non-MHTBID funds. MHTBID funds shall only be spent to benefit the assessed lodging businesses, and shall not be spent on that portion of any program which directly generates incidental room nights for non-assessed businesses.

D. Assessment

The annual assessment rate is one and one half percent (1.5%) of gross short-term sleeping room rental revenue. During the MHTBID's term, the assessment rate may be increased by the Owners' Association to a maximum rate of three percent (3%) of gross short-term sleeping room rental revenue for assessed lodging businesses. The maximum increase or decrease in any year shall be one half of one percent (0.5%). If the assessment rate is increased, it may subsequently be decreased by a maximum of one half of one percent (0.5%) each year, but shall not be decreased below a minimum of one and one half percent (1.5%) of gross short-term sleeping room rental revenue. Based on the benefit received, assessments will not be collected on: stays of more than thirty (30) consecutive days or stays by any officer or employee of a foreign government who is exempt by reason of express provision of federal law or international treaty.

The assessment was calculated based on the total cost of the activities to be provided for the benefit of the lodging businesses within the MHTBID with costs allocated based on the proportional benefit conferred to each lodging business. Activities funded by the MHTBID are specifically targeted to increase demand for room nights at assessed lodging businesses. All room night sales do not represent the same benefit to the payors. For example, a higher priced room night is of greater benefit than a lower priced room night because the assesse derives greater revenue. To account for this benefit differential and to make sure the benefits are proportional, an assessment formula based on a percentage of revenue has been selected. The proposed formula accurately reflects greater benefit to assessed lodging businesses with higher priced room nights.

The term "gross short-term sleeping room rental revenue" as used herein means: the consideration charged, whether or not received, for the occupancy of space in a lodging business valued in money, whether to be received in money, goods, labor, or otherwise, including all receipts, cash, credits and property, and services of any kind or nature, without any deduction therefrom whatsoever. Gross short-term sleeping room rental revenue shall not include any federal, state or local taxes collected, including but not limited to transient occupancy taxes.

The assessment is levied upon and a direct obligation of the assessed lodging business. However, the assessed lodging business may, at its discretion, pass the assessment on to transients. The amount of assessment, if passed on to each transient, shall be disclosed in advance and separately stated from the amount of rent charged and any other applicable taxes, and each transient shall receive a receipt for payment from the business. If the MHTBID assessment is identified separately it shall be disclosed as the "MHTBID Assessment." As an alternative, the disclosure may include the amount of the MHTBID assessment and the amount of the assessment imposed pursuant to the California Tourism Marketing Act, Government Code §13995 et seq. and shall be disclosed as the "Tourism Assessment." The assessment is imposed solely upon, and is the sole obligation of the assessed lodging business even if it is passed on to transients. The assessment shall not be considered revenue for calculation of transient occupancy taxes.

Bonds shall not be issued.

E. Penalties and Interest

The MHTBID shall reimburse the City of Morgan Hill for any costs associated with collecting unpaid assessments. If sums in excess of the delinquent MHTBID assessment are sought to be recovered in the same collection action by the City, the MHTBID shall bear its pro rata share of such collection costs. Assessed lodging businesses which are delinquent in paying the assessment shall be responsible for paying:

1. *Original Delinquency:* Any lodging business that fails to remit any assessment imposed within the time required shall pay a penalty of ten percent (10%) of the amount of the assessment in addition to the amount of the assessment.
2. *Continued Delinquency:* Any lodging business that fails to remit any delinquent remittance on or before a period of thirty (30) days following the date on which the remittance first became delinquent shall pay a second delinquency penalty of ten percent (10%) of the amount of the assessment in addition to the amount of the assessment and the ten percent (10%) penalty first imposed.
3. *Fraud:* If the City determines that the nonpayment of any remittance due is due to fraud, a penalty of twenty-five percent (25%) of the amount of the assessment shall be added thereto in addition to the penalties stated in paragraphs in 1 and 2 of this subsection E.
4. *Interest:* In addition to the penalties imposed, any lodging business who fails to remit any assessment imposed shall pay interest at the rate of one-half of one percent (0.5%) or fraction thereof on the amount the assessment, exclusive of penalties, from the date on which the remittance first became delinquent until paid.

F. Audits

The City may audit those records kept by the lodging business at any time upon reasonable notice to the lodging business. If the audit reveals an underpayment of assessments in excess of ten percent (10%) of the total amount owed to the City for any consecutive three (3) month period during the audit period, the lodging business shall pay the City's actual costs to perform the audit as well as the full amounts, plus penalties and interest of assessment, that the audit reveals should have been remitted to the City.

G. Time and Manner for Collecting Assessments

The MHTBID assessment will be implemented beginning March 1, 2023, or as soon as possible thereafter, and will continue for ten (10) years from the start date. The City will be responsible for collecting the assessment on a monthly basis (including any delinquencies, penalties and interest) from each lodging business. The City shall take all reasonable efforts to collect the assessments from each lodging business. The City shall forward the assessments collected to the Owners' Association.

V. GOVERNANCE

A. Owners' Association

The City Council, through adoption of this Management District Plan, has the right, pursuant to Streets and Highways Code §36651, to identify the body that shall implement the proposed program, which shall be the Owners' Association of the MHTBID as defined in Streets and Highways Code §36612. The City Council has determined that Visit Morgan Hill will continue to serve as the Owners' Association for the MHTBID.

The VMH Board shall be comprised of seven (7) or nine (9) directors. Among the directors:

- Up to four (4) but not less than three (3) directors shall be owners or approved managers of lodging businesses paying the MHTBID assessment; and
- Two (2) directors shall be City of Morgan Hill staff members representing Community Services and Economic Development and shall be appointed by the Morgan Hill City Council; and
- Up to three (3) but not less than one (1) director(s) shall represent:
    - A winery located in the Morgan Hill region, be in good standing with the Wineries Association of Santa Clara County; and/or
    - An entity associated with sports recreation tourism involved in Morgan Hill; and/or
    - The community at large with an interest in tourism.

B. Brown Act and California Public Records Act Compliance

An Owners' Association is a private entity and may not be considered a public entity for any purpose, nor may its board members or staff be considered to be public officials for any purpose. The Owners' Association is, however, subject to government regulations relating to transparency, namely the Ralph M. Brown Act and the California Public Records Act. These regulations are designed to promote public accountability. The Owners' Association acts as a legislative body under the Ralph M. Brown Act (Government Code §54950 et seq.). Thus, meetings of the Board and certain committees must be held in compliance with the public notice and other requirements of the Brown Act. Accordingly, the Owners' Association shall publicly report any action taken and the vote or abstention on that action of each member present for the action. The Owners' Association is also subject to the record keeping and disclosure requirements of the California Public Records Act.

C. Annual Report

VMH shall present an annual report at the end of each year of operation to the City Council pursuant to Streets and Highways Code §36650 (see Appendix 1) within one hundred-twenty (120) days of the MHTBID's fiscal year (June 30). The annual report shall include:

- Any proposed changes in the boundaries of the improvement district or in any benefit zones or classification of businesses within the district.
- The improvements and activities to be provided for that fiscal year.
- An estimate of the cost of providing the improvements and the activities for that fiscal year.
- The method and basis of levying the assessment, including any assessment rate increases or decreases and implementation date, in sufficient detail to allow each business owner to estimate the amount of the assessment to be levied against his or her business for that fiscal year.
- The estimated amount of any surplus or deficit revenues to be carried over from a previous fiscal year.

- The estimated amount of any contributions to be made from sources other than assessments levied pursuant to this part.

APPENDIX 1 – LAW

*** THIS DOCUMENT IS CURRENT THROUGH THE 2023 SUPPLEMENT ***
(ALL 2022 LEGISLATION)

STREETS AND HIGHWAYS CODE
DIVISION 18. PARKING
PART 7. PROPERTY AND BUSINESS IMPROVEMENT DISTRICT LAW OF 1994

CHAPTER 1. General Provisions

ARTICLE 1. Declarations

36600. Citation of part

This part shall be known and may be cited as the "Property and Business Improvement District Law of 1994."

36601. Legislative findings and declarations; Legislative guidance

The Legislature finds and declares all of the following:

(a) Businesses located and operating within business districts in some of this state's communities are economically disadvantaged, are underutilized, and are unable to attract customers due to inadequate facilities, services, and activities in the business districts.

(b) It is in the public interest to promote the economic revitalization and physical maintenance of business districts in order to create jobs, attract new businesses, and prevent the erosion of the business districts.

(c) It is of particular local benefit to allow business districts to fund business related improvements, maintenance, and activities through the levy of assessments upon the businesses or real property that receive benefits from those improvements.

(d) Assessments levied for the purpose of conferring special benefit upon the real property or a specific benefit upon the businesses in a business district are not taxes for the general benefit of a city, even if property, businesses, or persons not assessed receive incidental or collateral effects that benefit them.

(e) Property and business improvement districts formed throughout this state have conferred special benefits upon properties and businesses within their districts and have made those properties and businesses more useful by providing the following benefits:

(1) Crime reduction. A study by the Rand Corporation has confirmed a 12-percent reduction in the incidence of robbery and an 8-percent reduction in the total incidence of violent crimes within the 30 districts studied.

(2) Job creation.

(3) Business attraction.

(4) Business retention.

(5) Economic growth.

(6) New investments.

(f) With the dissolution of redevelopment agencies throughout the state, property and business improvement districts have become even more important tools with which communities can combat blight, promote economic opportunities, and create a clean and safe environment.

(g) Since the enactment of this act, the people of California have adopted Proposition 218, which added Article XIII D to the Constitution in order to place certain requirements and restrictions on the formation of, and activities, expenditures, and assessments by property-based districts. Article XIII D of the Constitution provides that property-based districts may only levy assessments for special benefits.

(h) The act amending this section is intended to provide the Legislature's guidance with regard to this act, its interaction with the provisions of Article XIII D of the Constitution, and the determination of special benefits in property-based districts.

(1) The lack of legislative guidance has resulted in uncertainty and inconsistent application of this act, which discourages the use of assessments to fund needed improvements, maintenance, and activities in property-based districts, contributing to blight and other underutilization of property.

(2) Activities undertaken for the purpose of conferring special benefits upon property to be assessed inherently produce incidental or collateral effects that benefit property or persons not assessed. Therefore, for special benefits to exist as a separate and distinct category from general benefits, the

incidental or collateral effects of those special benefits are inherently part of those special benefits. The mere fact that special benefits produce incidental or collateral effects that benefit property or persons not assessed does not convert any portion of those special benefits or their incidental or collateral effects into general benefits.

(3) It is of the utmost importance that property-based districts created under this act have clarity regarding restrictions on assessments they may levy and the proper determination of special benefits. Legislative clarity with regard to this act will provide districts with clear instructions and courts with legislative intent regarding restrictions on property-based assessments, and the manner in which special benefits should be determined.

36602. Purpose of part

The purpose of this part is to supplement previously enacted provisions of law that authorize cities to levy assessments within property and business improvement districts, to ensure that those assessments conform to all constitutional requirements and are determined and assessed in accordance with the guidance set forth in this act. This part does not affect or limit any other provisions of law authorizing or providing for the furnishing of improvements or activities or the raising of revenue for these purposes.

36603. Preemption of authority or charter city to adopt ordinances levying assessments

Nothing in this part is intended to preempt the authority of a charter city to adopt ordinances providing for a different method of levying assessments for similar or additional purposes from those set forth in this part. A property and business improvement district created pursuant to this part is expressly exempt from the provisions of the Special Assessment Investigation, Limitation and Majority Protest Act of 1931 (Division 4 (commencing with Section 2800)).

36603.5. Part prevails over conflicting provisions

Any provision of this part that conflicts with any other provision of law shall prevail over the other provision of law, as to districts created under this part.

36604. Severability

This part is intended to be construed liberally and, if any provision is held invalid, the remaining provisions shall remain in full force and effect. Assessments levied under this part are not special taxes.

ARTICLE 2. Definitions

36606. "Activities"

"Activities" means, but is not limited to, all of the following that benefit businesses or real property in the district:

(a) Promotion of public events.
(b) Furnishing of music in any public place.
(c) Promotion of tourism within the district.
(d) Marketing and economic development, including retail retention and recruitment.
(e) Providing security, sanitation, graffiti removal, street and sidewalk cleaning, and other municipal services supplemental to those normally provided by the municipality.
(f) Other services provided for the purpose of conferring special benefit upon assessed real property or specific benefits upon assessed businesses located in the district.

36606.5. "Assessment"

"Assessment" means a levy for the purpose of acquiring, constructing, installing, or maintaining improvements and providing activities that will provide certain benefits to properties or businesses located within a property and business improvement district.

36607. "Business"

"Business" means all types of businesses and includes financial institutions and professions.

36608. "City"

"City" means a city, county, city and county, or an agency or entity created pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 of the Government Code, the public member agencies of which includes only cities, counties, or a city and county, or the State of California.

36609. "City council"

"City council" means the city council of a city or the board of supervisors of a county, or the agency, commission, or board created pursuant to a joint powers agreement and which is a city within the meaning of this part.

36609.4. "Clerk"

"Clerk" means the clerk of the legislative body.

36609.5. "General benefit"

"General benefit" means, for purposes of a property-based district, any benefit that is not a "special benefit" as defined in Section 36615.5.

36610. "Improvement"

"Improvement" means the acquisition, construction, installation, or maintenance of any tangible property with an estimated useful life of five years or more including, but not limited to, the following:

(a) Parking facilities.
(b) Benches, booths, kiosks, display cases, pedestrian shelters and signs.
(c) Trash receptacles and public restrooms.
(d) Lighting and heating facilities.
(e) Decorations.
(f) Parks.
(g) Fountains.
(h) Planting areas.
(i) Closing, opening, widening, or narrowing of existing streets.
(j) Facilities or equipment, or both, to enhance security of persons and property within the district.
(k) Ramps, sidewalks, plazas, and pedestrian malls.
(l) Rehabilitation or removal of existing structures.

36611. "Management district plan"; "Plan"

"Management district plan" or "plan" means a proposal as defined in Section 36622.

36612. "Owners' association"

"Owners' association" means a private nonprofit entity that is under contract with a city to administer or implement improvements, maintenance, and activities specified in the management district plan. An owners' association may be an existing nonprofit entity or a newly formed nonprofit entity. An owners' association is a private entity and may not be considered a public entity for any purpose, nor may its board members or staff be considered to be public officials for any purpose. Notwithstanding this section, an owners' association shall comply with the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code), at all times when matters within the subject matter of the district are heard, discussed, or deliberated, and with the California Public Records Act (Division 10 (commencing with Section 7920.000) of Title 1 of the Government Code), for all records relating to activities of the district.

36614. "Property"

"Property" means real property situated within a district.

36614.5. "Property and business improvement district"; "District"

"Property and business improvement district," or "district," means a property and business improvement district established pursuant to this part.

36614.6. "Property-based assessment"

"Property-based assessment" means any assessment made pursuant to this part upon real property.

36614.7. "Property-based district"

"Property-based district" means any district in which a city levies a property-based assessment.

36615. "Property owner"; "Business owner"; "Owner"

"Property owner" means any person shown as the owner of land on the last equalized assessment roll or otherwise known to be the owner of land by the city council. "Business owner" means any person recognized by the city as the owner of the business. "Owner" means either a business owner or a property owner. The city council has no obligation to obtain other information as to the ownership of land or businesses, and its determination of ownership shall be final and conclusive for the purposes of this part. Wherever this part requires the signature of the property owner, the signature of the authorized agent of the property owner shall be sufficient. Wherever this part requires the signature of the business owner, the signature of the authorized agent of the business owner shall be sufficient.

36615.5. "Special benefit"

(a) "Special benefit" means, for purposes of a property-based district, a particular and distinct benefit over and above general benefits conferred on real property located in a district or to the public at large. Special benefit includes incidental or collateral effects that arise from the improvements, maintenance, or activities of property-based districts even if those incidental or collateral effects benefit property or persons not assessed. Special benefit excludes general enhancement of property value.

(b) "Special benefit" also includes, for purposes of a property-based district, a particular and distinct benefit provided directly to each assessed parcel within the district. Merely because parcels throughout an assessment district share the same special benefits does not make the benefits general.

36616. "Tenant"

"Tenant" means an occupant pursuant to a lease of commercial space or a dwelling unit, other than an owner.

ARTICLE 3. Prior Law

36617. Alternate method of financing certain improvements and activities; Effect on other provisions

This part provides an alternative method of financing certain improvements and activities. The provisions of this part shall not affect or limit any other provisions of law authorizing or providing for the furnishing of improvements or activities or the raising of revenue for these purposes. Every improvement area established pursuant to the Parking and Business Improvement Area Law of 1989 (Part 6 (commencing with Section 36500) of this division) is valid and effective and is unaffected by this part.

CHAPTER 2. Establishment

36620. Establishment of property and business improvement district

A property and business improvement district may be established as provided in this chapter.

36620.5. Requirement of consent of city council

A county may not form a district within the territorial jurisdiction of a city without the consent of the city council of that city. A city may not form a district within the unincorporated territory of a county without the consent of the board of supervisors of that county. A city may not form a district within the territorial jurisdiction of another city without the consent of the city council of the other city.

<u>36621.</u> Initiation of proceedings; Petition of property or business owners in proposed district

(a) Upon the submission of a written petition, signed by the property or business owners in the proposed district who will pay more than 50 percent of the assessments proposed to be levied, the city council may initiate proceedings to form a district by the adoption of a resolution expressing its intention to form a district. The amount of assessment attributable to property or a business owned by the same property or business owner that is in excess of 40 percent of the amount of all assessments proposed to be levied, shall not be included in determining whether the petition is signed by property or business owners who will pay more than 50 percent of the total amount of assessments proposed to be levied.

(b) The petition of property or business owners required under subdivision (a) shall include a summary of the management district plan. That summary shall include all of the following:

(1) A map showing the boundaries of the district.

(2) Information specifying where the complete management district plan can be obtained.

(3) Information specifying that the complete management district plan shall be furnished upon request.

(c) The resolution of intention described in subdivision (a) shall contain all of the following:

(1) A brief description of the proposed improvements, maintenance, and activities, the amount of the proposed assessment, a statement as to whether the assessment will be levied on property or businesses within the district, a statement as to whether bonds will be issued, and a description of the exterior boundaries of the proposed district, which may be made by reference to any plan or map that is on file with the clerk. The descriptions and statements do not need to be detailed and shall be sufficient if they enable an owner to generally identify the nature and extent of the improvements, maintenance, and activities, and the location and extent of the proposed district.

(2) A time and place for a public hearing on the establishment of the property and business improvement district and the levy of assessments, which shall be consistent with the requirements of Section 36623.

<u>36622.</u> Contents of management district plan

The management district plan shall include, but is not limited to, all of the following:

(a) If the assessment will be levied on property, a map of the district in sufficient detail to locate each parcel of property and, if businesses are to be assessed, each business within the district. If the assessment will be levied on businesses, a map that identifies the district boundaries in sufficient detail to allow a business owner to reasonably determine whether a business is located within the district boundaries. If the assessment will be levied on property and businesses, a map of the district in sufficient detail to locate each parcel of property and to allow a business owner to reasonably determine whether a business is located within the district boundaries.

(b) The name of the proposed district.

(c) A description of the boundaries of the district, including the boundaries of benefit zones, proposed for establishment or extension in a manner sufficient to identify the affected property and businesses included, which may be made by reference to any plan or map that is on file with the clerk. The boundaries of a proposed property assessment district shall not overlap with the boundaries of another existing property assessment district created pursuant to this part. This part does not prohibit the boundaries of a district created pursuant to this part to overlap with other assessment districts established pursuant to other provisions of law, including, but not limited to, the Parking and Business Improvement Area Law of 1989 (Part 6 (commencing with Section 36500)). This part does not prohibit the boundaries of a business assessment district created pursuant to this part to overlap with another business assessment district created pursuant to this part. This part does not prohibit the boundaries of a business assessment district created pursuant to this part to overlap with a property assessment district created pursuant to this part.

(d) The improvements, maintenance, and activities proposed for each year of operation of the district and the estimated cost thereof. If the improvements, maintenance, and activities proposed for each year of operation are the same, a description of the first year's proposed improvements, maintenance, and activities and a statement that the same improvements, maintenance, and activities are proposed for subsequent years shall satisfy the requirements of this subdivision.

(e) The total annual amount proposed to be expended for improvements, maintenance, or activities, and debt service in each year of operation of the district. If the assessment is levied on businesses, this amount may be estimated based upon the assessment rate. If the total annual amount proposed to be expended in each year of operation of the district is not significantly different, the amount proposed to be expended in the initial year and a statement that a similar amount applies to subsequent years shall satisfy the requirements of this subdivision.

(f) The proposed source or sources of financing, including the proposed method and basis of levying the assessment in sufficient detail to allow each property or business owner to calculate the amount of the assessment to be levied against their property or business. The plan also shall state whether bonds will be issued to finance improvements.

(g) The time and manner of collecting the assessments.

(h) The specific number of years in which assessments will be levied. In a new district, the maximum number of years shall be five. Upon renewal, a district shall have a term not to exceed 10 years. Notwithstanding these limitations, a district created pursuant to this part to finance capital improvements with bonds may levy assessments until the maximum maturity of the bonds. The management district plan may set forth specific increases in assessments for each year of operation of the district.

(i) The proposed time for implementation and completion of the management district plan.

(j) Any proposed rules and regulations to be applicable to the district.

(k)

(1) A list of the properties or businesses to be assessed, including the assessor's parcel numbers for properties to be assessed, and a statement of the method or methods by which the expenses of a district will be imposed upon benefited real property or businesses, in proportion to the benefit received by the property or business, to defray the cost thereof.

(2) In a property-based district, the proportionate special benefit derived by each identified parcel shall be determined exclusively in relationship to the entirety of the capital cost of a public improvement, the maintenance and operation expenses of a public improvement, or the cost of the activities. An assessment shall not be imposed on any parcel that exceeds the reasonable cost of the proportional special benefit conferred on that parcel. Only special benefits are assessable, and a property-based district shall separate the general benefits, if any, from the special benefits conferred on a parcel. Parcels within a property-based district that are owned or used by any city, public agency, the State of California, or the United States shall not be exempt from assessment unless the governmental entity can demonstrate by clear and convincing evidence that those publicly owned parcels in fact receive no special benefit. The value of any incidental, secondary, or collateral effects that arise from the improvements, maintenance, or activities of a property-based district and that benefit property or persons not assessed shall not be deducted from the entirety of the cost of any special benefit or affect the proportionate special benefit derived by each identified parcel.

(3) In a property-based district, properties throughout the district may share the same special benefits. In a district with boundaries that define which parcels are to receive improvements, maintenance, or activities over and above those services provided by the city, the improvements, maintenance, or activities themselves may constitute a special benefit. The city may impose assessments that are less than the proportional special benefit conferred, but shall not impose assessments that exceed the reasonable costs of the proportional special benefit conferred. Because one or more parcels pay less than the special benefit conferred does not necessarily mean that other parcels are assessed more than the reasonable cost of their special benefit.

(l) In a property-based district, a detailed engineer's report prepared by a registered professional engineer certified by the State of California supporting all assessments contemplated by the management district plan.

(m) Any other item or matter required to be incorporated therein by the city council.

36623. Procedure to levy assessment

(a) If a city council proposes to levy a new or increased property assessment, the notice and protest and hearing procedure shall comply with Section 53753 of the Government Code.

(b) If a city council proposes to levy a new or increased business assessment, the notice and protest and hearing procedure shall comply with Section 54954.6 of the Government Code, except that notice shall be mailed to the owners of the businesses proposed to be assessed. A protest may be made orally or in writing by any interested person. Every written protest shall be filed with the clerk at or before the time fixed for the public hearing. The city council may waive any irregularity in the form or content of any written protest. A written protest may be withdrawn in writing at any time before the conclusion of the public hearing. Each written protest shall contain a description of the business in which the person subscribing the protest is interested sufficient to identify the business and, if a person subscribing is not shown on the official records of the city as the owner of the business, the protest shall contain or be accompanied by written evidence that the person subscribing is the owner of the business or the authorized representative. A written protest that does not comply with this section shall not be counted in determining a majority protest. If written protests are received from the owners or authorized representatives of businesses in the proposed district that will pay 50 percent or more of the assessments proposed to be levied and protests are not withdrawn so as to reduce the protests to less than 50 percent, no further proceedings to levy the proposed assessment against such businesses, as contained in the resolution of intention, shall be taken for a period of one year from the date of the finding of a majority protest by the city council.

(c) If a city council proposes to conduct a single proceeding to levy both a new or increased property assessment and a new or increased business assessment, the notice and protest and hearing procedure for the property assessment shall comply with subdivision (a), and the notice and protest and hearing procedure for the business assessment shall comply with subdivision (b). If a majority protest is received from either the property or business owners, that respective portion of the assessment shall not be levied. The remaining portion of the assessment may be levied unless the improvement or other special benefit was proposed to be funded by assessing both property and business owners.

36624. Changes to proposed assessments

At the conclusion of the public hearing to establish the district, the city council may adopt, revise, change, reduce, or modify the proposed assessment or the type or types of improvements, maintenance, and activities to be funded with the revenues from the assessments. Proposed assessments may only be revised by reducing any or all of them. At the public hearing, the city council may only make changes in, to, or from the boundaries of the proposed property and business improvement district that will exclude territory that will not benefit from the proposed improvements, maintenance, and activities. Any modifications, revisions, reductions, or changes to the proposed assessment district shall be reflected in the notice and map recorded pursuant to Section 36627.

36625. Resolution of formation

(a) If the city council, following the public hearing, decides to establish a proposed property and business improvement district, the city council shall adopt a resolution of formation that shall include, but is not limited to, all of the following:

(1) A brief description of the proposed improvements, maintenance, and activities, the amount of the proposed assessment, a statement as to whether the assessment will be levied on property, businesses, or both within the district, a statement on whether bonds will be issued, and a description of the exterior boundaries of the proposed district, which may be made by reference to any plan or map that is on file with the clerk. The descriptions and statements need not be detailed and shall be sufficient if they enable an owner to generally identify the nature and extent of the improvements, maintenance, and activities and the location and extent of the proposed district.

(2) The number, date of adoption, and title of the resolution of intention.

(3) The time and place where the public hearing was held concerning the establishment of the district.

(4) A determination regarding any protests received. The city shall not establish the district or levy assessments if a majority protest was received.

(5) A statement that the properties, businesses, or properties and businesses in the district established by the resolution shall be subject to any amendments to this part.

(6) A statement that the improvements, maintenance, and activities to be conferred on businesses and properties in the district will be funded by the levy of the assessments. The revenue from the levy of assessments within a district shall not be used to provide improvements, maintenance, or activities outside the district or for any purpose other than the purposes specified in the resolution of intention, as modified by the city council at the hearing concerning establishment of the district. Notwithstanding the foregoing, improvements and activities that must be provided outside the district boundaries to create a special or specific benefit to the assessed parcels or businesses may be provided, but shall be limited to marketing or signage pointing to the district.

(7) A finding that the property or businesses within the area of the property and business improvement district will be benefited by the improvements, maintenance, and activities funded by the proposed assessments, and, for a property-based district, that property within the district will receive a special benefit.

(8) In a property-based district, the total amount of all special benefits to be conferred on the properties within the property-based district.

(b) The adoption of the resolution of formation and, if required, recordation of the notice and map pursuant to Section 36627 shall constitute the levy of an assessment in each of the fiscal years referred to in the management district plan.

36627. Notice and assessment diagram

Following adoption of the resolution establishing district assessments on properties pursuant to Section 36625, the clerk shall record a notice and an assessment diagram pursuant to Section 3114. No other provision of Division 4.5 (commencing with Section 3100) applies to an assessment district created pursuant to this part.

36628. Establishment of separate benefit zones within district; Categories of businesses

The city council may establish one or more separate benefit zones within the district based upon the degree of benefit derived from the improvements or activities to be provided within the benefit zone and may impose a different assessment within each benefit zone. If the assessment is to be levied on businesses, the city council may also define categories of businesses based upon the degree of benefit that each will derive from the improvements or activities to be provided within the district and may impose a different assessment or rate of assessment on each category of business, or on each category of business within each zone.

36628.5. Assessments on businesses or property owners

The city council may levy assessments on businesses or on property owners, or a combination of the two, pursuant to this part. The city council shall structure the assessments in whatever manner it determines corresponds with the distribution of benefits from the proposed improvements, maintenance, and activities, provided that any property-based assessment conforms with the requirements set forth in paragraph (2) of subdivision (k) of Section 36622.

36629. Provisions and procedures applicable to benefit zones and business categories

All provisions of this part applicable to the establishment, modification, or disestablishment of a property and business improvement district apply to the establishment, modification, or disestablishment of benefit zones or categories of business. The city council shall, to establish, modify, or disestablish a benefit zone or category of business, follow the procedure to establish, modify, or disestablish a property and business improvement district.

36630. Expiration of district; Creation of new district

If a property and business improvement district expires due to the time limit set pursuant to subdivision (h) of Section 36622, a new management district plan may be created and the district may be renewed pursuant to this part.

CHAPTER 3. Assessments

36631. Time and manner of collection of assessments; Delinquent payments

The collection of the assessments levied pursuant to this part shall be made at the time and in the manner set forth by the city council in the resolution levying the assessment. Assessments levied on real property may be collected at the same time and in the same manner as for the ad valorem property tax, and may provide for the same lien priority and penalties for delinquent payment. All delinquent payments for assessments levied pursuant to this part may be charged interest and penalties.

36632. Assessments to be based on estimated benefit; Classification of real property and businesses; Exclusion of residential and agricultural property

(a) The assessments levied on real property pursuant to this part shall be levied on the basis of the estimated benefit to the real property within the property and business improvement district. The city council may classify properties for purposes of determining the benefit to property of the improvements and activities provided pursuant to this part.
(b) Assessments levied on businesses pursuant to this part shall be levied on the basis of the estimated benefit to the businesses within the property and business improvement district. The city council may classify businesses for purposes of determining the benefit to the businesses of the improvements and activities provided pursuant to this part.
(c) Properties zoned solely for residential use, or that are zoned for agricultural use, are conclusively presumed not to benefit from the improvements and service funded through these assessments, and shall not be subject to any assessment pursuant to this part.

36633. Time for contesting validity of assessment

The validity of an assessment levied under this part shall not be contested in an action or proceeding unless the action or proceeding is commenced within 30 days after the resolution levying the assessment is adopted pursuant to Section 36625. An appeal from a final judgment in an action or proceeding shall be perfected within 30 days after the entry of judgment.

36634. Service contracts authorized to establish levels of city services

The city council may execute baseline service contracts that would establish levels of city services that would continue after a property and business improvement district has been formed.

36635. Request to modify management district plan

The owners' association may, at any time, request that the city council modify the management district plan. Any modification of the management district plan shall be made pursuant to this chapter.

36636. Modification of plan by resolution after public hearing; Adoption of resolution of intention

(a) Upon the written request of the owners' association, the city council may modify the management district plan after conducting one public hearing on the proposed modifications. The city council may modify the improvements and activities to be funded with the revenue derived from the levy of the assessments by adopting a resolution determining to make the modifications after holding a public hearing on the proposed modifications. If the modification includes the levy of a new or increased assessment, the city council shall comply with Section 36623. Notice of all other public hearings pursuant to this section shall comply with both of the following:
(1) The resolution of intention shall be published in a newspaper of general circulation in the city once at least seven days before the public hearing.
(2) A complete copy of the resolution of intention shall be mailed by first class mail, at least 10 days before the public hearing, to each business owner or property owner affected by the proposed modification.
(b) The city council shall adopt a resolution of intention which states the proposed modification prior to the public hearing required by this section. The public hearing shall be held not more than 90 days after the adoption of the resolution of intention.

36637. Reflection of modification in notices recorded and maps

Any subsequent modification of the resolution shall be reflected in subsequent notices and maps recorded pursuant to Division 4.5 (commencing with Section 3100), in a manner consistent with the provisions of Section 36627.

CHAPTER 3.5. Financing

36640. Bonds authorized; Procedure; Restriction on reduction or termination of assessments

(a)The city council may, by resolution, determine and declare that bonds shall be issued to finance the estimated cost of some or all of the proposed improvements described in the resolution of formation adopted pursuant to Section 36625, if the resolution of formation adopted pursuant to that section provides for the issuance of bonds, under the Improvement Bond Act of 1915 (Division 10 (commencing with Section 8500)) or in conjunction with Marks-Roos Local Bond Pooling Act of 1985 (Article 4 (commencing with Section 6584) of Chapter 5 of Division 7 of Title 1 of the Government Code). Either act, as the case may be, shall govern the proceedings relating to the issuance of bonds, although proceedings under the Bond Act of 1915 may be modified by the city council as necessary to accommodate assessments levied upon business pursuant to this part.
(b) The resolution adopted pursuant to subdivision (a) shall generally describe the proposed improvements specified in the resolution of formation adopted pursuant to Section 36625, set forth the estimated cost of those improvements, specify the number of annual installments and the fiscal years during which they are to be collected. The amount of debt service to retire the bonds shall not exceed the amount of revenue estimated to be raised from assessments over 30 years.
(c) Notwithstanding any other provision of this part, assessments levied to pay the principal and interest on any bond issued pursuant to this section shall not be reduced or terminated if doing so would interfere with the timely retirement of the debt.

CHAPTER 4. Governance

<u>36650.</u> Report by owners' association; Approval or modification by city council

(a) The owners' association shall cause to be prepared a report for each fiscal year, except the first year, for which assessments are to be levied and collected to pay the costs of the improvements, maintenance, and activities described in the report. The owners' association's first report shall be due after the first year of operation of the district. The report may propose changes, including, but not limited to, the boundaries of the property and business improvement district or any benefit zones within the district, the basis and method of levying the assessments, and any changes in the classification of property, including any categories of business, if a classification is used.
(b) The report shall be filed with the clerk and shall refer to the property and business improvement district by name, specify the fiscal year to which the report applies, and, with respect to that fiscal year, shall contain all of the following information:

(1) Any proposed changes in the boundaries of the property and business improvement district or in any benefit zones or classification of property or businesses within the district.
(2) The improvements, maintenance, and activities to be provided for that fiscal year.
(3) An estimate of the cost of providing the improvements, maintenance, and activities for that fiscal year.
(4) The method and basis of levying the assessment in sufficient detail to allow each real property or business owner, as appropriate, to estimate the amount of the assessment to be levied against his or her property or business for that fiscal year.
(5) The estimated amount of any surplus or deficit revenues to be carried over from a previous fiscal year.
(6) The estimated amount of any contributions to be made from sources other than assessments levied pursuant to this part.

(c) The city council may approve the report as filed by the owners' association or may modify any particular contained in the report and approve it as modified. Any modification shall be made pursuant to Sections 36635 and 36636.
The city council shall not approve a change in the basis and method of levying assessments that would impair an authorized or executed contract to be paid from the revenues derived from the levy of assessments, including any commitment to pay principal and interest on any bonds issued on behalf of the district.

<u>36651.</u> Designation of owners' association to provide improvements, maintenance, and activities

The management district plan may, but is not required to, state that an owners' association will provide the improvements, maintenance, and activities described in the management district plan. If the management district plan designates an owners' association, the city shall contract with the designated nonprofit corporation to provide services.

CHAPTER 5. Renewal

36660. Renewal of district; Transfer or refund of remaining revenues; District term limit

(a) Any district previously established whose term has expired, or will expire, may be renewed by following the procedures for establishment as provided in this chapter.
(b) Upon renewal, any remaining revenues derived from the levy of assessments, or any revenues derived from the sale of assets acquired with the revenues, shall be transferred to the renewed district. If the renewed district includes additional parcels or businesses not included in the prior district, the remaining revenues shall be spent to benefit only the parcels or businesses in the prior district. If the renewed district does not include parcels or businesses included in the prior district, the remaining revenues attributable to these parcels shall be refunded to the owners of these parcels or businesses.
(c) Upon renewal, a district shall have a term not to exceed 10 years, or, if the district is authorized to issue bonds, until the maximum maturity of those bonds. There is no requirement that the boundaries, assessments, improvements, or activities of a renewed district be the same as the original or prior district.

CHAPTER 6. Disestablishment

36670. Circumstances permitting disestablishment of district; Procedure

(a) Any district established or extended pursuant to the provisions of this part, where there is no indebtedness, outstanding and unpaid, incurred to accomplish any of the purposes of the district, may be disestablished by resolution by the city council in either of the following circumstances:
(1) If the city council finds there has been misappropriation of funds, malfeasance, or a violation of law in connection with the management of the district, it shall notice a hearing on disestablishment.
(2) During the operation of the district, there shall be a 30-day period each year in which assessees may request disestablishment of the district. The first such period shall begin one year after the date of establishment of the district and shall continue for 30 days. The next such 30-day period shall begin two years after the date of the establishment of the district. Each successive year of operation of the district shall have such a 30-day period. Upon the written petition of the owners or authorized representatives of real property or the owners or authorized representatives of businesses in the district who pay 50 percent or more of the assessments levied, the city council shall pass a resolution of intention to disestablish the district. The city council shall notice a hearing on disestablishment.
(b) The city council shall adopt a resolution of intention to disestablish the district prior to the public hearing required by this section. The resolution shall state the reason for the disestablishment, shall state the time and place of the public hearing, and shall contain a proposal to dispose of any assets acquired with the revenues of the assessments levied within the property and business improvement district. The notice of the hearing on disestablishment required by this section shall be given by mail to the property owner of each parcel or to the owner of each business subject to assessment in the district, as appropriate. The city shall conduct the public hearing not less than 30 days after mailing the notice to the property or business owners. The public hearing shall be held not more than 60 days after the adoption of the resolution of intention.

36671. Refund of remaining revenues upon disestablishment or expiration without renewal of district; Calculation of refund; Use of outstanding revenue collected after disestablishment of district

(a) Upon the disestablishment or expiration without renewal of a district, any remaining revenues, after all outstanding debts are paid, derived from the levy of assessments, or derived from the sale of assets acquired with the revenues, or from bond reserve or construction funds, shall be refunded to the owners of the property or businesses then located and operating within the district in which assessments were levied by applying the same method and basis that was used to calculate the assessments levied in the fiscal year in which the district is disestablished or expires. All outstanding assessment revenue collected after disestablishment shall be spent on improvements and activities specified in the management district plan.
(b) If the disestablishment occurs before an assessment is levied for the fiscal year, the method and basis that was used to calculate the assessments levied in the immediate prior fiscal year shall be used to calculate the amount of any refund.

APPENDIX 2 – ASSESSED BUSINESSES

Business Name	Business Address	City, State, ZIP
Airbnb Corporate*	888 Brannan St.	San Francisco, CA 94103
Budget Inn	19240 Monterey Rd.	Morgan Hill, CA 95037
California Inn	16525 Condit Rd.	Morgan Hill, CA 95037
Comfort Inn	16225 Condit Rd.	Morgan Hill, CA 95037
Courtyard by Mariott	18610 Madrone Pkwy.	Morgan Hill, CA 95037
Economy Inn	15080 Monterey Rd.	Morgan Hill, CA 95037
Executive Inn	16505 Condit Rd.	Morgan Hill, CA 95037
Extended Stay America	605 Jarvis Rd.	Morgan Hill, CA 95037
Granada Hotel	17440 Monterey Rd.	Morgan Hill, CA 95037
Hampton Inn Morgan Hill	16115 Condit Rd.	Morgan Hill, CA 95037
Holiday Inn Express	17035 Condit Rd.	Morgan Hill, CA 95037
Holiday Motel	16210 Monterey Rd.	Morgan Hill, CA 95037
La Quinta Inn	17043 Condit Rd.	Morgan Hill, CA 95037
Maple Leaf RV Park	15200 Monterey Rd.	Morgan Hill, CA 95037
Microtel Inn and Suites	16245 Condit Rd.	Morgan Hill, CA 95037
Morgan Hill Inn	16250 Monterey Rd.	Morgan Hill, CA 95037
Paradise Motel	16310 Monterey Rd.	Morgan Hill, CA 95037
Rancho Motel	19040 Monterey Rd.	Morgan Hill, CA 95037
Residence Inn	18620 Madrone Pkwy.	Morgan Hill, CA 95037

*Pursuant to an agreement executed between the City of Morgan Hill and Airbnb, Airbnb shall be responsible for collecting assessment remittances from short-term rentals within the MHTBID that are registered with Airbnb. Airbnb shall remit the collected assessment revenue to the City.

ORDINANCE NO. xxxx, NEW SERIES

AN ORDINANCE OF THE CITY OF MORGAN HILL ADDING CHAPTER 3.26 ("TOURISM BUSINESS IMPROVEMENT DISTRICT") TO TITLE 3 ("REVENUE AND FINANCE") OF THE MORGAN HILL MUNICIPAL CODE ESTABLISHING AND RENEWING THE MORGAN HILL TOURISM BUSINESS IMPROVEMENT DISTRICT

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

WHEREAS, the City of Morgan Hill (City) created the Morgan Hill Tourism Business Improvement District (MHTBID), in 2019 by Resolution No. 19-004 to begin on March 1, 2019; and

WHEREAS, the MHTBID was created for a five (5) year term, which ends on February 29, 2024; and

WHEREAS, lodging businesses who will pay more than fifty percent (50%) of the proposed assessment have petitioned the City Council (Council) to renew the MHTBID; and

WHEREAS, included with the petitions was a Management District Plan (Plan) summary that describes the proposed assessment to be levied on lodging businesses to pay for sales & marketing and sports facility marketing & development programs, and other improvements and activities set forth in the Plan; and

WHEREAS, the assessed lodging businesses within the MHTBID will receive a specific benefit from the activities and improvements set forth in the Plan; and

WHEREAS, on October 4, 2023, at 6:00 PM at the City Council Chamber Building located at 17555 Peak Ave., Morgan Hill, CA 95037, the Council adopted a Resolution of Intention, Resolution No. 23-044; and

WHEREAS, the public meeting and public hearing to consider the renewal of the MHTBID have been properly noticed in accordance with Streets and Highways Code §36623; and

WHEREAS, on November 1, 2023 at 6:00 PM at the City Council Chamber Building located at 17555 Peak Ave., Morgan Hill, CA 95037, the Council held a public meeting and introduction of this ordinance regarding the renewal of the MHTBID and the levy of assessments. At this meeting, the Council heard and received objections and protests, if any, to the renewal of the MHTBID and the levy of the proposed assessment; and

WHEREAS, on December 6, 2023 at 6:00 PM at the City Council Chamber Building located at 17555 Peak Ave., Morgan Hill, CA 95037, the Council held a public hearing, and the Council heard and received all objections and protests, if any, to the renewal of the MHTBID and the levy of the proposed assessment; and

WHEREAS, the City Clerk has determined that there was no majority protest. A majority protest is defined as written protests received from owners of businesses in the renewed MHTBID who would pay fifty percent (50%) or more of the assessments proposed to be levied. Protests are weighted based on the assessment proposed to be levied on each lodging business; and

WHEREAS, pursuant to the Taxpayer Protection and Government Accountability Act (TPGAA), an initiative certified eligible for qualification for the November 5, 2024, general election ballot, the proposed assessment is an exempt charge pursuant to TPGAA Section 5(j)(6), as the MHTBID is a tourism business improvement district formed under the provisions of the Property and Business Improvement District Law of 1994, as set forth in the Streets and Highways Code §36600, et seq.; and

WHEREAS, the amount of the proposed assessment for the MHTBID will total approximately $341,000 in the first year. Pursuant to the TPGAA, the City has found the proposed assessment amount is reasonable given the scope of services to be provided and shall not exceed the actual cost of providing the MHTBID services to the payors; and

WHEREAS, adoption of this Ordinance does not diminish the legal effect of the adoption of the Resolution of Formation.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY ORDAIN AS FOLLOWS:

<u>Section 1.</u> Chapter 3.26 of the Morgan Hill City Code is hereby adopted to read as follows:

Chapter 3.26 – TOURISM BUSINESS IMPROVEMENT DISTRICT

3.26.010 – Renewal.

The City of Morgan Hill renews the Morgan Hill Tourism Business Improvement District (MHTBID), for a ten (10) year life, beginning March 1, 2024 or as soon as possible thereafter, and ending ten (10) years from its start date, under the provisions of the Property and Business Improvement District Law of 1994, as set forth in the Streets and Highways Code of the state, Section 36600 et seq.

3.26.020 - Management District Plan.

The Management District Plan (Plan) dated September 15, 2023, is hereby adopted and approved.

3.26.030 - Activities and Improvements.

1. The activities to be provided to benefit businesses in the MHTBID will be funded by the levy of the assessment. The revenue from the assessment levy shall not be used: to provide activities that directly benefit businesses outside the MHTBID; to provide activities or improvements outside the MHTBID; or for any purpose other than the purposes specified in this ordinance, the Resolution of Intention, and the Plan. Notwithstanding the foregoing, improvements and activities that must be provided outside the MHTBID boundaries to create a specific benefit to the assessed businesses may be provided but shall be limited to marketing or signage pointing to the MHTBID.

2. The Council finds as follows:

   a. The activities funded by the assessment will provide a specific benefit to assessed businesses within the MHTBID that is not provided to those not paying the assessment.
   b. The assessment is a charge imposed for a specific benefit conferred or privilege granted directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of conferring the benefit or granting the privilege.
   c. The assessment is a charge imposed for a specific government service or product provided directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of providing the service or product.
   d. Assessments imposed pursuant to the MHTBID are levied solely upon the assessed business, and the business owner is solely responsible for payment of the assessment when due. If the owner chooses to collect any portion of the assessment from a transient or customer, that portion shall be specifically called out and identified for the transient or customer in any and all communications from the business owner as the "MHTBID Assessment" as specified in the Plan. As an alternative, the disclosure may include the amount of the MHTBID assessment and the amount of the assessment imposed pursuant to the California Tourism Marketing Act, Government Code §13995 et seq. and shall be disclosed as the "Tourism Assessment."

3. The assessments levied for the MHTBID shall be applied toward sales & marketing and sports facility marketing & development programs, and other improvements and activities as set forth in the Plan.

4. Assessments levied on lodging businesses pursuant to this ordinance shall be levied on the basis of benefit. Because the services provided are intended to increase room rentals, an assessment based on short term room rental revenue is the best measure of benefit.

3.26.040 - Budget.

The assessments for the entire MHTBID will total approximately $341,000 in year one (1).

3.26.050 - Bonds

Bonds shall not be issued to fund the MHTBID.

3.26.060 - Boundaries.

The renewed MHTBID includes all lodging businesses, existing and in the future, available for public occupancy located within the boundaries of the City of Morgan Hill as described in the Management District Plan.

3.26.070 - Assessments.

1. The annual assessment rate is one and one half percent (1.5%) of gross short-term sleeping room rental revenue. During the MHTBID's term, the assessment rate may be increased annually by the Owner's Association upon approval from the Board of Directors by a maximum of one half of one

percent (0.5%) of gross short-term sleeping room rental revenue per year. The maximum assessment rate may not exceed three percent (3%) of gross short-term sleeping room rental revenue. If the assessment rate is increased, it may subsequently be decreased by a maximum of one half of one percent (0.5%) each year, but shall not be decreased below a minimum of one- and one-half percent (1.5%) of gross short-term sleeping room rental revenue. Any proposed assessment rate increase or decrease shall be included in the MHTBID annual report and shall not be effective until approved by the Council. Based on the benefit received, assessments will not be collected on: stays of more than thirty (30) consecutive days or stays by any officer or employee of a foreign government who is exempt by reason of express provision of federal law or international treaty.

2. The assessments shall be used for the purposes set forth herein and any funds remaining at the end of any year may be used in subsequent years in which the MHTBID assessment is levied as long as they are used consistent with the requirements set forth herein.

3.26.080 - Collections.

The City will be responsible for collecting the assessment on a monthly basis (including any delinquencies, penalties and interest) from each lodging business located in the boundaries of the MHTBID. The City shall take all reasonable efforts to collect the assessments from each lodging business.

3.26090 - Owners' Association.

The Council, through adoption of this ordinance and the Plan, has the right pursuant to Streets and Highways Code §36651, to identify the body that shall implement the proposed program, which shall be the Owners' Association of the MHTBID as defined in Streets and Highways Code §36612. The Council has determined that Visit Morgan Hill shall continue to be the MHTBID Owners' Association. Passage of this ordinance authorizes the Council to contract with Visit Morgan Hill to administer the MHTBID.

3.26.100 - Annual Report.

Visit Morgan Hill, pursuant to Streets and Highways Code §36650, shall cause to be prepared a report for each fiscal year, except the first year, for which assessments are to be levied and collected to pay the costs of the improvement and activities described in the report. The first report shall be due after the first year of operation of the MHTBID.

3.26.110 - Amendments to Enabling Legislation.

The MHTBID renewed pursuant to this ordinance shall be subject to any amendments to the Property and Business Improvement District Law of 1994 (California Streets and Highways Code §36600 et. seq.).

<u>Section 2. Severability.</u> If any section, subsection, sentence, clause or phrase or word of this Ordinance is for any reason held to be unconstitutional, unlawful or otherwise invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The Council declares that it would have passed and adopted this ordinance and each and all provisions irrespective of the fact that any one or more of said provisions may be declared invalid or unconstitutional without regard to any such decision or preemptive legislation.

Section 3. Effective Date. This ordinance of the City of Morgan Hill shall be effective thirty (30) days after its passage, this ordinance or a summary thereof, as provided in Government Code Section 36933, shall be published at least once in a newspaper of general circulation published and circulated in the City of Morgan Hill, along with the names of the Council voting for and against its passage.

THE FOREGOING ORDINANCE WAS INTRODUCED AT A MEETING OF THE CITY COUNCIL HELD ON THE 1ST DAY OF NOVEMBER 2023, AND WAS FINALLY ADOPTED AT A MEETING OF THE CITY COUNCIL HELD ON THE XX DAY OF NOVEMBER 2023, AND SAID ORDINANCE WAS DULY PASSED AND ADOPTED IN ACCORDANCE WITH LAW 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 Ordinance No. XXXX, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the XX day of November 2023.

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

DATE: ________________________ ______________________________
MICHELLE BIGELOW, City Clerk

RESOLUTION NO. 23-044

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL DECLARING ITS INTENTION TO RENEW THE MORGAN HILL TOURISM BUSINESS IMPROVEMENT DISTRICT (MHTBID) AND FIXING THE TIME AND PLACE OF A PUBLIC MEETING AND A PUBLIC HEARING THEREON AND GIVING NOTICE THEREOF

WHEREAS, the City of Morgan Hill (City) created the MHTBID on January 23, 2019 by Resolution No. 19-004; and

WHEREAS, the MHTBID was created for a five (5) year term which ends on February 29, 2024, and

WHEREAS, the Property and Business Improvement Law of 1994, Streets and Highways Code §36600 et seq., authorizes the City to renew business improvement districts for the purposes of promoting tourism; and

WHEREAS, Visit Morgan Hill, lodging business owners, and representatives from the City have met to consider the renewal of the MHTBID; and

WHEREAS, Visit Morgan Hill has drafted a Management District Plan (Plan) which sets forth the proposed boundary of the MHTBID, a service plan and budget, and a proposed means of governance; and

WHEREAS, lodging businesses who will pay more than fifty percent (50%) of the assessment under the MHTBID have petitioned the City Council to renew the MHTBID.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL THAT:

1. The recitals set forth herein are true and correct.

2. The City Council finds that lodging businesses that will pay more than fifty percent (50%) of the assessment proposed in the Plan have signed and submitted petitions in support of the renewal of the MHTBID. The City Council accepts the petitions and adopts this Resolution of Intention to renew the MHTBID and to levy an assessment on lodging businesses within the MHTBID boundaries in accordance with the Property and Business Improvement District Law of 1994.

3. The City Council finds that the Plan satisfies all requirements of Streets and Highways Code § 36622.

4. The City Council declares its intention to renew the MHTBID and to levy and collect assessments on lodging businesses within the MHTBID boundaries pursuant to the Property and Business Improvement District Law of 1994.

5. The MHTBID shall include all lodging businesses, existing and in the future, available for public

occupancy located within the boundaries of the City of Morgan Hill, as shown in the map attached as Exhibit A.

6. The name of the district shall be Morgan Hill Tourism Business Improvement District (MHTBID).

7. The annual assessment rate is one and one half percent (1.5%) of gross short-term sleeping room rental revenue. During the MHTBID's term, the assessment rate may be increased annually by the Owner's Association upon approval from the Board of Directors by a maximum of one half of one percent (0.5%) of gross short-term sleeping room rental revenue per year. The maximum assessment rate may not exceed three percent (3%) of gross short-term sleeping room rental revenue. If the assessment rate is increased, it may subsequently be decreased by a maximum of one half of one percent (0.5%) each year, but shall not be decreased below a minimum of one- and one-half percent (1.5%) of gross short-term sleeping room rental revenue. Any proposed assessment rate increase or decrease shall be included in the MHTBID annual report and shall not be effective until approved by the Morgan Hill City Council. Based on the benefit received, assessments will not be collected on: stays of more than thirty (30) consecutive days or stays by any officer or employee of a foreign government who is exempt by reason of express provision of federal law or international treaty.

8. The assessments levied for the MHTBID shall be applied toward sales and marketing and sports facility marketing & development programs to market assessed lodging businesses in Morgan Hill as tourist, meeting, and event destinations, as described in the Plan. Funds remaining at the end of any year may be used in subsequent years in which MHTBID assessments are levied as long as they are used consistent with the requirements of this resolution and the Plan.

9. The renewed MHTBID will have a ten (10) year life, beginning March 1, 2024 or as soon as possible thereafter, and ending ten (10) years from its start date, unless renewed pursuant to Streets and Highways Code § 36660.

10. Bonds shall not be issued.

11. The time and place for the public meeting to hear testimony on establishing the MHTBID and levying assessments are set for November 1, 2023 at 6:00 PM, or as soon thereafter as the matter may be heard, at the City Council Chamber Building located at 17555 Peak Ave., Morgan Hill, CA 95037. Following the public meeting, the City Council shall move to introduce and conduct the first reading of the Ordinance to renew the MHTBID and continue the levy of assessments.

12. The time and place for the public hearing to establish the MHTBID and the levy of assessments are set for December 6, 2023, at 6:00 PM, or as soon thereafter as the matter may be heard, at the City Council Chamber Building located at 17555 Peak Ave., Morgan Hill, CA 95037. The City Clerk is directed to provide written notice to the lodging businesses subject to assessment of the date and time of the meeting and hearing, and to provide that notice as required by Streets and Highways Code §36623, no later than October 21, 2023.

13. At the public meeting and hearing the testimony of all interested persons for or against the

renewal of the MHTBID may be received. If at the conclusion of the public hearing, there are of record written protests by the owners of the lodging businesses within the renewed MHTBID that will pay more than fifty percent (50%) of the estimated total assessment of the entire MHTBID, no further proceedings to renew the MHTBID shall occur for a period of one (1) year.

14. Following a successful public hearing, at the same City Council meeting on December 6, 2023, held at the City Council Chamber Building located at 17555 Peak Ave., Morgan Hill, CA 95037, the City Council may conduct a second reading of the Ordinance to renew the MHTBID and to continue the levy of assessments. At the conclusion of the second reading of the Ordinance, the City Council may adopt the Ordinance, renewing the MHTBID and levying the assessments.

15. The complete Plan is on file with the City Clerk and may be reviewed upon request.

16. This resolution shall take effect immediately upon its adoption by the City Council.

PASSED AND ADOPTED THIS 4TH DAY OF OCTOBER 2023, AT A REGULAR MEETING OF THE CITY COUNCIL BY THE FOLLOWING VOTE:

AYES:	**COUNCIL MEMBERS:**	**Gino Borgioli, Marilyn Librers, Mark Turner, Rene Spring, Yvonne Martinez Beltran**
NOES:	**COUNCIL MEMBERS:**	**None**
ABSTAIN:	**COUNCIL MEMBERS:**	**None**
ABSENT:	**COUNCIL MEMBERS:**	**None**

APPROVED:

DocuSigned by:
Mark Turner

MARK TURNER, Mayor

ATTEST:

DocuSigned by:
Michelle Bigelow

MICHELLE BIGELOW, City Clerk

ꕤ CERTIFICATION ꕤ

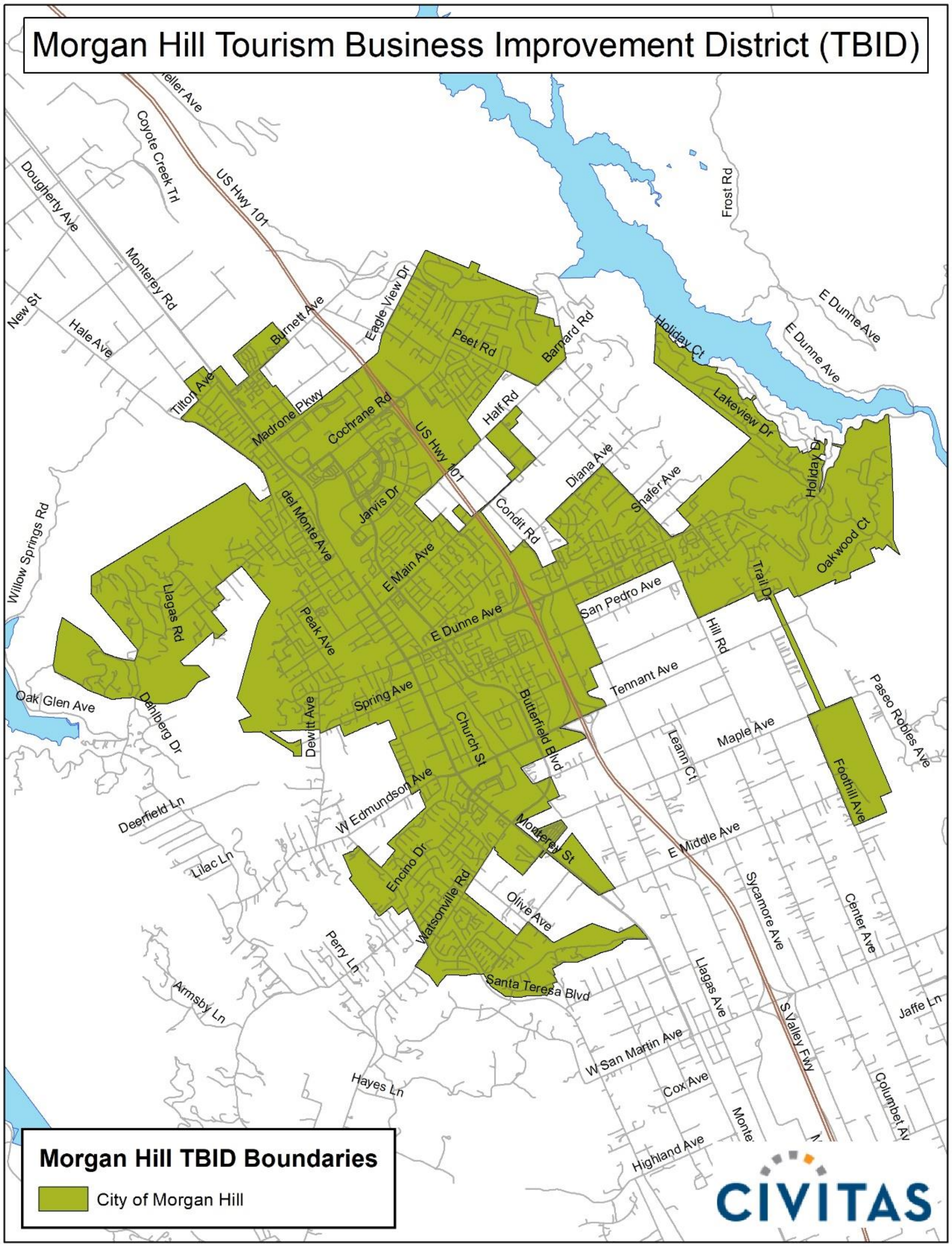
I, Michelle Bigelow, City Clerk of the City of Morgan Hill, California, do hereby certify that the foregoing is a true and correct copy of Resolution No. 23-044 adopted by the City Council at the meeting held on the 4th day of October 2023.

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

DATE: 10/9/2023

DocuSigned by:
Michelle Bigelow
MICHELLE BIGELOW, City Clerk

EXHIBIT A
District Boundaries



CITY OF MORGAN HILL

CITY COUNCIL STAFF REPORT
MEETING DATE: November 1, 2023

PREPARED BY:
Dat Nguyen, Finance Director
APPROVED BY: City Manager

RECEIVE MONTHLY BUDGET UPDATE; SEPTEMBER 2023 FINANCIAL AND INVESTMENT REPORTS; AND CITY MANAGER AUTHORITY REPORT

RECOMMENDATION(S)
Accept and file report.

COUNCIL PRIORITIES, GOALS & STRATEGIES
City Council Ongoing Priorities
Preserving and Cultivating Public Trust

2022-2023 Strategic Priorities
Fiscal Sustainability
Community Outreach, Engagement, and Messaging

REPORT NARRATIVE:
As part of the City Council's expectation to maintain a high level of transparency and to be responsible stewards of public funds, staff is providing this monthly budget update, along with the September 2023 financial and investment reports.

<u>September 2023 Financial Report</u>
The Revenue and Expense Summary through September 2023 is included on the first page of the monthly financial report. Overall, General Fund revenues total $6.0 million or about 11% of the budget. Expenditures, including encumbrances, amounted to $16.1 million, of which approximately $3.9 million is attributable to outstanding encumbrances, compared to prior year expenditures, including encumbrances, of $15.1 million. This represents an increase of $1.0 million, including encumbrances, compared to the prior year. Excluding the encumbrances, expenditures increased by about $0.6 million mainly due to new programs such as Innovative Transit, continued recovery in Recreation Services, as well as overall cost increases.

<u>Budget Update</u>
There has been no material change to the City's revenue since the last budget update to the Council on August 23, 2023. Based on the latest forecast provided by the County, the City is expected to receive approximately $18.8 million in property tax revenue for

the current fiscal year, slightly more than the budget of $18.5 million. However, this is offset by a downward revision of our sales tax revenue by HdL, the City's sales tax consultant, of about $0.2 million for the current fiscal year. Recreation Services revenues continue to recover from the pandemic and on target with budget. For water revenue, Morgan Hill residents consumed about 2% less water through September compared to the prior three-year average. As such, no revenue stabilization water rate was implemented.

City Manager's Authority Report
Pursuant to the City Council Policy 18-05 – Report on delegation of authority to City Manager, Page 21 of Attachment 1 lists the contracts and or agreements between $25,000 to $60,000, or the limit of the California Uniform Public Construction Cost Accounting Act (CUPCCAA), entered into by the City Manager since the last report from August 10, 2023, through October 18, 2023.

COMMUNITY ENGAGEMENT:
Inform

Finance staff prepares these financial reports to inform City officials, the Council, the community, and various lenders and stakeholders about the financial health of the organization, which assists each one of the interested parties in making sound financial and investment decisions.

ALTERNATIVE ACTIONS:
No alternative action is recommended, as this is a monthly financial report on City transactions which have already occurred.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:
The City Council receives and files the financial and investment report for each month. At the September 16, 2015 meeting, City Council recommended monthly financial and investment reports be agendized under the Consent Agenda, and quarterly financial and investment reports be presented to City Council as an "Other Business" item.

FISCAL AND RESOURCE IMPACT:
The preparation of the report is a part of the Finance workplan.

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

Monthly Financial and Investment Reports

September 30, 2023 - 25% of Year Complete

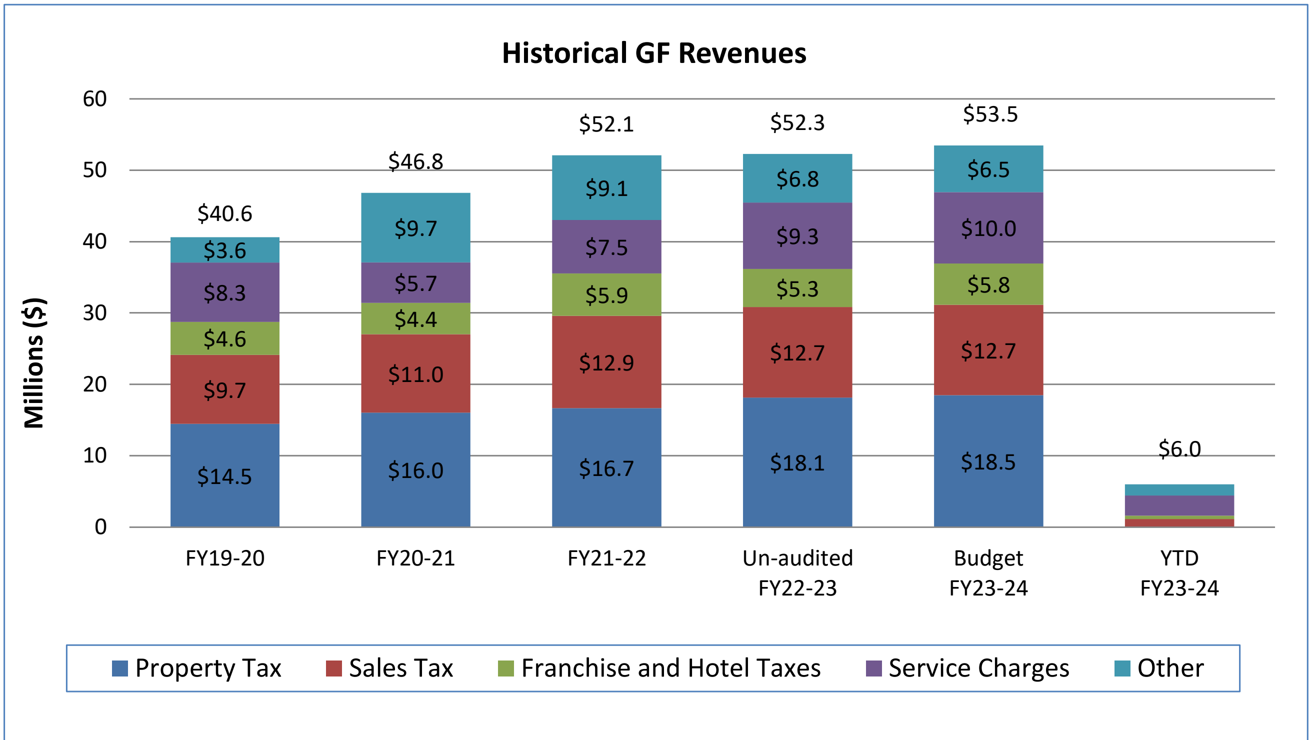
CITY OF MORGAN HILL

Prepared by:

FINANCE DEPARTMENT

- **General Fund** – Revenues through September totaled $6.0 million, or about 11% of the budgeted revenues as some of the major revenue categories such as property tax are received later in the fiscal year. With respect to the property tax revenue forecast, the County estimates the City will receive approximately $18.8 million in property tax revenue for the current fiscal year, slightly more than the budget of $18.5 million. As for sales tax, HdL, the City's sales tax consultant revised the City's current fiscal year sales tax revenue estimate, before tax rebates, to $12.5 million, a downward revision of about $0.2 million from the current year budget, partially attributable to falling gas prices, lower household discretionary spending, and weaker consumer confidence.

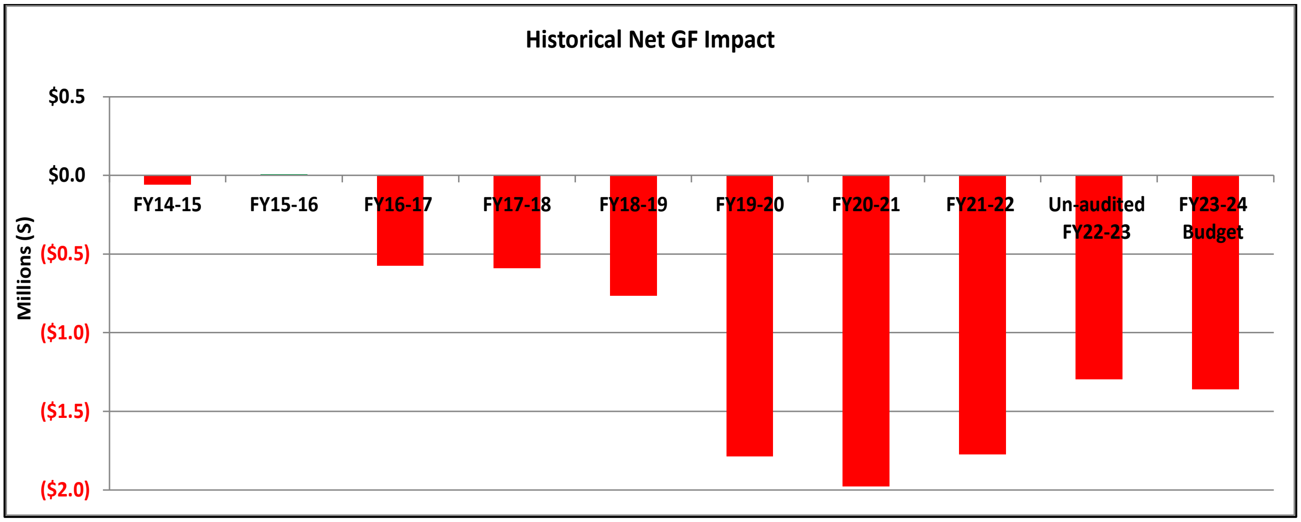
  The chart below shows historical General Fund revenues by major revenue category from FY19-20 through FY21-22 Actual, Un-audited FY22-23, FY23-24 Budget, and YTD as of September 30, 2023.



  General Fund expenditures and encumbrances through September totaled $16.1 million, of which approximately $3.9 million is attributable to outstanding encumbrances, compared to prior year expenditures, including encumbrances, of $15.1 million. This represents an increase of $1.0 million, including encumbrances, compared to the prior year. Excluding the encumbrances, expenditures increased by about $0.6 million mainly due to new programs such as Innovative Transit, continued recovery in Recreation Services, as well as overall cost increases.

- **Community Services** – The Community Services Department's recreation operations, as reflected in the schedule presented on page 7 of the Monthly Financial and Investments Reports, shows a negative impact to the General Fund of approximately $1.3 million as of September 30, 2023. Recreation Services revenues continue to recover from the pandemic and on target with budget.

The chart below shows the historical net impact of Recreation Operations to the general fund.



Due to longstanding governmental accounting and budgeting convention, the City's recreation operations are not charged for indirect costs (known in Morgan Hill as "General Fund Administration") from the central services departments of City Attorney, City Manager, and Administrative Services. The City's other governmental funds, such as Development Services, and the proprietary funds, such as Water and Wastewater, and the Information Services Fund, are assessed such charges through the City's indirect cost allocation plan, prepared in compliance with the guidelines set forth in the Code of Federal Regulations Title 2, Chapter II, Part 200 (formerly OMB Circular No. A-87), which mandates certain calculation and cost allocation practices that must be followed in order to qualify for Federal grant funding, but which also represents best practice for non-grant funded City operations like utilities and information services.

- **Development Services Fund –** Revenues through September totaled $1.1 million compared to prior year to date amount of approximately $1.6 million. Expenditures, including encumbrances, totaled $1.4 million.

- **Debt Service Funds –** Expenditures through September totaled $1,883. The debt service for the first half of the year includes both interest and principal, while the second half of the year will include interest only. Debt service payments were all scheduled when the bonds were issued and are budgeted for in the months delineated in the underlying bond documents. The General Fund's portion of the annual debt service payments is approximately $200,000, less than one percent of the General Fund's budgeted revenues.

- **Wastewater Operations –** Revenues through September 30, 2023 totaled $2.6 million. Expenditures and outstanding encumbrances totaled $2.3 million or 15% of the budget. The table below shows historical Wastewater Operations revenues and expenditures from FY19-20 through FY21-22 Actual, Un-audited FY22-23, FY23-24 Budget, and YTD as of September 30, 2023.

(amount in millions)	FY19-20	FY20-21	FY21-22	Un-audited FY22-23	Budget FY23-24	YTD FY23-24
Revenues	11.9	13.3	14.9	15.3	15.6	2.6
Expenditures	12.3	13.3	14.8	16.0	15.5	2.3
Operating Margin	(0.4)	-	0.1	(0.7)	0.1	0.3
Operating Margin without Encumbrances	(0.1)	-	0.1	(0.7)	0.1	0.4

- **Water Operations** – Water Operations includes Utility Billing, Water Conservation, and Water Operations. Revenues through September 30, 2023 totaled $3.9 million. Water Operations expenditures, including outstanding encumbrances, totaled $4.8 million. Morgan Hill residents consumed about 2% less water through September compared to the prior three-year average. As such, no revenue stabilization water rate was implemented. The table below shows Water Operations revenues and expenditures from FY19-20 through FY21-22 Actual, Un-audited FY22-23, FY23-24 Budget, and YTD as of September 30, 2023.

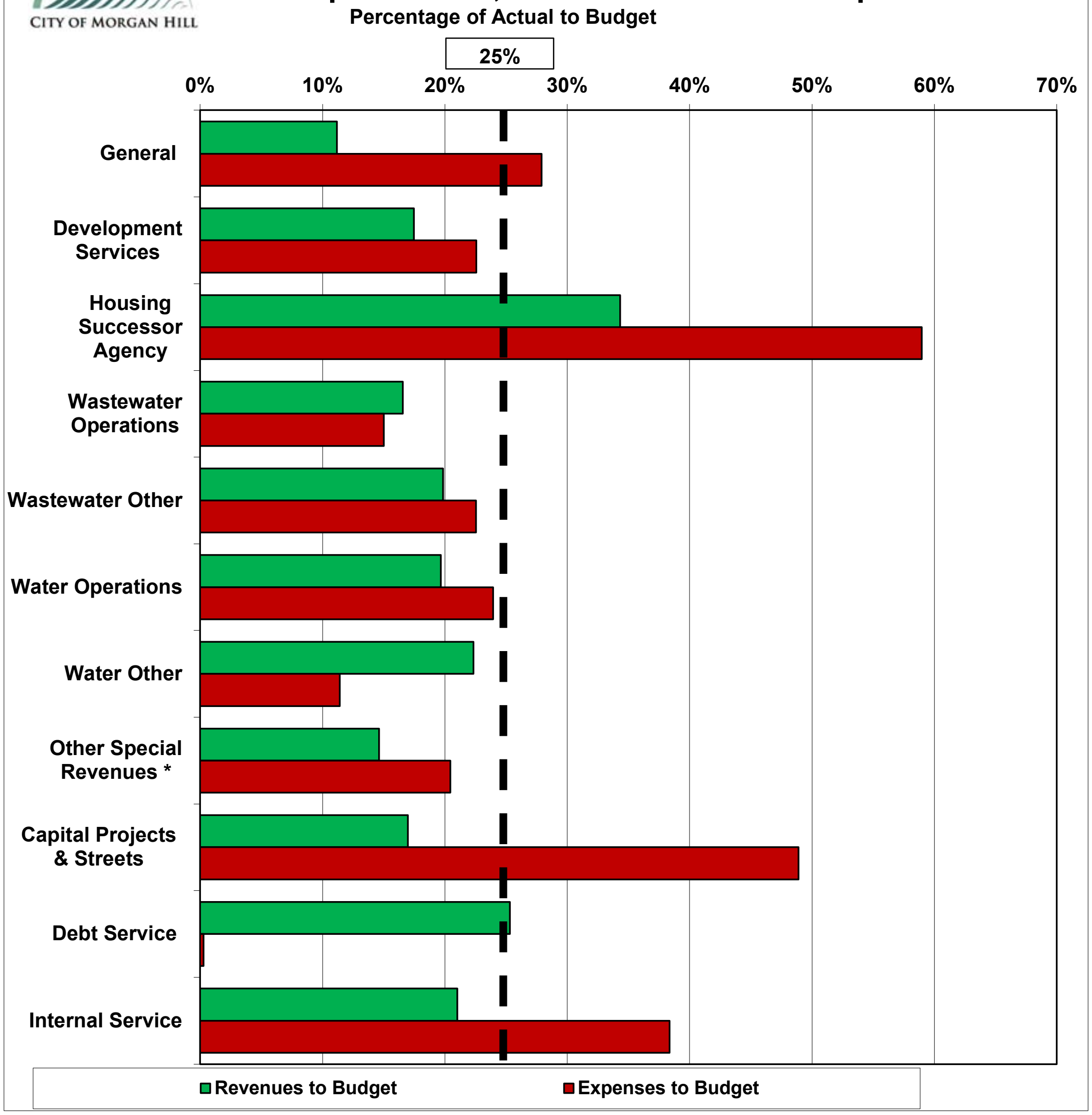
(amount in millions)	FY19-20	FY20-21	FY21-22	Un-audited FY22-23	Budget FY23-24	YTD FY23-24
Revenues	15.3	16.5	16.0	18.1	19.8	3.9
Expenditures	16.4	16.5	15.2	18.0	20.1	4.8
Operating Margin	(1.1)	-	0.8	0.1	(0.3)	(0.9)
Operating Margin without Encumbrances	(0.1)	-	0.8	0.1	(0.3)	(0.1)

- **Investments –** One security was called, and one new security was purchased. Total interest earnings received on investments were $463,000 during the month.

CITY OF MORGAN HILL

Morgan Hill YTD Revenue & Expense Summary

September 30, 2023 - 25% of Year Complete

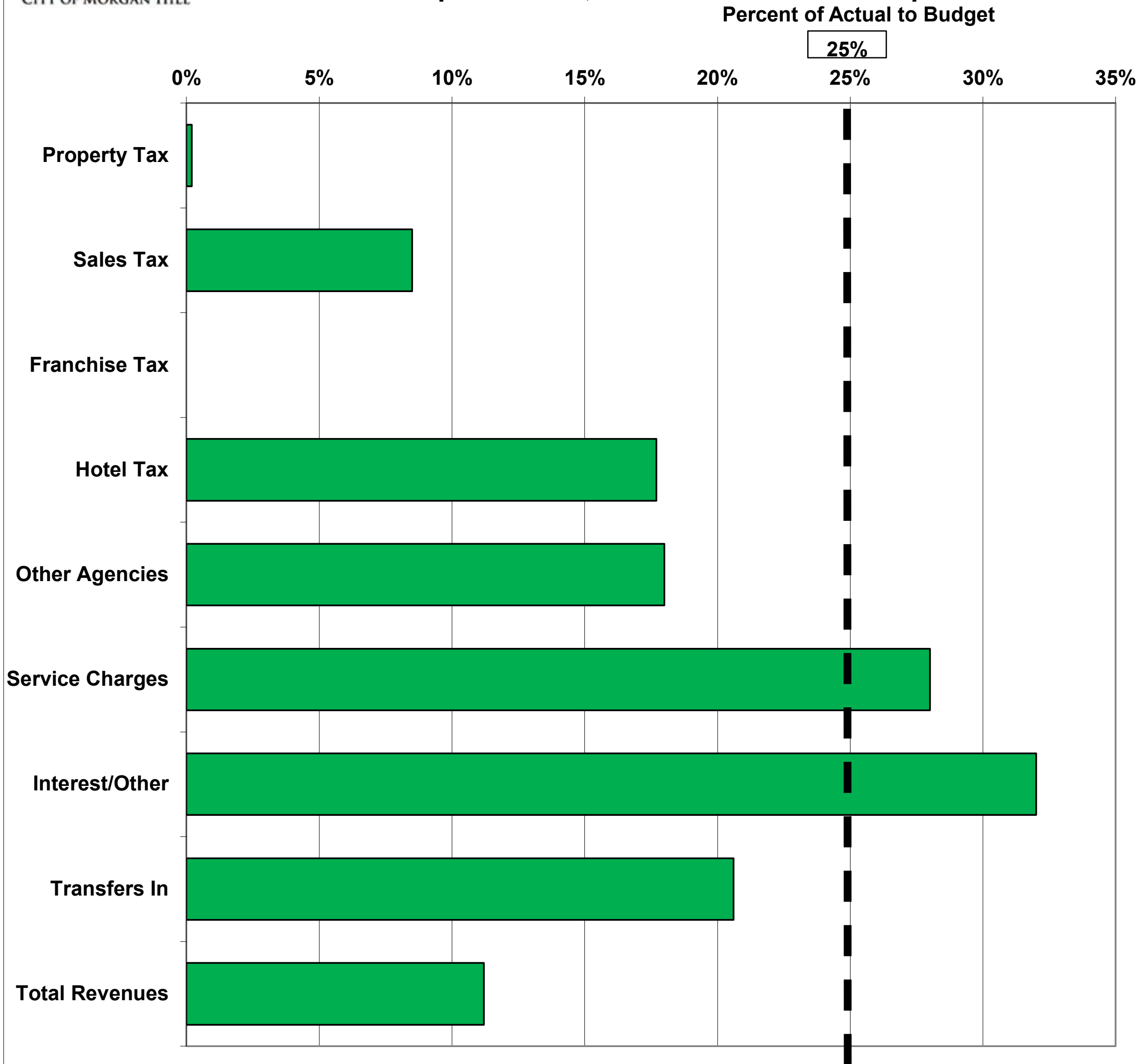


FUND NAME	REVENUES ACTUAL		REVENUES % OF BUDGET	EXPENSES ACTUAL PLUS ENCUMBRANCES		EXPENSES % OF BUDGET
General	$	5,973,745	11%	$	16,070,032	28%
Development Services		1,105,469	17%		1,439,512	23%
Housing Successor Agency		82,066	34%		691,050	59%
Wastewater Operations		2,578,987	17%		2,321,172	15%
Wastewater Other		1,950,233	20%		4,862,938	23%
Water Operations		3,892,787	20%		4,820,425	24%
Water Other		1,943,327	22%		1,668,979	11%
Other Special Revenues *		1,224,174	15%		1,730,006	20%
Capital Projects & Streets		2,226,501	17%		23,073,462	49%
Debt Service		171,724	25%		1,883	0%
Internal Service		2,564,706	21%		4,665,988	38%
TOTAL FOR ALL FUNDS	$	23,713,719	16%	$	61,345,447	30%

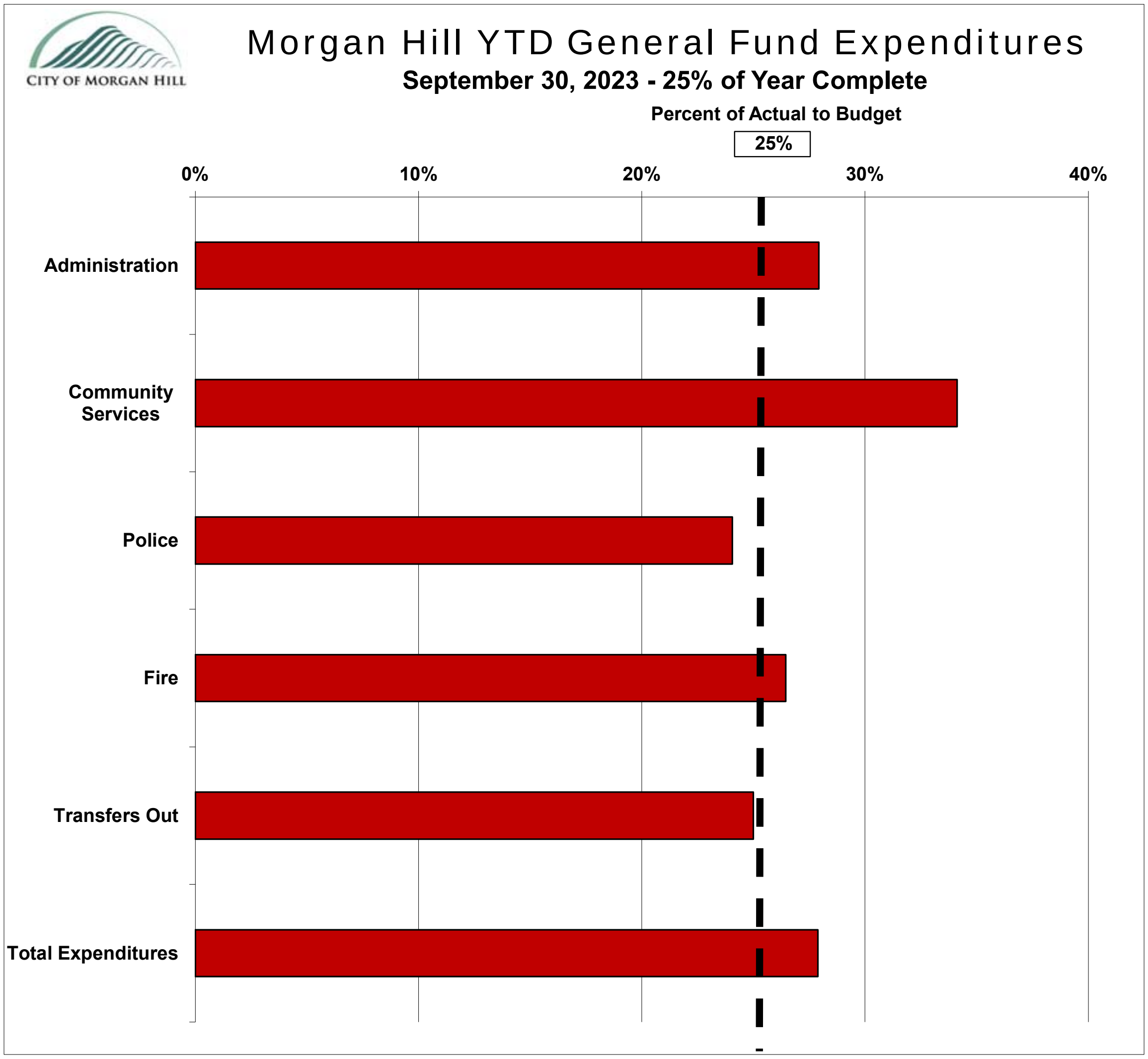
* Includes all Special Revenue Funds except Development Services Fund, Street Funds, and Housing Successor Agency.

Morgan Hill YTD General Fund Revenues

September 30, 2023 - 25% of Year Complete



REVENUE CATEGORY	BUDGET	ACTUAL	% OF BUDGET	PRIOR YEAR TO DATE	% CHANGE FROM PRIOR YEAR
Property Tax	$ 18,472,000	$ 34,018	0%	$ 48,929	-30%
Sales Tax	12,673,967	1,074,625	9%	1,023,074	5%
Franchise Tax	2,983,800	-		-	N/A
Hotel Tax	2,800,000	495,598	18%	445,985	11%
Other Agencies	1,011,233	182,446	18%	97,076	88%
Service Charges	10,006,079	2,801,577	28%	2,464,942	14%
Interest/Other	2,173,687	695,547	32%	355,339	96%
Transfers In	3,342,540	689,933	21%	672,747	3%
TOTAL REVENUES	$ 53,463,306	$ 5,973,745	11%	$ 5,108,091	17%



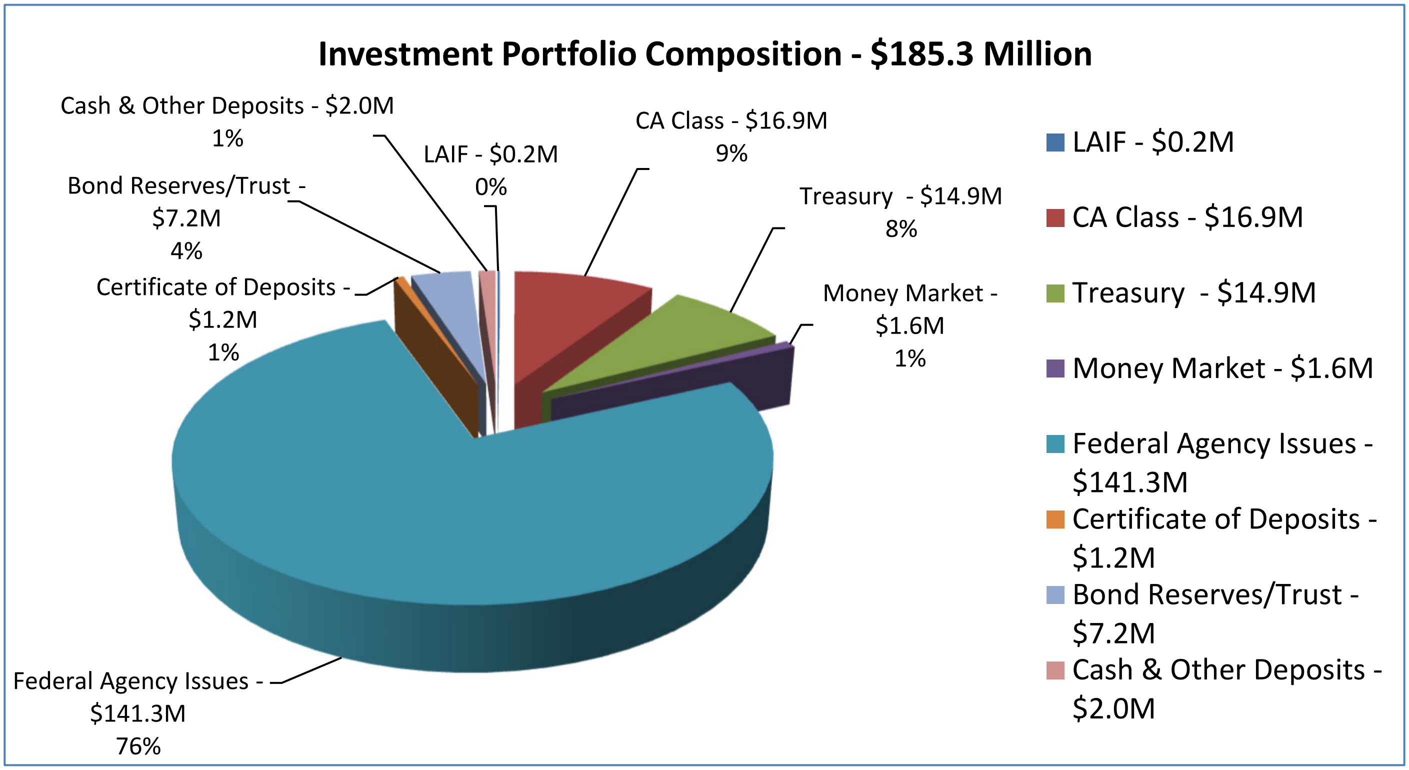
EXPENDITURE CATEGORY	BUDGET	ACTUAL PLUS ENCUMBRANCES	% OF BUDGET	PRIOR YTD PLUS ENCUMBRANCES	% CHANGE FROM PRIOR YEAR
Administration	$ 6,465,162	$ 1,805,424	28%	$ 2,086,289	-13%
Community Services	17,199,011	5,868,647	34%	5,292,320	11%
Police	23,578,404	5,671,096	24%	4,840,010	17%
Fire	9,067,905	2,398,924	26%	2,538,163	-5%
Transfers Out	1,303,767	325,942	25%	321,829	1%
TOTAL EXPENDITURES	$ 57,614,249	$ 16,070,032	28%	$ 15,078,610	7%

City of Morgan Hill
Recreation Report - Fiscal Year 2023-24
For the Month Ended September 30, 2023
25% of Year Complete

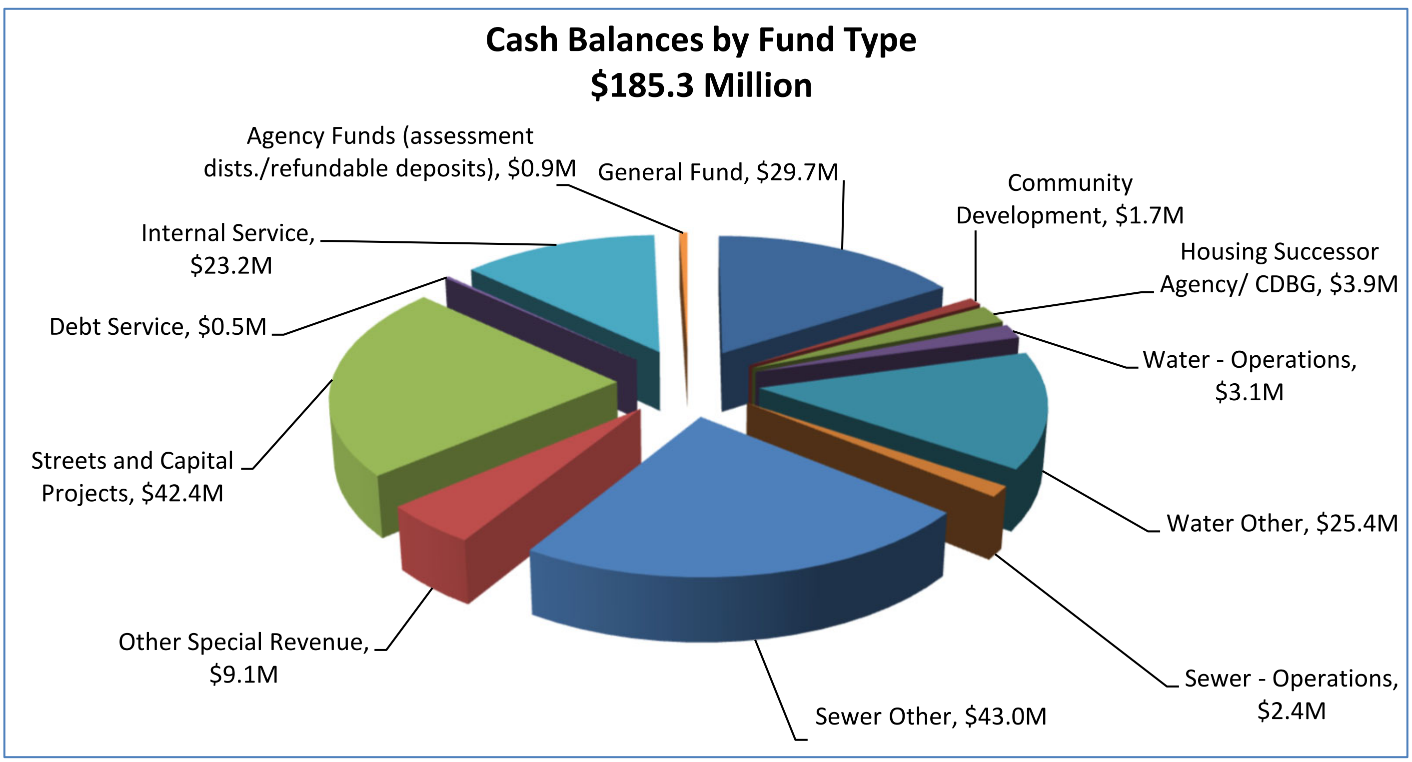
	Budget	September 2023	YTD	% of Budget
Revenues				
Membership Services & Rec Programs	$ 5,656,265	$ 402,566	$ 1,687,617	
Facility Rentals	1,203,269	189,888	420,515	
Community Services	152,498	2,252	7,546	
Transfers in	75,000	6,250	18,750	
Total Revenues	$ 7,087,032	$ 600,956	$ 2,134,428	30%
Less: Expenditures				
Membership & Program Services	$ 7,200,406	$ 453,118	$ 1,733,996	
Facility Rentals	573,524	50,119	125,097	
Community Services	672,192	41,984	113,047	
Total Expenditures	$ 8,446,123	$ 545,219	$ 1,972,140	23%
Net Impact without encumbrances	**$ (1,359,091)**	**$ 55,737**	**$ 162,287**	
Encumbrances	-	-	1,478,226	
Net Impact with encumbrances	**$ (1,359,091)**	**$ 55,737**	**$(1,315,938)**	

City of Morgan Hill
Monthly Investment Report - September 30, 2023

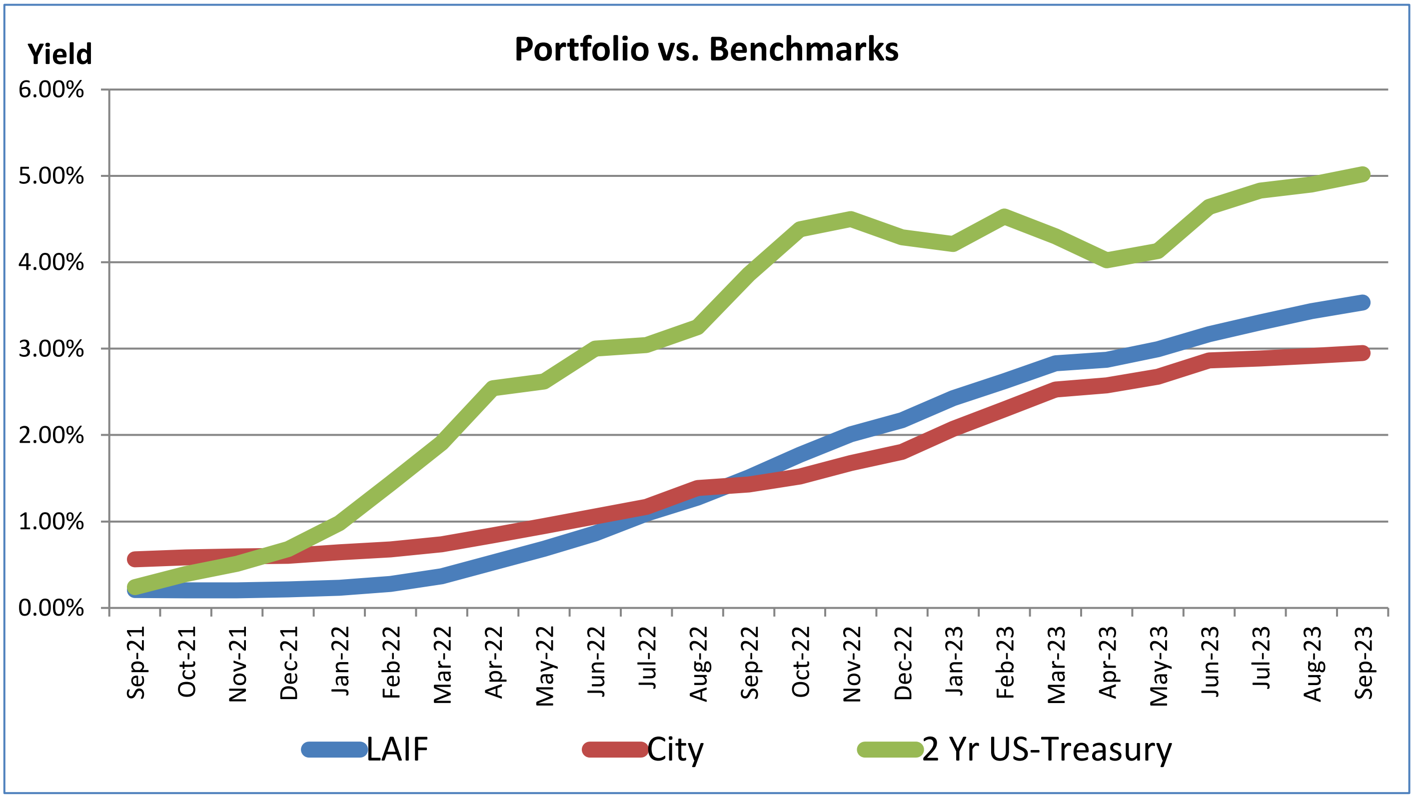
The following are the snapshots of City's investment portfolio as of September 30, 2023. The first chart shows the portfolio composition by investment type:



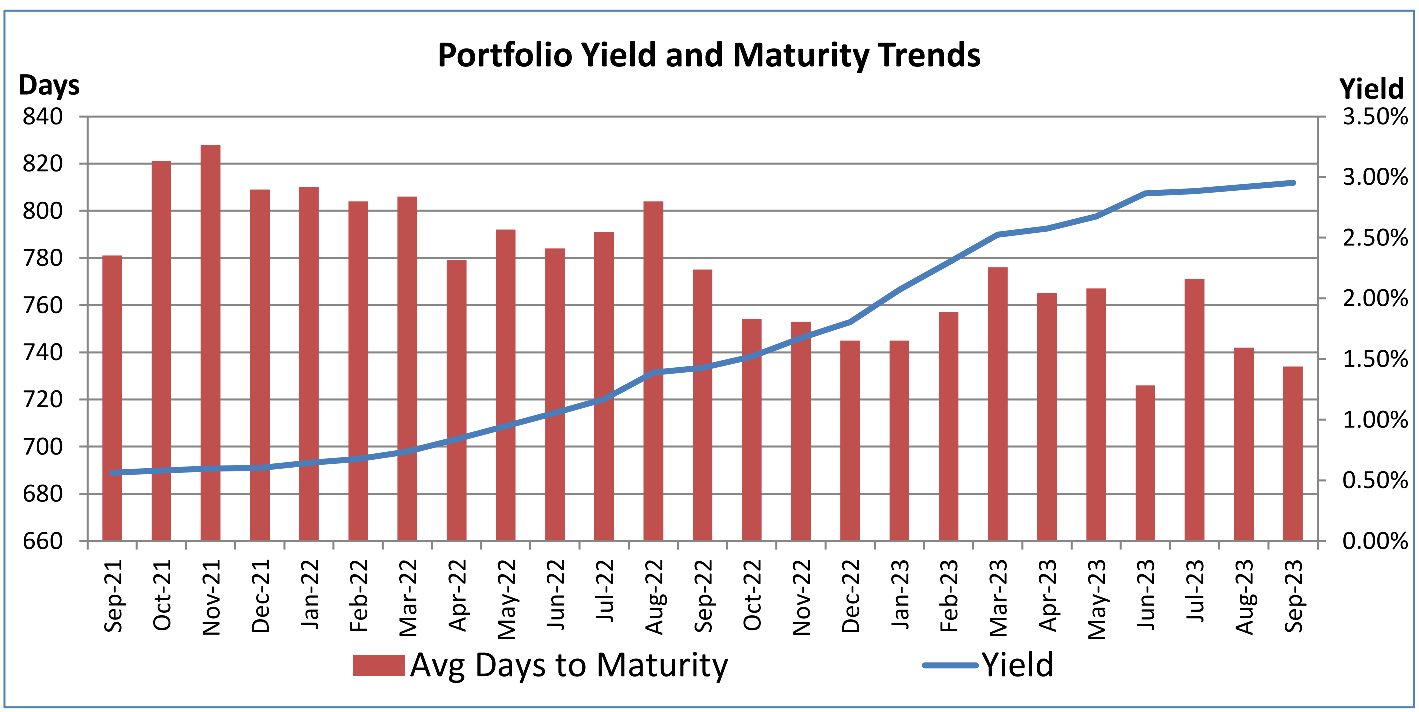
The chart below shows cash balances by fund type reconciled to City's financial system:



The following chart illustrates a yield comparison by month among the City's portfolio, LAIF and 2-Year US Treasury:



The chart below illustrates monthly average days to maturity of the City's portfolio along with the weighted average yield for the past two years:



CITY OF MORGAN HILL

City of Morgan Hill
Investment Portfolio Detail
As of September 30, 2023

Investment Type	CUSIP	Settlement Date	Cost Value	Book Value	% of Portfolio	Market Value	YTM at Cost	Next Call Date	Date of Maturity
L A I F			**$ 248,329**	**$ 248,329**	**0.13%**	**$ 244,561**	**3.53%**		
California C L A S S			**16,893,011**	**16,893,011**	**9.12%**	**$ 16,893,011**	**5.48%**		
City Managed									
Treasury Bill	912797GV3	6/6/2023	1,671,172	1,699,273	0.92%	1,699,745	5.31%	10/3/2023	10/3/2023
Treasury Note	91282CCZ2	10/8/2021	1,987,656	1,992,558	1.08%	1,784,680	1.00%	9/30/2026	9/30/2026
Treasury Note	91282CDR9	1/4/2022	1,999,141	1,999,891	1.08%	1,977,180	0.77%	12/31/2023	12/31/2023
Treasury Note	91282CDR9	1/19/2022	1,989,688	1,998,666	1.08%	1,977,180	1.02%	12/31/2023	12/31/2023
Treasury Note	91282CDV0	2/11/2022	1,977,969	1,996,231	1.08%	1,970,240	1.44%	1/31/2024	1/31/2024
Treasury Note	9128286R6	3/28/2022	1,996,320	1,998,974	1.08%	1,963,440	2.34%	4/30/2024	4/30/2024
Treasury Note	912828U24	6/13/2022	1,904,688	1,932,644	1.04%	1,839,620	3.16%	11/15/2026	11/15/2026
Treasury Note	91282CAW1	11/17/2022	1,246,984	1,293,282	0.70%	1,291,953	4.49%	11/15/2023	11/15/2023
FFCB Bond	3133ELVX9	4/8/2020	2,000,000	2,000,000	1.08%	1,951,800	0.88%	10/8/2023	4/8/2024
FFCB Bond	3133ELC28	5/27/2020	2,000,000	2,000,000	1.08%	1,853,420	0.73%	11/27/2023	5/27/2025
FHLMC Bond	3134GVYN2	6/3/2020	2,000,000	2,000,000	1.08%	1,890,360	0.60%	12/3/2023	12/3/2024
FHLMC Bond	3134GWZG4	10/20/2020	2,000,000	2,000,000	1.08%	1,820,640	0.60%	10/20/2023	10/20/2025
FHLMC Bond	3134GW3X2	10/27/2020	2,000,000	2,000,000	1.08%	1,820,220	0.63%	10/27/2023	10/27/2025
FHLMC Bond	3134GW6E1	11/2/2020	2,000,000	2,000,000	1.08%	1,991,440	0.32%	11/2/2023	11/2/2023
FFCB Bond	3133EMFR8	11/3/2020	2,000,000	2,000,000	1.08%	1,813,200	0.54%	11/3/2023	11/3/2025
FNMA Bond	3135GA4P3	11/18/2020	2,000,000	2,000,000	1.08%	1,814,620	0.65%	11/18/2023	11/18/2025
FHLMC Bond	3134GXEJ9	11/24/2020	2,000,000	2,000,000	1.08%	1,812,860	0.64%	11/24/2023	11/24/2025
FFCB Bond	3133EMHF2	11/24/2020	1,000,000	1,000,000	0.54%	905,630	0.60%	11/24/2023	11/24/2025
FHLMC Bond	3134GXCS1	11/25/2020	3,000,000	3,000,000	1.62%	2,718,060	0.63%	11/25/2023	11/25/2025
FHLMC Bond	3134GXFA7	11/30/2020	2,000,000	2,000,000	1.08%	1,812,840	0.65%	11/26/2023	11/26/2025
FFCB Bond	3133EMLC4	12/22/2020	2,000,000	2,000,000	1.08%	1,800,240	0.47%	12/22/2023	12/22/2025
FHLB Bond	3130AKQ74	1/22/2021	2,000,000	2,000,000	1.08%	1,800,360	0.63%	1/22/2024	1/22/2026
FNMA Bond	3135G06R9	1/28/2021	2,000,000	2,000,000	1.08%	1,795,980	0.55%	1/28/2024	1/28/2026
FHLB Bond	3130AKRN8	1/28/2021	2,000,000	2,000,000	1.08%	1,800,300	0.65%	1/28/2024	1/28/2026
FHLB Bond	3130ALCV4	2/24/2021	2,000,000	2,000,000	1.08%	1,799,360	0.75%	2/24/2024	2/24/2026
FHLB Bond	3130ALDB7	2/25/2021	2,000,000	2,000,000	1.08%	1,795,160	0.66%	2/25/2024	2/25/2026
FHLB Bond	3130AKZ25	2/26/2021	2,000,000	2,000,000	1.08%	1,794,520	0.65%	2/26/2024	2/26/2026
FHLB Bond	3130ALGS7	3/10/2021	2,000,000	2,000,000	1.08%	1,801,060	0.85%	3/10/2024	3/10/2026
FHLB Bond	3130ALEP5	3/16/2021	2,000,000	2,000,000	1.08%	1,793,160	0.70%	3/16/2024	3/16/2026
FHLB Bond	3130ALDN1	3/16/2021	2,000,000	2,000,000	1.08%	1,797,720	0.80%	3/16/2024	3/16/2026
FHLB Bond	3130AMNH1	6/9/2021	2,000,000	2,000,000	1.08%	1,796,680	1.08%	12/9/2023	6/9/2026
FHLB Bond	3130AMYJ5	6/30/2021	2,000,000	2,000,000	1.08%	1,789,040	1.00%	12/30/2023	6/30/2026
FHLB Bond	3130AMYP1	7/15/2021	3,000,000	3,000,000	1.62%	2,689,590	1.13%	1/15/2024	7/15/2026
FHLB Bond	3130AMYS5	7/15/2021	2,000,000	2,000,000	1.08%	1,847,800	0.85%	1/15/2024	7/15/2025
FHLB Bond	3130ANJC5	8/26/2021	2,000,000	2,000,000	1.08%	1,768,980	0.80%	2/26/2024	8/26/2026
FHLB Bond	3130ANLW8	8/26/2021	3,000,000	3,000,000	1.62%	2,669,400	1.00%	2/26/2024	8/26/2026
FHLB Bond	3130ANLZ1	8/26/2021	2,000,000	2,000,000	1.08%	1,774,280	0.90%	2/26/2024	8/26/2026
FHLB Bond	3130A8XY4	9/13/2021	2,103,340	2,060,981	1.11%	1,834,080	0.82%	3/11/2024	9/11/2026
FFCB Bond	3133EM4X7	9/28/2021	1,982,960	1,989,864	1.07%	1,774,720	0.98%	3/10/2024	9/10/2026
FHLB Bond	3130APCH6	9/29/2021	3,000,000	3,000,000	1.62%	2,671,200	1.13%	3/29/2024	9/29/2026
FHLB Bond	3130ANZE3	9/30/2021	2,000,000	2,000,000	1.08%	1,781,380	0.88%	3/30/2024	9/30/2026
FHLB Bond	3130AP6N0	9/30/2021	3,000,000	3,000,000	1.62%	2,664,810	1.05%	3/30/2024	9/30/2026
FHLB Bond	3130AP6M2	9/30/2021	3,000,000	3,000,000	1.62%	2,662,350	1.02%	3/30/2024	9/30/2026
FHLB Bond	3130APCG8	10/19/2021	2,000,000	2,000,000	1.08%	1,770,400	1.00%	10/19/2023	10/19/2026
FHLB Bond	3130APNX9	11/18/2021	2,000,000	2,000,000	1.08%	1,781,520	1.30%	11/18/2023	11/18/2026
FHLB Bond	3130AQFL2	12/29/2021	2,000,000	2,000,000	1.08%	1,977,500	0.75%	12/29/2023	12/29/2023
FHLB Bond	3130AQHU0	1/19/2022	2,000,000	2,000,000	1.08%	1,819,160	1.74%	1/19/2024	1/19/2027
FHLB Bond	3130AQKT9	1/25/2022	2,000,000	2,000,000	1.08%	1,884,060	1.51%	1/25/2024	7/25/2025
FHLB Bond	3130AR4F5	3/10/2022	2,000,000	2,000,000	1.08%	1,911,100	3.48%	3/10/2024	3/10/2027
FHLMC Bond	3134GXUZ5	6/15/2022	2,000,000	2,000,000	1.08%	1,931,760	3.28%	12/15/2023	12/15/2025
FHLB Bond	3130ASPE3	7/28/2022	2,000,000	2,000,000	1.08%	1,922,000	4.30%	1/28/2024	7/28/2027
FNMA Bond	3135GACZ2	11/25/2022	2,000,000	2,000,000	1.08%	1,989,320	5.40%	11/25/2023	11/25/2024
FHLMC Bond	3134GY4B5	11/28/2022	2,000,000	2,000,000	1.08%	1,986,860	5.00%	11/15/2023	11/15/2023
FHLB Bond	3130AUFT6	1/27/2023	2,000,000	2,000,000	1.08%	1,987,680	5.43%	10/27/2023	1/27/2025

Investment Type	CUSIP	Settlement Date	Cost Value	Book Value	% of Portfolio	Market Value	YTM at Cost	Next Call Date	Date of Maturity
FHLB Bond	3130AUP32	1/27/2023	2,250,000	2,250,000	1.21%	2,218,568	5.98%	10/27/2023	1/27/2028
FHLMCMTN Bond	3134GYGB2	1/30/2023	2,000,000	2,000,000	1.08%	1,956,180	5.20%	10/26/2023	1/26/2028
FHLMCMTN Bond	3134GYG22	2/16/2023	3,000,000	3,000,000	1.62%	2,947,380	5.13%	11/16/2023	11/16/2026
FHLB Bond	3130AUTZ7	2/24/2023	2,000,000	2,000,000	1.08%	1,976,120	6.44%	2/24/2024	2/24/2028
FHLB Bond	3130AUZH0	3/6/2023	2,000,000	2,000,000	1.08%	1,990,240	6.33%	12/6/2023	3/6/2026
FHLB Bond	3130AUZZ0	3/13/2023	2,000,000	2,000,000	1.08%	1,987,020	6.23%	12/13/2023	3/13/2026
FHLB Bond	3130AV2Z4	3/15/2023	2,000,000	2,000,000	1.08%	1,997,800	5.35%	3/15/2024	3/15/2024
FHLB Bond	3130AV3P5	3/20/2023	2,000,000	2,000,000	1.08%	1,992,020	5.50%	3/20/2024	9/20/2024
FHLB Bond	3130AVK92	4/5/2023	3,000,000	3,000,000	1.62%	2,990,250	5.00%	10/5/2023	4/5/2024
FHLB Bond	3130AVL83	4/6/2023	2,000,000	2,000,000	1.08%	1,988,560	5.20%	10/7/2023	10/7/2024
FHLB Bond	3130AVQ96	4/17/2023	2,000,000	2,000,000	1.08%	1,994,500	5.15%	10/17/2023	4/17/2024
FHLB Bond	3130AVNT5	4/28/2023	1,000,000	1,000,000	0.54%	993,320	5.50%	10/25/2023	4/25/2025
FHLMCMTN Bond	3134GYQZ8	5/11/2023	3,000,000	3,000,000	1.62%	2,978,730	6.09%	2/11/2024	5/11/2026
FHLMCMTN Bond	3134GYSV5	5/25/2023	2,000,917	2,000,000	1.08%	1,994,760	5.50%	10/22/2023	06/18/2024
FHLB Bond	3130AWF62	6/13/2023	2,000,000	2,000,000	1.08%	1,989,840	5.50%	12/13/2023	12/13/2024
FHLB Bond	3130AWEB2	6/26/2023	2,000,000	2,000,000	1.08%	1,990,560	5.55%	3/26/2024	12/26/2024
FHLB Bond	3130AWHD5	6/29/2023	2,000,000	2,000,000	1.08%	1,980,880	5.90%	12/29/2023	6/29/2027
FHLMCMTN Bond	3134GYUY6	7/12/2023	2,000,000	2,000,000	1.08%	1,975,460	6.29%	10/12/2023	7/12/2028
FHLMCMTN Bond	3134GYWC2	7/26/2023	2,000,000	2,000,000	1.08%	1,976,180	6.00%	1/26/2024	7/26/2028
FHLMCMTN Bond	3134GYW57	7/27/2023	2,000,000	2,000,000	1.08%	1,988,560	6.00%	10/27/2023	7/27/2026
FHLMCMTN Bond	3134H1CJ0	9/28/2023	2,000,000	2,000,000	1.08%	1,999,580	6.25%	12/28/2023	9/28/2028
CD - Ally Bank	02007GM83	3/30/2023	250,000	250,000	0.13%	249,458	5.15%	3/28/2024	3/28/2024
CD - Western Alliance Bank	95763PLA7	3/30/2023	250,000	250,000	0.13%	249,808	5.30%	1/2/2024	1/2/2024
CD - Zions Bancorp	98970LC43	3/31/2023	250,000	250,000	0.13%	249,278	5.40%	9/27/2024	9/27/2024
CD - Pacific Western Bank	69506YYD5	4/5/2023	250,000	250,000	0.13%	250,123	5.65%	4/5/2024	4/5/2028
CD - US Bank	90354KBR8	5/17/2023	250,000	250,000	0.13%	249,170	5.10%	5/16/2024	5/16/2024
Sub Total/Average			**$ 157,360,834**	**$ 157,462,364**	**84.97%**	**$ 148,527,001**	**2.66%**		
US Bank Money Market			**$ 564,968**	**$ 564,968**	**0.30%**	**$ 564,968**	**5.24%**		
WFB Money Market			**$ 1,007,907**	**$ 1,007,907**	**0.54%**	**$ 1,007,907**	**5.22%**		
Total City Managed/Average			**$ 176,075,049**	**$ 176,176,579**	**85.41%**	**$ 167,237,448**	**2.95%**		
Bond Reserve Accounts - Held By Trustees			**$ 369,194**	**$ 369,194**	**0.20%**	**$ 369,194**			
Cash/Deposits			**$ 1,986,934**	**$ 1,986,934**	**1.07%**	**$ 1,986,934**			
PARS and CALPERS CERBT Trust			**$ 6,787,404**	**$ 6,787,404**	**3.66%**	**$ 7,115,306**			
GRAND TOTAL/AVERAGE			**$ 185,218,581**	**$ 185,320,112**	**100%**	**$ 176,708,882**			

CITY OF MORGAN HILL CASH AND INVESTMENT REPORT
FOR THE MONTH OF SEPTEMBER 30, 2023
FOR THE FISCAL YEAR OF 2023-24

	Invested in Fund	Yield	Book Value End of Month	% of Total	Market Value
Investments					
State Treasurer LAIF - City	All Funds Pooled	3.53%	$ 248,329	0.13%	$ 244,561
California CLASS	All Funds Pooled	5.48%	16,893,011	9.12%	16,893,011
Federal Issues	All Funds Pooled	2.65%	141,300,845	76.25%	132,775,128
Treasury	All Funds Pooled	2.27%	14,911,520	8.05%	14,504,038
Certificate of Deposits	All Funds Pooled	5.32%	1,250,000	0.67%	1,247,835
Dreyfus Treas Cash Mgmt & WFB MMA	All Funds Pooled	5.23%	1,572,876	0.85%	1,572,876
	SUBTOTAL		**$ 176,176,579**	**95.07%**	**$ 167,237,448**
Bond Reserve Accounts - held by trustees					
Zions Bank - Civic Center/Library Facility					
Blackrock Liq Fund	Debt Service	4.47%	76	0.00%	76
Zions Bank - MH Police Facility Lease Revenue Bonds					
Blackrock Liq Fund	Debt Service	4.47%	97	0.00%	97
BNY - RDA Bonds					
Dreyfus Cash Mgmt 521	Agency Fund	0.00%	103,974	0.06%	103,974
Zions Bank - Madrone Bus Park Taxable/ Tax Exempt 2015					
Blackrock Liquidity Temp Fund-2015	Agency Fund	4.47%	265,047	0.14%	265,047
	SUBTOTAL		**369,194**	**0.20%**	**369,194**
Other Cash/Deposits					
General Checking	All Funds		1,940,834	1.05%	1,940,834
Workers' Comp Administrators	Workers' Comp		30,000	0.02%	30,000
Petty Cash & Emergency Cash	General Fund		16,100	0.01%	16,100
CALPERS CERBT - OPEB Trust			4,487,404	2.42%	4,673,007
PARS - PENSION Trust			2,300,000	1.24%	2,442,299
	SUBTOTAL		**8,774,338**	**4.73%**	**9,102,240**
Total Cash and Investments			**$ 185,320,112**	**100.00%**	**$ 176,708,882**

CASH ACTIVITY SUMMARY
FY 2023-24

Fund Type	**Unaudited 07/01/2023 Balance**	**Change in Cash Balance**	**9/30/2023 Balance**
General Fund	$ 32,352,753	$ (2,686,958)	$ 29,665,795
Community Development	1,831,559	(89,949)	1,741,611
Housing Successor Agency/ CDBG	4,202,736	(260,541)	3,942,196
Water - Operations	2,585,170	514,068	3,099,238
Water Other	23,673,105	1,758,660	25,431,765
Sewer - Operations	907,428	1,488,642	2,396,070
Sewer Other	44,135,046	(1,213,358)	42,921,689
Other Special Revenue	8,827,861	224,046	9,051,907
Streets and Capital Projects (except RDA)	40,486,238	1,882,011	42,368,249
Debt Service	342,534	169,896	512,430
Internal Service	25,139,787	(1,897,279)	23,242,508
Agency Funds (assessment dists./refundable deposits)	8,515,969	(7,569,314)	946,655
Total	**$ 193,000,187**	**$ (7,680,075)**	**$ 185,320,112**

Note: See Investment Porfolio Detail for maturities of "Investments." Market values are obtained from the City's investment brokers' monthly reports.

I certify that information on the investment report has been reconciled to the general ledger and bank statements and that there are sufficient funds to meet the expenditure requirements of the City for the next six months. The portfolio is in compliance with the City of Morgan Hill Investment Policy and all State laws and regulations.

Prepared by: Gina Nazareno, Senior Accountant

Reviewed by: Dat Nguyen, Finance Director

Approved by: Caitlin Jachimowicz, Treasurer

City of Morgan Hill
Year to Date Revenues - Fiscal Year 2023-24
For the Month Ended September 30, 2023
25% of Year Complete

	ADOPTED BUDGET	AMENDED BUDGET	CURRENT YTD ACTUAL	% OF BUDGET	PRIOR YTD	INCR (DECR) FROM PRIOR YTD	% CHANGE
010 GENERAL FUND							
TAXES							
Property Tax - Secured/Unsecured	$ 15,245,000	15,745,000	$ -	n/a		$ -	n/a
Property Tax - RPTTF Residual Distribution	2,527,000	2,527,000	-	n/a	-	-	n/a
Property Tax - Supplemental Roll	200,000	200,000	34,018	17%	48,929	(14,910)	-30%
Sales Tax	12,218,967	12,218,967	1,040,466	9%	987,706	52,760	5%
Public Safety Sales Tax	455,000	455,000	34,159	8%	35,368	(1,209)	-3%
Transient Occupancy Taxes	2,800,000	2,800,000	495,598	18%	445,985	49,613	11%
Franchise (Refuse ,Cable ,PG&E)	2,873,800	2,983,800	-	n/a	-	-	n/a
Property Transfer Tax	510,000	510,000	83,925	16%	87,407	(3,482)	-4%
TOTAL TAXES	**36,829,767**	**37,439,767**	**1,688,167**	**5%**	**1,605,395**	**82,773**	**5%**
LICENSES/PERMITS							
Business License	170,000	200,000	147,518	74%	116,399	31,119	27%
Other Permits	53,975	53,975	11,307	21%	9,828	1,479	15%
TOTAL LICENSES/PERMITS	**223,975**	**253,975**	**158,826**	**63%**	**126,227**	**32,599**	**26%**
FINES AND PENALTIES							
Parking Enforcement	3,019	3,019	2,030	67%	808	1,222	151%
Bails & Fines	47,875	47,875	13,746	29%	2,768	10,979	397%
Administrative Citations	20,000	20,000	11,033	55%	-	11,033	0%
TOTAL FINES AND PENALTIES	**70,894**	**70,894**	**26,809**	**38%**	**3,576**	**23,234**	**650%**
OTHER AGENCIES							
Motor Vehicle in-Lieu	40,800	40,800	-	n/a	-	-	n/a
Other Revenue - Other Agencies	971,089	1,011,233	182,446	18%	97,076	85,370	88%
TOTAL OTHER AGENCIES	**1,011,889**	**1,052,033**	**182,446**	**17%**	**97,076**	**85,370**	**88%**
CHARGES CURRENT SERVICES							
Police False Alarm Charge	33,248	33,248	5,770	17%	6,192	(422)	-7%
Business License Application Review	53,000	53,000	53,593	101%	9,955	43,638	438%
Membership Services & Rec Programs	5,656,265	5,656,265	1,687,617	30%	1,431,909	255,708	18%
Facility Rentals	1,203,269	1,203,269	420,515	35%	347,948	72,566	21%
Community Services	152,498	152,498	7,546	5%	6,623	923	14%
General Administration Overhead	1,822,869	1,822,869	453,288	25%	443,852	9,436	2%
Other Charges Current Services	1,084,930	1,084,930	173,248	16%	218,463	(45,216)	-21%
TOTAL CURRENT SERVICES	**10,006,079**	**10,006,079**	**2,801,577**	**28%**	**2,464,942**	**336,634**	**14%**
OTHER REVENUE							
Use of money/property	583,850	683,850	362,915	53%	105,264	257,651	245%
Other Revenues	234,168	614,168	63,072	10%	32,865	30,207	92%
TOTAL OTHER REVENUE	**818,018**	**1,298,018**	**425,987**	**33%**	**138,129**	**287,858**	**208%**
TRANSFERS IN							
One Time Transfer	180,000	180,000	45,000	25%	45,000	-	0%
Public Safety Facilities Fund	50,000	50,000	12,500	25%	12,500	-	0%
Supplemental Law Enforcement Fund	100,000	100,000	-	n/a	-	-	n/a
Countywide Solid Waste	373,000	468,680	93,250	20%	88,750	4,500	5%
Streets	949,760	949,760	140,658	15%	137,471	3,187	2%
Park Maintenance	650,000	650,000	162,500	25%	162,501	(1)	0%
Sewer Operations	394,000	394,000	98,500	25%	93,750	4,750	5%
Water Operations	394,000	394,000	98,500	25%	93,750	4,750	5%
Open Space	81,100	81,100	20,275	25%	20,275	-	n/a
Park Development	75,000	75,000	18,750	25%	18,750	-	n/a
TOTAL TRANSFERS IN	**3,246,860**	**3,342,540**	**689,933**	**21%**	**672,747**	**17,186**	**3%**
TOTAL GENERAL FUND	**52,207,482**	**53,463,306**	**5,973,745**	**11%**	**5,108,091**	**865,654**	**17%**
SPECIAL REVENUE FUNDS							
202 STREET MAINTENANCE							
Gas Tax 2105 - 2107.5	954,952	954,952	139,957	15%	136,969	2,987	2%
Interest / Other Revenue/Other Charges	78	78	701	898%	502	199	40%
202 STREET MAINTENANCE	**955,030**	**955,030**	**140,658**	**15%**	**137,471**	**3,186**	**2%**

City of Morgan Hill
Year to Date Revenues - Fiscal Year 2023-24
For the Month Ended September 30, 2023
25% of Year Complete

	ADOPTED BUDGET	AMENDED BUDGET	CURRENT YTD ACTUAL	% OF BUDGET	PRIOR YTD	INCR (DECR) FROM PRIOR YTD	% CHANGE
SPECIAL REVENUE FUNDS							
205 SUPPLEMENTAL LAW ENFORCEMENT FUND							
Interest Income	1,905	1,905	1,974	104%	509	1,465	288%
Police Grant/SLEF/JAG	100,000	100,000	86,159	86%	-	86,159	n/a
205 SUPPLEMENTAL LAW ENFORCEMENT FUND	**101,905**	**101,905**	**88,133**	**86%**	**509**	**87,624**	**17227%**
206 DEVELOPMENT SERVICES							
Building Fees	3,455,600	3,495,600	711,219	20%	1,207,096	(495,877)	-41%
Planning Fees	1,645,444	1,645,444	189,244	12%	167,518	21,726	13%
Engineering Fees	1,190,852	1,190,852	170,406	14%	137,591	32,815	24%
Other Revenue/Current Charges	-	-	34,600	n/a	69,641	(35,042)	-50%
206 DEVELOPMENT SERVICES	**6,291,896**	**6,331,896**	**1,105,469**	**17%**	**1,581,846**	**(476,377)**	**-30%**
207 LONG RANGE PLANNING	**1,013,392**	**1,013,392**	**183,338**	**18%**	**229,188**	**(45,850)**	**-20%**
215 and 216 HCD BLOCK GRANT							
Interest Income/Other Revenue	325	325	405	125%	133	272	204%
215 and 216 HCD BLOCK GRANT	**325**	**325**	**405**	**125%**	**133**	**272**	**204%**
225 ASSET SEIZURE	**1,298**	**1,298**	**622**	**48%**	**221**	**400**	**181%**
229 LIGHTING AND LANDSCAPE	**200,028**	**200,028**	**1,131**	**1%**	**349**	**782**	**224%**
230 COMMUNITY FACILITIES DISTRICT	**37,914**	**37,914**	**896**	**2%**	**259**	**637**	**246%**
232 ENVIRONMENTAL PROGRAMS	**590,223**	**590,223**	**142,526**	**24%**	**135,044**	**7,483**	**6%**
234 MOBILE HOME PARK RENT STAB.	**584**	**584**	**463**	**79%**	**142**	**321**	**227%**
236 HOUSING MITIGATION	**4,456,924**	**4,456,924**	**277,041**	**6%**	**208,723**	**68,318**	**33%**
240 EMPLOYEE ASSISTANCE	**20,889**	**20,889**	**1,973**	**9%**	**1,857**	**117**	**6%**
246 COUNTYWIDE SOLID WASTE	**1,645,138**	**1,944,000**	**526,793**	**27%**	**401,901**	**124,892**	**31%**
247 ENVIRONMENT REMEDIATION	**1,358**	**1,358**	**853**	**63%**	**282**	**572**	**203%**
255 HOUSING SUCCESSOR AGENCY	**239,202**	**239,202**	**82,066**	**34%**	**194,201**	**(112,135)**	**-58%**
TOTAL SPECIAL REVENUE FUNDS	**15,556,107**	**15,894,969**	**2,552,367**	**16%**	**2,892,126**	**(339,758)**	**-12%**
CAPITAL PROJECTS FUNDS							
301 PARK DEVELOPMENT	**1,673,505**	**1,673,505**	**60,934**	**4%**	**1,160,857**	**(1,099,923)**	**-95%**
302 PARK MAINTENANCE	**83,038**	**83,038**	**25,107**	**30%**	**6,610**	**18,497**	**280%**
303 LOCAL DRAINAGE	**447,897**	**447,897**	**181,376**	**40%**	**24,570**	**156,806**	**638%**
304 LOCAL DRAINAGE/NON AB1600	**30,901**	**30,901**	**8,599**	**28%**	**3,660**	**4,939**	**135%**
306 AGRICULTURE & OPEN SPACE PRESERVATION	**4,036**	**4,036**	**13,728**	**340%**	**22,863**	**(9,135)**	**-40%**
308 STREET CIP	**3,926,656**	**3,926,656**	**549,352**	**14%**	**508,427**	**40,925**	**8%**
309 TRAFFIC IMPACT	**1,276,925**	**1,276,925**	**104,865**	**8%**	**36,224**	**68,641**	**189%**
315 PUBLIC SAFETY FACILITIES IMPACT	**801,703**	**801,703**	**69,073**	**9%**	**31,282**	**37,791**	**121%**
346 PUBLIC FACILITIES NON-AB1600	**822,102**	**822,102**	**117,012**	**14%**	**6,123**	**110,888**	**1811%**
347 PUBLIC FACILITIES IMPACT	**176,602**	**176,602**	**20,156**	**11%**	**8,817**	**11,339**	**129%**
348 LIBRARY	**657,457**	**657,457**	**59,888**	**9%**	**28,700**	**31,188**	**109%**
350 UNDERGROUNDING	**22,520**	**22,520**	**10,408**	**46%**	**3,423**	**6,986**	**204%**
355 SCHOOL PEDESTRIAN/TRAFFIC SAFETY	**492,717**	**492,717**	**555**	**0%**	**-**	**555**	**n/a**
360 COMMUNITY/REC IMPACT FUND	**1,142,697**	**1,142,697**	**100,962**	**9%**	**50,283**	**50,679**	**101%**
375 QUIMBY FEE	**610,860**	**610,860**	**763,829**	**125%**	**1,590**	**762,239**	**47926%**
TOTAL CAPITAL PROJECTS FUNDS	**12,169,616**	**12,169,616**	**2,085,843**	**17%**	**1,893,430**	**192,413**	**10%**
DEBT SERVICE FUNDS							
420 CIVIC CENTER DEBT	**290,850**	**290,850**	**73,932**	**25%**	**73,483**	**448**	**1%**
441 POLICE FACILITY BOND	**387,792**	**387,792**	**97,793**	**25%**	**97,214**	**579**	**1%**
TOTAL DEBT SERVICE FUNDS	**678,642**	**678,642**	**171,724**	**25%**	**170,697**	**1,028**	**1%**

CITY OF MORGAN HILL

City of Morgan Hill
Year to Date Revenues - Fiscal Year 2023-24
For the Month Ended September 30, 2023
25% of Year Complete

	ADOPTED BUDGET	AMENDED BUDGET	CURRENT YTD ACTUAL	% OF BUDGET	PRIOR YTD	INCR (DECR) FROM PRIOR YTD	% CHANGE
ENTERPRISE FUNDS							
640 WASTEWATER OPERATION							
Sewer Service Fees	15,200,000	15,200,000	2,514,086	17%	2,513,668	418	0%
Interest Income/Transfers	39,704	39,704	11,352	29%	6,399	4,953	77%
Other Revenue/Current Charges	329,403	329,403	53,549	16%	52,264	1,286	2%
640 WASTEWATER OPERATION	**15,569,107**	**15,569,107**	**2,578,987**	**17%**	**2,572,330**	**6,657**	**0%**
641 WASTEWATER EXPANSION							
Interest Income	40,173	40,173	137,702	343%	42,766	94,936	222%
Development Impact Fee	4,388,986	4,388,986	368,355	8%	216,973	151,382	70%
Transfer From-643 (Sewer Replacement)	-	-	-	n/a	5,453,912	(5,453,912)	-100%
641 WASTEWATER EXPANSION	**4,429,159**	**4,429,159**	**506,057**	**11%**	**5,713,651**	**(5,207,595)**	-91%
642 WASTEWATER RATE STABILIZATION	**192,000**	**192,000**	**66,015**	**34%**	**18,305**	**47,710**	**261%**
643 WASTEWATER CAPITAL PROJECT	**5,204,512**	**5,204,512**	**1,378,161**	**26%**	**1,519,854**	**(141,694)**	**-9%**
TOTAL SEWER FUNDS	***25,394,778***	***25,394,778***	***4,529,220***	***18%***	***9,824,141***	***(5,294,921)***	***-54%***
650 WATER OPERATION							
Water Sales	18,500,000	18,500,000	3,525,663	19%	3,261,484	264,180	8%
Meter Install & Service	50,000	50,000	46,080	92%	2,384	43,696	1833%
Transfers-In / Interest Income	606,318	606,318	167,023	28%	145,504	21,519	15%
Other Revenue/Current Charges	630,464	630,464	154,021	24%	151,930	2,090	1%
650 WATER OPERATION	**19,786,782**	**19,786,782**	**3,892,787**	**20%**	**3,561,302**	**331,485**	**9%**
651 WATER EXPANSION							
Interest Income/Other Revenue/Transfer	28,855	28,855	18,939	66%	6,120	12,819	209%
Development Impact Fee	1,720,216	1,720,216	89,980	5%	55,519	34,461	62%
651 WATER EXPANSION	**1,749,071**	**1,749,071**	**108,919**	**6%**	**61,639**	**47,280**	**77%**
652 WATER RATE STABILIZATION	-	**-**	20,377	**n/a**	**6,699**	**13,678**	**204%**
653 WATER CAPITAL PROJECT	**6,948,348**	**6,948,348**	**1,814,031**	**26%**	**1,285,839**	**528,192**	**41%**
TOTAL WATER FUNDS	***28,484,201***	***28,484,201***	***5,836,114***	***20%***	***4,915,479***	***920,635***	***19%***
TOTAL ENTERPRISE FUNDS	**53,878,979**	**53,878,979**	**10,365,334**	**19%**	**14,739,620**	**(4,374,286)**	**-30%**
INTERNAL SERVICE FUNDS							
730 INFORMATION SYSTEMS	**2,493,922**	**2,493,922**	**627,505**	**25%**	**560,318**	**67,187**	**12%**
740 BUILDING MAINTENANCE	**1,675,215**	**1,675,215**	**419,183**	**25%**	**413,937**	**5,247**	**1%**
741 BUILDING REPLACEMENT	**859,973**	**859,973**	**234,271**	**27%**	**210,240**	**24,031**	**11%**
745 CIP ADMINISTRATION	**2,059,092**	**2,059,092**	**-**	**n/a**	**494,327**	**(494,327)**	**-100%**
760 UNEMPLOYMENT INSURANCE	**2,940**	**2,940**	**1,777**	**60%**	**626**	**1,151**	**184%**
770 WORKERS COMPENSATION	**997,442**	**997,442**	**214,891**	**22%**	**197,508**	**17,383**	**9%**
790 EQUIPMENT REPLACEMENT	**1,165,990**	**1,165,990**	**325,378**	**28%**	**276,976**	**48,403**	**17%**
791 EMPLOYEE BENEFITS	**849,796**	**849,796**	**213,101**	**25%**	**202,224**	**10,877**	**5%**
795 GENERAL LIABILITY INSURANCE	**2,103,483**	**2,103,483**	**528,599**	**25%**	**495,459**	**33,141**	**7%**
TOTAL INTERNAL SERVICE FUNDS	**12,207,853**	**12,207,853**	**2,564,706**	**21%**	**2,851,613**	**(286,907)**	**-10%**
TOTAL FOR ALL FUNDS	**$ 146,698,679**	**$ 148,293,365**	**$ 23,713,719**	**16%**	**$ 27,655,578**	**$ (3,941,858)**	**-14%**

City of Morgan Hill
Year to Date Expenses - Fiscal Year 2023-24
For the Month Ended September 30, 2023
25% of Year Complete

FUND NO.	FUND/ACTIVITY	CURRENT MONTH ACTUAL EXPENSES	AMENDED BUDGET	YTD EXPENSES	OUTSTANDING ENCUMBRANCE	TOTAL ALLOCATED	PERCENT OF TOTAL TO BUDGET	PRIOR YTD
010	GENERAL FUND							
I.	ADMINISTRATION							
	CITY COUNCIL	$ 14,149	$ 435,652	$ 65,415	$ -	$ 65,415	15%	$ 120,701
	CITY ATTORNEY	87,066	1,081,241	194,261	32,256	226,517	21%	198,435
	CITY MANAGER	67,628	886,041	148,329	42,935	191,264	22%	133,766
	HUMAN RESOURCES	75,415	898,203	184,196	-	184,196	21%	194,399
	COUNCIL SVCS & RECORDS MGMT							
	Council Svcs & Records Mgmt	42,111	628,281	128,781	-	128,781	20%	131,709
	Elections	2,829	37,728	6,808	-	6,808	18%	1,266
	COUNCIL SVCS & RECORDS MGMT	44,940	666,009	135,589	-	135,589	20%	132,975
	FINANCE	187,975	2,498,016	433,302	569,142	1,002,443	40%	420,663
	TOTAL ADMINISTRATION	477,173	6,465,162	1,161,091	644,333	1,805,424	28%	1,200,939
II.	COMMUNITY SERVICES							
	Membership Services & Rec. Programs	453,118	7,200,406	1,733,996	1,348,812	3,082,808	43%	1,562,700
	Recreation Facility Rentals	50,119	573,524	125,097	49,043	174,140	30%	117,000
	Innovative Transit	60,202	850,612	115,977	671,157	787,134	93%	50,204
	Community Services	41,984	672,192	113,047	80,371	193,418	29%	122,518
	Park Maintenance	103,749	1,560,828	224,002	77,917	301,919	19%	239,039
	Environmental Services	24,132	705,264	58,170	4,689	62,859	9%	54,948
	Countywide Solid Waste Program	36,150	472,354	86,665	-	86,665	18%	80,641
	Street Maintenance	194,629	3,019,357	443,711	232,651	676,363	22%	455,867
	Downtown Maintenance	18,351	345,237	57,544	34,523	92,066	27%	42,283
	Cable Television	7,143	74,940	21,108	-	21,108	28%	4,417
	COMMUNITY SERVICES	989,576	15,474,714	2,979,318	2,499,162	5,478,480	35%	2,729,618
	CODE COMPLIANCE	19,294	340,153	41,758	-	41,758	12%	41,919
	INFRASTRUCTURE PLANNING & CONGESTION MGMT	30,361	414,110	71,293	-	71,293	17%	71,764
	ECONOMIC DEVELOPMENT PROGRAMS	110,889	970,034	230,191	46,925	277,116	29%	201,355
	TOTAL COMMUNITY SERVICES	1,150,120	17,199,011	3,322,559	2,546,088	5,868,647	34%	3,044,657
III.	PUBLIC SAFETY							
	POLICE							
	PD Administration	162,716	1,735,700	340,090	53,771	393,861	23%	433,195
	Field Operations	1,112,024	11,733,613	2,570,153	45,273	2,615,426	22%	2,181,785
	Support Services	234,568	3,585,524	695,536	583,800	1,279,336	36%	683,922
	Emergency Services/Haz Mat	20,294	222,865	47,570	-	47,570	21%	46,129
	Special Operations	388,356	4,098,765	894,526	-	894,526	22%	957,778
	Dispatch Services	182,859	2,201,937	440,378	-	440,378	20%	464,763
	POLICE	2,100,818	23,578,404	4,988,253	682,844	5,671,096	24%	4,767,572
	FIRE	685,617	9,067,905	2,344,964	53,960	2,398,924	26%	2,168,638
	TOTAL PUBLIC SAFETY	2,786,435	32,646,309	7,333,216	736,803	8,070,020	25%	6,936,210
IV.	TRANSFERS							
	Other	108,647	1,303,767	325,942	-	325,942	25%	321,829
	TOTAL TRANSFERS	108,647	1,303,767	325,942	-	325,942	25%	321,829
	TOTAL GENERAL FUND	4,522,375	57,614,249	12,142,808	3,927,224	16,070,032	28%	11,503,635

City of Morgan Hill
Year to Date Expenses - Fiscal Year 2023-24
For the Month Ended September 30, 2023
25% of Year Complete

FUND NO.	FUND/ACTIVITY	CURRENT MONTH ACTUAL EXPENSES	AMENDED BUDGET	YTD EXPENSES	OUTSTANDING ENCUMBRANCE	TOTAL ALLOCATED	PERCENT OF TOTAL TO BUDGET	PRIOR YTD
SPECIAL REVENUE FUNDS								
202 STREET MAINTENANCE		**433**	**954,952**	**141,956**	**-**	**141,956**	**15%**	**139,001**
205	**PUBLIC SAFETY/SUPP.LAW**	**107**	**101,289**	**322**	**-**	**322**	**0%**	**313**
206 DEVELOPMENT SERVICES FUND								
	Planning	160,984	1,840,044	383,080	430	383,510	21%	366,625
	Building	255,252	2,563,441	558,896	105,196	664,093	26%	487,762
	Engineering	158,909	1,974,680	377,725	14,184	391,909	20%	357,663
206 DEVELOPMENT SERVICES FUND		**575,145**	**6,378,165**	**1,319,701**	**119,810**	**1,439,512**	**23%**	**1,212,050**
207	**LONG RANGE PLANNING**	**81,077**	**1,581,133**	**205,113**	**19,318**	**224,431**	**14%**	**192,752**
215/216	**CDBG**	**7**	**83**	**21**	**-**	**21**	**25%**	**20**
225	**ASSET SEIZURE**	**65**	**782**	**196**	**-**	**196**	**25%**	**190**
229	**LIGHTING AND LANDSCAPE**	**22,950**	**234,554**	**38,010**	**10,455**	**48,465**	**21%**	**33,539**
230	**COMMUNITY FACILITIES DISTRICT**	**3,543**	**41,249**	**8,125**	**-**	**8,125**	**20%**	**7,064**
232	**ENVIRONMENT PROGRAMS**	**33,562**	**561,968**	**86,144**	**9,473**	**95,616**	**17%**	**104,499**
234	**MOBILE HOME PARK**	**76**	**907**	**227**	**-**	**227**	**25%**	**220**
236	**HOUSING MITIGATION**	**89,395**	**941,126**	**181,937**	**150,279**	**332,216**	**35%**	**205,100**
240	**EMPLOYEE ASSISTANCE**	**2,079**	**20,946**	**2,236**	**-**	**2,236**	**11%**	**4,161**
246	**COUNTYWIDE SOLID WASTE PROGRAM**	**31,083**	**2,078,493**	**111,250**	**906,901**	**1,018,151**	**49%**	**212,425**
255	**HOUSING SUCCESSOR AGENCY**	**149,385**	**1,172,110**	**370,217**	**320,833**	**691,050**	**59%**	**314,467**
TOTAL SPECIAL REVENUE FUNDS		**988,907**	**14,067,757**	**2,465,454**	**1,537,070**	**4,002,524**	**28%**	**2,425,799**
CAPITAL PROJECT FUNDS								
301	**PARK DEVELOPMENT**	**65,453**	**701,361**	**122,451**	**309,829**	**432,280**	**62%**	**531,228**
302	**PARK MAINTENANCE**	**54,274**	**650,000**	**162,718**	**-**	**162,718**	**25%**	**163,550**
303	**LOCAL DRAINAGE**	**174,865**	**13,816,423**	**216,080**	**3,809,447**	**4,025,528**	**29%**	**620,618**
304	**LOCAL DRAIN. NON-AB1600**	**251**	**310,489**	**754**	**47,904**	**48,658**	**16%**	**8,239**
306	**AGRICULTURE & OPEN SPACE PRESERVATI(**	**8,133**	**97,600**	**24,400**	**-**	**24,400**	**25%**	**31,464**
308	**STREET CIP**	**10,704**	**7,919,070**	**28,371**	**4,342,825**	**4,371,196**	**55%**	**3,245,564**
309	**TRAFFIC IMPACT**	**124,130**	**5,197,546**	**151,685**	**3,768,755**	**3,920,440**	**75%**	**1,432,033**
315	**PUBLIC SAFETY FACILITIES IMPACT**	**180,262**	**11,682,382**	**237,066**	**9,289,353**	**9,526,419**	**82%**	**164,647**
346	**PUBLIC FAC.NON AB1600**	**9,255**	**1,321,382**	**10,018**	**54,136**	**64,154**	**5%**	**10,511**
347	**PUBLIC FACILITIES IMPACT**	**22,440**	**1,279,278**	**47,319**	**75,000**	**122,319**	**10%**	**7,288**
348	**LIBRARY IMPACT**	**18,529**	**222,349**	**55,587**	**-**	**55,587**	**25%**	**55,729**
350	**UNDERGROUNDING**	**98**	**1,175**	**294**	**-**	**294**	**25%**	**285**
355	**SCHOOL PEDESTRIAN & TRAFFIC SAFETY**	**1,711**	**563,063**	**5,132**	**13,534**	**18,666**	**3%**	**5,092**
360	**COMM/REC CENTER IMPACT**	**31,869**	**1,946,259**	**90,913**	**52,749**	**143,662**	**7%**	**4,874**
375	**QUIMBY FEE**	**7,947**	**537,000**	**15,184**	**-**	**15,184**	**3%**	**66,383**
TOTAL CAPITAL PROJECTS FUNDS		**709,921**	**46,245,377**	**1,167,973**	**21,763,533**	**22,931,506**	**50%**	**6,347,504**
DEBT SERVICE FUNDS								
420	**CIVIC CENTER DEBT**	**270**	**290,852**	**810**	**-**	**810**	**0%**	**787**
441	**POLICE FACILITY BOND DEBT**	**358**	**387,792**	**1,073**	**-**	**1,073**	**0%**	**1,041**
TOTAL DEBT SERVICE FUNDS		**628**	**678,644**	**1,883**	**-**	**1,883**	**0%**	**1,828**

City of Morgan Hill
Year to Date Expenses - Fiscal Year 2023-24
For the Month Ended September 30, 2023
25% of Year Complete

FUND NO.	FUND/ACTIVITY	CURRENT MONTH ACTUAL EXPENSES	AMENDED BUDGET	YTD EXPENSES	OUTSTANDING ENCUMBRANCE	TOTAL ALLOCATED	PERCENT OF TOTAL TO BUDGET	PRIOR YTD
ENTERPRISE FUNDS								
SEWER								
640	WASTEWATER OPERATIONS	814,947	15,463,024	2,272,886	48,286	2,321,172	15%	2,586,389
641	WASTEWATER CAPITAL EXPANSION	183,558	7,519,551	321,242	453,227	774,469	10%	133,583
642	WASTEWATER RATE STABILIZATION	156	1,872	468	-	468	25%	454
643	WASTEWATER CAPITAL PROJECTS	881,443	14,060,425	966,755	3,121,247	4,088,001	29%	7,765,979
TOTAL SEWER FUND(S)		1,880,104	37,044,872	3,561,351	3,622,759	7,184,111	19%	10,486,406
WATER								
	Water Operations	1,246,310	18,304,142	3,768,668	742,768	4,511,436	25%	3,180,327
	Utility Billing	83,323	1,192,638	204,923	41,860	246,783	21%	179,376
	Water Conservation	27,639	644,730	62,206	-	62,206	10%	44,491
650	WATER OPERATIONS	1,357,273	20,141,510	4,035,797	784,628	4,820,425	24%	3,404,194
651	WATER CAPITAL EXPANSION	65,759	2,314,032	181,321	18,077	199,398	9%	180,979
652	WATER RATE STABILIZATION	117	1,403	351	-	351	25%	340
653	WATER-CAPITAL PROJECTS	38,188	12,329,792	40,684	1,428,546	1,469,230	12%	26,405
TOTAL WATER FUND(S)		1,461,337	34,786,737	4,258,153	2,231,251	6,489,404	19%	3,611,919
TOTAL ENTERPRISE FUNDS		3,341,441	71,831,609	7,819,504	5,854,011	13,673,515	19%	14,098,325
INTERNAL SERVICE FUNDS								
730	INFORMATION SYSTEMS	186,039	2,491,931	646,447	20,653	667,099	27%	359,485
740	BUILDING MAINTENANCE	117,232	1,599,348	295,625	100,131	395,756	25%	287,737
741	BUILDING REPLACEMENT	-	900,000	31,730	12,035	43,765	5%	65,914
745	CIP ADMINISTRATION	159,682	2,061,046	388,245	2,037	390,282	19%	402,530
760	UNEMPLOYMENT	11,826	15,000	11,826	-	11,826	79%	-
770	WORKERS COMPENSATION	1,141	1,048,265	589,575	-	589,575	56%	523,601
790	EQUIPMENT REPLACEMENT	48,342	745,240	77,219	144,002	221,222	30%	165,549
791	EMPLOYEE BENEFITS FUND	15,206	750,000	57,865	-	57,865	8%	150,782
795	GEN. LIABILITY INSURANCE	526,939	2,551,193	2,288,597	-	2,288,597	90%	1,650,547
TOTAL INTERNAL SERVICE FUNDS		1,066,408	12,162,023	4,387,129	278,858	4,665,988	38%	3,606,146
REPORT TOTAL		$ 10,629,679	$ 202,599,659	$ 27,984,752	$ 33,360,695	$ 61,345,447	30%	$ 37,983,236

City of Morgan Hill
Fund Activity Summary - Fiscal Year 2022-23
For the Month Ended September 30, 2023
25% of Year Complete

Fund No.	Fund Description	Unaudited Beg Fund Balance 07-01-23	Revenues YTD Actual	Revenues % of Budget	Expenses YTD Actual	Expenses % of Budget	Year to-Date Deficit or Carryover	Preliminary Ending Fund Balance Reserved[1]	Preliminary Ending Fund Balance Unreserved
010	GENERAL FUND	$ 32,349,777	$ 5,973,745	11%	$ 12,142,808	21%	$ (6,169,063)	$ 3,927,224	$ 22,253,490
TOTAL GENERAL FUND		**$ 32,349,777**	**$ 5,973,745**	**11%**	**$ 12,142,808**	**21%**	**$ (6,169,063)**	**$ 3,927,224**	**$ 22,253,490**
202	STREET MAINTENANCE	63,915	$ 140,658	15%	$ 141,956	22%	$ (1,298)	$ -	$ 62,617
205	PUBLIC SAFETY/SUPPL. LAW	319,801	88,133	86%	322	19%	87,811	-	407,612
206	DEVELOPMENT SERVICES	(385,369)	1,105,469	17%	1,319,701	21%	(214,232)	119,810	(719,412)
207	LONG RANGE PLANNING	1,380,255	183,338	18%	205,113	13%	(21,774)	19,318	1,339,163
215 / 216	CDBG	30,752	405	125%	21	25%	384	-	31,136
225	ASSET SEIZURE	102,473	622	48%	196	25%	426	-	102,899
229	LIGHTING AND LANDSCAPE	196,914	1,131	1%	38,010	16%	(36,879)	10,455	149,581
230	COMMUNITY FACILITIES DISTRICT	150,622	896	2%	8,125	20%	(7,229)	-	143,393
232	ENVIRONMENTAL PROGRAMS	328,087	142,526	24%	86,144	15%	56,382	9,473	374,997
234	MOBILE HOME PK RENT STAB.	75,847	463	79%	227	25%	236	-	76,083
235	SENIOR HOUSING	236,079	-	n/a	-	n/a	-	-	236,079
236	HOUSING MITIGATION	6,269,527	277,041	6%	181,937	19%	95,104	150,279	6,214,351
240	EMPLOYEE ASSISTANCE	60,825	1,973	9%	2,236	11%	(263)	-	60,562
246	COUNTYWIDE SOLID WASTE	276,975	526,793	63%	111,250	5%	415,543	906,901	(214,383)
247	ENVIRONMENT REMEDIATION	141,274	853	63%	-	n/a	853	-	142,127
255	HOUSING SUCCESSOR AGENCY	2,036,214	82,066	34%	370,217	32%	(288,151)	320,833	1,427,230
TOTAL SPECIAL REVENUE FUNDS		**$ 11,284,191**	**$ 2,552,367**	**16%**	**$ 2,465,454**	**18%**	**$ 86,913**	**$ 1,537,070**	**$ 9,834,034**
301	PARK DEV. IMPACT FUND	$ 1,523,130	$ 60,934	4%	$ 122,451	17%	$ (61,517)	$ 309,829	$ 1,151,784
302	PARK MAINTENANCE	2,500,256	25,107	30%	162,718	25%	(137,611)	-	2,362,645
303	LOCAL DRAINAGE	11,898,616	181,376	40%	216,080	2%	(34,705)	3,809,447	8,054,464
304	LOCAL DRAINAGE/NON-AB1600	1,350,934	8,599	28%	754	0%	7,845	47,904	1,310,874
306	AG. AND OPEN SPACE PRESERVATION	541,375	13,728	340%	24,400	25%	(10,672)	-	530,703
308	STREET CIP	4,074,276	549,352	14%	28,371	0%	520,981	4,342,825	252,432
309	TRAFFIC IMPACT FUND	3,613,394	104,865	8%	151,685	3%	(46,820)	3,768,755	(202,181)
315	PUBLIC SAFETY FACILITIES IMPACT	3,008,990	69,073	9%	237,066	2%	(167,992)	9,289,353	(6,448,356)
346	PUBLIC FACILITIES NON-AB1600	2,970,080	117,012	14%	10,018	1%	106,993	54,136	3,022,937
347	PUBLIC FACILITIES IMPACT FUND	1,110,398	20,156	11%	47,319	4%	(27,164)	75,000	1,008,234
348	LIBRARY IMPACT FUND	1,414,873	59,888	9%	55,587	25%	4,301	-	1,419,174
350	UNDERGROUNDING	1,625,772	10,408	46%	294	25%	10,115	-	1,635,887
355	SCHOOL PEDESTRIAN/TRAFFIC SFTY	92,051	555	0%	5,132	1%	(4,577)	13,534	73,940
360	COMM/REC CTR IMPACT FUND	985,744	100,962	9%	90,913	5%	10,048	52,749	943,044
375	QUIMBY FEE	1,713,260	763,829	125%	15,184	3%	748,645	-	2,461,905
TOTAL CAPITAL PROJECT FUNDS		**$ 38,423,149**	**$ 2,085,843**	**17%**	**$ 1,167,973**	**3%**	**$ 917,870**	**$ 21,763,533**	**$ 17,577,486**
420	CIVIC CENTER DEBT	$ 175,833	$ 73,932	25%	$ 810	0%	$ 73,121	$ 76	$ 248,878
441	POLICE FACILITY BOND DEBT	166,944	97,793	25%	1,073	0%	96,720	97	263,567
TOTAL DEBT SERVICE FUNDS		**$ 342,777**	**$ 171,724**	**25%**	**$ 1,883**	**0%**	**$ 169,842**	**$ 173**	**$ 512,445**
640	WASTEWATER OPERATIONS	$ 3,926,699	$ 2,578,987	17%	$ 2,272,886	15%	$ 306,101	48,286	4,184,514
641	WASTEWATER IMPACT FUND*	23,490,274	506,057	11%	321,242	4%	184,814	453,227	23,221,862
642	WASTEWATER RATE STABILIZATION	2,819,330	66,015	34%	468	25%	65,547	-	2,884,877
643	WASTEWATER CAPITAL PROJECTS	14,669,589	1,378,161	26%	966,755	7%	411,406	3,121,247	11,959,748
650	WATER OPERATIONS	6,377,993	3,892,787	20%	4,035,797	20%	(143,011)	784,628	5,450,355
651	WATER IMPACT FUND*	2,990,382	108,919	6%	181,321	8%	(72,402)	18,077	2,899,902
652	WATER RATE STABILIZATION	3,204,315	20,377	n/a	351	25%	20,027	-	3,224,342
653	WATER -CAPITAL PROJECT	13,878,926	1,814,031	26%	40,684	0%	1,773,347	1,428,546	14,223,727
TOTAL ENTERPRISE FUNDS		**$ 71,357,508**	**$ 10,365,334**	**19%**	**$ 7,819,504**	**11%**	**$ 2,545,830**	**$ 5,854,011**	**$ 68,049,327**
730	INFORMATION SERVICES	$ 781,600	$ 627,505	25%	$ 646,447	26%	$ (18,941)	$ 20,653	$ 742,006
740	BUILDING MAINTENANCE	12,079	419,183	25%	295,625	18%	123,559	100,131	35,507
741	BUILDING REPLACEMENT	4,366,561	234,271	27%	31,730	4%	202,541	12,035	4,557,067
745	CIP ENGINEERING	7,312	-	n/a	388,245	19%	(388,245)	2,037	(382,970)
760	UNEMPLOYMENT	303,072	1,777	60%	11,826	79%	(10,049)	-	293,023
770	WORKERS COMPENSATION	2,175,310	214,891	22%	589,575	56%	(374,684)	30,000	1,770,626
790	EQUIPMENT REPLACEMENT	7,789,880	325,378	28%	77,219	10%	248,159	144,002	7,894,037
791	EMPLOYEE BENEFITS FUNDS	(83,140)	213,101	25%	57,865	8%	155,236	-	72,096
795	GEN. LIABILITY INSURANCE	1,241,308	528,599	25%	2,288,597	90%	(1,759,998)	-	(518,690)
TOTAL INTERNAL SERVICE FUNDS		**$ 16,593,982**	**$ 2,564,706**	**21%**	**$ 4,387,129**	**36%**	**$ (1,822,423)**	**$ 308,858**	**$ 14,462,700**

City of Morgan Hill
Fund Activity Summary - Fiscal Year 2022-23
For the Month Ended September 30, 2023
25% of Year Complete

Fund No.	Fund Description	Unaudited Beg Fund Balance 07-01-23	Revenues YTD Actual	Revenues % of Budget	Expenses YTD Actual	Expenses % of Budget	Year to-Date Deficit or Carryover	Preliminary Ending Fund Balance Reserved[1]	Preliminary Ending Fund Balance Unreserved
SUMMARY BY FUND TYPE									
	GENERAL FUND GROUP	$ 32,349,777	$ 5,973,745	11%	$ 12,142,808	21%	$ (6,169,063)	$ 3,927,224	$ 22,253,490
	SPECIAL REVENUE GROUP	11,284,191	2,552,367	16%	2,465,454	18%	86,913	1,537,070	9,834,034
	DEBT SERVICE GROUP	342,777	171,724	25%	1,883	0%	169,842	173	512,445
	CAPITAL PROJECTS GROUP	38,423,149	2,085,843	17%	1,167,973	3%	917,870	21,763,533	17,577,486
	ENTERPRISE GROUP	71,357,508	10,365,334	19%	7,819,504	11%	2,545,830	5,854,011	68,049,327
	INTERNAL SERVICE GROUP	16,593,982	2,564,706	21%	4,387,129	36%	(1,822,423)	308,858	14,462,700
	TOTAL ALL GROUPS	**$ 170,351,384**	**$ 23,713,719**	**16%**	**$ 27,984,752**	**14%**	**$ (4,271,033)**	**$ 33,390,868**	**$ 132,689,483**

For Enterprise Funds: Unrestricted fund balance = Fund balance net of fixed assets and long-term liabilities.
*Unreserved fund balance includes bond proceeds reserved for projects listed in bond documents.
[1] Amount restricted for encumbrances, fixed asset replacement, long-term receivables, and bond reserves.

City Manager's Signature Authority
Contracts and Agreements Between $25,000 to $60,000 Entered From 8/10/2023 to 10/18/2023

Vendor Name	Description of Service	Begin Date	End Date	Department	Amount
Circle Up Education	DEI in Morgan Hill	8/27/2023	6/30/2024	DS	$49,000
CivicPlus	SeeClickFix Annual Licencing	10/3/2023	10/3/2024	E&U	$30,987
Outfront Media LLC	Countywide Solid Waste VTA Bus Taillight Outreach Project	10/17/2023	7/31/2024	CS	$25,840
Pro Sports Floors, Inc.	CRC and CCC hardwood floor services	8/24/2023	6/30/2025	CS	$30,596
JT Electric Inc.	On-call Electrical Maintenance	9/8/2023	6/30/2024	CS	$60,000