



Special/Regular Meeting Agenda
City Council

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

Wednesday, December 6, 2023 5:30 PM

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

AMENDED AGENDA

Council Member Gino Borgioli will be participating remotely as follows:
2500 Grant Road
Mountain View, Ca

Public comment shall be allowed from this location.

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
 - o Via email to ccpubliccomment@morganhill.ca.gov; or
 - o 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.

SPECIAL/REGULAR MEETING

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

SPECIAL MEETING

5:30 p.m. Closed Session

CALL TO ORDER

ROLL CALL ATTENDANCE

DECLARATION OF POSTING AGENDA

CLOSED SESSION

Conference with Legal Counsel – Anticipated Litigation

Significant exposure to litigation pursuant to
§ 54956.9(b): (Two Cases)

OPPORTUNITY FOR PUBLIC COMMENT

ADJOURN TO CLOSED SESSION

REGULAR MEETING

6:00 p.m.

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

PRESENTATIONS

YAC Presentation

CITY COUNCIL REPORTS

Council Member Spring

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)

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 THE ANNUAL SENATE BILL (SB) 165 REPORT FOR COMMUNITY FACILITIES DISTRICT NO. 2014-1 (FISHER CREEK)**

Recommendation:

Accept and file the report.

2. **ACCEPT THE CITY'S ANNUAL COMPREHENSIVE FINANCIAL REPORT FOR THE FISCAL YEAR ENDED JUNE 30, 2023**

Recommendation:

Accept the City's Annual Comprehensive Financial Report for the Fiscal Year Ended June 30, 2023.

3. **ADOPT RESOLUTION APPROVING AND MAKING FINDINGS RELATED TO THE ASSEMBLY BILL (AB) 1600 DEVELOPMENT IMPACT FEE ANNUAL REPORT FOR FISCAL YEAR 2022-23**

Recommendation:

1. Adopt resolution making findings for unexpended development impact fees; and
2. Accept the annual development impact fee report.

4. **ADOPT RESOLUTION AND ADOPT ORDINANCE 2349, NEW SERIES, 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**

Recommendation:

1. Adopt resolution; and
2. Waive the reading, adopt Ordinance No. 2349, New Series, and declare that said title, which appears on the agenda, shall be determined to have been read by title and further reading waived.

5. **ADOPT ORDINANCE 2350, NEW SERIES, ADDING SECTION 18.30.070 (VEHICLE SALES OVERLAY ZONE (-VS)) OF CHAPTER 18.30 (OVERLAY ZONES AND COMBINING DISTRICTS) OF TITLE 18 (ZONING) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL ESTABLISHING THE VEHICLE SALES OVERLAY ZONE (-VS) TO ALLOW VEHICLE- RELATED**

USES AND OTHER COMPATIBLE USES IN DIFFERENT PARTS OF THE CITY THAT CAN SUPPORT SUCH A USE

Recommendation:

Waive the reading, adopt Ordinance No. 2350, New Series, and declare that said title, which appears on the agenda, shall be determined to have been read by title and further reading waived.

6. ADOPT RESOLUTION CERTIFYING COMPLIANCE WITH STATE HOUSING LAWS IN ORDER TO RECEIVE \$3,921,000 IN ONE BAY AREA GRANT CYCLE 3 (OBAG 3) FUNDING FOR THE MONTEREY ROAD TRAFFIC, BICYCLE, AND PEDESTRIAN IMPROVEMENTS PROJECT

Recommendation:

Adopt a resolution for self-certifying compliance with State housing laws that is required for receiving One Bay Area Grant Cycle 3 (OBAG 3) funding for the Monterey Road Traffic, Bicycle, and Pedestrian Improvements Project

7. ADOPT RESOLUTION JOINING BUILD THE FUTURE SANTA CLARA COUNTY

Recommendation:

Adopt resolution joining Build the Future Santa Clara County in advocating for comprehensive and collaborative solutions to solve the child care crisis.

8. ADOPT WEED ABATEMENT RESOLUTION, EXEMPT FROM CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) UNDER SECTION 15304(I)

Recommendation:

Adopt resolution declaring weeds and brush to be a nuisance and setting the hazardous vegetation public hearing for February 21, 2024.

9. ADOPT RESOLUTION AUTHORIZING CALIFORNIA CLIMATE INVESTMENTS - DEPARTMENT OF FORESTRY AND FIRE PROTECTION (CAL FIRE) FIRE PREVENTION GRANT APPLICATION

Recommendation:

Adopt a resolution authorizing a grant application to the California Department of Forestry and Fire Protection and authorizing the City Manager to execute associated grant documents.

10. APPROVE A THREE-YEAR SERVICE AGREEMENT WITH ALPHA ANALYTICAL LABORATORIES, INC. FOR A NOT-TO-EXCEED AMOUNT OF \$225,000 FOR WATER LABORATORY TESTING AND ANALYSIS SERVICES

Recommendation:

Approve and authorize the City Manager to execute and administer a three-year service agreement for a not-to-exceed amount of \$225,000 with Alpha Analytical Laboratories, Inc., for water laboratory testing and analysis services.

11. APPROVE CONTRACT WITH SCS ENGINEERS FOR COMPLETION OF A FOOD WASTE PREVENTION STUDY IN THE AMOUNT OF \$111,538

Recommendation:

Authorize the City Manager to enter into an agreement with SCS Engineers for completion of a Food Waste Prevention Study.

12. APPROVE FIRST AMENDMENT TO THE TUCKER CONSTRUCTION ON-CALL FENCING CONTRACT, AND AUTHORIZE CITY MANAGER TO EXTEND CONTRACT UP TO TWO YEARS

Recommendation:

1. Approve the first amendment to the on-call contract for public works projects with Tucker Construction, Inc. for an additional year of services for \$150,000, for a total contract amount of \$250,000; and
2. Authorize the City Manager to execute and administer two additional one-year extensions of the on-call contract in annual amounts that would not increase the price of the contract for the immediately preceding year by more than five (5%) annually.

13. APPROVE JOINT POWERS AGREEMENT FOR ENACTMENT OF THE CITIES ASSOCIATION OF SANTA CLARA COUNTY, JOINT POWERS AUTHORITY (CASCC JPA)

Recommendation:

1. Approve the proposed Joint Powers Agreement;
2. Authorize Mayor Turner or his alternate, Councilmember Librers, to report approval of the Agreement to the CASCC Board of Directors; and
3. Authorize the City Manager to execute the Agreement.

14. APPROVE SIXTH AMENDMENT TO DESIGN SERVICES AGREEMENT WITH HYDROSCIENCE ENGINEERS, INC. FOR THE NEW SEWER TRUNK LINE PROJECT FOR AN ADDITIONAL AMOUNT OF \$280,246

Recommendation:

1. Approve Sixth Amendment to Service Agreement for Design Professionals with HydroScience Engineers, Inc. to provide additional services for the New Sewer Trunk Line to Gilroy project for an additional \$280,246, for a total not-to-exceed amount of \$2,059,956; and
2. Authorize the City Manager to execute and administer the amended services agreement.

15. APPROVE THE NOVEMBER 15, 2023 CITY COUNCIL MEETING MINUTES

Recommendation:
Approve Minutes.

16. **AUTHORIZE THE CITY MANAGER TO EXECUTE A PURCHASE AGREEMENT WITH CADENCE TEAM FOR THE NETWORK EQUIPMENT IN THE NOT-TO-EXCEED AMOUNT OF \$242,241, INCLUDING CONTINGENCY**

Recommendation:

Authorize the City Manager to execute a purchase agreement for network equipment with Cadence Team in the amount of \$242,241, including a 10% contingency of \$22,022.

17. **AWARD AND APPROVE AN AGREEMENT WITH IRISH EXCAVATION IN THE AMOUNT OF \$74,780 FOR CONSTRUCTION OF THE WOODLAND BOOSTER STATION RETAINING WALLS**

Recommendation:

Approve and authorize the City Manager to execute and administer an agreement with Irish Excavation in the amount of \$74,780 to install two retaining walls at the Woodland Booster Station.

18. **AWARD A TWO-YEAR LANDSCAPE MAINTENANCE AGREEMENT TO MEDALLION LANDSCAPE MANAGEMENT, LLC IN THE AMOUNT OF \$371,712 FOR CITY FACILITIES AND ASSESSMENT DISTRICTS**

Recommendation:

1. Award a two-year contract to Medallion Landscape Management, LLC in the amount of \$371,712 to service Group 2 - City Facilities, Group 4 - Landscape Assessment Districts, including an extra services allocation of \$30,000 per year; and
2. Authorize the City Manager to execute and administer the Maintenance Service Agreement with Medallion Landscape Management, LLC. and to extend the agreement for up to three (3) additional one-year terms.

19. **RECEIVE MONTHLY BUDGET UPDATE AND OCTOBER 2023 FINANCIAL AND INVESTMENT REPORTS**

Recommendation:

Accept and file report.

OTHER BUSINESS

20. **REVIEW SECTION 15.63 OF THE MUNICIPAL CODE AND PROVIDE DIRECTION REGARDING THE PROHIBITION OF NATURAL GAS INFRASTRUCTURE IN NEW BUILDINGS**

Recommendation:

1. Review Section 15.63 of the Municipal Code and discuss the prohibition of natural gas infrastructure in new buildings; and
2. Take no action to amend Section 15.63 of the Municipal Code, which prohibits natural gas infrastructure in new buildings.

21. PROVIDE DIRECTION REGARDING THE KEEPING OF ROOSTERS WITHIN CITY LIMITS

Recommendation:

Provide direction regarding whether to prohibit the keeping of roosters within the City of Morgan Hill.

22. PROVIDE DIRECTION TO STAFF ON WHETHER TO ALLOW PUBLIC COMMENT ON ZOOM

Recommendation:

Provide direction to staff on whether to allow public comment on Zoom.

23. SELECT AND APPOINT CITY COUNCIL MAYOR PRO TEMPORE

Recommendation:

1. Open floor to nomination(s) for Mayor Pro Tempore; and
2. Select a Council Member to serve as Mayor Pro Tempore per City Council Policy 99-01.

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

Recommendation:

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

1. Consider providing more lead time for posting City Council agendas;
2. Consider a discussion on the Agricultural Mitigation Policy 18.152.050 - Mitigation ratio;
3. Consider a discussion on potential funding mechanisms for public art;
4. Consider revisiting City Council Policy 21-02, City Council Funding Requests;
5. Consider a discussion on special event security requirements;
6. Consider revisiting the Economic Development Blueprint; and
7. Consider a discussion on imposing a Commercial Vacancy Tax.

PUBLIC HEARINGS

25. INTRODUCE ORDINANCE AMENDING SECTIONS 2.04.020 SALARY OF COUNCIL MEMBERS AND 2.04.030 SALARY OF THE MAYOR OF THE CHAPTER 2.04 CITY COUNCIL OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL

Recommendation:

1. Open/close public hearing;
2. Waive first and second reading of the Ordinance; and
3. Introduce Ordinance by title.

FUTURE COUNCIL INITIATED AGENDA ITEMS

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

ADJOURNMENT

NOTICE

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

PUBLIC COMMENT

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

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

Persons interested in proposing an item for the City Council agenda should contact a member of the City Council who may 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.



December 6, 2023



CITY COUNCIL STAFF REPORT

MEETING DATE: December 6, 2023

PREPARED BY:

APPROVED BY: City Manager

YAC PRESENTATION

RECOMMENDATION(S)

1. Each action begins with a verb (Adopt, Approve, Direct, Accept, etc)
2. Only ONE action per number
3. Number each action ONLY when more than ONE action is recommended

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Enhancing Public Safety

Protecting the Environment and Preserving Open Space and Agricultural Land

Maintaining and Enhancing Infrastructure

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

Advancing Regional Initiatives

2022-2023 Strategic Priorities

Fiscal Sustainability

Affordable Housing and Homelessness

Community Outreach, Engagement, and Messaging

Economic Development

Transportation

Guiding Documents

Bikeways, Trails, and Recreation Master Plan

Climate Action Plan

Communications, Outreach, and Engagement Plan

Economic Blueprint

Fire Services Standards of Coverage

GIS Strategic Plan

Morgan Hill 2035 General Plan

Public Safety Master Plan

Storm Drain Master Plan

REPORT NARRATIVE:

POLICY CONSIDERATIONS:

If there are City Council Policy considerations enter them here. If none – delete this section.

At a minimum, the following items must be included. Please feel free to add helpful and/or relevant information not already covered below:

1. Explain the purpose of the Project, Policy, Program, Initiative, etc.
2. Describe what is being proposed (who, what, when, where, why, how & how much)
3. If the Council is required to make certain findings, set forth those findings and the factual support that will allow Council to make each of those findings
4. **For contracts, the following must also be included:**

1. Explain Bid/Proposal/Quote process
2. Itemized list of Bids/Proposals/Quotes received
3. Rationale for selection of vendor/contractor/consultant
4. Countersigned Agreement must be attached
5. Indicate the next steps if the item is approved.

COMMUNITY ENGAGEMENT:

Choose an option and remove the others-

Inform/ Consult/ Involve/ Collaborate/ Empower/ Not Applicable

For a “new project” staff report:

- Describe your plan for community engagement

For a “project check-in” staff report:

- Provide the community engagement actions to date
- Next steps

For a “project completion” staff report:

- Provide the community engagement actions to date

Community Engagement – indicate what steps have been or will be taken to inform, consult, involve, collaborate, and/or empower the public, including a summary of meeting dates, survey results, open houses, etc. according to the Council’s adopted Public Participation/Engagement Plan. If no community engagement has or will be done, explain why. NOTE: If no community engagement has or will take place, this must be known by the City Manager long before the staff report is routed for approval.

ALTERNATIVE ACTIONS:

Include a brief summary of each feasible alternative available for consideration and the consequences of not taking action. (It is important to include a complete list)

- What feasible alternative actions can be taken
- What are the fiscal/resource impacts of the possible alternative actions
- What are the impacts of the possible alternative actions

If there is no alternative action – type Not Applicable

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

Describe all previous actions that have been taken on this item prior to this report by a City Commission and City Council, including fiscal year budget adoption actions.

FISCAL AND RESOURCE IMPACT:

Fiscal:

1. How much will be spent?
2. Is this item budgeted in the current fiscal year? If so, please note the following: This item is included in the current adopted budget (FY17-18) and is part of the (Name Department) workplan and specify the source of funding including fund, department, account # and project # (if applicable).
3. If the project is not budgeted for in this fiscal year, or if you have not budgeted enough:
 - Include a budget scorecard AND resolution
 - Indicate that the budget scorecard and resolution are attached
 - Specify the source of funding, specifically fund, department, account # and project # (if applicable)
4. If there's a request for additional revenue (e.g. Grant acceptance), include the amount and account number.

Resource:

If significant time is required of teammates, explain the extent of the impact and if the impacts will affect other projects or day to day tasks

CEQA (California Environmental Quality Act):

(Choose one and delete what does not apply) Project / Not a Project / Categorical Exemption / Statutory Exemption

Provide Categorical or Statutory Exemption justification; if a project, describe the CEQA requirements; if it is not a project, provide justification. Below are examples of types of work that qualify as "Not a Project"

As a general rule, any activity directly undertaken by the City is a project for CEQA purposes. Under the CEQA guidelines, the only activities that qualify to be listed as "Not a Project" on a staff report are:

1. Proposals for legislation to be enacted by the State Legislature.
2. Continuing administrative or maintenance activities, such as purchases for

supplies, personnel-related actions, general policy and procedure making (except where the policies and procedures may result in a change to the physical environment).

3. The submittal of proposals to a vote of the people of the state or of a particular community that does not involve a public agency sponsored initiative.

4. The creation of government funding mechanisms or other government fiscal activities, which do not involve any commitment to any specific project that may result in a potentially significant physical impact on the environment.

5. Organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment.

Contact the City Attorney's office of Planning Director if you need help identifying the appropriate CEQA exemption.

CITY COUNCIL STAFF REPORT

MEETING DATE: December 6, 2023

PREPARED BY:

Dat Nguyen, Finance Director

APPROVED BY: City Manager

ACCEPT THE ANNUAL SENATE BILL (SB) 165 REPORT FOR COMMUNITY FACILITIES DISTRICT NO. 2014-1 (FISHER CREEK)

RECOMMENDATION(S)

Accept and file the 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:

The Local Agency Special Tax and Bond Accountability Act ("The Act") requires that any local special tax or local bond measure subject to voter approval contains a statement indicating the specific purposes of the special tax, requires that the proceeds of the special tax be applied to those purposes, requires the creation of an account into which the proceeds shall be deposited, and requires an annual report containing specified information concerning the use of proceeds.

The Act was enacted by Senate Bill 165 and codified in the California Government Code Sections 53410 through 53412. The City's Community Facilities District (CFD) No. 2014-1 (Fisher Creek) falls within these reporting requirements and the attached annual report is intended to comply with the regulation.

COMMUNITY ENGAGEMENT:

Inform

This report serves to inform the Community of the required reporting information for the CFD.

ALTERNATIVE ACTIONS:

Not Applicable

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The City Council receives and files the SB 165 Report for CFD No. 2014-1 (Fisher Creek) annually.

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.

SB 165: LOCAL AGENCY SPECIAL TAX AND BOND ACCOUNTABILITY ACT

Senate Bill 165, filed with the Secretary of State on September 19, 2000, enacted the Local Agency Special Tax and Bond Accountability Act (the “Act”). This Act requires that any local special tax or local bond measure subject to voter approval contain a statement indicating the specific purposes of the special tax, require that the proceeds of the special tax be applied to those purposes, require the creation of an account into which the proceeds shall be deposited, and require an annual report containing specified information concerning the use of the proceeds. The Act only applies to any local special tax measure or local bond measure adopted on or after January 1, 2001, in accordance with Section 50075.1 or Section 53410 of the California Government Code.

Some of the requirements of the Act are handled at the formation of the Special Tax District and others are handled through annual reports. This Section of this report intends to comply with Sections 50075.3 and 53411 of the California Government Code that states:

“The chief fiscal officer of the issuing local agency shall file a report with its governing body no later than January 1, 2002, and at least once a year thereafter. The annual report shall contain both of the following:

1. The amount of funds collected and expended.
2. The status of any project required or authorized to be funded as identified in subdivision (a) of Sections 50075.1 [and] 53410.”

The requirements of the Act apply to the Funds for the following:

The City of Morgan Hill
Community Facilities District No. 2014-1 (Fisher Creek)

Purpose of Special Tax

The special tax provides funding for all or a portion of the costs of the maintenance and monitoring required by the San Francisco Bay Regional Water Quality Control Board for the realignment of Fisher Creek. The special tax funds the cost of maintenance, monitoring and reporting of the Fisher Creek Realignment project; pay for administrative expenses; pay for any amounts required to establish or replenish capital improvement funds, repair and contingency funds or reserve funds; and pay for reasonable anticipated delinquent special taxes.

The project(s) are ongoing on an annual basis.

Collections and Expenditures

Fund Name	06/30/2022 Balance	Amount Collected ⁽¹⁾⁽²⁾	Amount Expended	06/30/2023 Balance
Special Tax Fund	\$132,367	\$51,659	\$33,375	\$150,651

(1) Figure represents the total amount levied for Fiscal Year 2022/23, less County Collection Fees of 1.0% of the total levy amount and delinquencies.

(2) Includes interest earned.

CITY COUNCIL STAFF REPORT

MEETING DATE: December 6, 2023

PREPARED BY:

Dat Nguyen, Finance Director

APPROVED BY: City Manager

ACCEPT THE CITY'S ANNUAL COMPREHENSIVE FINANCIAL REPORT FOR THE FISCAL YEAR ENDED JUNE 30, 2023

RECOMMENDATION(S)

Accept the City's Annual Comprehensive Financial Report for the Fiscal Year Ended June 30, 2023.

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Preserving and Cultivating Public Trust

2022-2023 Strategic Priorities

Community Outreach, Engagement, and Messaging

REPORT NARRATIVE:

The [Fiscal Year 2022-23 Annual Comprehensive Financial Report \(ACFR\)](#) is presented for your review. Each year the City engages an independent firm to audit the books and accounts of the City's general ledger. Included in this audit is the review and verification of all finance processes. An annual audit is required by state law and by bond covenants.

The ACFR presents the operations and financial activity of all the City's various funds, including the General Fund. It includes an unmodified audit opinion from Maze & Associates, the City's external auditors, stating that the financial statements present fairly the results of operations for the year ended June 30, 2023, in conformance with Generally Accepted Accounting Principles (GAAP). An auditor gives an Unmodified Opinion (or clean opinion) when they do not have any significant reservation in respect of matters contained in the Financial Statements.

A summary of significant highlights follows:

General Fund: The unassigned or unrestricted fund balance decreased by about \$0.8 million compared to the prior year despite the absence of approximately \$5.5 million in federal stimulus received in the previous year. This is mostly attributable to continued strength and improvement in most revenue categories and conservative spending.

Development Services Fund: At the end of FY 22-23, the fund had a negative balance of about \$0.4 million, an improvement of about \$0.1 million from the prior year. The fund was budgeted with a higher revenue amount than the actual received for the year by about \$0.3 million. However, larger budget savings, mainly from conservative spending were more than enough to offset a shortfall in revenue.

Enterprise Funds: Unrestricted net position at June 30, 2023, amounted to \$18.9 million for Sewer Operations and \$20.0 million for Water Operations. Water Operations' unrestricted net position increased by \$6.0 million compared to the prior year. The operating revenues increased by about \$2.2 million compared to the prior year primarily due to increased consumption and rate adjustments. Sewer Operations' unrestricted net position increased by \$2.6 million from the prior fiscal year with operating revenues increased by \$0.4 million primarily due to rate adjustments. The Sewer Impact Fund had \$20.3 million in net position restricted for capital improvements and expansion, an increase of \$0.8 million from the prior year mainly due to higher impact fee collection, while the Water Impact Fund had \$3.0 million for the same purpose, a slight increase of \$0.1 million from prior year.

COMMUNITY ENGAGEMENT:

Inform

Finance staff presents these audited reports in an effort to keep the City Council, Community, and various lenders and stakeholders informed on the financial health of the organization, which assists each one of the interested parties in making sound financial decisions.

ALTERNATIVE ACTIONS:

Not Applicable

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The audited comprehensive financial report is presented to Council each year for the prior fiscal year ending June 30.

FISCAL AND RESOURCE IMPACT:

The resources and costs associated with the audit and preparation of the annual comprehensive financial report are budgeted and included in the Finance Division.

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 COUNCIL STAFF REPORT

MEETING DATE: December 6, 2023

PREPARED BY:

Dat Nguyen, Finance Director

APPROVED BY: City Manager

ADOPT RESOLUTION APPROVING AND MAKING FINDINGS RELATED TO THE ASSEMBLY BILL (AB) 1600 DEVELOPMENT IMPACT FEE ANNUAL REPORT FOR FISCAL YEAR 2022-23

RECOMMENDATION(S)

1. Adopt resolution making findings for unexpended development impact fees; and
2. Accept the annual development impact fee 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:

Government Code Section 66000 et seq. requires that any city imposing development impact fees must report certain information each year. In accordance with this requirement, staff is presenting the Annual Development Impact Fee Report (Attachment 1) for the fiscal year ending June 30, 2023. The report includes a fee description, a schedule of impact fees for the reporting period as approved by City Council, and a report of the 2022-23 revenues and expenditures for each impact fee, along with the balance available for current and future projects. A description of the project that resources were used for is also included for each impact fee.

Section 66001(d) requires that for the fifth fiscal year following the collection of development fees, and every five years thereafter, the local agency shall make findings with respect to any portion of the fee collected remaining unexpended, whether committed or uncommitted. Staff identified \$6,359,047 from the Storm Drain Impact Fee (Fund 303); \$1,312,690 from the Public Safety Facilities Impact Fee (Fund 315); and \$257,765 from the Public Facilities Impact Fee (Fund 347) in unexpended fees that were collected over five years ago (Attachment 2). These unexpended fees have been

or will be appropriated into existing and future capital improvement projects:

1) Storm Drain Impact Fee to fund Storm System Expansions and Llagas Flood Control Project. The Storm System Expansions will expand storm system capacity in alignment with the 2018 Storm Drain System Master Plan and the Llagas Flood Control Project is to address storm water conveyance that drains into the Upper Llagas Creek Flood Protection Project (ULCFPP) and the West Little Llagas watershed. A total of \$8.7 million from Storm Drain Impact Fees has been allocated to these projects in the adopted Fiscal Year 2022-23 - 2027-28 Capital Improvement Program (CIP).

2) Public Safety Facilities Impact Fee to fund construction of the Fire Station on Butterfield Boulevard. A total of \$9.1 million from Public Safety Facilities Impact Fees has been allocated to this project in the adopted Fiscal Year 2022-23 - 2027-28 CIP.

3) Public Facilities Impact Fee to fund construction of public facilities such as expansion of the City Hall and the Corporation Yard. Based on the recently completed Maintenance and Operations Space Needs Analysis, the total cost for the expansion of the City Hall and the Corporation Yard is estimated to be about \$43.0 million.

COMMUNITY ENGAGEMENT:

Inform

Finance staff prepares this annual report in an effort to keep City Officials, City Council, Community, and stakeholders informed on the financial status of each impact fee, which assists each one of the interested parties in making sound financial decisions.

ALTERNATIVE ACTIONS:

Not Applicable

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The annual impact fee report is presented to Council each year for the prior fiscal year ending June 30.

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
AB 1600 Development Impact Fee Report
Fiscal Year 2022-23

Impact Fee Fund Descriptions

Park Impact – This fund receives revenues from developers of properties and the fund may only be used for the design, development, maintenance, and construction of new parks within the City.

Storm Drain – This fund receives revenues from developers of properties to cover the costs of design and construction of new storm drain that benefit new customers residing within the City of Morgan Hill as a result of growth in population.

Traffic Impact – This fund receives revenues from developers when their projects have an adverse impact on traffic flows, etc. The funds collected may be expended on new streets, traffic signals and improvements of existing streets where they are impacted by new development.

Public Safety Facilities Impact – This fee was created as a result of combination of Police and Fire Impact Fees. Revenues are collected from developers to cover the costs required for police and fire capital expansion projects to assist in providing services to new developments.

Public Facilities – Revenues are collected to finance the expansion of public facilities necessary to benefit new customers residing within the City of Morgan Hill as a result of growth in population.

Library Impact – Revenues are collected to finance the provision of future library space and materials necessary to benefit, and necessary to provide library services to, new residents residing in the City of Morgan Hill as a result of population growth.

Community/Recreation Center Impact – Revenues are collected to finance the expansion of existing and construction of new recreation and community center facilities demanded by new development.

Sewer Impact – Revenues are collected to finance the expansion of wastewater facilities necessary to benefit, and necessary to provide wastewater services to new customers residing in the service area within the City of Morgan Hill as a result of growth in population.

Water Capacity (Impact) – Revenues are collected to finance the expansion of water facilities necessary to benefit, and necessary to provide water services to, new customers residing in the service area within the City of Morgan Hill as a result of growth in population.

Housing In-Lieu – Fees are collected pursuant to the Inclusionary Housing Ordinance, whereby housing developers contribute funds to support the City's provision of affordable housing. The fund supports acquisition, construction, development assistance, rehabilitation, financing, rent subsidies, or other efforts that support the administration of such programs.

City of Morgan Hill
Impact Fee Schedule Summary
Fiscal Year 2022-23

Description of Fee	Unit of Measure	Amount (\$)
Park Impact Fee	Single Family Dwelling Unit-Sub	7,283.00
	Single Family Dwelling Unit-No Sub	5,295.00
	Multi Family Dwelling Unit-Sub	7,017.00
	Multi Family Dwelling Unit-No Sub	5,107.00
	Senior/Downtown/Secondary Unit	4,806.00
Storm Drain Impact Fee	Single Family Dwelling Unit	2,434.00
	Multi Family Dwelling Unit (>1200SF)	1,386.00
	Multi Family Dwelling Unit (≤1200SF)	645.00
	Commercial/Office per acre	26,359.00
	Industrial per acre	19,407.00
	Auto Dealership per acre	26,359.00
	Hotel per room	390.00
Traffic Impact Fee	Single Family Dwelling Unit	4,230.00
	Multi Family Dwelling Unit (>1200SF)	2,621.00
	Multi Family Dwelling Unit (≤1200SF)	1,650.00
	Commercial/Industrial/Office per PHT	4,230.00
Public Safety Facilities Impact Fee	Single Family Dwelling Unit	2,434.00
	Multi Family Dwelling Unit (>1200SF)	2,152.00
	Multi Family Dwelling Unit (≤1200SF)	1,612.00
	Commercial per acre	13,602.00
	Industrial per acre	16,326.00
	Office per acre	16,307.00
	Auto Dealership per acre	6,524.00
	Hotel per room	75.00
Public Facilities	Single Family Dwelling Unit	693.00
	Multi Family Dwelling Unit	667.00
	Senior/Downtown/Secondary Unit	458.00
	Commercial per acre	1,527.00
	Office per acre	1,815.00
	Industrial per acre	2,138.00
	Auto Dealership per acre	612.00
	Hotel per room	18.00
Library Impact Fee	Single Family Dwelling Unit	2,674.00
	Multi Family Dwelling Unit	2,576.00
	Senior/Downtown/Secondary Unit	1,764.00
Community Recreation Centers	Single Family Dwelling Unit	4,960.00
	Multi Family Dwelling Unit	4,352.00
	Senior/Downtown/Secondary Unit	3,284.00
Sewer Impact Fee	Single Family Dwelling Unit	19,206.00
	Multi Family Dwelling Unit	16,255.00
	Commercial/Industrial/Office per GPD	63.25
Water Capacity (Impact) Fee	5/8-1 inch meter	11,692.00
	1.5-inch meter	23,385.00
	2-inch meter	37,415.00
	3-inch meter	74,830.00
	4-inch meter	116,923.00
	6-inch meter	233,845.00
	8-inch meter	374,152.00
Housing In-Lieu	For-Sale Projects (per sq feet)	
	Within Downtown	15.19
	Outside of Downtown	22.67
	Rental Projects (per sq feet)	
	Within Downtown	16.69
	Outside of Downtown	33.38

City of Morgan Hill Impact Fees Revenue and Expenditures For Fiscal Year 2022-23

FUND 301 - PARK IMPACT FEE	Project Number	FY 22-23 AB 1600		
<u>Revenue</u>				
Interest		\$ 16,305		
Development Impact Fees		227,202		
Project Reimbursement/Others		3,405,437		
Total Revenue		\$ 3,648,944		
			% from this	Total Project
<u>Revenue Expended For</u>			Fund	Expenditures
Parks Land	110097	\$ 8,152	100.00%	8,152
Inclusive Playground	137015	651,943	100.00%	651,943
Butterfield Blvd Connector Path Project	148017	13,227	100.00%	13,227
W. Little Llagas Creek Trail Phase	117001	441,391	100.00%	441,391
Monterey Road Ball Field Park	145023	105,153	100.00%	105,153
Sports Facility Development	148018	50,116	100.00%	50,116
General Plan Update		7,700	7.00%	110,000
RCSD Services - Infrastructure Planning		75,000	29.41%	255,000
Banking Fees and Other		15,727	100.00%	15,727
Administration		30,556	1.72%	1,775,408
Total Expenditures		\$ 1,398,965		
Revenue Less Expenditures		\$ 2,249,979		
Balance as of July 1, 2022		(822,989)		
Balance as of June 30, 2023		\$ 1,426,990		

City of Morgan Hill Impact Fees Revenue and Expenditures For Fiscal Year 2022-23

FUND 303 - STORM DRAIN IMPACT FEE	Project Number	FY 22-23 AB 1600		
Revenue				
Interest		\$ 107,584		
Development Impact Fees		1,033,721		
Total Revenue		\$ 1,141,305		
			% from this Fund	Total Project Expenditures
Revenue Expended For				
Storm System Expansion	415020	\$ 108,703	100.00%	108,703
Llagas Flood Control	417099	779,039	100.00%	779,039
General Plan Update		7,700	7.00%	110,000
RCSD Services - Infrastructure Planning		15,000	5.88%	255,000
Administration		9,359	0.53%	1,775,408
Total Expenditures		\$ 919,801		
Revenue Less Expenditures		\$ 221,504		
Balance as of July 1, 2022		11,596,359		
Balance as of June 30, 2023		\$ 11,817,863		

City of Morgan Hill Impact Fees Revenue and Expenditures For Fiscal Year 2022-23

FUND 309 - TRAFFIC IMPACT FEE	Project Number	FY 22-23 AB 1600		
<u>REVENUE</u>				
Interest		\$ (2,181)		
Traffic Impact Fees		1,608,009		
VTA Measure B		6,949,478		
Project Reimbursement/Others		100,000		
TOTAL REVENUE		\$ 8,655,306		
<u>Revenue Expended For</u>			% from this Fund	Total Project Expenditures
Hale Avenue Extension	546007	\$ 5,985,210	100.00%	5,985,210
General Plan Update		31,900	29.00%	110,000
RCSD Services - Infrastructure Planning		75,000	29.41%	255,000
Administration		22,655	1.28%	1,775,408
Total Expenditures		\$ 6,114,765		
Revenue Less Expenditures		\$ 2,540,541		
Balance as of July 1, 2022		1,187,039		
Balance as of June 30, 2023		\$ 3,727,580		

City of Morgan Hill Impact Fees Revenue and Expenditures For Fiscal Year 2022-23

FUND 315 - PUBLIC SAFETY FACILITIES	Project Number	FY 22-23 AB 1600
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REVENUE

Interest	\$	50,856
Public Safety Facilities Impact Fees		608,217

TOTAL REVENUE	\$	659,073
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Revenue Expended For

			% from this Fund	Total Project Expenditures
New Fire Station	231018	\$ 535,980	100.00%	535,980
Police Facility Expansion	228020	\$ 60,598	100.00%	60,598
Debt Service		205,370	30.62%	670,612
Banking Fees and Other		22,013	100.00%	22,013
Administration		6,208	0.35%	1,775,408

Total Expenditures	\$	830,169
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Revenue Less Expenditures	\$	(171,096)
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Balance as of July 1, 2022		3,221,824
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Balance as of June 30, 2023	\$	3,050,728
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City of Morgan Hill Impact Fees Revenue and Expenditures For Fiscal Year 2022-23

FUND 347 - PUBLIC FACILITIES IMPACT FEE	Project Number	FY 22-23 AB 1600		
REVENUE				
Interest/Other		\$ 6,497		
Public Facilities Impact Fees		105,415		
TOTAL REVENUE		\$ 111,912		
			% from this Fund	Total Project Expenditures
Revenue Expended For				
RCSD Services - Infrastructure Planning		\$ 25,000	9.80%	255,000
Administration		4,154	0.23%	1,775,408
Total Expenditures		\$ 29,154		
Revenue Less Expenditures		\$ 82,758		
Balance as of July 1, 2022		1,017,051		
Balance as of June 30, 2023		\$ 1,099,809		

City of Morgan Hill Impact Fees Revenue and Expenditures For Fiscal Year 2022-23

FUND 348 - LIBRARY IMPACT FEE	Project Number	FY 22-23 AB 1600		
REVENUE				
Interest		\$ 16,361		
Library Impact Fees		170,212		
TOTAL REVENUE		\$ 186,573		
Revenue Expended For			% from this Fund	Total Project Expenditures
Civic Center Debt Service		\$ 207,553	30.95%	670,612
Administration		15,365	0.87%	1,775,408
Total Expenditures		\$ 222,918		
Revenue Less Expenditures		\$ (36,345)		
Balance as of July 1, 2022		1,444,583		
Balance as of June 30, 2023		\$ 1,408,238		

City of Morgan Hill Impact Fees Revenue and Expenditures For Fiscal Year 2022-23

FUND 360 - COMMUNITY/REC CENTERS IMPACT FEE	Project Number	FY 22-23 AB 1600		
REVENUE				
Interest/Others		\$ 24,250		
Com/Rec Centers Impact Fees		315,938		
Project Reimbursement/Others		209,003		
TOTAL REVENUE		\$ 549,191		
			% from this	Total Project
Revenue Expended For			Fund	Expenditures
Centennial Recreation Center Expansion	138016	\$ 178,210	100.00%	178,210
CRC Battery Storage System	229018	590,442	100.00%	590,442
Sports Facility Improvements - Sand Volleyball	148018	67,821	100.00%	67,821
Administration		15,515	0.87%	1,775,408
Total Expenditures		\$ 851,988		
Revenue Less Expenditures		\$ (302,797)		
Balance as of July 1, 2022		1,295,025		
Balance as of June 30, 2023		\$ 992,228		

City of Morgan Hill Impact Fees Revenue and Expenditures For Fiscal Year 2022-23

FUND 641 - SEWER IMPACT FEE	Project Number	FY 22-23 AB 1600		
REVENUE				
Interest		\$ 195,516		
Sewer Impact Fees		2,952,545		
Reimbursement of Expenses		10,230,667		
TOTAL REVENUE		\$ 13,378,728		
Revenue Expended For			% from this Fund	Total Project Expenditures
Sewer Plant Expansion	303093	\$ 10,178,741	1372.60%	741,565
Sewer Plant Improvements	303a11	1,152,312	100.00%	1,152,312
Sewer Main Upgrades	302t17	52,632	58.03%	90,698
Trunk Line - Phase I & II	308a08	181,280	39.51%	458,767
New Sewer Lines	315006	20,304	100.00%	20,304
Rate Studies	110023	111,285	56.80%	195,916
General Plan Update		7,700	7.00%	110,000
RCSD Services - Infrastructure Planning		25,000	9.80%	255,000
Debt Service		802,180	31.52%	2,544,863
Administration		49,744	2.80%	1,775,408
Total Expenditures		\$ 12,581,178		
Revenue Less Expenditures		\$ 797,550		
Balance as of July 1, 2022		20,552,531		
Balance as of June 30, 2023		\$ 21,350,081		

City of Morgan Hill Impact Fees Revenue and Expenditures For Fiscal Year 2022-23

FUND 651 - WATER IMPACT FEE	Project Number	FY 22-23 AB 1600		
REVENUE				
Interest		\$ 27,609		
Water Impact Fees		728,847		
TOTAL REVENUE		\$ 756,456		
Revenue Expended For			% from this Fund	Total Project Expenditures
Pump station capacity	610023	\$ 910	100.000%	910
Holiday Lake pump station	610a18	3,386	100.000%	3,386
General Plan Update		7,700	7.000%	110,000
RCSD Services - Infrastructure Planning		25,000	9.80%	255,000
Debt Service		642,776	38.763%	1,658,229
Banking Fees and Other		13,880	100.000%	13,880
Administration		17,440	0.982%	1,775,408
Total Expenditures		\$ 711,092		
Revenue Less Expenditures		\$ 45,364		
Balance as of July 1, 2022		2,924,596		
Balance as of June 30, 2023		\$ 2,969,960		

City of Morgan Hill Impact Fees Revenue and Expenditures For Fiscal Year 2022-23

FUND 236 - HOUSING IN-LIEU FEE	Project Number	FY 22-23 AB 1600		
REVENUE				
Interest/Others		\$ 61,640		
Housing in-lieu fee		674,725		
Project Reimbursement/Others		182,049		
TOTAL REVENUE		\$ 918,414		
			% from this	Total Project
Revenue Expended For			Fund	Expenditures
Housing services		\$ 711,185	100.00%	711,185
Administration		83,071	4.68%	1,775,408
Total Expenditures		\$ 794,256		
Revenue Less Expenditures		\$ 124,158		
Balance as of July 1, 2022		4,841,712		
Balance as of June 30, 2023		\$ 4,965,870		

RESOLUTION NO. 23-XXX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL MAKING FINDINGS FOR UNEXPENDED DEVELOPMENT IMPACT FEES IN ACCORDANCE WITH CALIFORNIA GOVERNMENT CODE SECTION 66001 AND ACCEPTING THE ANNUAL DEVELOPMENT IMPACT FEE REPORT

WHEREAS, the Mitigation Fee Act, Government Code Section 66000 et seq., authorizes the City of Morgan Hill ("City") to impose, collect, and expend mitigation fees to offset the impacts of development within the City; and;

WHEREAS, among the procedural requirements mandated by the Mitigation Fee Act is a requirement that beginning with the fifth fiscal year following deposit of development fees into a designated account, and each fifth fiscal year thereafter, the City make specified findings regarding any portion of the fees that remain unexpended; and

WHEREAS, a portion of the fees currently deposited in the City's Storm Drain Impact Fee Fund, Public Safety Facilities Impact Fund, and Public Facilities Impact Fee Fund were collected over five (5) years ago, and therefore the City wishes to make the findings required by Government Code Section 66001(d); and

WHEREAS, the City also wishes to review and accept reports required by the Mitigation Fee Act under the annual information disclosure requirements of Government Code Section 66006(b), including but not limited to the amount of the fee, the beginning and ending balance of the fee account or fund, and the interest earned thereon.

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

1. The City Council has considered the full record before it, which may include, but is not limited to, the staff report, testimony by staff and the public, and other materials and evidence submitted or provided to it. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.
2. The City Council finds that the Storm Drain Impact Fee Fund currently contains Six Million Three Hundred Fifty Nine Thousand Forty Seven Dollars (\$6,359,047); Public Safety Facilities Impact Fee Fund currently contains One Million Three Hundred Twelve Thousand Six Hundred Ninety Dollars (\$1,312,690); and Public Facilities Impact Fee Fund currently contains Two Hundred Fifty Seven Thousand Seven Hundred Sixty Five Dollars (\$257,765) in unexpended fees that were collected over five (5) years ago.

3. In accordance with Government Code section 66001(d)(1), the City Council finds as follows:
 - a. The Unexpended Fees will be used to provide for the following projects:
 - (A) Storm Drain Impact Fee to fund Storm System Expansions and Llagas Flood Control Project. The Storm System Expansions will expand storm system capacity in alignment with the 2018 Storm Drain System Master Plan and the Llagas Flood Control Project is to address storm water conveyance that drains into the Upper Llagas Creek Flood Protection Project (ULCFPP) and the West Little Llagas watershed. The project would provide flood protection and mitigate the increased risk of flooding when the ULCFPP is completed;
 - (B) Public Safety Facilities Impact Fee to fund construction of the Fire Station on Butterfield Boulevard. The project will address the need for a new fire station as the community grows.
 - (C) Public Facilities Impact Fee to fund the expansion of the City Hall and the Corporation Yard. These projects will address the maintenance and operations space needs as the community grows.
 - b. There exists a reasonable relationship between the Unexpended Fees and the purpose for which they were charged as described above.
 - c. The current estimated costs that have been appropriated or will be appropriated for the Storm System Expansions and Llagas Flood Control Project are approximately Eight Million Seven Hundred Thousand Dollars (\$8,700,000); costs for the Fire Station on Butterfield Boulevard are approximately Nine Million One Hundred Thousand Dollars (\$9,100,000); and costs for the expansion of the City Hall and the Corporation Yard are estimated to be about Forty Three Million Dollars (\$43,000,000). The City's funding sources will include the Unexpended Fees described above and future impact fees to be collected for these projects.
 - d. The Unexpended Fees have been deposited in the respective Impact Fee Funds, which are the appropriate funds to finance the projects described above.
4. This Resolution shall take effect immediately upon adoption.

PASSED AND ADOPTED by the City Council of Morgan Hill at a Regular Meeting held on the 6th day of December 2023 by the following vote:

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

APPROVED:

ATTEST:

MARK TURNER, Mayor

MICHELLE BIGELOW, City Clerk

∞ CERTIFICATION ∞

I, Michelle Bigelow, City Clerk of the City of Morgan Hill, California, do hereby certify that the foregoing is a true and correct copy of Resolution No.23-XXX, adopted by the City Council at the meeting held on December 6, 2023.

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

DATE: _____

MICHELLE BIGELOW, City Clerk

CITY COUNCIL STAFF REPORT

MEETING DATE: December 6, 2023

PREPARED BY:

Kim Mancera, Deputy City Clerk

APPROVED BY: City Manager

ADOPT RESOLUTION AND ADOPT ORDINANCE 2349, NEW SERIES, 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

RECOMMENDATION(S)

1. Adopt resolution; and
2. Waive the reading, adopt Ordinance No. 2349, New Series, and declare that said title, which appears on the agenda, shall be determined to have been read by title and further reading waived.

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

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:

On November 1, 2023, the City Council introduced Ordinance No 2349, New Series, by the following roll call vote: AYES: Borgioli, Martinez Beltran, Spring, Turner; NOES: None; ABSTAIN: None; ABSENT: Librers.

Adoption of this Resolution and the Ordinance will result in the renewal of the MHTBID and the continued levy of assessments on lodging businesses within the MHTBID.

The MHTBID is a benefit assessment district proposed to continue a revenue source to help fund sales & marketing and sports facility marketing & 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.

MHTBID Renewal Process

October 4, 2023 RESOLUTION OF INTENTION HEARING (**COMPLETED**)
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 (**COMPLETED**)

November 1, 2023 PUBLIC MEETING AND INTRODUCTION/FIRST READING OF ORDINANCE (**COMPLETED**)

December 6, 2023 FINAL PUBLIC HEARING AND SECOND READING/ADOPTION 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:

On November 1, 2023, the City Council approved and introduced Ordinance No 2349, approving the renewal of the MHTBID and the continued levy of assessments on lodging businesses within the MHTBID on a 4-0 vote.

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)

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.

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.

RESOLUTION NO. 23 – xxx

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY
OF MORGAN HILL DECLARING RESULTS OF
MAJORITY PROTEST PROCEEDINGS AND RENEWING
THE MORGAN HILL TOURISM BUSINESS
IMPROVEMENT DISTRICT (MHTBID)**

WHEREAS, the City of Morgan Hill (City) created the MHTBID in 2019 by Resolution No. 19-004 for a five (5) year term which ends on February 29, 2024; and

WHEREAS, the Property and Business Improvement District Law of 1994 (Streets and Highways Code §36600 et. seq.) authorizes the City to renew business improvement districts upon petition by a weighted majority of the business owners located within the boundaries of the district; and

WHEREAS, lodging business owners who will pay more than fifty percent (50%) of the proposed assessment, as weighted according to the amount of the assessment to be paid by the petitioner, within the boundaries of the MHTBID have petitioned the City 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 all lodging businesses existing and in future within the MHTBID 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 City 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 City Council held a public meeting regarding the renewal of the MHTBID, conducted the first reading of the Ordinance to renew the MHTBID and continue the levy of assessments, and the City Council heard and received objections and protests, if any, to the renewal of the OTMD 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 City Council held a public hearing

regarding the renewal of the MHTBID, and the City 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, on December 6, 2023, following the receipt of all objections and protests and the adoption of this Resolution of Formation, a second reading of the Ordinance to renew the MHTBID and levy the assessments will be heard. At the conclusion of the second reading of the Ordinance, the City Council may adopt the Ordinance to renew the MHTBID and levy the assessments; 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 which 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, adoption of this Resolution does not diminish the legal effect of the adoption of the Ordinance to be adopted at the final hearing; and

WHEREAS, the City bears the burden of proving by a preponderance of the evidence that an assessment imposed for a specific benefit or specific government service is not a tax, that the amount is no more than necessary to cover the costs to the City in providing the specific benefit or specific government service, and that the manner in which those costs are allocated to a payor bear a fair or reasonable relationship to the specific benefits or specific government services received by the payor.

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

1. The recitals set forth herein are adopted by the City Council as findings and they are true and correct.
2. The MHTBID is hereby renewed for a ten (10) year term, beginning March 1, 2024 or as soon as possible thereafter, and ending ten (10) years from its start date.
3. The Plan dated September 15, 2023 is hereby adopted and approved.
4. 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 Resolution, the Resolution of Intention, the Ordinance, 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.
5. The City 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, that portion shall be specifically called out and identified for the transient in any and all communications from the business owner as the “MHTBID Assessment” or “Tourism Assessment” as specified in the Plan.

6. The assessments levied for the MHTBID shall be applied towards sales and marketing programs to market MHTBID lodging businesses as tourist, meeting and event destinations, and other improvements and activities as set forth in the Plan.

7. Assessments levied on lodging businesses pursuant to this resolution shall be levied on the basis of benefit. Because the services provided are intended to increase sleeping room rentals, an assessment based on gross short-term sleeping room rentals is the best measure of benefit.

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

9. Bonds shall not be issued to fund the MHTBID.

10. The MHTBID shall include all lodging business, existing and in the future, available for public occupancy located within the boundaries of the City of Morgan Hill. A boundary map is attached hereto and incorporated herein by reference.

11. The assessments shall be used for the purposes set forth above 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.

12. The assessments to fund the activities and improvements for the MHTBID will be collected by the City of Morgan Hill on a monthly basis, and in accordance with Streets and Highways Code §36631.

13. The City Council, through adoption of this Resolution 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 City Council has determined that Visit Morgan Hill shall continue to be the MHTBID Owners' Association.

14. 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.

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

16. The City Clerk, or their designee, is directed to take all necessary actions to complete the renewal of the MHTBID and to levy the assessments.

17. This Resolution shall take effect immediately upon its adoption by the City Council.

PASSED AND ADOPTED THIS 6TH DAY OF DECEMBER 2023, AT A REGULAR MEETING OF THE CITY COUNCIL BY THE FOLLOWING VOTE:

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

APPROVED:

ATTEST:

MARK TURNER, Mayor

MICHELLE BIGELOW, City Clerk

∞ **CERTIFICATION** ∞

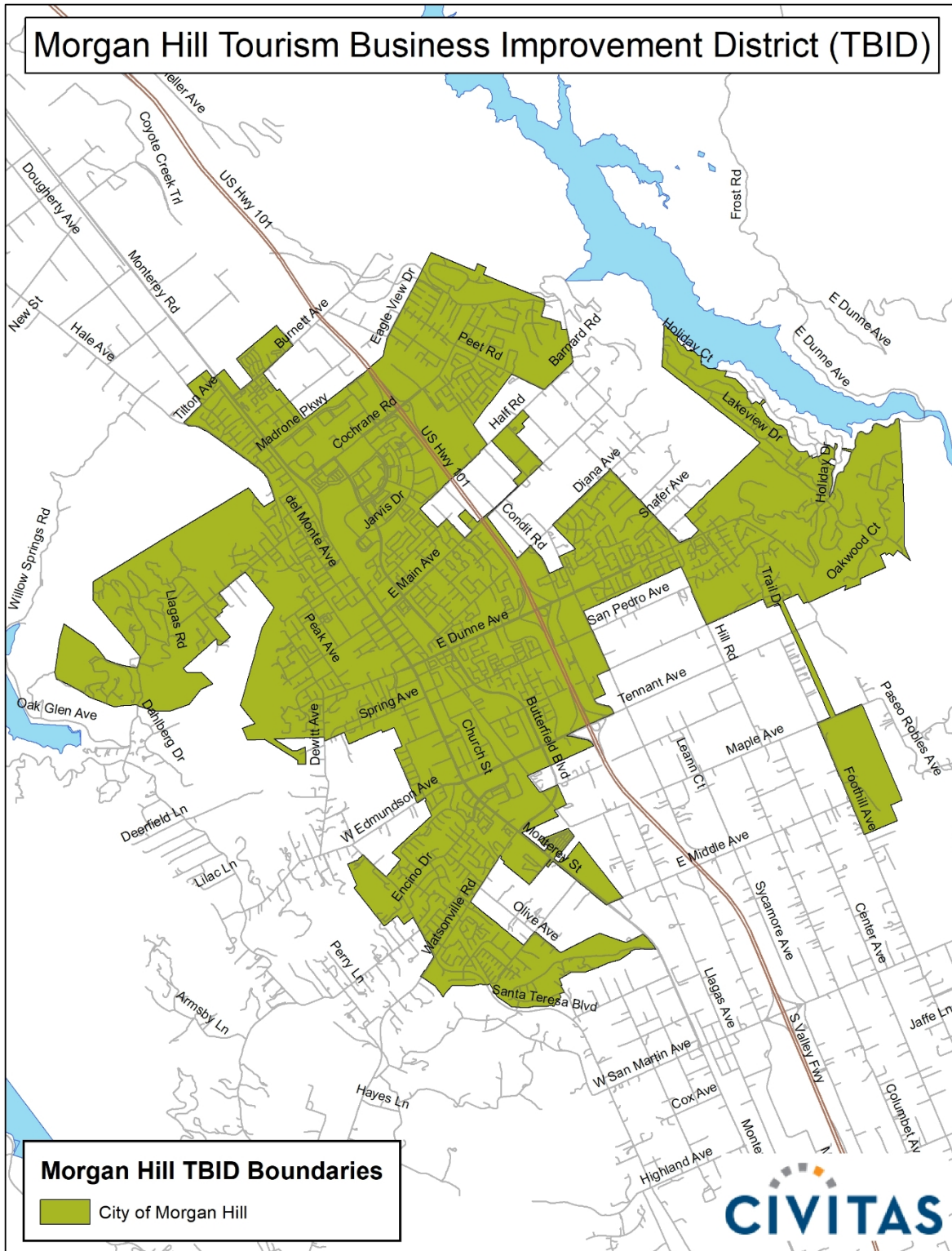
I, Michelle Bigelow, City Clerk of the City of Morgan Hill, California, do hereby certify that the foregoing is a true and correct copy of Resolution No. 23-xxx adopted by the City Council at the meeting held on December 6, 2023.

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

DATE: _____

MICHELLE BIGELOW, City Clerk

Boundary Map



ORDINANCE NO. 2349, 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:

Section 1. 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.).

Section 2. Severability. 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 6TH DAY OF DECEMBER 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**

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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. 2349, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on December 6, 2023.

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

DATE: _____

MICHELLE BIGELOW, City Clerk

CITY COUNCIL STAFF REPORT

MEETING DATE: December 6, 2023

PREPARED BY:

Kim Mancera, Deputy City Clerk

APPROVED BY: City Manager

ADOPT ORDINANCE 2350, NEW SERIES, ADDING SECTION 18.30.070 (VEHICLE SALES OVERLAY ZONE (-VS)) OF CHAPTER 18.30 (OVERLAY ZONES AND COMBINING DISTRICTS) OF TITLE 18 (ZONING) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL ESTABLISHING THE VEHICLE SALES OVERLAY ZONE (-VS) TO ALLOW VEHICLE- RELATED USES AND OTHER COMPATIBLE USES IN DIFFERENT PARTS OF THE CITY THAT CAN SUPPORT SUCH A USE

RECOMMENDATION(S)

Waive the reading, adopt Ordinance No. 2350, New Series, and declare that said title, which appears on the agenda, shall be determined to have been read by title and further reading waived.

COUNCIL PRIORITIES, GOALS & STRATEGIES

2022-2023 Strategic Priorities

Fiscal Sustainability

Economic Development

Guiding Documents

Economic Blueprint

Morgan Hill 2035 General Plan

REPORT NARRATIVE:

On November 15, 2023, the City Council approved Ordinance No 2350 New Series, by the following roll call votes: AYES: Borgioli, Librers, Turner; NOES: Martinez Beltran, Spring; ABSTAIN: None; ABSENT: None.

The Ordinance establishes Section 18.30.070 (Vehicle Sales Overlay Zone (-VS)) of Chapter 18.30 (Overlay Zones and Combining Districts) of the Zoning Code to allow vehicle-related uses as well as other compatible uses in different parts of the City that can support such a use. The initial applicability of the -VS overlay zone applies to the three parcels at the corner of Cochrane Road, Hwy 101 and DePaul Drive, extending approximately 1,800 feet south of Cochrane Road between Hwy 101 and DePaul Drive, comprising approximately 28.7 acres. The Overlay Zone as approved in the first

reading, allows 70% of the overlay to contain vehicle sales uses. The Ordinance also establishes design guidelines that are applicable to any new vehicle sales use established within the Overlay District.

COMMUNITY ENGAGEMENT:

Inform/Engage

A 10-day public hearing notice for the November 15, 2023 City Council meeting was published on Friday, November 3, 2023 in the edition of the Morgan Hill Times pursuant to Government Code Sections 65090-65096. Notices were also provided on the City's 411, City's website, and via social media.

A 10-day public hearing notice for the October 24, 2023 Planning Commission meeting was published on Friday, October 13, 2023 in the edition of the Morgan Hill Times pursuant to Government Code Sections 65090-65096. Notices were also provided on the City's 411, City's website, and via social media.

On October 12, 2023, the City's Economic Development team provided an update to the Morgan Hill Chamber of Commerce's Economic Development Committee that the City will be bringing forward a proposed Vehicle Sales Zoning Overlay (-VS) with Design Guidelines (for the property bounded by Cochrane on the north, De Paul on the East, Hwy101 on the West and approximately 1,800 feet from Cochrane Rd to the South) for consideration at the October 24, 2023 Planning Commission and the November 15 City Council meeting.

On August 8, 2023, staff held a public workshop with the Planning Commission to review draft design guidelines and receive additional input.

On Monday, July 31, 2023, City staff held a meeting with community stakeholders who had previously expressed an interest in the CO Zoning Text Amendment and the location of auto/vehicle dealers on the Trammell Crow North 30 property to hear their concerns and gather feedback.

A 10-Day public hearing notice for the June 21, 2023 City Council meeting was published in the Friday, June 9, 2023 edition of the Morgan Hill Times pursuant to Government Code Sections 65090-65096. Notices were also provided on the City's 411, City's website, and via social media.

The City's Economic Development team presented the proposed Zoning Code Text Amendment to the Morgan Hill Chamber of Commerce's Economic Development Committee on May 11, 2023 and conducted a Neighborhood meeting on June 15, 2023. The neighborhood meeting was promoted in the City's 411.

On May 9, 2023, the Planning Commission held a public hearing regarding the proposed ordinance amendments in which a 10-day public hearing notice was published in the Friday, April 21, 2023 edition of the Morgan Hill Times.

ALTERNATIVE ACTIONS:

Not Applicable.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On November 15, 2023, the City Council approved and introduced Ordinance No 2350 New Series, establishing the new Vehicle Sales Overlay Zone of 70% with Design Guidelines on a 3-2 vote.

On November 14, the Planning Commission recommended the approval of the Vehicle Sales Overlay Zone, which included an overlay zone of 60% and minor amendments to the Design Guidelines. The Planning Commission approved this recommendation on a vote of 6-1.

On August 23, 2023, the City Council voted against a second reading of Ordinance No. 2347 New Series, by the following roll call vote: AYES: Borgioli, Turner; NOES: Librers, Martinez Beltran, Spring; ABSTAIN: None; ABSENT: None.

On June 21, 2023, the City Council introduced Ordinance No. 2347 New Series, by the following roll call vote: AYES: Borgioli, Librers, Turner; NOES: Martinez Beltran, Spring; ABSTAIN: None; ABSENT: None.

On May 9, 2023, the Planning Commission recommended approval of the Zoning Code Text Amendment on a vote of 4-1 with two members absent.

In January 2023, the City Council reaffirmed the Economic Development department's strategic priorities to include the attraction and recruitment of hotels and auto dealers.

On June 6, 2018, the City Council adopted Ordinance No. 2277 N.S., a comprehensive update of Title 18 – Zoning of the City of Morgan Hill Municipal Code. The update included an amendment to the City's official zoning map consistent with the Morgan Hill 2035 General Plan.

In April 2017, the City Council unanimously adopted the 2017 Morgan Hill Economic Blueprint that identified Retail as a key strategy for long-term economic sustainability.

In 2002, 2003, 2013, 2014, and 2017, the City created and utilized the Auto Incentive program to attract and expand new auto dealers and vehicle sales to the City of Morgan Hill.

FISCAL AND RESOURCE IMPACT:

The City currently has only three (3) branded auto dealerships, but they make up approximately 25% of the City's sales tax revenue. Sales tax revenue is an important source of General Fund revenue that the Council has the discretion to allocate and fund essential City services, including police, fire, street, parks, recreation, etc.

As the cost to maintain City services continues to outpace the City's anticipated revenue growth, it is important that the City focuses on economic development strategies that maintain and increase the City's tax base. Amending the City's municipal code to create a -VS overlay zone at Cochrane and US 101 to allow vehicle sales related uses for approximately 29 acres doesn't guarantee more auto dealerships, but it gives the City and the Economic Development Team increased flexibility to pursue and attract high sales tax generating businesses to the City.

CEQA (California Environmental Quality Act):

There are no new significant environmental impacts or previously identified significant impacts associated with the Project. Therefore, the City determined that an Addendum to the Morgan Hill 2035 General Plan Final Environmental Impact Report (EIR) is the appropriate California Environmental Quality Act (CEQA) document to address project modifications in accordance with CEQA Guidelines Section 15164. CEQA Guidelines Section 15164(c) provides that an addendum need not be circulated for public review.

ORDINANCE NO. 2350, NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL ADDING SECTION 18.30.070 (VEHICLE SALES OVERLAY ZONE (-VS)) OF CHAPTER 18.30 (OVERLAY ZONES AND COMBINING DISTRICTS) OF TITLE 18 (ZONING) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL ESTABLISHING THE VEHICLE SALES OVERLAY ZONE (-VS) TO ALLOW VEHICLE- RELATED USES AND OTHER COMPATIBLE USES IN DIFFERENT PARTS OF THE CITY THAT CAN SUPPORT SUCH A USE

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

Section 1. Section 18.30.070 (Vehicle Sales Overlay Zone (-VS)) of Chapter 18.30 (Overlay Zones and Combining Districts) of Title 18 (Zoning) is hereby established to read as follows:

18.30.070 Vehicle Sales Overlay Zone (-VS).

- A. Purpose of Vehicle Sales Overlay Zone. The purpose of the Vehicle Sales (-VS) overlay zone is to allow vehicle sales in different parts of the City on parcels that can support such a use. This overlay zone also incorporates specific design elements for future dealerships that align with design goals in the General Plan.
- B. Applicability. The -VS overlay zone applies to parcels at the corner of Cochrane Road, Hwy 101 and DePaul Drive as shown on the zoning map extending approximately 1,800 feet south of Cochrane Road between Hwy 101 and DePaul Drive comprising of approximately 28.70 acres.
- C. Land Use Regulations.

Permitted Land Uses. Table 18.30-2 identifies land uses permitted in the Vehicle Sales Overlay Zone (-VS) in addition to the uses allowed pursuant to the underlying base zoning district.

Table 18.30-2 Permitted Land Uses in the Vehicle Sales Overlay District

Key P Permitted Use C Conditional Use Permit required	
Commercial Uses	
General Retail	P
Eating and Drinking Uses	
Restaurants, Fast Food	P
Restaurants, Sit-Down	P
Tasting Rooms	P
Vehicle-Related Uses	

Vehicle Sales and Leasing [1]	P
Convenience Market with Fuel and Service Station	C
Fuel and Service Stations	C
Vehicle Rentals [2]	P
Vehicle Repair and Maintenance, Minor [3]	P
Vehicle Washing [2]	C

Notes:

[1] Allowed except for “used car sales” limited to the same property as an original equipment manufacturer.

[2] Allowed only when associated with an on-site original equipment manufacturer.

[3] Allowed only when associated with an on-site or off-site original equipment manufacturer.

D. Development Standards

The development standards that apply in the -VS overlay zone shall be the same as the underlying base zone with the exception of the following:

1. Vehicle Sale uses cannot utilize more than seventy (70) percent of the total acreage available within the overlay zone, preserving thirty (30) percent of the total acreage for non-vehicle sales uses.

E. Design Guidelines for the Vehicle Sales (-VS) Overlay Zone. Vehicle Rentals, Vehicle Repair and Maintenance, Vehicle Sales and Leasing, and Vehicle Washing uses shall substantially comply with the following design standards and shall be reviewed through a design permit as required by Section 18.108.040 (Design Permit):

1. Site Design

- a. Site frontages of highways and public streets should minimize the number of visible vehicles in exterior display areas.
- b. Showrooms are encouraged over exterior vehicle display areas that front onto a public street. Interior vehicle display should be limited to ground level and second floor only.
- c. To enhance the visual prominence of the dealership building, interior vehicle showrooms should be located on the front portion of the site and oriented towards the street.
- d. To reduce visual presence of vehicle maintenance areas, vehicle service entrances and service bays should be integrated within the design of the main building, when possible, be less prominent than the main building, and screened from public right-of-way vantage points.
- e. For contiguous dealerships, dealerships should be designed to provide cohesive vehicular and pedestrian access and connectivity between dealerships and other adjacent uses for ease of customer accessibility.
- f. Onsite circulation should include efficient space to support vehicular deliveries and auto service access to reduce overflow to off-site parking.

- g. To improve the visual aesthetics of contiguous dealerships, large expanses of Vehicle Sales Areas and storage areas should be divided into smaller areas with landscaping.
- h. Vehicle Sales Areas, which are elevated above grade (i.e., display pedestals of any type), and exterior display areas with automated movement are prohibited unless specifically approved within the design permit for the site.
- i. Outdoor amenities, including seating, tables, and covered areas with shade, are encouraged.
- j. Accessory structures, including charging stations for electric vehicles, should be consistent with the overall design of the dealership, especially for contiguous dealerships.
- k. Noise on dealership sites from a public address system, from service departments, or other sources should be minimized.

2. Building Design

- a. A compatible architectural design is encouraged for contiguous dealerships in order to create a visually unified and attractive environment.
- b. Dealership buildings should have high quality architectural designs with recessed windows and entries that include large display windows.
- c. All sides of a building that are visible from public right-of-way vantage points should have a consistent architectural quality, design, and use of materials. When adjacent to the freeway or between two streets, buildings should consider two frontages or 360-degree architectural design.
- d. Parked and stored vehicles in a building should be screened from view except in ground or second level showrooms.
- e. Service bay entrances should be designed to minimize sight lines into the interior of service bays and parts departments.
- f. Accessory and ancillary structures should be architecturally compatible with the overall design of the dealership.

3. Landscaping

- a. Landscape buffers should be incorporated along frontages of highways and public streets.
- b. Large stormwater retention and treatment basins should be located away from public streets, when possible.
- c. Accent paving such as stamped concrete or pavers is encouraged at main entrances.
- d. For contiguous dealerships, landscaping, screening walls, and fences should be complementary amongst dealerships.

4. Parking

- a. Customer and employee parking and storage of vehicles for dealerships should be accommodated within the boundaries of each dealership and not on public streets.
- b. Structured parking is encouraged. Vehicle parking and storage within structures or on the roofs of buildings should not be visible from ground level vantage points.

5. Lighting

- a. Parking areas should have lighting capable of providing adequate illumination for security and safety.
- b. Lighting should be energy-efficient and have brightness and color necessary for the use of the on-site vehicles and structures, as well as for the needs of pedestrians.
- c. Lighting levels of interior and exterior vehicle display areas should be minimized after normal business hours.
- d. Lighting levels need to be in conformance with the City of Morgan Hill performance standards.
- e. Lighting should have fixtures that shield direct light from visibility from neighboring properties and from public streets.
- f. Lighting sources should not have motion, such as search lights that are aimed at the sky.
- g. Building illumination and architectural lighting should be indirect in character (light sources should be minimally visible). Indirect wall lighting or “wall washing”, exterior overhead down lighting, or interior indirect illumination that spills outside the building is encouraged. Architectural lighting should articulate and animate building design and provide functional lighting for the safety and clarity of pedestrian movement.

Section 2. Severability. Should any provision of this ordinance be deemed unconstitutional or unenforceable by a court of competent jurisdiction, such provision shall be severed from the ordinance, and such severance shall not affect the remainder of the ordinance.

Section 3. Effective Date; Posting. This Ordinance shall take effect on _____, 20___. The City Clerk is hereby directed to publish this Ordinance or a summary thereof pursuant to Government Code Section 36933.

THE FOREGOING ORDINANCE WAS INTRODUCED AT A MEETING OF THE CITY COUNCIL HELD ON THE 15th DAY OF NOVEMBER 2023, AND WAS FINALLY ADOPTED AT A MEETING OF THE CITY COUNCIL HELD ON THE 6th DAY OF DECEMBER 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. 2350, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 6th day of December 2023.

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

DATE: _____

MICHELLE BIGELOW, City Clerk

CITY COUNCIL STAFF REPORT

MEETING DATE: December 6, 2023

PREPARED BY:

Lynette Kong, Associate Engineer

APPROVED BY: City Manager

ADOPT RESOLUTION CERTIFYING COMPLIANCE WITH STATE HOUSING LAWS IN ORDER TO RECEIVE \$3,921,000 IN ONE BAY AREA GRANT CYCLE 3 (OBAG 3) FUNDING FOR THE MONTEREY ROAD TRAFFIC, BICYCLE, AND PEDESTRIAN IMPROVEMENTS PROJECT

RECOMMENDATION(S)

Adopt a resolution for self-certifying compliance with State housing laws that is required for receiving One Bay Area Grant Cycle 3 (OBAG 3) funding for the Monterey Road Traffic, Bicycle, and Pedestrian Improvements Project

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Enhancing Public Safety

Maintaining and Enhancing Infrastructure

Advancing Regional Initiatives

2022-2023 Strategic Priorities

Fiscal Sustainability

Affordable Housing and Homelessness

Transportation

Guiding Documents

Bikeways, Trails, and Recreation Master Plan

Morgan Hill 2035 General Plan

Vision Zero

REPORT NARRATIVE:

The Metropolitan Transportation Commission (MTC) created the One Bay Area Grant program (OBAG) in May 2012 to incorporate the region's discretionary transportation funding from the Federal Highway Administration (FHWA) with Plan Bay Area 2050 goals. There have been two previous OBAG program cycles where the City received grant funding from both cycles for the following projects: Monterey Road Preservation (OBAG Cycle 1) and East Dunne Avenue Rehabilitation Project (OBAG Cycle 2). MTC adopted the program's third round of funding (OBAG 3) in January 2022 and includes over \$750 million in federal funding for projects to be funded from 2023 through 2026.

The OBAG 3 program is divided into a Regional Program, managed by MTC, and a County and Local Program, managed by MTC in partnership with the nine Bay Area County Transportation Agencies (CTAs). The Santa Clara Valley Transportation Authority (VTA) is the CTA for Santa Clara County. The City's current funding application filing request is for the County and Local Program.

In 2022, staff submitted an OBAG 3 competitive grant funding application for \$3,921,000 for the construction phase of the Monterey Road Traffic, Bicycle, and Pedestrian Improvements Project. The project's location is on Monterey Road from Cochrane Road to East Middle Avenue and will consist of the following improvements: slurry sealing; buffered bicycle lane treatments; green colored bicycle lane striping enhancements for bicycle facilities at intersections, conflict points, and their approaches; sidewalk gap closures; replace portions of striped center medians with raised concrete medians at specific locations; new and/or upgraded curb ramp improvements; and bicycle and pedestrian signage improvements.

The Monterey Road Traffic, Bicycle, and Pedestrian Improvements Project was adopted by MTC's Board on January 23, 2023 for the final selection of projects programmed for the OBAG 3 grant. The OBAG 3 grant policies for project selection and programming consist of several requirements for local jurisdiction projects to comply with to be eligible to receive the OBAG 3 funding. This report addresses the OBAG 3 requirement for the City to adopt a Resolution (Attachment 1) self-certifying compliance with various State housing laws related to surplus lands, accessory dwelling units, and density bonuses.

The City's housing development policies include the adoption and implementation of regulations to encourage the development of accessory dwelling units (ADUs) and junior accessory dwelling units (JADUs), the use of density bonuses, annual reporting to the California Department of Housing and Community Development (HCD), and other measures in compliance with State laws. The City has received certification of its 6th Cycle Housing Element from HCD.

Upon adoption of this resolution, staff will submit a copy of this resolution to MTC as part of the OBAG 3 funding requirements. The remaining outstanding OBAG 3 grant compliance item that staff is working on is the completion of the State's Local Streets and Roads survey; the anticipated completion date of this remaining grant compliance item is Spring 2024.

The estimated project schedule consists of the design phase starting by the end of this year; processing of the federal project authorization during Summer/Fall 2024; and commencement of construction in Summer 2025.

COMMUNITY ENGAGEMENT:

Inform

Affected businesses and property owners will be notified of the roadway improvement work that is funded with this grant money prior to the start of construction activities.

ALTERNATIVE ACTIONS:

Not applicable. Failure to adopt the resolution will result in loss of grant funding.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

- On June 21, 2023, City Council adopted a Resolution of Local Support and authorized the filing of an OBAG 3 funding application for the Monterey Road Traffic, Bicycle, and Pedestrian Improvements Project.
- On January 25, 2023, City Council adopted a Resolution amending the General Plan to update the Housing Element of the General Plan for the period of 2023-2031.
- On December 4, 2019, City Council adopted Ordinance 2313, New Series amending Chapter 18.84 (Accessory Dwelling Units) and Chapter 18.124 (Land Use Definitions) of the Morgan Hill Municipal Code to align with State law changes regarding accessory dwelling units and junior accessory dwelling units.
- On September 13, 2013, City Council adopted a Resolution of Local Support for MTC Discretionary Funding Program (OBAG Cycle 1).

FISCAL AND RESOURCE IMPACT:

There is no fiscal and resource impact associated with adopting this resolution.

CEQA (California Environmental Quality Act):

Not a Project.

Adopting a resolution certifying compliance with State housing laws is not a "project" under CEQA as defined in the CEQA Guidelines, section 15378, because this resolution has no potential for resulting in either a direct or foreseeable physical change in the environment. Necessary environmental review for the Monterey Road Traffic, Bicycle, and Pedestrian Improvements Project will be completed as part of the project development process.

RESOLUTION NO. 23-XXX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL TO COMPLY WITH STATE HOUSING LAWS AS AN ELIGIBILITY REQUIREMENT FOR THE ONE BAY AREA GRANT CYCLE 3 (OBAG 3)

WHEREAS, the San Francisco region has the highest housing costs in the United States; and

WHEREAS, the Bay Area produced less than 30% of the need for low- and moderate-income housing units from 2007-2014, and is on track to similarly underproduce low-income units during the 2015-2023 time period; and

WHEREAS, there are limited funding sources available to secure land for the construction of low- and moderate-income housing; and

WHEREAS, public lands can play a critical role in increasing the supply of land for affordable housing;

WHEREAS, accessory dwelling units (ADUs) and junior accessory dwelling units (JADUs) provide an important option to increase the availability and affordability of housing, especially in existing, lower density neighborhoods; and

WHEREAS, density bonuses are an effective tool to increase the financial feasibility of housing and incentivize the creation of affordable housing; and

WHEREAS, the Metropolitan Transportation Commission adopted Resolution No. 4505, outlining the programming policy and project selection criteria for the One Bay Area Grant Program (OBAG 3), including certain requirements to access these funds;

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

1. That the City of Morgan Hill agrees to comply with the terms of Surplus Land Act (California Government Code § 54220 et seq.), as exists now or may be amended in the future, including, but not limited to, AB 1255 (Rivas, 2019), which requires jurisdictions to compile and report annually an inventory of surplus lands to the California Department of Housing and Community Development; and
2. That the City of Morgan Hill agrees to comply with state laws related to ADUs and JADUs, as it exists now or may be amended in the future, including, but not limited to California Government Code §§ 65852.150, 65852.2, 65852.22, et seq. and California Health & Safety Code §§ 17980.12; and
3. That the City of Morgan Hill agrees to comply with state Density Bonus Law (California Government Code § 65915 et seq.), as exists now or may be amended in the future; and

4. That the City of Morgan Hill warrants and represents that it is in compliance with the aforementioned state housing laws and that there are [no claims, actions, suits](#), or [proceedings pending](#) to the best of the City of Morgan Hill's [knowledge](#), alleging violations of the state housing laws by the City of Morgan Hill.

PASSED AND ADOPTED by the City Council of the City of Morgan Hill, State of California, on this 6th day of December 2023, by the following vote:

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

APPROVED:

ATTEST:

MARK TURNER, Mayor

MICHELLE BIGELOW, City Clerk

∞ CERTIFICATION ∞

I, Michelle Bigelow, City Clerk of the City of Morgan Hill, California, do hereby certify that the foregoing is a true and correct copy of Resolution No. 23-xxx, adopted by the City Council at a regular meeting held on December 6, 2023.

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

DATE: _____

Michelle Bigelow, City Clerk

CITY COUNCIL STAFF REPORT

MEETING DATE: December 6, 2023

PREPARED BY:

Hilary Holeman, Administrative Analyst

APPROVED BY: City Manager

ADOPT RESOLUTION JOINING BUILD THE FUTURE SANTA CLARA COUNTY

RECOMMENDATION(S)

Adopt resolution joining Build the Future Santa Clara County in advocating for comprehensive and collaborative solutions to solve the child care crisis.

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Supporting our Youth, Seniors, and Entire Community

Fostering a Positive Organizational Culture

Enhancing Diversity and Inclusiveness

REPORT NARRATIVE:

Build the Future is a movement to build a brighter future for all Santa Clara County residents by advocating for affordable, quality childcare. Providing affordable childcare not only helps working parents and kids but also helps our entire community by reducing poverty, improving community safety, and building a stronger economy.

Joining Build the Future Santa Clara County demonstrates the City is advocating for comprehensive and collaborative solutions to solve the child care crisis.

COMMUNITY ENGAGEMENT:

This report serves to inform the Community of the proposed City Council action to adopt a resolution joining Build the Future Santa Clara County in advocating for comprehensive and collaborative solutions to solve the child care crisis.

ALTERNATIVE ACTIONS:

City Council may choose to support Build the Future Santa Clara County differently or not approve the resolution.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

None.

FISCAL AND RESOURCE IMPACT:

There is no fiscal impact associated with adopting this resolution.

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.

RESOLUTION NO. 23-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL JOINING “BUILD THE FUTURE SANTA CLARA COUNTY” IN ADVOCATING FOR COMPREHENSIVE AND COLLABORATIVE SOLUTIONS TO SOLVE OUR CHILDCARE CRISIS

WHEREAS, the Council for a Strong America issued a report in early 2023 which details that the shortage of infant-toddler child care costs the United States \$122 billion in lost earnings, productivity, and revenue every year; and

WHEREAS, this shortage translates to a \$15 billion economic threat to California and a \$3 billion threat to Santa Clara County; and

WHEREAS, a family living in Silicon Valley needs to pay an average of \$26,450 per child per year for infant care and \$21,900 per year for one preschooler's childcare; and

WHEREAS, the two most significant monthly expenses faced by working families are rent and child care; and

WHEREAS, the lack of an affordable child care option leads to underemployment, greater housing instability, less consumer spending, depressed business productivity and the near impossibility of seeking, securing and maintaining employment; and

WHEREAS, investing in affordable childcare provides vital infrastructure to working parents and supports early childhood development, allows families to remain in a geographic area, creates a stronger economy, improves business productivity and consumer spending, decreases poverty, leads to safer communities, and provides additional revenue for cities; and

WHEREAS, cities have a direct interest in building strong local economies, supporting and benefiting from local small businesses, attracting and retaining families and employers; and

WHEREAS, one of the most impactful tools we can deploy to solve our greatest economic and societal challenges is investing in broadly accessible, high quality child care immediately; and

WHEREAS, investments in the child care sector should prioritize supporting our most underserved children and their families; and

NOW, THEREFORE, THE MORGAN HILL CITY COUNCIL DOES RESOLVE AS FOLLOWS:

SECTION 1: The City of Morgan Hill will be proactive in its efforts to promote and advocate for funding streams in support of child care; and be it further

SECTION 2: The City of Morgan Hill will propose and support policies and practices that will facilitate expedited zoning, permitting and licensing processes for both center-based and home-based child care facilities to the extent possible; and

SECTION 3: The City of Morgan Hill will empower our office of economic development to promote the importance of child care businesses in this city and provide support for providers who desire to operate within this city; and

SECTION 4: The City of Morgan Hill joins with Build the Future Santa Clara County in advocating for comprehensive and collaborative solutions to solve our child care crisis, including but not limited to building a coalition of stakeholders across all sectors including small and large businesses, community based organizations, neighborhood associations, law enforcement authorities, local governments including school and special districts and city councils, and labor and trades unions for the purpose of identifying and implementing solutions to this economic and social crisis.

PASSED AND ADOPTED by the City Council of Morgan Hill at a Regular Meeting held on the 6th day of December 2023 by the following vote:

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

APPROVED:

ATTEST:

MARK TURNER, Mayor

MICHELLE BIGELOW, City Clerk

∞ CERTIFICATION ∞

I, Michelle Bigelow, City Clerk of the City of Morgan Hill, California, do hereby certify that the foregoing is a true and correct copy of Resolution No.23-__ adopted by the City Council at the meeting held on the 6th day of December 2023.

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

DATE: _____

MICHELLE BIGELOW, City Clerk

CITY COUNCIL STAFF REPORT

MEETING DATE: December 6, 2023

PREPARED BY:

Nichole Martin, Community Services Coordinator

APPROVED BY: City Manager

ADOPT WEED ABATEMENT RESOLUTION, EXEMPT FROM CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) UNDER SECTION 15304(I)

RECOMMENDATION(S)

Adopt resolution declaring weeds and brush to be a nuisance and setting the hazardous vegetation public hearing for February 21, 2024.

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Enhancing Public Safety

REPORT NARRATIVE:

Under Government Code section 39561, cities may adopt a resolution declaring weeds and dry brush to be a public nuisance and order their abatement (Attachment 1). Weed and brush abatement services constitute the City's weed abatement program and are key to reducing fire risk and protecting public safety. The City of Morgan Hill has contracted with Santa Clara County for weed and brush abatement services since 1996. In the last several years, City and County staff have successfully worked together to streamline program administration and improve communications with Morgan Hill property owners. The County's Consumer and Environmental Protection Agency - Weed Abatement Program manages the program. As in prior years, staff has combined the initial resolution for both the weed and brush abatement programs. Staff proposes that the abatement program commencement hearing take place on February 21, 2024. Once the resolution is adopted, County staff will notify the affected property owners of the February 21st public hearing and of their obligations to abate hazardous vegetation before the deadline. In response to the City's past request for more notification to the property owners, the County will also be mailing a courtesy notice out to affected property owners in the early Spring to further remind them of their obligations. The City's Fire Department and the County's Weed Abatement Division are continuing to integrate their efforts and communication methods to enhance customer service. The improvements instituted have eliminated customer complaints about receiving conflicting information from the two programs.

COMMUNITY ENGAGEMENT:

Empower

The weed abatement program relies on a full range of community engagement approaches. Much of it begins when the County Program or City Fire Department informs a property owner that a hazardous situation has been observed on their property. The owner is given several months during which they may consult and work together with program staff to understand the situation and the needed remedies. Ultimately, each property owner is invited and empowered to remedy the situation themselves in order to minimize their program charges while maintaining public safety. In addition, many of the properties on the original list got onto the list as a result of a complaint from a community member about a hazardous situation.

ALTERNATIVE ACTIONS:

The Council could choose not to act or delay action on this resolution. Not declaring weeds and brush to be a nuisance would potentially compromise community fire safety. Delaying action would ultimately provide the affected property owners with less notice and time to plan for abating their hazardous vegetation.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

While this will be the first Council action addressing hazardous vegetation for the 2024 fire season, the recommended approach is consistent with the actions taken by the Council for over a decade.

FISCAL AND RESOURCE IMPACT:

The Weed Abatement Program is designed to be user-fee supported. The per-lot assessment includes costs for doing the weed and brush control work plus overhead County costs to administer the program. Based on the City's agreement with the County, the City may need to ultimately contribute to the program's costs if user fee revenues do not completely cover all of the County's costs. Administering this program is an activity anticipated in the Public Services and Fire Departments' work programs and budgets. Fees imposed by the County Program do not cover the cost of the City staff time associated in providing oversight and those resources are budgeted and funded through the General Fund (010).

CEQA (California Environmental Quality Act):

Categorical Exemption These activities are categorically exempt from environmental review under the California Environmental Quality Act pursuant to California Code of Regulations, Title 21, Section 15304(i) (Minor Alterations to Land – Fuel Management Activities).

RESOLUTION NO. 23-XXX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL DECLARING CERTAIN HAZARDOUS VEGETATION GROWING IN THE CITY OF MORGAN HILL TO BE A PUBLIC NUISANCE, DESCRIBING PROPERTIES WHERE SUCH NUISANCE EXISTS; ORDERING ABATEMENT AND SETTING A PUBLIC HEARING THEREON

WHEREAS, the City Council finds that certain weeds and brush are growing in the City of Morgan Hill upon the various streets, alleys, sidewalks, and upon private property, which said weeds and brush bear seeds of a wingy or downy nature, or may attain such growth as to become, when dry, a fire menace, or which are otherwise noxious and dangerous; and

WHEREAS, the City Council further finds and declares that said weeds and brush constitute a public nuisance.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Morgan Hill authorizes as follows:

1. That the weeds, as described in the above recital, constitute and will continue to constitute a public nuisance, and it is ordered that this public nuisance be abated in the manner provided in Title 8, Chapter 8.20 of the Morgan Hill Municipal Code.
2. That the nuisance exists upon all streets, alleys, sidewalks, and private property within said City as shown, described and delineated on the several maps of the property in the City, which are recorded in the Office of the County Recorder of the County of Santa Clara, reference in each instance for the description of any particular street, alley, or private property being hereby made to the several maps mentioned, and in the event of there being several subdivision maps on which lots are shown, reference is hereby made to the latest subdivision map.
3. That it is ordered that Wednesday, the 21st day of February 2024, at 6:00 p.m., in the Council Chambers of the City Council of the City of Morgan Hill is hereby fixed as the time and place when objections to the proposed destruction or removal of weeds shall be heard and be given due consideration.
4. That the City Clerk of the City of Morgan Hill is hereby ordered and directed to cause notice of the adoption of this Resolution and notice of hearing to be given to property owners pursuant to Section 39562.1 of the Government Code.

PASSED AND ADOPTED by the City Council of Morgan Hill at a Regular Meeting held on the 6th day of December 2023 by the following vote:

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

APPROVED:

ATTEST:

MARK TURNER, Mayor

MICHELLE BIGELOW, City Clerk

∞ **CERTIFICATION** ∞

I, Michelle Bigelow, City Clerk of the City of Morgan Hill, California, do hereby certify that the foregoing is a true and correct copy of Resolution No.23-xxx, adopted by the City Council at the meeting held on December 6, 2023.

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

DATE: _____

MICHELLE BIGELOW, City Clerk

CITY COUNCIL STAFF REPORT

MEETING DATE: December 6, 2023

PREPARED BY:

Barbara Voss, Management Analyst

APPROVED BY: City Manager

ADOPT RESOLUTION AUTHORIZING CALIFORNIA CLIMATE INVESTMENTS - DEPARTMENT OF FORESTRY AND FIRE PROTECTION (CAL FIRE) FIRE PREVENTION GRANT APPLICATION

RECOMMENDATION(S)

Adopt a resolution authorizing a grant application to the California Department of Forestry and Fire Protection and authorizing the City Manager to execute associated grant documents.

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Enhancing Public Safety

Protecting the Environment and Preserving Open Space and Agricultural Land

Maintaining and Enhancing Infrastructure

REPORT NARRATIVE:

The purpose of this staff report is to request the City Council's authorization to submit a grant application to Cal Fire which will assist the City with the development of a long-range wildfire mitigation plan.

CAL FIRE's Fire Prevention Grants Program provides funding for local projects and activities that address the risk of wildfire and reduce wildfire potential to forested and forest adjacent communities. Funded activities include hazardous fuel reduction, fire prevention planning, and fire prevention education with an emphasis on improving public health and safety while reducing greenhouse gas emissions. Up to \$117 million is being allocated to the 2023-2024 grant program which aims to reduce the risk of wildland fires to habitable structures and communities, while maximizing carbon sequestration in healthy wildland habitat and minimizing the uncontrolled release of emissions emitted by wildfires. More information can be found on the CAL FIRE website at: <https://www.fire.ca.gov/grants/fire-prevention-grants/>

The [Santa Clara County Community Wildfire Protection Plan](#) (CWPP) from 2016 identified strategic goals and specific mitigation projects for the City of Morgan Hill. This document serves as a reference framework for the City to address and remedy noted wildfire hazard assessments. City staff has determined that the fire prevention planning aspect of the CAL FIRE grant opportunity will support the development of a long-range

planning document which addresses the CWPP recommendations, prioritizes projects by critical need, provides applicable design concepts, and outlines an implementation timeline. This will be a critical first step in furthering the City's efforts related to community-wide wildfire protection and risk mitigation.

COMMUNITY ENGAGEMENT:

None

No specific engagement was done for the grant application.

ALTERNATIVE ACTIONS:

The Council could choose to not authorize the submission of the application and forego the opportunity for the grant or provide staff with other alternate direction.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The City Council has authorized submissions for this grant opportunity in prior years.

FISCAL AND RESOURCE IMPACT:

There is no fiscal impact associated with this grant application. The City may receive up to \$150,000 in grant funds if the application is successful. Should matching funds be necessary, the City currently has funding appropriated within the Infrastructure Planning Project of the Capital Improvement Program. The City has also submitted other related grant applications to other funding sources.

CEQA (California Environmental Quality Act):

Not a Project

The submission of a grant application is an administrative action and does not constitute a project under CEQA. However, should a grant agreement be executed with CAL FIRE, proof of adequate compliance with CEQA is required within one year of that execution.

RESOLUTION NO: XX-XXX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING THE SUBMITTAL OF A CALIFORNIA CLIMATE INVESTMENTS FIRE PREVENTION GRANT APPLICATION TO THE CALIFORNIA DEPARTMENT OF FORESTRY & FIRE PROTECTION AND AUTHORIZING THE CITY MANAGER TO EXECUTE DOCUMENTS REQUIRED TO APPLY AND ACCEPT THE GRANT FOR THE CITY, IF AWARDED, AND DIRECTING CERTAIN ACTIONS IN CONNECTION THEREWITH

WHEREAS, the City of Morgan Hill, is 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”); and

WHEREAS, the Governor of the State of California in cooperation with the California State Legislature has enacted State of California **Climate Investment**, which provides funds to the State of California and its political subdivisions for **fire prevention programs**; and

WHEREAS, the State Department of Forestry and Fire Protection (CAL FIRE) has been delegated the responsibility for the administration of the program within the State, setting up necessary procedures governing the application by local agencies, non-profit organizations, and others under the program; and

WHEREAS, the applicant will enter into an agreement with the State of California to carry out the Morgan Hill Wildfire Mitigation Plan project; and

WHEREAS, the City desires to apply for the grant funds through the State of California, Department of Forestry and Fire Protection; and

WHEREAS, the City Council determines that adoption of this Resolution is in the public interest.

NOW, THEREFORE, BE IT RESOLVED, THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY: APPROVES THE FILING OF AN APPLICATION FOR MORGAN HILL WILDFIRE MITIGATION PLAN; AND

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:

1. Certifies the approval of the filing of an application for “**California Climate Investment Fire Prevention Grant Program**”; and

2. Certifies that said applicant has or will have sufficient funds to operate and maintain the project; and
3. Certifies that funds under the jurisdiction of The City of Morgan Hill are available to begin the project; and
4. Certifies that the applicant will expend grant funds prior to the Grant Deadline of March 15, 2030; and
5. Delegates the authority to the City Manager to conduct all negotiations, sign and submit all documents, including, but not limited to applications, agreements, amendments, and payment requests, which may be necessary for the completion of Grant Scope;

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 a regular meeting held on the 6th day of December, 2023.

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

APPROVED:

ATTEST:

MARK TURNER, Mayor

MICHELLE BIGELOW, City Clerk

∞ CERTIFICATION ∞

I, Michelle Bigelow, City Clerk of the City of Morgan Hill, California, do hereby certify that the foregoing is a true and correct copy of Resolution No.xx-xxx, adopted by the City Council at a regular meeting held on December 6th, 2023.

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

DATE: _____

MICHELLE BIGELOW, City Clerk

CITY COUNCIL STAFF REPORT

MEETING DATE: December 6, 2023

PREPARED BY:

Inga Alonzo, Management Analyst

APPROVED BY: City Manager

APPROVE A THREE-YEAR SERVICE AGREEMENT WITH ALPHA ANALYTICAL LABORATORIES, INC. FOR A NOT-TO-EXCEED AMOUNT OF \$225,000 FOR WATER LABORATORY TESTING AND ANALYSIS SERVICES

RECOMMENDATION(S)

Approve and authorize the City Manager to execute and administer a three-year service agreement for a not-to-exceed amount of \$225,000 with Alpha Analytical Laboratories, Inc., for water laboratory testing and analysis services.

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Enhancing Public Safety

Protecting the Environment and Preserving Open Space and Agricultural Land

2022-2023 Strategic Priorities

Fiscal Sustainability

Guiding Documents

Water System Master Plan

REPORT NARRATIVE:

The Utilities Division systematically tests Morgan Hill's drinking water to ensure that water quality meets or exceeds all public health standards set by the U.S. Environmental Protection Agency (EPA) and the California Department of Public Health. Test results are reported to the State and to the public (City water customers receive the annual Water Quality Consumer Confidence Report). The EPA and State establish the regulations for the type and frequency of testing as well as quality control procedures. Drinking water sampling and analysis is carried out pursuant to the provisions of the California Health and Safety Code, Division 101, Part 12, Chapter 4, Section 100825. Additionally, rigorous water quality sample analysis is needed to support the City's Stormwater Management program. Various stormwater samples and samples from surface waterbodies are collected to meet Non-Point Source National Pollution Discharge Elimination Program (NPDES) permit requirements.

To meet these requirements, the City uses certified commercial laboratory services

located within a 60 mile radius of the City to perform labs and analysis of our water samples. A Request for Proposals (RFP) was issued in September 2023 for a vendor for a new three-year contract to provide analytical services beginning January 1, 2024. The RFP was posted to the City Website and was advertised in the Morgan Hill Times. Submittals were received by two qualified labs, but one of the proposals was deemed non-responsive because they failed to submit all of the required proposal documentation. The other submittal was from Alpha Analytical and meets all of the licensing, certification, qualification and experience required to perform this work. Alpha Analytical is the City's current lab contractor and has provided excellent services in the course of their current agreement. Therefore, staff recommends awarding the new agreement to Alpha Analytical.

COMMUNITY ENGAGEMENT:

Not Applicable

Sampling and analysis are required functions for the City Water Utility and Storm Water functions, which are services expected to be provided by the City. No specific community engagement was conducted in association with this item.

ALTERNATIVE ACTIONS:

City Council could decide to not approve the agreement and direct staff to re-bid the service. This is not recommended as the formal procedures have already been fully performed by staff and it is not believed cost savings will be achieved by rebidding.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On December 4, 2019, Council authorized the City Manager to enter into a three-year agreement with Alpha Analytical in the amount of \$200,000.

FISCAL AND RESOURCE IMPACT:

Funds for these services are included in the annual operating budget and costs are allocated on an as-used basis across Water Operations (Fund 650) not to exceed \$190,000 and the Stormwater Program (Fund 232) not to exceed \$35,000.

CEQA (California Environmental Quality Act):

Categorical Exemption

Section 15308--Actions by Regulatory Agencies for Protection of the Environment

**SERVICE AGREEMENT
ALPHA ANALYTICAL LABORATORIES, INC.**

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

1. **City Authority.** This Agreement is entered into pursuant to the action of the Morgan Hill City Council taken on _____, _____, 20____.
2. **Term of Agreement.** This Agreement shall cover services rendered from the Effective Date of this Agreement until December 31, 2026 at which time SERVICE PROVIDER'S services shall be completed. The City Manager is authorized to extend the term of this Agreement for a maximum period of one year. Any such extension shall be in writing and signed by both Parties to this Agreement.
3. **Scope of Service.** The services to be performed by SERVICE PROVIDER shall be water laboratory testing and analysis services as further described in **Exhibit A.**
4. **Compensation.** SERVICE PROVIDER shall be compensated as follows:
 - 4.1. **Amount.** \$225,000.00. Total compensation to SERVICE PROVIDER under this Agreement during its initial term set forth in Section 2 above shall not exceed Two Hundred Twenty-Five Thousand Dollars and shall be billed based on the rate and basis set forth in **Exhibit B.** If the City Manager extends the term of this Agreement pursuant to the provisions of Section 2 above, the City Manager shall have the authority to increase the maximum compensation allowed to be paid to SERVICE PROVIDER during that extended term period, so long as City Council has appropriated sufficient funds therefor, the Parties mutually agree to such amount in a writing signed by both Parties to this Agreement and provided further that in no event shall such maximum compensation allowed for the extended term exceed 105% of the maximum compensation allowed to be paid to SERVICE PROVIDER for one year of service during the initial term of this Agreement.
 - 4.2. **Billing.** SERVICE PROVIDER shall provide CITY with an invoice containing the dated, detailed, and itemized descriptions of all services performed and expenses incurred (if such expenses are reimbursable pursuant to Exhibit B) by SERVICE PROVIDER on a monthly basis unless otherwise specified in Exhibit B. All invoices shall be sent to the CITY addressed to the department head or project manager identified below in Section 14 Notices. Payment will be made to SERVICE PROVIDER within thirty (30) days of receipt of invoice by CITY. Any rate charged shall be prorated where services are interrupted or not provided for any rate period (for example, any monthly rate charge should be prorated when services were interrupted or provided for only part of the month). For services billed on an hourly rate, the minimum unit of billed time shall not exceed one tenth of one hour. CITY shall pay for services and expenses (if so provided in Exhibit B) up to the limit of compensation set forth above, that in the CITY'S judgment were necessary and reasonable. Services for work performed and expenses incurred in excess of the total compensation set forth in paragraph 4.1 above shall be at no cost to CITY.
5. **Termination.** CITY or SERVICE PROVIDER shall have the right to terminate this Agreement, without cause, by giving thirty (30) days' written notice or less under urgent circumstances. Upon such termination,

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

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

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

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

8. **Insurance Requirements.** SERVICE PROVIDER shall procure and provide proof of the insurance coverage required by this section in the form of certificates and endorsements. The required insurance must cover the activities of SERVICE PROVIDER, including its subcontractors, employees and agents, relating to or arising from the performance of any work or service under this Agreement, and must remain in full force and effect at all times during the period covered by this Agreement. **The coverages may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by excess or "umbrella" policies, provided each such policy complies with the requirements set forth herein. Any deductibles or self-insured retentions must be declared to and approved by CITY. SERVICE PROVIDER further understands that 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 the CITY for at least five (5) years after the completion of work performed under this Agreement.

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

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

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

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

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

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

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

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

8.2.2. Workers Compensation.

If the performance of SERVICE PROVIDER'S work or service under this Agreement involves access to or activity on any property or premises owned or occupied by the CITY, including, but not limited to, SERVICE PROVIDER'S presence during site visits

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

- 8.3. **Qualification of Insurers.** All insurance required pursuant to this Agreement must be issued by a company licensed and admitted, or otherwise legally authorized to carry out insurance business in the State of California, and each insurer must have a current A.M. Best's financial strength rating of "A" or better and a financial size rating of "VII" or better.
- 8.4. **Certificates.** SERVICE PROVIDER shall furnish CITY with copies of all certificates as outlined herein, whether new or modified, promptly upon receipt. In the event of a claim or legal action, SERVICE PROVIDER shall promptly furnish CITY of Morgan Hill with copies of all policies outlined herein. No policy subject to SERVICE PROVIDER'S agreement with the CITY shall be canceled or materially changed except after thirty (30) days' notice by the insurer to CITY. A "material change" is a change that results in non-compliance with any insurance requirements in this section 8. Certificates, including renewal certificates, may be mailed electronically to riskmgmt@morganhill.ca.gov or delivered to the Certificate Holder address provided herein.

Certificate Holder address:

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

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

10. **Compliance with Law.**

- 10.1. SERVICE PROVIDER and its officers, employees, agents, and subcontractors shall comply with all applicable laws, ordinances, administrative regulations, and permitting requirements in carrying out their obligations under this Agreement. SERVICE PROVIDER and its officers, employees, agents, and subcontractors covenant there shall be no discrimination based upon any basis prohibited by state or federal law, including but not limited to, race, color, creed, religion, gender, marital status, age, sexual orientation, national origin, mental disability, physical disability, medical condition, or ancestry, in any activity pursuant to this Agreement.
- 10.2. Compliance with Wage and Hour Laws: SERVICE PROVIDER, and any subcontractor it employs to complete work under this Agreement, shall comply with all applicable federal, state and local wage and hour laws. Applicable laws may include, but are not limited to, the Federal Fair Labor Standards Act and the California Labor Code.

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

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

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

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

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

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

11. **Independent Contractor.** SERVICE PROVIDER is an independent contractor and not an agent or employee of CITY.
12. **Confidentiality.** All data, documents, or other information received by SERVICE PROVIDER from CITY or prepared in connection with SERVICE PROVIDER'S services under this Agreement are deemed confidential and shall not be disclosed to any third party by SERVICE PROVIDER without prior written consent by CITY.
13. **Conflict of Interest and Reporting.** SERVICE PROVIDER shall at all times avoid conflict of interest or appearance of conflict of interest in performance of this Agreement.

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

Address of SERVICE PROVIDER is as follows:

Alpha Analytical Laboratories, Inc.
262 Rickenbacker Circle
Livermore, CA 94551

Address of CITY is as follows:

Utilities Division	with a copy to:
City of Morgan Hill	City Clerk
100 Edes St.	City of Morgan Hill
Morgan Hill, CA 95037	17575 Peak Avenue
	Morgan Hill, CA 95037

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

16. **Service Provider's Proposal.** If applicable, this Agreement shall include SERVICE PROVIDER'S proposal or bid which is incorporated herein. In the event of any inconsistency between the terms of the proposal and this Agreement, this Agreement shall govern.

17. **Maintenance of Records.**

- 17.1. **Maintenance.** SERVICE PROVIDER shall prepare, maintain, and preserve all reports and records that may be required by federal, state, and CITY rules and ordinances related to services provided under this Agreement. SERVICE PROVIDER shall maintain records for a period of at least 3 years after receipt of final payment under this Agreement. If any litigation, claim, negotiation, audit exception, or other action relating to this Agreement is pending at the end of the 3-year period, then SERVICE PROVIDER shall retain said records until such action is resolved.
- 17.2. **Access to and Audit of Records.** 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. **Notice Of Security and/or Privacy Incident.** If SERVICE PROVIDER, or its subcontractor, suspect, discover or are notified of a data security incident or potential breach of security and/or privacy relating to CITY PII, PHI and/or PCI, SERVICE PROVIDER shall immediately, but in no event later than forty-eight (48) hours from suspicion, discovery or notification of the incident or potential breach, notify CITY of such incident or potential breach. SERVICE PROVIDER shall, upon CITY's request, investigate such incident or potential breach, inform the CITY of the results of any such investigation, and assist the CITY in maintaining the confidentiality of such information. In addition to the foregoing, SERVICE PROVIDER shall provide CITY with any assistance necessary to comply with any state and/or federal laws requiring the provision of notice of any privacy incident or security breach with respect to any CITY PII, PHI and/or PCI to the affected or impacted individuals and/or organizations, in addition to any notification to applicable state and federal agencies. SERVICE PROVIDER agrees that it shall reimburse CITY for all expenses, costs, attorneys' fees, and resulting fines, penalties, and damages associated with such incident, breach, investigation and/or notification.

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

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[Signatures on Next Page]

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

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

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

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

ATTEST:

CITY OF MORGAN HILL

City Clerk/Deputy City Clerk

City Manager

Michelle Bigelow
Print Name

Christina J. Turner
Print Name

Date: _____

Date: _____

APPROVED AS TO FORM:

Alpha Analytical Laboratories, Inc.

City Attorney

By: _____

Donald A. Larkin
Print Name

ROBBIE PHILLIPS, PRESIDENT

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

Date: _____

Date: _____ 11/13/2023

By: _____

DAVID PINGATORE, SECRETARY

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

Date: _____ 11/13/2023

EXHIBIT A SCOPE OF SERVICES

Contractor shall provide laboratory testing and analysis services on drinking water samples provided by the City of Morgan Hill. The services shall include transportation to pick up collected water samples from the City's Corporation Yard at 100 Edes Street in Morgan Hill. Because of this the contractor must be located within a 60 mile radius to the City of Morgan Hill Corporation Yard. The contractor's services shall also include any and all labor, materials, equipment, transportation, facilities and services for the sample collection analysis, and report submittal.

All water sampling analysis shall be done using current EPA methods for drinking water approved by the State Water Resources Control Board and in accordance with Article 17. The contractor shall provide electronic reporting of analysis results via email. The results shall include the laboratory letterhead cover sheet signed by an official of the laboratory and a copy of the original chain of custody. In addition, the contractor shall submit a monthly electronic spreadsheet for all the previous month's analysis results including subcontracted lab results by the 10th of the month.

The City also requires proactive assistance from the chosen laboratory in assuring that the quality of the City's water is maintained. To this end, the City will ask the contracted lab to actively help the City interpret and follow any new regulations, communicate immediately with the City any time a sample exceeds State MCL, and meet periodically with City staff to resolve problems and provide advisement.

The laboratory will be required to provide extra samples, as needed, to be taken at the same unit price per method as provided in Exhibit B of this contract. From time to time, the City also requires testing and analysis of Stormwater samples taken from local creeks. This would be a time and materials task and defined by task order to the contracted laboratory. A not to exceed amount will be defined in this contract.

The Contractor, if requested, will subcontract samples for HF183 Bacteroides analysis to LuminAltra, a specialty lab located in Baltimore MD. There may be potential discounts offered for high volume collection events, but at a maximum, the total cost per sample to the City would be \$550 for HF183 analysis. This includes Alpha Labs bench staff filtering and prepping the samples prior to shipping to LuminUltra for qPCR Fecal Assay testing.

The laboratory is to have staff available during normal business hours of the Utilities Division of 6:30 a.m. to 4:00 p.m. (Monday -Thursday) and 6:30 a.m. to 3:00 p.m. (Friday) and to ensure that there is a person available on-call 24 hours per day, 7 days per week.

EXHIBIT B
SCHEDULE OF COMPENSATION RATES

All water sampling analysis to be done using current EPA methods for drinking water approved by the State Water Resources Control Board and in accordance with Article 17.

Pursuant to this Request for Proposal, the Service Provider hereby proposes and agrees that on award by the City of Morgan Hill and under this Proposal, and in accordance with the provisions therein stated, to execute a Contract to furnish and all labor, materials, equipment, transportation, facilities, and services for the sample collection, analysis, and report submittal for Calendar Year **2024** for the City of Morgan Hill Laboratory Testing and Analysis Program, in accordance with the Specifications and at the prices quoted in this Proposal as follows:

WEEKLY TESTS							
Matrix	Qty	Analysis	Price/Sample (24 hour)	Price/Sample (5 day)	Price/Sample (Standard*)	TOTAL ANNUAL PRICE (Standard)	Lab or Subcontract
Liquid	12	Routine Total Coliform P/A	15.00	15.00	15.00	9,360.00	Lab
Liquid	3	Total Coliform MPN (Special)	20.00	20.00	20.00	3,120.00	Lab
						12,480.00	

MONTHLY TESTS							
Matrix	Qty	Analysis	Price/Sample (24 hour)	Price/Sample (5 day)	Price/Sample (Standard*)	TOTAL ANNUAL PRICE (Standard)	Lab or Subcontract
Liquid	3	Source Total Coliform P/A (Special)	15.00	15.00	15.00	540.00	Lab
						540.00	

QUARTERLY TESTS

Matrix	Qty	Analysis	Price/Sample (Standard*)	TOTAL ANNUAL PRICE (Standard)	Lab or Subcontract
Liquid	4	TTHM - Stage 2 (Dist. System)	55.00	880.00	Lab
Liquid	4	HAA5 (Dist system)	95.00	1,520.00	Lab
Liquid	3	Nitrates	25.00	300.00	Lab
Liquid	3	Title 22: Regulated Inorganic Chemicals	200.00	2,400.00	Lab
Liquid	3	Title 22: Regulated Volatile Organic Chemicals	85.00	1,020.00	Lab
Liquid	3	Title 22: Regulated Synthetic Organic Chemicals	1,370.00	16,440.00	Lab and Sub
				22,560.00	

SEMI ANNUAL TESTS

Matrix	Qty	Analysis	Price/Sample (Standard*)	TOTAL ANNUAL PRICE (Standard)	Lab or Subcontract
Liquid	5	Title 22: Regulated Synthetic Organic Chemicals	1,370.00	13,700.00	Lab and Sub
				13,700.00	

CALENDAR YEAR 2024
PAGE 3 OF 3

ANNUAL TESTS

Matrix	Qty	Analysis	Price/Sample (Standard*)	TOTAL ANNUAL PRICE (Standard)	Lab or Subcontract
Liquid	5	Title 22: General Mineral-General Physical	160.00	800.00	Lab
Liquid	5	Title 22: Inorganic Chemical	200.00	1,000.00	Lab
Liquid	5	Title 22: Regulated Volatile Organic Chemicals	85.00	425.00	Lab
Liquid	5	Title 22: Regulated Synthetic Organic Chemicals	1,370.00	6,850.00	Lab and Sub
Liquid	16	Nitrates	25.00	400.00	Lab
Liquid	30	Lead and Copper Rule	40.00	1,200.00	Lab
Liquid	3	Title 22: Radiological	70.00	210.00	Sub

O:\Utilities\Admin\Purchasing\Bids-RFPs-RFQs\FY2023-24\Lab Testing Services\Submittals\Alpha\MH Attachment 4- Cost Schedule for Water Laboratory Testing and Analysis Services
* Standard = 10 Calendar days

Liquid	25	Total Coliform (Special)	15.00	375.00	Lab
Liquid	25	WQ Investigation (Color, Odor, Turbidity, pH, TDS, EC, Sulfate, Fe, Mn, Cu)	110.00	2,750.00	Lab
				14,010.00	

SUBTOTAL SAMPLES	63,290.00
TRANSPORTATION - weekly pickup at Corporation Yard	0.00
TOTAL FOR CY 2024	63,290.00

COST PROPOSAL FOR PROVIDING LABORATORY TESTING AND ANALYSIS SERVICES

All water sampling analysis to be done using current EPA methods for drinking water approved by the State Water Resources Control Board and in accordance with Article 17.

Pursuant to this Request for Proposal, the Service Provider hereby proposes and agrees that on award by the City of Morgan Hill and under this Proposal, and in accordance with the provisions therein stated, to execute a Contract to furnish and all labor, materials, equipment, transportation, facilities, and services for the sample collection, analysis, and report submittal for Calendar Year **2025** for the City of Morgan Hill Laboratory Testing and Analysis Program, in accordance with the Specifications and at the prices quoted in this Proposal as follows:

WEEKLY TESTS							
Matrix	Qty	Analysis	Price/Sample (24 hour)	Price/Sample (5 day)	Price/Sample (Standard*)	TOTAL ANNUAL PRICE (Standard)	Lab or Subcontract
Liquid	12	Routine Total Coliform P/A	16.00	16.00	16.00	9,984.00	Lab
Liquid	3	Total Coliform MPN (Special)	21.00	21.00	21.00	3,276.00	Lab
						13,260.00	

MONTHLY TESTS							
Matrix	Qty	Analysis	Price/Sample (24 hour)	Price/Sample (5 day)	Price/Sample (Standard*)	TOTAL ANNUAL PRICE (Standard)	Lab or Subcontract
Liquid	3	Source Total Coliform P/A (Special)	16.00	16.00	16.00	576.00	Lab
						576.00	

QUARTERLY TESTS

Matrix	Qty	Analysis	Price/Sample (Standard*)	TOTAL ANNUAL PRICE (Standard)	Lab or Subcontract
Liquid	4	TTHM - Stage 2 (Dist. System)	55.00	880.00	Lab
Liquid	4	HAA5 (Dist system)	95.00	1,520.00	Lab
Liquid	3	Nitrates	25.00	300.00	Lab
Liquid	3	Title 22: Regulated Inorganic Chemicals	200.00	2,400.00	Lab
Liquid	3	Title 22: Regulated Volatile Organic Chemicals	85.00	1,020.00	Lab
Liquid	3	Title 22: Regulated Synthetic Organic Chemicals	1,370.00	16,440.00	Lab and Sub
				22,560.00	

SEMI ANNUAL TESTS

Matrix	Qty	Analysis	Price/Sample (Standard*)	TOTAL ANNUAL PRICE (Standard)	Lab or Subcontract
Liquid	5	Title 22: Regulated Synthetic Organic Chemicals	1,370.00	13,700.00	Lab and Sub
				13,700.00	

CALENDAR YEAR 2025
PAGE 3 OF 3

ANNUAL TESTS

Matrix	Qty	Analysis	Price/Sample (Standard*)	TOTAL ANNUAL PRICE (Standard)	Lab or Subcontract
Liquid	5	Title 22: General Mineral-General Physical	160.00	800.00	Lab
Liquid	5	Title 22: Inorganic Chemical	200.00	1,000.00	Lab
Liquid	5	Title 22: Regulated Volatile Organic Chemicals	85.00	425.00	Lab
Liquid	5	Title 22: Regulated Synthetic Organic Chemicals	1,370.00	6,850.00	Lab and Sub
Liquid	16	Nitrates	25.00	400.00	Lab
Liquid	30	Lead and Copper Rule	40.00	1,200.00	Lab
Liquid	3	Title 22: Radiological	70.00	210.00	Sub

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* Standard = 10 Calendar days

Liquid	25	Total Coliform (Special)	16.00	400.00	Lab
Liquid	25	WQ Investigation (Color, Odor, Turbidity, pH, TDS, EC, Sulfate, Fe, Mn, Cu)		0.00	Lab
				11,285.00	

SUBTOTAL SAMPLES	61,381.00
TRANSPORTATION - weekly pickup at Corporation Yard	0.00
TOTAL FOR CY 2025	61,381.00

COST PROPOSAL FOR PROVIDING LABORATORY TESTING AND ANALYSIS SERVICES

All water sampling analysis to be done using current EPA methods for drinking water approved by the State Water Resources Control Board and in accordance with Article 17.

Pursuant to this Request for Proposal, the Service Provider hereby proposes and agrees that on award by the City of Morgan Hill and under this Proposal, and in accordance with the provisions therein stated, to execute a Contract to furnish and all labor, materials, equipment, transportation, facilities, and services for the sample collection, analysis, and report submittal for Calendar Year **2026** for the City of Morgan Hill Laboratory Testing and Analysis Program, in accordance with the Specifications and at the prices quoted in this Proposal as follows:

WEEKLY TESTS							
Matrix	Qty	Analysis	Price/Sample (24 hour)	Price/Sample (5 day)	Price/Sample (Standard*)	TOTAL ANNUAL PRICE (Standard)	Lab or Subcontract
Liquid	12	Routine Total Coliform P/A	17.00	17.00	17.00	10,608.00	Lab
Liquid	3	Total Coliform MPN (Special)	22.00	22.00	22.00	3,432.00	Lab
						14,040.00	

MONTHLY TESTS							
Matrix	Qty	Analysis	Price/Sample (24 hour)	Price/Sample (5 day)	Price/Sample (Standard*)	TOTAL ANNUAL PRICE (Standard)	Lab or Subcontract
Liquid	3	Source Total Coliform P/A (Special)	17.00	17.00	17.00	612.00	Lab
						612.00	

QUARTERLY TESTS

Matrix	Qty	Analysis	Price/Sample (Standard*)	TOTAL ANNUAL PRICE (Standard)	Lab or Subcontract
Liquid	4	TTHM - Stage 2 (Dist. System)	55.00	880.00	Lab
Liquid	4	HAA5 (Dist system)	100.00	1,600.00	Lab
Liquid	3	Nitrates	25.00	300.00	Lab
Liquid	3	Title 22: Regulated Inorganic Chemicals	200.00	2,400.00	Lab
Liquid	3	Title 22: Regulated Volatile Organic Chemicals	85.00	1,020.00	Lab
Liquid	3	Title 22: Regulated Synthetic Organic Chemicals	1,370.00	16,440.00	Lab and Sub
				22,640.00	

SEMI ANNUAL TESTS

Matrix	Qty	Analysis	Price/Sample (Standard*)	TOTAL ANNUAL PRICE (Standard)	Lab or Subcontract
Liquid	5	Title 22: Regulated Synthetic Organic Chemicals	1,370.00	13,700.00	Lab and Sub
				13,700.00	

CALENDAR YEAR 2026
PAGE 3 OF 3

ANNUAL TESTS

Matrix	Qty	Analysis	Price/Sample (Standard*)	TOTAL ANNUAL PRICE (Standard)	Lab or Subcontract
Liquid	5	Title 22: General Mineral-General Physical	160.00	800.00	Lab
Liquid	5	Title 22: Inorganic Chemical	200.00	1,000.00	Lab
Liquid	5	Title 22: Regulated Volatile Organic Chemicals	85.00	425.00	Lab
Liquid	5	Title 22: Regulated Synthetic Organic Chemicals	1,370.00	6,850.00	Lab and Sub
Liquid	16	Nitrates	25.00	400.00	Lab
Liquid	30	Lead and Copper Rule	40.00	1,200.00	Lab
Liquid	3	Title 22: Radiological	70.00	210.00	Sub

O:\Utilities\Admin\Purchasing\Bids-RFPs-RFQs\FY2023-24\Lab Testing Services\Submittals\Alpha\MH Attachment 4- Cost Schedule for Water Laboratory Testing and Analysis Services
* Standard = 10 Calendar days

Liquid	25	Total Coliform (Special)	17.00	425.00	Lab
Liquid	25	WQ Investigation (Color, Odor, Turbidity, pH, TDS, EC, Sulfate, Fe, Mn, Cu)	110.00	2,750.00	Lab
				14,060.00	

SUBTOTAL SAMPLES	65,052.00
TRANSPORTATION - weekly pickup at Corporation Yard	0.00
TOTAL FOR CY 2026	65,052.00

Extra drinking water samples as needed per the pricing in this schedule, not to exceed a contract total of \$190,000.
Stormwater analysis will be requested as a materials task not to exceed \$35,000.

EXHIBIT C
SCHEDULE OF PERFORMANCE

Per Exhibit B, laboratory shall provide testing and analysis services, weekly, monthly , quarterly and annually with weekly pick up of samples for analysis. The contractor shall submit a monthly electronic spreadsheet for all the previous month's analysis results including subcontracted lab results by the 10th of the month. The City shall be invoiced once a month for all of the testing done per month from the 1st of the month to the last day of the month.

CITY COUNCIL STAFF REPORT

MEETING DATE: December 6, 2023

PREPARED BY:

Tanya Carothers, Environmental Services Administrator

APPROVED BY: City Manager

APPROVE CONTRACT WITH SCS ENGINEERS FOR COMPLETION OF A FOOD WASTE PREVENTION STUDY IN THE AMOUNT OF \$111,538

RECOMMENDATION(S)

Authorize the City Manager to enter into an agreement with SCS Engineers for completion of a Food Waste Prevention Study.

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Protecting the Environment

Advancing Regional Initiatives

2022-2023 Strategic Priorities

Community Outreach, Engagement, and Messaging

REPORT NARRATIVE:

The purpose of this agenda item is to authorize the City Manager to enter into a contract with SCS Engineers for completion of a Food Waste Prevention Study in partnership with the City of Gilroy - see Attachment A.

Background

On March 2, 2022, Council authorized submittal of an application for funds from the CalRecycle SB 1383 Local Assistance Program Grant (SB 1383 LAP Grant). Eligible items under the grant included SB 1383 programs related to Mandatory Organic Waste Recycling, Procurement, and/or Edible Food Recovery Programs. The City of Morgan Hill partnered as the lead agency with the City of Gilroy to submit a larger regional grant application that totalled \$138,410. The Morgan Hill/Gilroy application proposed to: 1) provide the cities' contributions to the Edible Food Recovery Program that is managed regionally and supports countywide food recovery infrastructure upgrades and expansion; and 2) complete a Food Waste Prevention Project in both communities.

Project Description

The cities of Morgan Hill and Gilroy have partnered with the City of Mountain View to implement a community-based social marketing (CBSM) behavior change campaign to

address residential food waste at multi-family properties. The goal of this project is to find ways to support multifamily properties in reducing food waste that goes to landfills. While the study will focus primarily on food waste prevention, the study will also touch on food recycling and proper use of the green organics bin when there is food waste generated.

A previous pilot study in the region tested outreach to motivate residents in single-family homes to reduce food waste through eating leftovers and fridge organization. The proposed study aims to build upon the previous methodologies and findings on food waste prevention in single-family homes by tailoring outreach and engagement efforts to be relevant to multi-family properties. The project will include six tasks: 1) planning; 2) research and strategy development; 3) outreach and pilot development based on research; 4) pilot implementation including pre- and post- waste characterizations, pre- and post- surveys, postcard mailings, collateral, and door-to-door outreach and engagement; 5) analysis and reporting; and 6) project management. For more details associated with each of these tasks see the scope of work included in the contract, see Attachment A.

The Food Waste Prevention Study will be completed in coordination with the City of Gilroy and the City of Mountain View. As the lead agency in the SB 1383 LAP Grant, Morgan Hill will manage Gilroy's funds under the Morgan Hill contract, and Mountain View will enter into their own contract with SCS Engineers. All three agencies will benefit from the efficiencies of working together on tasks included in the study. If Mountain View decides not to proceed with the study, then the project will be adjusted so that the study can take place in its entirety within Morgan Hill and Gilroy.

Because SCS Engineers completed the prior Food Waste Prevention Study that focused on single family dwellings, there will be time savings and cost savings in using the same consultant because they can use prior findings and methodologies and adjust them to cater to a multifamily project. It is not expected that a competitive process would identify a consultant at a lower cost and with the relevant project expertise held by SCS Engineers. For this reason, the City of Morgan Hill proposes entering into an agreement for the services of SCS Engineers.

COMMUNITY ENGAGEMENT:

Inform, Consult, Involve

Completion of the Food Waste Prevention Study will essentially be one big community engagement activity as various methods are used to encourage involvement, consult on opinions, and involve residents in decisions made in prevention of the generation of food waste. Additionally, findings may be used in future outreach and engagement with multifamily properties regarding food waste prevention and food recycling in the green bins.

ALTERNATIVE ACTIONS:

The Council could decide not to move forward with the proposed Food Waste Prevention Project. This would result in a missed opportunity to save time and funds

from the efficiencies of partnering with the City of Mountain View and the use of SCS Engineers who completed the prior Food Waste Prevention Study for single-family dwellings. Staff would need to consider other projects in coordination with the City of Gilroy in order to complete a Food Waste Prevention Study, which the cities committed to as part of their SB 1383 LAP Grant application.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On March 2, 2022, the City Council approved submittal of an application for the CalRecycle SB 1383 LAP Grant which included funds allocated for a Food Waste Prevention Study.

FISCAL AND RESOURCE IMPACT:

The Food Waste Prevention Study will be funded by SB 1383 LAP Grant funds which encompassed one-time revenues and expenses of approximately \$138,410 in FY 2022-23. \$111,538 in grant funds not spent in FY 2022-23 were rolled over to FY 2023-24 to cover the cost of the Food Waste Prevention Study. SB 1383 compliance activities are included in the work program of the Public Services Department.

CEQA (California Environmental Quality Act):

Not a Project

The Food Waste Prevention Study is an administrative program and will not result in a change to the physical environment, therefore entering into a contract to complete the study is not a project under the California Environmental Quality Act.

CONSULTANT AGREEMENT FOR DESIGN PROFESSIONALS
Stearns, Conrad and Schmidt Consulting Engineers, Inc. dba SCS Engineers

THIS AGREEMENT is entered into and becomes effective on _____ (Effective Date), by and between the CITY OF MORGAN HILL, a municipal corporation, ("CITY"), and Stearns, Conrad and Schmidt Consulting Engineers, Inc. dba SCS Engineers a Virginia Corporation ("CONSULTANT"), duly authorized to do business in California and will remain so during the term of this Agreement, hereinafter referred to collectively as "Parties." In consideration of the promises and the mutual covenants contained in this Agreement, the Parties agree as follows:

1. **City Authority.** This Agreement is entered into pursuant to the action of the Morgan Hill City Council taken on _____, _____, 20____.
2. **Term of Agreement.** This Agreement shall cover services rendered from the Effective Date of this Agreement until May 1, 2024, at which time CONSULTANT'S services shall be completed. The City Manager is authorized to extend the term of this Agreement for a maximum period of one year. Any such extension shall be in writing and signed by both Parties to this Agreement.
3. **Scope of Service.** The services to be performed by CONSULTANT shall be completion of a Community Based Social Marketing (CBSM) Food Waste Prevention Study as further described in **Exhibit A.**
4. **Compensation.** CONSULTANT shall be compensated as follows:
 - 4.1. **Amount.** \$111,538.00. Total compensation to CONSULTANT under this Agreement during its initial term set forth in Section 2 above shall not exceed one hundred eleven thousand five hundred thirty eight dollars and shall be billed based on the rate and basis set forth in **Exhibit B.** If the City Manager extends the term of this Agreement pursuant to the provisions of Section 2 above, the City Manager shall have the authority to increase the maximum compensation allowed to be paid to CONSULTANT, so long as City Council has appropriated sufficient funds therefor, the Parties mutually agree to such amount in a writing signed by both Parties to this Agreement, and provided further that in no event shall such maximum compensation allowed for the term exceed the City Manager's authority pursuant to Chapter 3.04 of the Morgan Hill Municipal Code, unless otherwise authorized by City Council.
 - 4.2. **Billing.** CONSULTANT shall provide CITY with an invoice containing the dated, detailed, and itemized descriptions of all services performed and expenses incurred (if such expenses are reimbursable pursuant to Exhibit B) by CONSULTANT on a monthly basis unless otherwise specified in Exhibit B. All invoices shall be sent to the CITY addressed to the department head or project manager identified below in Section 13 Notices. Any rate charged shall be prorated where services are interrupted or not provided for any rate period (for example, any monthly rate charge should be prorated when services were interrupted or provided for only part of the month). For services billed on an hourly rate, the minimum unit of billed time shall not exceed one tenth of one hour. CITY shall pay for services and expenses (if so provided in Exhibit B) up to the limit of compensation set forth above, that in the CITY'S judgment were necessary and reasonable. Services for work performed and expenses incurred in excess of the total compensation set forth in paragraph 4.1 above shall be at no cost to CITY.

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

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

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

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

7.1. **Insurance Types and Amounts.**

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

combined insurance policies (including any excess or “umbrella” policies), whichever is greater.

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

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

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

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

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

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

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

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

7.2.2. Workers Compensation.

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

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

- 7.4. **Certificates.** CONSULTANT shall furnish CITY of Morgan Hill with copies of all certificates as outlined herein, whether new or modified, promptly upon receipt. In the event of a claim or legal action, CONSULTANT shall promptly furnish CITY of Morgan Hill with copies of all policies outlined herein. No policy subject to the CONSULTANT'S agreement with the CITY shall be canceled or materially changed except after thirty (30) days' notice by the insurer to CITY. A "material change" is a change that results in non-compliance with any insurance requirements in this section 7. Certificates, including renewal certificates, may be mailed electronically to riskmgmt@morganhill.ca.gov or delivered to the Certificate Holder address provided herein.

Certificate Holder address:

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

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

9. **Compliance with Law.**

- 9.1. CONSULTANT and its officers, employees, agents, and subcontractors shall comply with all applicable laws, ordinances, administrative regulations, and permitting requirements in carrying out their obligations under this Agreement. CONSULTANT and its officers, employees, agents, and subcontractors covenant there shall be no discrimination based upon any basis prohibited by State or Federal law, including but not limited to, race, color, creed, religion, gender, marital status, age, sexual orientation, national origin, mental disability, physical disability, medical condition, or ancestry, in any activity pursuant to this Agreement.
- 9.2. Compliance with Wage and Hour Laws: Consultant, and any subcontractor it employs to complete work under this Agreement, shall comply with all applicable federal, state, and local wage and hour laws. Applicable laws may include, but are not limited to, the Federal Fair Labor Standards Act and the California Labor Code.

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

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

MANNER IN WHICH IT WILL SATISFY – ANY SUCH JUDGMENTS, DECISIONS OR ORDERS.

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

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

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

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

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

Address of CONSULTANT is as follows:

Stearns, Conrad and Schmidt Consulting Engineers, Inc. dba SCS Engineers

Attn: Lauren Romanazzi
438 S. Marengo Avenue
Pasadena, CA 91101

Address of CITY is as follows:

Attn: Tanya Carothers
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.

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

[Signatures on Next Page]

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

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

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

(1) CHAIRPERSON OF THE BOARD, PRESIDENT, OR VICE PRESIDENT; AND

(2) SECRETARY, ASSISTANT SECRETARY, CHIEF FINANCIAL OFFICER OR ASSISTANT TREASURER.

ATTEST:

CITY OF MORGAN HILL

City Clerk/Deputy City Clerk

City Manager

Michelle Bigelow

Christina J. Turner

Print Name

Print Name

Date: _____

Date: _____

APPROVED AS TO FORM:

STEARNS, CONRAD AND SCHMIDT
CONSULTING ENGINEERS, INC. dba SCS
ENGINEERS



City Attorney

By:

MP Leonard, Senior Vice President

Donald A. Larkin

Print Name and Title of Signer.

If Corporate: Chairman, President or Vice
President

Date: _____

Date: 11/27/2023



By:

Curtis Jang, Sr. VP and CFO

Print Name and Title of Signer.

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

Date: 11/27/2023

**EXHIBIT A
SCOPE OF SERVICES**

See attached.

November 17, 2023

Ms. Jennifer Cutter
Ms. Tanya Carothers
Via Email

Subject: Proposal to Conduct Multi-Family Dwelling Food Waste Prevention Study

Dear Ms. Cutter and Carothers:

1.0 OVERVIEW

The Cities of Morgan Hill, Gilroy, and Mountain View seek to create a community-based social marketing (CBSM) behavior change campaign to address residential food waste in multi-family dwellings (MFDs). A previous pilot study in the region tested outreach to motivate residents in single-family (SF) homes to reduce food waste through eating leftovers and fridge organization. The proposed study aims to build upon previous findings by tailoring outreach and engagement efforts relevant to MFDs.

Before extending the previous outreach to the MFD context, it is essential to note some key differences between the two target populations (SF homes and MFDs). First, there is a difference in infrastructure, with SF dwellings each having individual carts, while MFDs have communal bins. This creates a context of anonymity when disposing of waste, making the establishment of social norms around accountability difficult. Second, while SB 1383 is the law and requires Californians to dispose of their food waste in designated 'organics' bins, many MFDs are not yet compliant due to various challenges resulting in food waste being disposed of in the properties' landfill bins. This issue makes it challenging to measure a reduction in food waste associated with the outreach because measures will have to rely on food waste comingled with other solid waste. Additionally, when food waste is mixed with bagged waste, the food waste behaviors are not observable.

In addition to differences in the target populations of SFDs versus MFDs, two other important considerations guide the design of this study. First, to make claims concerning the effect of outreach on MFD residents' behavior regarding food waste reduction, there must be a large enough sample size across a homogeneous area to allow for comparison. Second, each participating city has a different budget to contribute to the study. To address these considerations, the number of properties in each city included in the waste characterization sample size will be proportional to each city's budget. Additionally, the results of this study will be reported in aggregate (i.e., across all cities). We cannot make comparisons across cities or make conclusions about the performance of outreach materials within any specific city. Table 1 shows the distribution of efforts across cities. For the waste characterization, the total number of bags represents both the pre-and post-sorting activities.

Table 1. Study Design

	Waste Characterization					Outreach and Post Survey		
City	Properties ¹		Bins per Property	Bags per Bin	Total Bags	Pre-awareness Survey (treatment and control) ²	Households Receiving Outreach Materials ³	Post Survey (treatment and control) ⁴
	Treatment	Control						
Gilroy	10	5	3	1	90	60	460	690
Morgan Hill	8	4	3	1	72	48	368	552
Mountain View	2	1	3	1	18	12	92	138
Totals	20	10	9	3	180	120	920	1,380

¹ Values represent the minimum sample size; ² Values assumes at least 4 completed surveys per property; ³Value assumes an average of 46 households per property; ⁴ Values represent the total number of households the team would attempt to contact.

2.0 SCOPE OF WORK: MFD FOOD WASTE REDUCTION PILOT

Below is a scope of work and associated costs for a CBSM pilot to address the participating cities' food waste reduction and diversion goals. The budget for this study is \$128,115, with an expenditure deadline of April 1, 2024.

TASK 1: PLANNING

Kickoff meeting – One-hour call to understand the problem, confirm key questions that need to be answered, devise workflow, assign tasks, and establish goals and objectives more fully for the study.

Literature review – Obtain and review relevant academic, white, and grey literature on food waste behaviors, especially those in MFDs.

Study area identification – Through systematic desktop analysis (via hauler data, Google Earth, ESRI Arc GIS, or QGIS) and on-the-ground verification, AR and SCS staff will define a study area with the following characteristics:

- Number of properties: 30 (minimum)
- Number of bins at each property: minimum of 1
- Property managers must be able and willing to assist with bins access
- As possible, prioritize properties with a high proportion of families or larger household sizes.

Please note: due to the large sample size needed for this study and the logistic complexity of coordinating access to the preferred properties, this task will require significant coordination

between the participating cities and property managers. It is highly recommended that we begin outreach to property managers as soon as possible since lack of access will eliminate properties from the sample pool. We will attempt to contact each property three times. If after three times the property does not commit to involvement in the study, we will move on to the next property. Additionally, given the proposed method, properties not currently compliant with SB 1383 are preferred. However, field staff can perform organics measures should a property comply with SB 1383 or achieve compliance during pilot implementation.

Recommendation call – One-hour call to relay findings and discuss next steps.

TASK 1 Deliverables:

- Kickoff meeting agenda and notes
- summary of literature (2-3 pages)
- 1-page memo with written recommendations for the study area

TASK 2: RESEARCH AND STRATEGY DEVELOPMENT

Pre-Awareness Surveys – Action Research will develop a survey tool to verify the target behaviors, and the associated barriers and benefits which are relevant to the MFD context and to inform strategies for outreach to residents. The survey will also serve as a pre-assessment of knowledge, awareness and behavioral intention to reduce food waste at both treatment and control properties. Field staff from SCS will intercept residents at MFD properties in the study area to provide relevant data. A sample size of 120 households across the three cities will be needed to test for statistical significance.

Develop Barrier Benefit Document and Strategy Table – Action Research will analyze the data gathered from pre-awareness surveys to inform a list of barriers and benefits to reducing food waste in MFDs. From this analysis, a set of strategies (commitments, prompts, social diffusion, message framing, etc.) will be developed to serve as the base of the campaign.

Barrier Benefit/Strategy Call – One-hour call to relay findings and discuss next steps.

Task 2 Deliverables:

- Survey instrument
- Data collection protocol
- Data entry and management tools
- Call agenda and notes

TASK 3: OUTREACH AND PILOT DEVELOPMENT

While the outreach and pilot will focus primarily and mostly on food waste prevention, the items listed below will also briefly touch on food recycling and proper use of the green bin when there is food waste generated.

Review Existing Collateral – Collateral developed for the single-family study and related outreach from the region will be reviewed for relevance and identify any necessary updates.

Develop/Redesign Collateral – Apply necessary updates and develop any new collateral items deemed necessary based on barrier benefit research and chosen outreach strategies. The costs outlined below are estimates for redesigning five collateral items and producing 1,000 units each.

Script Development – Action Research will develop an interview script and protocol and conduct training for SCS staff engaging in one-on-one interactions with residents.

Post-Outreach Survey Development – To serve as an additional indicator of the effectiveness of outreach efforts, a post-outreach survey will be paired with the measurements of food waste. Action Research will develop the survey tool, script, and protocol that SCS staff will administer in the project area.

Material Production – Action Research will produce all necessary materials for the outreach campaign. The costs outlined below are estimates for producing 1,000 units of each piece (5 redesigned pieces of collateral).

DELIVERABLES: Redesigned collateral material (physical copies and design files);

- Pre-notification postcard (hard copy);
- Interview scripts (hard copy);
- Survey instrument (hard copy, does not include programming);
- 1–2-page memo outlining pilot implementation

TASK 4: PILOT IMPLEMENTATION

Baseline Waste Characterization – Prior to conducting outreach, field staff from SCS will visit each property (N=30) in the study area, select one random waste bag from three pre-selected bins and characterize the waste therein as inedible food, edible food, or non-food. Measures of weight and volume will be included, if possible. SCS will develop a protocol for this effort, which will also be used in the Post Outreach Waste Characterization subtask.

Pre-notification Mailing –A postcard will be mailed to the households in the treatment portions of the study area, alerting them that materials will soon be arriving.

Perform Outreach – SCS staff will go door to door in the treatment properties of the study area (N=20) to conduct interviews and perform outreach.

Post Outreach Waste Characterization – Approximately two weeks following the outreach, field staff from SCS will visit each property in the study area (N=30), select one waste bag at random from the same pre-selected bins, and characterize the waste therein.

Post Outreach Survey – The survey will be administered to the treatment and control groups and cover changes in behavior, knowledge, and awareness. In the treatment areas, the survey will only be administered at households who received the outreach materials and participated in the outreach interview (i.e., no ‘leave behind’ households will receive the post-outreach survey).

DELIVERABLES:

- Pre-notification postcard (mailing);
- Waste characterization protocol
- Baseline and post-outreach waste characterization (data file);
- Post outreach survey results (data file)

TASK 5: ANALYSIS AND REPORTING

Data Analysis – Action Research staff will analyze pre- and post-waste characterization and completed post-outreach surveys.

Reporting – Findings will be compiled in a final technical report.

Wrap-up Call – One-hour call to relay results and walk the client through the final report.

DELIVERABLES:

- Final report (document or slide deck hard copy)
- Call agenda and notes

TASK 6: PROJECT MANAGEMENT

Internal Planning and Coordination – Required meetings and email correspondence to plan and implement the study effectively.

Monthly Invoice – Monthly invoices will be provided to the prime contractor in accordance with their invoicing procedures.

3.0 BUDGET AND SCHEDULE

Table 2 below outlines the budget for each task in the study:

Table 2. Project Budget

Task	Cost
1 Planning	\$23,118.00
2 Research and Strategy Development	\$10,323.00
3 Outreach and Pilot Development	\$18,309.00
4 Pilot Implementation	\$36,335.00
5 Analysis and Reporting	\$18,788.00

6 Project Management	\$11,998.00
Total	\$128,110.00

Table 3. 2023 Fee Schedule

Title	Rate
SCS Engineers	
Staff Professional	\$145
Project Professional	\$175
Project Manager	\$280
Project Director	\$310
Action Research*	
President/Principal	\$200
Project Manager	\$145
Project Associate	\$115
Creative Manager	\$165
Creative Associate	\$125
Research Manager	\$140
Spark Team Advisor	\$225

*Costs for subcontractors are billed at actual cost plus a 10 percent administrative fee.

SCS will perform these services on a time and expense reimbursement basis, up to the total budget amount, according to the above 2023 Fee Schedule, and will not exceed the total budget without prior authorization by the City of Morgan Hill/Mountain View. SCS will invoice services on a time and expense reimbursement basis and submit separate monthly invoices to the cities of Morgan Hill and Mountain View. Work on the project will be billed based on which jurisdiction work was completed for, and when work completed benefits all jurisdictions equally then jurisdictions will be billed proportionally (87% of costs to Morgan Hill and 13% of costs to Mountain View).

We understand that each participating city has their own budget for this project:

- Mountain View: \$16,577
- Morgan Hill: \$50,894
- Gilroy: \$60,644

Mountain View has staff available to help with field support in their jurisdiction (such as conducting the pre-awareness surveys) and contacting and recruiting MFD property managers for this study as listed in Task 1. The scope of work can be completed for only Morgan Hill/Gilroy, however modification of the waste characterization and survey portions would need to be made. In the event Mountain View decides not to participate, SCS will divide the 30 participating properties among

Morgan Hill and Gilroy to ensure a statistically significant sample. For the waste characterization, SCS will sample 2 bags per property instead of 3 bags. The number of pre and post surveys and outreach material distributed will be reduced to reflect the reduction in the budget.

The proposed schedule is included as Table 3.

Table 4. Project Schedule

Task	Start	End
1 Planning	Early December 2023	Mid December 2023
2 Research and Strategy Development	Mid December 2023	Late December 2023
3 Outreach Development	Early December 2023	Early January 2024
4 Pilot Implementation	Early/Mid-January 2024	Early March 2024
5 Analysis and Reporting	Early March 2024	Late March 2024
6 Administration	December 2023	March 2024

After reviewing this proposal, please do not hesitate to contact Lauren Romanazzi with questions you may have. We appreciate this opportunity to present our proposal to the cities of Gilroy, Morgan Hill, and Mountain View and look forward to working with you on this endeavor.

Sincerely,



Michelle Leonard
Project Director
SCS Engineers



Lauren Romanazzi
Project Manager
SCS Engineers

**EXHIBIT B
SCHEDULE OF COMPENSATION RATES**

2023 SCS Fee Schedule

	Rate
Staff Professional	\$145
Project Professional	\$175
Project Manager	\$280
Project Director	\$310

Action Research Fee Schedule*

	Rate
President/Principal	\$200
Project Manager	\$145
Project Associate	\$115
Creative Manager	\$165
Creative Associate	\$125
Research Manager	\$140
Spark Team Advisor	\$225

***Costs for subcontractors are billed at actual cost plus a 10 percent administrative fee.**

EXHIBIT C
SCHEDULE OF PERFORMANCE

Task 1: Planning. Early December 2023 to Mid December 2023.

Task 2: Research and Strategy Development. Mid December 2023 to Late December 2023.

Task 3: Outreach Development. Early December 2023 to early January 2024.

Task 4: Pilot Implementation. Early/Mid-January 2024 to Early March 2024.

Task 5: Analysis and Reporting. Early March 2024 to Late March 2024.

Task 6: Administration. December 2023 to March 2024.

CITY COUNCIL STAFF REPORT

MEETING DATE: December 6, 2023

PREPARED BY:

Cynthia Iwanaga, Management Analyst

APPROVED BY: City Manager

APPROVE FIRST AMENDMENT TO THE TUCKER CONSTRUCTION ON-CALL FENCING CONTRACT, AND AUTHORIZE CITY MANAGER TO EXTEND CONTRACT UP TO TWO YEARS

RECOMMENDATION(S)

1. Approve the first amendment to the on-call contract for public works projects with Tucker Construction, Inc. for an additional year of services for \$150,000, for a total contract amount of \$250,000; and
2. Authorize the City Manager to execute and administer two additional one-year extensions of the on-call contract in annual amounts that would not increase the price of the contract for the immediately preceding year by more than five (5%) annually.

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Maintaining and Enhancing Infrastructure

2022-2023 Strategic Priorities

Fiscal Sustainability

REPORT NARRATIVE:

The purpose of this report is to provide the City Council with an opportunity to consider a First Amendment to the City's on-call contract for public works projects with Tucker Construction, Inc. for fencing construction, maintenance, and repair services at City facilities and City projects. The City has contracted for these services for many years. The process of obtaining quotes to select fencing contractors for individual projects, and processing the contract documentation can take several weeks, and many hours of staff time. To streamline the process, the City issued a Request for Proposals (RFP) in October 2021 to contract with a pre-qualified on-call fencing contractor who could respond to work proposal requests, and complete fencing construction and repair work for the City. One proposal was received from Tucker Construction, Inc.

The City has contracted with Tucker Construction, Inc. since December 22, 2021 to

provide on-call fencing construction, maintenance, and repair services to various City Public Services Department divisions, including the Maintenance, Utilities, and Engineering divisions. The original on-call contract was approved by the City Council on December 15, 2021 in the amount of \$100,000 for two years with three additional one-year extensions. Since Tucker Construction, Inc. has been under contract with the City, the amount of time needed to begin fencing projects, especially repairs, has been greatly reduced. The current contract expires on December 31, 2023.

This proposed First Amendment includes an increase of \$150,000 for an additional year of service that would extend the term to December 31, 2024, and increase the total amount of the contract from \$100,000 to \$250,000. The substantial increase in the amount of the contract is being proposed to accommodate the anticipated demand for on-call fencing services by the three Public Services Department divisions in the coming year. The recommended action would also authorize the City Manager to execute and administer the two (2) additional one-year extensions of the contract in annual amounts that would not increase the price of the contract for the immediately preceding year by more than five (5%) annually. The maximum not-to-exceed amount with two additional one-year extensions would be \$572,875.

COMMUNITY ENGAGEMENT:

Not Applicable

As fencing construction, 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 could decline to approve the First Amendment, and instead direct staff to proceed with a request for proposals for on-call fencing construction, maintenance, and repair services. Since Tucker Construction Inc.'s on-call contract expires on December 31, 2023, the City Council could authorize an extension of the contract allowing staff time to conduct an RFP process. This alternative is not recommended as City staff is highly satisfied with the quality and performance of Tucker Construction Inc.'s fencing services and conducting an RFP is not anticipated to result in a better value to the City.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The City Council previously approved the Tucker Construction, Inc. on-call fencing contract at its December 15, 2021 meeting.

FISCAL AND RESOURCE IMPACT:

The on-call fencing contractor service costs will be paid by the specific operating budgets or Capital Improvement Projects (CIP).

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.

FIRST AMENDMENT TO ON-CALL CONTRACT FOR PUBLIC WORKS PROJECTS TUCKER CONSTRUCTION, INC.

This FIRST AMENDMENT TO ON-CALL CONTRACT FOR PUBLIC WORKS PROJECTS is entered into and becomes effective on _____ (Effective Date), by THE CITY OF MORGAN HILL, a municipal corporation, ("CITY") and TUCKER CONSTRUCTION, INC., a California Corporation ("CONTRACTOR"), hereinafter referred to collectively as the "Parties".

RECITALS

The following recitals are a substantive part of this Agreement:

1. This First Amendment is entered into pursuant to the action of the Morgan Hill City Council taken on December 6, 2023.
2. The CITY and CONTRACTOR entered into the "ON-CALL CONTRACT FOR PUBLIC WORKS PROJECTS" made as of December 22, 2021, for services for a maximum compensation of One Hundred Thousand Dollars (\$100,000.00) ("ON-CALL CONTRACT"). The ON-CALL CONTRACT is attached as Exhibit "1" to this Amendment.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **Amendments:** All terms and conditions of the ON-CALL CONTRACT, 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. Per Subsection c of Section 4, "Terms and Compliance with Work Order," the term of the ON-CALL CONTRACT is extended for an additional twelve (12) months through December 22, 2024.
 - B. Subsection a of Section 4, "Compensation and Payment," is hereby amended to read as follows:

"a. Compensation to be paid to Contractor shall be as described in Attachment A and in accordance with the fees and rates set forth in Attachment B: Schedule of Compensation Rates, which are attached and incorporated herein by this reference, and each Work Order issued by the City. In no event shall Contractor's compensation exceed Two-Hundred Fifty Thousand dollars (\$250,000.00) without additional written authorization from the City. Payment by City under this Contract shall not be deemed a waiver of defects, even if such defects were known to the City at the time of payment."

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 the On-Call Contract and the terms and provisions of the ON-CALL CONTRACT, the terms of this First Amendment to the On-Call Contract shall govern and control.

TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS:

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

ATTEST:

CITY OF MORGAN HILL

Michelle Bigelow, City Clerk
Date: _____

Christina J. Turner, City Manager
Date: _____

APPROVED AS TO FORM:

Donald A. Larkin, City Attorney
Date: _____

**TUCKER CONSTRUCTION,
INC.**

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

Date: November 14, 2023

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

Date: November 14, 2023

ATTACHMENT B

SCHEDULE OF COMPENSATION RATES TUCKER CONSTRUCTION ON-CALL FENCING CONTRACT For January 1, 2024 to December 31, 2024

Item	Hourly Rate
Journeyperson – Laborer Rate Monday to Friday (8 am to 5 pm)	\$100.94
Journeyperson – Laborer Rate Monday to Friday (5 pm to 8 am) and Saturday Overtime	\$139.05
Journeyperson – Laborer Rate Sundays and Holiday Overtime	\$175.10
Foreman Journeyperson – Laborer Rate Monday to Friday (8 am to 5 pm)	\$118.45
Foreman Journeyperson – Laborer Rate Monday to Friday (5 pm to 8 am) and Saturday Overtime	\$164.80
Foreman Journeyperson – Laborer Rate Sundays and Holiday Overtime	\$200.85
Item	%
Bidders' Overhead and Profit Mark-Up %	15%

12604-21-079

EXHIBIT 1

**CITY OF MORGAN HILL
ON-CALL CONTRACT FOR PUBLIC WORKS PROJECTS
TUCKER CONSTRUCTION, INC.**

This on-call public works contract ("Contract") is entered into by and between the City of Morgan Hill, a municipal corporation ("City") and Tucker Construction, Inc. a California corporation ("Contractor") effective as of 12/22/2021, 2021.

The parties agree as follows:

1. Scope of Services. The Scope of Services attached as Exhibit A to this Contract provides for the general scope of and type of work to be performed by Contractor. When City identifies a project, City shall request a proposal from Contractor (Proposal Request Worksheet) based on the Scope of Services. Contractor shall provide a proposal within the number of days specified by City in its request. City and Contractor may negotiate the cost and scope. Upon receipt of a written notice to proceed, Contractor shall provide such services and related work at the time, place, and in the manner specified in Contractor's proposal, subject to the direction of the City through its staff that it may provide from time to time. A Change Order shall be prepared as provided in the General Conditions for changes in scope, price, or time. Contractor acknowledges that the Scope of Services provides for 24 hour-a-day, 7 day-a-week, on-call support on an as needed basis.

2. Contract Documents. The Contract Documents incorporated into this Contract include and are comprised of all of the following, and the definitions provided in Article 1 of the General Conditions apply to all of the Contract Documents, unless otherwise indicated:

- 2.1** Contract;
- 2.2** Payment and Performance Bonds (if Work Order exceeds \$25,000);
- 2.3** Special Conditions;
- 2.4** General Conditions;
- 2.5** Change Orders, if any;
- 2.6** Notice to Proceed (via email);
- 2.7** The following developed for each project: Proposal Request Worksheet ("Contractor's Proposal"), On-Call Construction Work Order ("Work Order")

3. Time for Performance.

- a. Time of Essence. Time is of the essence in the performance of this Contract. The time for completion of the services and related work to be performed by Contractor is an essential condition of this Contract. Contractor shall prosecute regularly and diligently the services and related work contemplated pursuant to this Contract consistent with Contractor's Proposal and shall provide, furnish and pay all labor, materials, necessary tools, expendable equipment, and all taxes, bonds, utility and transportation services required to perform such the services and related work.
- b. Performance Schedule. Contractor shall commence the services and related work pursuant to this Contract upon receipt of a written notice to proceed and shall perform all services and related work within the time period(s) established in the

Work Order/Contractor's Proposal. When requested by Contractor, extensions to the time period(s) specified may be approved in writing by the City Manager through a Change Order.

- c. **Term and Compliance with Work Order.** Unless earlier terminated as provided elsewhere in this Contract, this Contract shall continue in full force and effect for a period of two (2) years, commencing on the Effective Date. The City may, at its sole discretion, extend the term of this Contract on a 12-month basis not to exceed three (3) additional twelve (12) month renewal terms by giving written notice thereof to Contractor not less than thirty (30) days before the end of the contract term, such notice to be exercised by the City Manager. Contractor hereby agrees and acknowledges that any and all work or services performed pursuant to this Contract shall be based upon the issuance of a Work Order by the City. Contractor acknowledges that it is not guaranteed any minimum or specific amount of work or services as all work or services shall be authorized through a task/work order and minor construction agreement issued by the City.

4. Compensation and Payment.

- a. Compensation to be paid to Contractor shall be in accordance with the fees and rates set forth in Exhibit A, which is attached hereto and incorporated herein by reference, and each Work Order issued by the City. In no event shall Contractor's compensation exceed one-hundred thousand dollars (\$100,000.00) without additional written authorization from the City. Payment by City under this Contract shall not be deemed a waiver of defects, even if such defects were known to the City at the time of payment.
- b. Contractor shall promptly submit billings to the City describing the services and related work performed during the preceding month to the extent that such services and related work were performed. Contractor's bills shall be segregated by Work Order, if applicable, such that the City receives a separate accounting for work done on each individual task for which Contractor provides services. Contractor's bills shall include a brief description of the services performed, the date the services were performed, the number of hours spent and by whom, and a description of any reimbursable expenditures.

5. Termination. City or Contractor shall have the right to terminate this Contract, without cause, by giving thirty (30) days' written notice, or less under urgent circumstances. Upon such termination, Contractor shall submit to City an itemized statement of services performed for which compensation has not been paid. City may require Contractor to complete certain work. Upon receipt of such notice, the Contractor shall immediately cease all work under this Contract, unless the notice provides otherwise. If the City suspends or terminates a portion of this Contract such suspension or termination shall not make void or invalidate the remainder of this Contract. The City Manager is authorized to terminate this Contract on behalf of City.

6. Ability of Contractor. City has relied upon the training and ability of Contractor to perform the services hereunder as a material inducement to enter into this Contract. Contractor shall therefore provide properly skilled personnel to perform all services under this Contract. All work performed by Contractor, its employees, or its Subcontractors, under this Contract shall be in accordance with applicable legal

requirements and shall meet the standard of quality ordinarily to be expected of competent contractors in Contractor's field of expertise.

7. Licenses. Contractor represents and warrants to City that it has the licenses, permits, qualifications, insurance and approvals of whatsoever nature which are legally required of Contractor to practice its profession. Contractor represents and warrants to City that Contractor shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Contract, any licenses, permits, insurance and approvals which are legally required of Contractor to practice its profession. Contractor shall maintain a City of Morgan Hill business license.

8. Contractor's Obligations. Contractor must provide an executed copy of the Contract within ten (10) days of receipt of the Notice of Award email. Contractor must provide, furnish, and supply all things necessary and incidental for the timely performance and completion of the Work, including all necessary labor, materials, equipment, transportation, and utilities, unless otherwise specified in the Contract Documents. Contractor must use its best efforts to complete the Work in a professional and expeditious manner and to meet or exceed the performance standards required by the Contract Documents.

8.1 Bonds. For any Work Order more than Twenty-Five Thousand Dollars (\$25,000.00), within ten (10) days following receipt of the Notice of Award email from City, and before beginning any Work on the Project, Contractor must submit a payment bond and a performance bond, each for one hundred percent (100%) of the Work Order price, using the bond forms provided and in accordance with the requirements of the Contract Documents. Contractor may not proceed with the Work until City has approved the bonds.

8.2 Insurance. Contractor must provide the required insurance certificates and endorsements within ten (10) days following receipt of the Notice of Award email from City, and before beginning any Work.

8.3 If the performance of Contractor's work or service under this Contract for a specific Work Order involves hazardous materials, contaminated soil disposal, and/or a risk of accidental release of fuel oil, chemicals or other toxic gases or hazardous materials, Contractor shall procure and maintain Pollution Liability covering the contractor's liability for bodily injury, property damage and environmental damage resulting from pollution and related cleanup costs arising out of the work or services to be performed under this Contract as described in the General Conditions.

9. Liquidated Damages. If Contractor fails to complete the Work within the Contract Time, City will assess liquidated damages in the amount of five hundred dollars (\$500.00) for each day of unexcused delay in completion, and the Contract Price will be reduced accordingly.

10. Labor Code Compliance.

- 10.1 General.** This Contract is subject to all applicable requirements of Chapter 1 of Part 7 of Division 2 of the Labor Code, including requirements pertaining to wages, working hours, and workers' compensation insurance, as further specified in Article 9 of the General Conditions.
- 10.2 Prevailing Wages.** Any Work order over \$1,000 is subject to the prevailing wage requirements applicable to the locality in which the Work is to be performed for each craft, classification, or type of worker needed to perform the Work, including employer payments for health and welfare, pension, vacation, apprenticeship, and similar purposes. Copies of these prevailing rates are available online at <http://www.dir.ca.gov/DLSR>.
- 10.3 DIR Registration.** City will not enter into the Contract with a Contractor, without proof that Contractor and its Subcontractors are registered with the California Department of Industrial Relations ("DIR") to perform public work pursuant to Labor Code Section 1725.5, subject to limited legal exceptions.
- 10.4 Wage Theft Prevention.** All Contractors are expected to have read and understand the "Wage Theft Prevention Policy" adopted by the City Council on July 26, 2017 as further described section 9.6 in the General Conditions.
- 11. Workers' Compensation Certification.** Under Labor Code Section 1861, by signing this Contract, Contractor certifies as follows: "I am aware of the provisions of Labor Code Section 3700 which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the Work on this Contract."
- 12. Notice.** Any notice required by the Contract Documents must be made in writing, and sent to the other party by personal delivery, U.S. Mail, a reliable overnight delivery service, facsimile, or by email as a PDF (or comparable) file. Notice is deemed effective upon delivery unless otherwise specified. Notice for each party must be given as follows:

	City	Contractor
Name/Title	Keri Russell, Maintenance Coordinator	Mark Tucker, President Tucker Construction, Inc.
Address	17575 Peak Avenue	1725-D Little Orchard St.
City/state/zip	Morgan Hill, California 95037	San Jose, CA 95125
Phone	(408) 310-4057	(408) 287-1424
Fax		
Email	Michelle.bigelow@morganhill.ca.gov	tucker@tuckercon.com
Copy to:	Keri.russell@morganhill.ca.gov	

13. General Provisions.

- 13.1 Assignment and Successors.** Contractor may not assign its rights or obligations under this Contract, in part or in whole, without City's written consent. This Contract is binding on Contractor's successors and permitted assigns.
- 13.2 Third Party Beneficiaries.** There are no intended third-party beneficiaries to this Contract except as expressly provided in the General Conditions or Special Conditions.
- 13.3 Governing Law and Venue.** This Contract will be governed by California law and venue will be in the Superior Court for Santa Clara County, and no other place.
- 13.4 Amendment.** No amendment or modification of this Contract will be binding unless it is in a writing duly authorized and signed by the parties to this Contract.
- 13.5 Integration; Severability.** This Contract and the Contract Documents incorporated herein, including authorized amendments or Change Orders thereto, constitute the final, complete, and exclusive terms of the agreement between City and Contractor. If any provision of the Contract Documents, or portion of a provision, is determined to be illegal, invalid, or unenforceable, the remaining provisions of the Contract Documents will remain in full force and effect.

- 13.6 Authorization.** Each individual signing below warrants that he or she is authorized to do so by the party that he or she represents, and that this Contract is legally binding on that party.

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

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

The parties agree to this Contract as witnessed by the signatures below:

CITY OF MORGAN HILL:

DocuSigned by:
Christina Turner
 Christina J. Turner
 City Manager

Date: 12/22/2021

Attest:

DocuSigned by:
Michelle Bigelow
 Michelle Bigelow
 Deputy City Clerk

Date: 12/22/2021

Approved as to Form:

DocuSigned by:
Cynthia Hanson
 Donald A. Larkin
 City Attorney

Date: 12/17/2021

CONTRACTOR:

TUCKER CONSTRUCTION, INC.
Mark Tucker
 Signature

Mark Tucker/President
 Name/Title [print]

Date: 11/24/21

Corporate entities must provide a second signature:

Mark Tucker
 Signature

Mark Tucker/Secretary
 Name/Title [print]

Date: 11/24/21

454738
 Contractor's License Number(s)

03/31/2022
 Expiration Date(s)

Seal:

1000006784
 Contractor's DIR Registration Number(s)
 (if applicable)

06/30/2022
 Expiration Date

**CITY OF MORGAN HILL
ON-CALL CONTRACT
FOR PUBLIC WORKS PROJECTS**

ATTACHMENT A

The following documents are attached and made part of the Contract Documents:

Project Drawings and Specifications

X Project Scope of Work

The scope of work includes construction, repair and maintenance fencing services for City buildings and facilities on an on-call basis.

On-Call fencing projects will be initiated by issuing a Request Proposal Worksheet describing the scope of work to the on-call fencing contractor. If accepted, a Work Order will be issued to initiate work on a specific project.

It is anticipated that the on-call fencing contractor's scope of work and if appropriate, their subcontractor's scope of work may entail any of the following scopes of work:

I. General:

The contractor will provide all labor, equipment, and materials to install fences as requested by the City of Morgan Hill in locations including, but not limited to:

1. City Owned Building Facilities and Grounds
2. City Leased Properties
3. City Parks
4. City Owned Parcels and Open Spaces
5. City Rights of Ways
6. City Owned or Leased Water Facilities including, but not limited to:
 - a. Well Sites
 - b. Tank Sites
 - c. Outfall Locations
 - d. Retention Ponds

II. Specifications:

A. Fence Types:

- a. The City may require fences and/or gates built in City owned or leased properties of various sizes and materials, including, but not limited to:

- i. Wood Privacy Fence
 - 1. With and without lattice top panels
- ii. Wooden Gates
- iii. Split Rail Fence
- iv. Chain Link Fencing and gates, including, but not limited to:
 - 1. Variety of Mesh Sizes
 - 2. Galvanized or other coatings
 - 3. Top Wire
 - 4. Top Pole
 - 5. Cyclone Fence
 - 6. Privacy
 - 7. Barbed Wire Top
 - 8. Razor Wire Top
- v. Wrought Iron/Ornamental Fencing
- vi. Barbed Wire Fencing
- vii. Metal Swing Gates
- viii. Metal Sliding Gates

B. Material Requirements

- a. Fence materials will include:
 - i. Pressure treated lumber or approved wood preservative treatment for any lumber buried or in contact with soil
 - ii. Galvanized or other approved treatment of posts buried or in contact with soil

C. Contract Pricing

- a. Fencing cost will be calculated in cost per linear foot, inclusive of all materials
- b. Gate cost will be calculated per gate size
- c. Costs for alternative or requested finishes (vinyl covering, slats)
- d. Extra components such as automatic openers, keypads, etc... will be listed on quotes as unit costs
- e. Service costs for repairs on existing fences shall be per hour
 - i. Regular State Prevailing Wage Rate
 - ii. Overtime State Prevailing Wage Rate
 - iii. Weekend State Prevailing Wage Rate
- f. Materials and parts costs for repairs on existing fences shall be per each, per unit, or per foot with the agreed upon 15% mark-up.

CITY COUNCIL STAFF REPORT

MEETING DATE: December 6, 2023

PREPARED BY:

Donald Larkin, City Attorney

APPROVED BY: City Manager

APPROVE JOINT POWERS AGREEMENT FOR ENACTMENT OF THE CITIES ASSOCIATION OF SANTA CLARA COUNTY, JOINT POWERS AUTHORITY (CASCC JPA)

RECOMMENDATION(S)

1. Approve the proposed Joint Powers Agreement;
2. Authorize Mayor Turner or his alternate, Councilmember Librers, to report approval of the Agreement to the CASCC Board of Directors; and
3. Authorize the City Manager to execute the Agreement.

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Advancing Regional Initiatives

REPORT NARRATIVE:

Background:

Over thirty years ago, the cities and towns in Santa Clara County ("Member Agencies") established the CASCC to improve cooperation on issues of common interest. The CASCC was intended to consolidate and maintain the functions and purposes of the Inter-City Council, the Santa Clara County Mayor's Conference, and the City Selection Committee for Santa Clara County. In 1990, the cities and towns entered into an agreement to provide some structure and outline the purpose and function of the CASCC. In 2010, the CASCC adopted its bylaws. Currently, the CASCC is an unincorporated association.

As early as 2017, the CASCC began reviewing and considering the appropriate organizational structure for the CASCC. In August 2020, its Board of Directors unanimously voted to take the steps necessary to form a joint powers authority because it would provide a more formal and recognized structure for CASCC and clarity regarding tax status, governmental immunities, and potential liability of the Members. To form a joint powers authority, a JPA must be approved by the CASCC Board of Directors and then executed by each Member Agency that wishes to join the joint powers authority, which would be called the Cities Association of Santa Clara County

Joint Powers Agency (“Agency”).

The CASCSC conducted outreach and solicited input on the proposed draft JPA over the past two years. The CASCSC circulated a draft JPA to all City and Town Attorneys in the County for their review and input and incorporated significant changes into the agreement. The Acting Executive Director and the General Counsel at the time attended two virtual meetings with most of the Town or City Attorneys and/or Assistant City Attorneys on September 14 and September 28, 2022. The entire JPA was reviewed each time. A separate and additional meeting was held by the Santa Clara City Attorneys Roundtable on September 16, 2022, where the JPA was again reviewed.

CASCSC representatives presented a draft JPA at the Santa Clara County City Managers Association (“SCCCMA”) meeting on October 12, 2022. Based on feedback from the SCCCMA, additional changes were made to the Agreement. On August 9, 2023, CASCSC representatives again met with the SCCCMA to review the proposed JPA, and receive additional input.

On September 14, 2023, the CASCSC Board received an updated draft JPA that included edits that responded to comments of the City/Town Attorneys and City Managers. At the meeting, the CASCSC Board heard the concerns raised by Board members and City Managers who attended the meeting, and it was confirmed that those concerns would be addressed in the JPA. The CASCSC Board directed some additional changes be made to the draft JPA to clarify that the Agency would not hire employees, and to provide some language permitting but not requiring the CASCSC Board to appoint a working committee to review new initiatives and provide input. With these changes, the CASCSC Board unanimously approved transmittal of the draft JPA to the City Councils for each of the proposed Member Agencies for their consideration.

Overview of the proposed Agreement:

The Agreement restates the same purposes expressed for the creation of the CASCSC. Consistent with the Joint Exercise of Powers Act (Government Code section 6500 et seq.), the agreement defines the power and authority of the JPA. To address concerns raised by Member Agencies, the JPA would be specifically prohibited from acquiring real property, levying taxes, hiring employees or exercising any eminent domain power. The proposed Agreement has also been modified to further restrict the authority of the JPA. (See Sections 6 and 7). The CASCSC Executive Board would be replaced by an Executive Committee. The Executive Committee may only take on those powers approved by the Agency’s Board of Directors. For example, the Executive Committee is not permitted to authorize any investigations into the business of the JPA without the Board’s approval.

Like the former CASCSC, the JPA would also be charged with administering the City Selection Committee (“CSC”), which involves establishment of the application process, scheduling and holding meetings for appointments to be made, keeping track of committee and board appointments, terms, and resignations, coordinating with the County Clerk and disseminating meeting minutes, and troubleshooting where

necessary. The CSC is a state-mandated entity charged with making appointments to various regional and local boards and committees. Each city and town in Santa Clara County will continue to participate in the CSC even if the city or town is not a member of CASCC JPA. Appointments to the local boards and committees will be based on majority votes of the city/town CSC representatives.

Of note, the CASCC provides benefits to its members beyond administering the CSC. The CASCC allows all 15 cities and towns in Santa Clara County to work together on regional issues, advocate at the county, regional and state levels, and provide a significant voice in policymaking in Sacramento. The solid work of the CASCC has resulted in some notable achievements and benefits to our cities and towns. The single-use plastic bag ban ordinances passed by all 15 cities and towns originated with the CASCC, as did the Healthy Cities Dashboard in conjunction with Santa Clara County Department of Public Health. Other examples include delivery of county-wide symposia on timely and important topics such as housing and sustainability, providing technical assistance to city staff for Housing Element Updates through the Planning Collaborative, and providing feedback and endorsements for legislative bills under consideration. The CASCC is also a great way for representatives from the different cities to share ideas, create professional connections and collaborate on similar issues affecting all the cities and towns.

Advantages of forming the JPA:

1. As a governmental agency, the JPA would have access to insurance and risk pools that are not available to an unincorporated association.
2. The JPA may be a more attractive recipient of sponsorships and donations, potentially easing pressure on the budget and therefore on the Members (see Fiscal Impact section below).
3. The Agreement clarifies liability issues and is drafted so that the entity indemnifies the members of the JPA.
4. The formation of the JPA would clarify the tax status of the organization.

COMMUNITY ENGAGEMENT:

None

ALTERNATIVE ACTIONS:

The City could chose not to join the JPA. The City would still have a vote while the JPA acts as the City's Selection Committee, but we would not participate in any of the regional or collaborative efforts.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

Morgan Hill has participated in the Cities Association since its inception, and was a

party to the agreement that formalized the association in 1990.

FISCAL AND RESOURCE IMPACT:

Dues for the current fiscal year are already included in the City's budget. For the current fiscal year, the City's dues are \$11,693.

1. The budget for FY25 has not yet been developed and therefore has not been presented to the CASC Board for consideration. Under the current CASC bylaws, the Executive Director will develop the FY25 budget for adoption by the Board at its April 11, 2024, board meeting. This budget will be developed with the same parameters as the FY24 budget, which are:

- a. The CASC budget is an operational budget-there are no separate line items for programs other than the Annual Membership Meeting and the Annual Holiday Party. The major expense in the budget is the payment of independent contractors, currently the Executive Director and the General Counsel (on an as-needed basis).
- b. The Executive Director will present a responsible budget in line with the current CASC finances that would not exceed its resources.

2. There is no indication that the CASC budget will increase solely because CASC becomes a JPA.

- a. Approval of any new programs or projects with budget impacts of \$10,000 or greater requires approval of 2/3 of the Board of Directors and the financial resources to fund such a program or project. If there is not enough budget for said programs/projects, the Executive Director will advise the Board of such and will give the Board all relevant information to make an informed decision. Ultimately, the Board decides how to proceed financially. (See item 1.b above.)
- b. It is anticipated that CASC legal costs would be reduced after the adoption of a JPA. Formation of the JPA was calculated as part of the FY24 budget and once the JPA formation is complete, the need for legal services would decrease.
- c. As a JPA, the CASC will be eligible to receive sponsorships and donations to underwrite costs of programs and events. Every effort will be made to seek sponsorships and donations as this relieves the pressure on the budget.

Membership Dues

As has been the case over the past few years, the FY24 dues are based on the size of each Member Agency and the plan is to continue with this same approach. In addition, the Board has expressed a desire not to increase the membership dues in light of current economic conditions. Therefore, for the FY25 membership dues, the Executive

Director intends to propose a budget to the CASC Board (or Agency Board of Directors) that preserves the same dues structure as FY24 whereby each Member Agency will be asked to pay the same amount in dues as in FY24.

In the event not all 15 cities join the Agency, the budget proposal would preserve the same dues, but the Agency Board would be required to make some budget adjustments. The Executive Director would advise the Board on how the CASC or Agency budget may be revised, providing all relevant information and data. Also, after FY25, it is anticipated that an annual CPI adjustment would be recommended.

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.

JOINT POWERS AGENCY AGREEMENT FOR CITIES ASSOCIATION OF SANTA CLARA COUNTY

This Joint Powers Agreement (“Agreement” or “JPA”) for the Cities Association of Santa Clara County is entered into by and among the cities (“Members”), which are organized and existing under the Constitution and laws of the State of California in which public agencies are located in the County of Santa Clara, and upon approval and full execution of the Agreement, creates the Cities Association of Santa Clara County Joint Powers Agency (“Agency”).

RECITALS

WHEREAS, Articles 1 and 2, Chapter 5, Division 7, Title 1 of the California Government Code (Section 6500 *et seq.*) permit two or more public agencies by agreement to jointly exercise powers common to the Members; and

WHEREAS, the public agency Members executing this JPA are cities or towns within the jurisdiction of the County of Santa Clara (“County”); and

WHEREAS, the Cities Association of Santa Clara County has existed as an unincorporated association since 1990 and desires to formalize the relationship between its City and Town members and form a Joint Powers Agency in order to carry out activities for the good of all its Members; and

WHEREAS, the Members executing this Agreement, desire to join together to create a separate Joint Powers Agency for the purpose of promoting cooperation among the Members; advocating for positive action; enhancing the quality of life for the residents of the County and their individual cities; and encouraging other joint and cooperative endeavors among the public agencies for their mutual benefit.

NOW, THEREFORE, the Parties agree to the following:

AGREEMENT

ARTICLE 1 - DEFINITIONS

- 1.1 “Associate Member” shall mean any non-city local agency, located within jurisdictional authority of the County of Santa Clara, and shall have duly executed and delivered to the Agency an Associate Membership Agreement in the form of and as further provided in the Bylaws of the Agency, as further provided in Article 32 herein.
- 1.2 “Agency” shall mean the Cities Association of Santa Clara County Joint Powers Agency created by this Agreement.
- 1.3 “Board of Directors” or “Board” shall mean the governing body of the Agency.
- 1.4 “Executive Committee” shall mean the Executive Committee of the Board of Directors of the Agency.

- 1.5 “Fiscal Year” shall mean that period of twelve (12) months which is established by the Board of Directors or the Bylaws as the fiscal year of the Agency, which shall run from July 1 to June 30 of each year.
- 1.6 “Government Code” shall mean the California Government Code, as amended.
- 1.7 “Joint Powers Law” shall mean Articles 1 and 2, Chapter 5, Division 7, Title 1 (commencing with Section 6500) of the Government Code, known as the Joint Exercise of Powers Act, as amended.
- 1.8 “Legislative Body” shall mean the legislative board of each Public Agency that is a Member of the Agency.
- 1.9 “Member” shall mean any city which has executed this Agreement and has become a member of the Agency. The complete list of Members is set forth in Exhibit “A” attached hereto and incorporated herein by this reference.
- 1.10 “Parties” shall mean Members or Associate Members who are party to this Agreement.
- 1.11 “Public Agency” shall mean public agency as defined in Government Code Section 6500, as amended.
- 1.12 Unless the context clearly requires otherwise, as used in this Agreement, words of the masculine, feminine or neutral gender shall be construed to include each other gender, when appropriate, and words of the singular number shall be construed to include the plural number, and vice versa, when appropriate. This Agreement and all the terms and provisions herein shall be construed to effectuate the purposes set forth and to sustain the validity of those purposes.

ARTICLE 2 - CREATION AND PURPOSES

- 2.1 This Agreement is entered into by the Members in order to:
 - 2.1.1 Review, study, develop consensus positions, and take action on issues of interest to Members;
 - 2.1.2 Focus on local and regional matters that are important to our future;
 - 2.1.3 Develop a common agenda for Santa Clara County cities;
 - 2.1.4 Serve as a unified voice for Santa Clara County cities in relationship to other agencies, organizations, and levels of government;
 - 2.1.5 Establish and administer the City Selection Committee pursuant to Government Code Section 50270 *et seq.*, as amended and make appointments to regional and local bodies as provided by law;
 - 2.1.6 Serve as a source of education, information, and networking for officials from all cities in Santa Clara County;

- 2.1.7 Provide a forum for non-city individuals, groups and organizations and the private sector to address items of interest to Santa Clara County cities;
- 2.1.8 Reduce duplication of effort by sharing information and provide a unified voice and strong advocacy on legislation and other important issues that affect its Members;
- 2.1.9 Strengthen the Members' and Agency's standing at the regional, State and Federal level;
- 2.1.10 Strive to respect local control, provide regional perspective, and make a difference to elevate the quality of life throughout the County;
- 2.1.11 Provide a forum for discussion and study of problems common to the Members and to assist in the development and implementation of solutions to such problems;
- 2.1.12 Provide a method for the Members to collaborate and jointly develop policies that benefit the region; and
- 2.1.13 Collaborate in such a way that is efficient, saves the jurisdictions the expense of individual effort, and creates positive outcomes.

ARTICLE 3 - PARTIES TO AGREEMENT

Each Member, as a Party to this Agreement, intends to and does contract with all other Members as Parties to this Agreement and, with other Public Agencies as may later be added as Parties to this Agreement pursuant to the Joint Powers Law. The withdrawal of any party from this Agreement, pursuant to Article 20, shall not affect this Agreement or the remaining Members' obligations.

ARTICLE 4 – FORMATION; TERM

This Agreement shall become effective when fully executed and returned to the Agency by at least eight (8) Members, but only as to those Members that have executed the Agreement. The Agency shall promptly notify all Members in writing of the effective date. After one full year after the initial formation of the Agency, should the membership fall below seven (7) Members due to the withdrawal of Members and the membership level remains at below seven (7) Members for a period of at least one (1) year and a similar joint powers authority, with the same or similar powers and functions is formed containing a majority of cities in the County of Santa Clara, the Agency shall change its name and permit the new organization to take on the name of the Agency. Notwithstanding the name change, this Agreement shall continue in effect until terminated as provided herein. The termination of this Agreement with respect to an individual Member upon its withdrawal from membership in the Agency shall not operate to terminate this Agreement with respect to the remaining Members.

ARTICLE 5 - CREATION OF THE AGENCY

Pursuant to the Joint Powers Law, there is hereby created a public entity, separate and apart from the Parties hereto, to be known as the "Cities Association of Santa Clara County Joint Powers

Agency” with powers as are set forth herein. Upon formation of the Agency as described in Article 4, the Cities Association of Santa Clara County, an unincorporated association shall follow the process of dissolution and cease to exist.

ARTICLE 6 - POWERS OF THE AGENCY

6.1 Subject to the terms of this agreement, the Agency shall have all of the powers of a public agency as defined in the Government Code Section 6500 as amended and all additional powers set forth in the Joint Powers Law and other statutes applicable to the Joint Powers Agency created hereby and is authorized to do all acts necessary for the exercise of these powers on behalf of its Members. Powers include, but are not limited to, the following, in the Agency’s own name:

- 6.1.1 To make and enter into contracts;
- 6.1.2 To incur debts, liabilities, and obligations and to encumber personal property;
- 6.1.3 To acquire, hold, or dispose of personal property, contributions, and donations of personal property, funds, services, and other forms of assistance from persons, firms, corporations, and government entities;
- 6.1.4 To sue and be sued in its own name, and to settle any claim against it;
- 6.1.5 To receive and use contributions and advances from Members as provided in Government Code Section 6504, as amended including contributions or advances of personnel and equipment;
- 6.1.6 To invest any money in its treasury that is not required for its immediate necessities, pursuant to Government Code Section 6509.5, as amended;
- 6.1.7 To acquire, construct, manage, maintain, or operate title to personal property, or rights, or any interest therein;
- 6.1.8 To retain the services of agents, contractors, and consultants;
- 6.1.9 To receive, collect, and disburse monies;
- 6.1.10 To conduct studies, tests, evaluations, and similar activities;
- 6.1.11 To contract for services from Members, including in-kind services;
- 6.1.12 To conduct public outreach and education;
- 6.1.13 To participate in pilot and demonstration projects;
- 6.1.14 To charge for services, programs, and/or systems;
- 6.1.15 To work with elected officials and local, regional, state, and federal agencies, including other joint powers agencies and unincorporated associations to pursue funding, enter agreements and otherwise carry out the purposes of the Agency; and

6.1.16 Subject to this Agreement or the Bylaws of the Agency, and only as authorized by the Joint Powers Law, to exercise other reasonable and necessary powers in furtherance or support of any purpose of the Agency.

ARTICLE 7 - RESTRICTIONS ON POWERS

- 7.1 Pursuant to and to the extent required by Government Code Section 6509, as amended, the Agency shall be restricted in the exercise of its powers and shall exercise its powers in the same manner as the Town of Los Gatos is restricted in its exercise of similar powers; provided that, if the Town of Los Gatos shall cease to be a Member, then the Agency shall be restricted in the exercise of its power in the same manner as another Member agreed to by the majority of the Board of Directors. Unless expressly provided for, the Agency does not, by virtue of this Section or this Agreement, subject itself to the internal policies or ordinances of any Member.
- 7.2 The Agency shall not have the power of eminent domain.
- 7.3 The Agency shall not have the power of taxation. The Agency may not impose taxes but may receive the proceeds of taxes imposed by other entities or public funds from other entities.
- 7.4 The Agency shall not have the power to acquire, purchase, hold or dispose of real property.
- 7.5 The Agency shall not have the power to hire employees.
- 7.6 The Agency shall not have the power to issue debt.

ARTICLE 8 - BOARD OF DIRECTORS

- 8.1 The Agency shall be governed by the Board of Directors, which shall be composed of one Director representing each Member. Each Member's Legislative Body, according to its own procedures, shall appoint a Member of the Legislative Body as a Director to represent the Member on the Board of Directors. The Director shall serve at the pleasure of their respective Legislative Body. The Legislative Body of each Member shall also appoint one alternate Director ("Alternate") who shall participate in and vote at any meeting of the Board when the primary Director is absent. Any vacancy in a Director or Alternate position shall be filled by the appointing Member's Legislative Body, subject to the provisions of this Article. Immediately upon admission of a new Member, the new Member shall be entitled and required to appoint a Director and one alternate Director. Every Director or Alternate shall be a Council Member or Mayor of their individual Member city.
- 8.2 A Director and/or Alternate shall be removed from the Board of Directors upon the occurrence of any one of the following events: (1) the Agency receives written notice from the appointing Member of the removal and/or replacement of the Director or Alternate; (2) the withdrawal of the Member from this Agreement; (3) the death or resignation of the Director or Alternate; (4) the Agency receives written notice from the Member that the Director or Alternate is no longer qualified as provided in the first paragraph of this Article 8; or as set forth in Article 21.

- 8.3 The Board of Directors shall have the following powers and functions:
- 8.3.1 Except as otherwise provided in this Agreement, the Board shall exercise all powers and conduct all business of the Agency, either directly or by delegation to other bodies or persons;
 - 8.3.2 The Board shall elect an Executive Committee, as provided in Article 11;
 - 8.3.3 The Board shall be the policy setting body of the Agency;
 - 8.3.4 The Board shall appoint or retain the services of necessary agents, consultants, or independent contractors in accordance with Article 14;
 - 8.3.5 The Board shall cause to be prepared, and shall review, modify as necessary, and adopt the annual operating budget of the Agency. Adoption of the budget may not be delegated. The Board shall adopt their budget no later than the first April 30th following formation and then subsequently by April 30th of each successive year. The Board shall review, set, and adopt annual dues to be funded by Agency Members;
 - 8.3.6 The Board shall receive, review and act upon periodic reports and audits of the funds of the Agency, as required under Article 16 of this Agreement;
 - 8.3.7 The Board may adopt policies regarding personnel, conflicts of interest and other matters necessary or convenient for the efficient operation of the Agency;
 - 8.3.8 The Board shall adopt a set of priorities and work plan for each fiscal year; and
 - 8.3.9 Subject to the terms of this Agreement, the Board shall have such other powers and duties as are reasonably necessary to carry out the purposes of the Agency.

ARTICLE 9 – MEETINGS OF THE BOARD OF DIRECTORS

- 9.1 The Board of Directors shall hold at least one regular meeting each year. The Board of Directors shall fix by resolution, or in the Bylaws, the date, time, and location of each regular meeting. The Board or Executive Director, in consultation with the President of the Board as provided in Article 10 below, may call special meetings.
- 9.2 Each meeting of the Board of Directors, including without limitation, regular, adjourned regular and special meetings shall be called, noticed, held, and conducted in accordance with the Ralph M. Brown Act, Government Code Section 54950 *et seq.*, as amended.
- 9.3 The Agency shall require the Secretary/Treasurer or designee to take and maintain minutes of all regular, adjourned regular and special meetings. As soon as practicable after each meeting, the Secretary/Treasurer or designee shall forward to each Board Member, a copy of the minutes of the meeting.
- 9.4 A majority of the Members of the Board shall constitute a quorum for the transaction of business. Unless otherwise required by law, a vote of the majority of a quorum of the members

present at a meeting is sufficient to take any action, unless otherwise specified in this Agreement. However, less than a quorum may adjourn the meeting to a future date.

9.5 Each Member of the Board shall have one vote.

ARTICLE 10 - OFFICERS

The Board shall elect as Officers of the Agency President, First Vice President, Second Vice President, Secretary/Treasurer, and Immediate Past President at its first meeting. Thereafter, except as may be otherwise provided in the Bylaws of the Agency, the Board shall elect the President, First Vice President, Second Vice President, Secretary/Treasurer, and Immediate Past President, at the November Board of Directors meeting, or the first meeting held on or after November 1 of each year. Of the Officers, the President, and at least two other Officers, must also be members of the Board of Directors. The remaining Officers may be the elected or appointed Mayor or Council Member of any Member of the Agency regardless of whether they are on the Board of Directors. Each Officer shall assume the duties of his or her office upon election. If the President ceases to be a Member of the Board, the resulting vacancy shall be filled at the next meeting of the Board held after the vacancy occurs, or at a special meeting of the Board called to fill the vacancy. The President shall preside at and conduct all meetings of the Board. Should the Board President not be available then the highest-level Officer, who is a member of the Board of Directors, shall preside. If that individual is unavailable, then any Director appointed by the President may preside. The Board may appoint other officers as it considers necessary. The duties of the Secretary/Treasurer are set forth in Articles 16 and 17 of this Agreement. The Secretary/Treasurer shall be appointed by the Board of Directors and shall be eligible to serve as Secretary/Treasurer, as provided in the Joint Powers Law.

ARTICLE 11 - EXECUTIVE COMMITTEE

At such time as there are nine Members, the Board shall establish and elect an Executive Committee of the Board which shall consist solely of three (3) Officers consisting of the President, First Vice President, and Secretary/Treasurer, which shall exist thereafter. At such time as there are 11 Members, the Board shall establish and elect an Executive Committee of the Board which shall consist solely of five (5) Officers, with the addition of the Immediate Past President, which shall exist thereafter. Should the Immediate Past President no longer hold elected office then a Member at Large may be appointed by the Board to serve on the Executive Committee. The qualifications of the Member at Large are that they must be an elected or appointed Mayor or Council Member of a Member of the Agency but need not be on the Board of Directors. The terms of office of the Members of the Executive Committee shall be one year. The Executive Committee shall conduct the business of the Agency between meetings of the Board, exercising all those powers as provided for in this Article, or as otherwise delegated to it by the Board.

The Executive Committee, subject to approval by the Board of Directors, shall exercise all powers or duties of the Board relating to the entering, approval and execution of agreements, leases, and other instruments of or relating to the finances of the Joint Powers Agency within the previously

approved annual budget or amended budget. The Executive Committee may have additional powers delegated to it by the Board, except for the adoption of the Agency's annual budget. Any additional powers and duties delegated shall be specified in a Resolution adopted by the Board. The Executive Committee shall obtain approval from the Board before authorizing or conducting any investigations into the business of the Agency and before taking personnel action. These actions must be authorized by a majority vote of the Executive Committee. Each meeting of the Executive Committee shall be called, noticed, held, and conducted in accordance with the Ralph M. Brown Act, Government Code Section 54950 *et seq.*, as amended.

ARTICLE 12 - COMMITTEES

The Board may establish committees, as it deems appropriate to conduct the business of the Agency or it may, in the Bylaws or by resolution, delegate this power to the Executive Committee by Resolution. Members of committees, except as otherwise stated in this Agreement, shall be appointed by the President. Each committee shall have those duties as determined by whichever Agency body created it or as otherwise set forth in the Bylaws. Each committee shall meet on the call of its chairperson and shall report to and be directed by whichever entity created it. No more than one representative from each jurisdiction shall serve on each committee. Membership of any committee may consist in whole or in part of persons who are not members of the Board; provided that the Board may delegate decision-making powers and duties only to a committee, a majority of the members of which are Board Members. Any committee, except the City Selection Committee, in which a majority of the members are not Board Members may function only in an advisory capacity. The Legislative Action Committee shall be a permanent Committee of the Agency chaired by the Second Vice President and whose members shall be appointed by the Agency Members. Should there be no Second Vice President, the Legislative Action Committee shall be chaired by the First Vice President. All standing committees shall abide by the Ralph M. Brown Act, Government Code Section 54950 *et seq.*, as amended.

ARTICLE 13 – CITY SELECTION COMMITTEE

The City Selection Committee is established pursuant to State law and the Agency shall administer the City Selection Committee as follows: The City Selection Committee shall be a permanent committee of the Agency, consisting of the Mayor of each City or Town, consistent with Government Code 50270, as amended. The Agency shall allow all cities in the County to participate in the City Selection Committee, whether or not they are members of the Agency.

ARTICLE 14 – PROFESSIONAL SERVICES

14.1 The Board of Directors may contract with individuals or companies to provide the following services at the pleasure of the Board of Directors:

- 14.1.1 Executive Director. The Board shall contract with a consultant or independent contractor to fulfill the following duties of an Executive Director: manage the affairs of the Agency, subject to the general supervision and policy direction of the Board and the Executive Committee; oversee the day-to-day activities of the Agency; select and manage the activities of all consultants and independent contractors to the Agency; be responsible for required filings by the Agency with the State of California; prepare or delegate the preparation of all meeting notices, minutes, and required documentation of the Agency; prepare and propose an annual budget; prepare reports and recommendations for consideration by the Executive Committee or Board; be responsible for billing and collection of annual dues; maintain the records of the Agency; assist Local Agencies in the preparation and filing of applications for participation in the financing programs of the Agency; expedite the processing of these applications; pay all invoices, taxes and amounts due; and perform other duties as are assigned by the Board and Executive Committee. The Executive Director may have the authority to sign agreements, applications, and other documents on behalf the Agency, if authorized by the Board or Executive Committee. The Executive Director shall have the Authority to enter into individual Agreements with a single vendor over the course of a fiscal year, on behalf of the Agency, up to the amount set by the Bylaws.
- 14.1.2 General Counsel. The Board shall contract with a consultant, independent contractor, or law firm to fulfill the duties of General Legal Counsel. The General Counsel shall take direction from the majority of the Board of Directors. The General Counsel shall be a member in good standing of the California State Bar. The General Counsel shall be responsible for the legal affairs of the Agency;
- 14.1.3 Auditor. The Auditor shall be a Certified Public Accountant licensed to practice in the State of California. The Auditor will conduct annual financial audits of the Agency;
- 14.1.4 Other services. The Executive Director may hire additional consultants and independent contractors, as appropriate, based upon a previously approved budget;
- 14.1.5 The Agency shall not contract with or become a member of the California Public Employees Retirement System ("PERS"), nor shall any agent, consultant or independent contractor of the Agency become a member of PERS or be entitled to a pension or retirement from PERS as a result of service to the Agency; and
- 14.1.6 The consultants and independent contractors fulfilling the duties of Executive Director, the Auditor, the General Counsel and any other consultants or independent contractors who provide services to the Agency shall be compensated in such manner as shall be approved by the Board and as permitted by applicable law.

ARTICLE 15 - SIGNIFICANT PROGRAMS

If the Board desires to create significant programs or activities which will utilize substantial resources of the Agency, it shall do so by a vote of the Board. If the Board deems it necessary, it may

appoint a working committee to study the significant program or activity and provide input to the Board. Substantial resources and significant program or activity shall be defined as any program or activity requiring \$10,000 or more in annual expenditures; this amount shall be increased by the annual cost of living CPI index. Any new significant program or activity shall require a work plan and a two-thirds vote of the Members in order to be initiated. When a new significant program is intentionally designed to be limited in scope, such that it only provides benefits to particular Members, the Agency may enter into a specific program or project Agreement that includes relevant terms regarding the particular affected Members, and any such Agreement shall be approved by the Board prior to or at the same time as formation of the significant program. These limited scope Agreements shall be subject to approval by the Board by a two-thirds vote of the Members.

ARTICLE 16 - ACCOUNTS AND RECORDS

- 16.1 The Agency shall adopt an operating budget pursuant to Section 8.3.5 of Article 8 of this Agreement.
- 16.2 The Secretary/Treasurer of the Agency or the Executive Director shall establish and maintain funds and accounts as may be required by good accounting practices and by the Board. Books and records of the Agency shall be open to and made available for inspection at all reasonable times upon request by authorized representatives of the Members.
- 16.3 The Agency shall adhere to the standard of strict accountability for funds and report all receipts and disbursements as set forth in the Joint Powers Law.
- 16.4 Auditor's Report. The Auditor, within one hundred and twenty (120) days after the close of each Fiscal Year, shall give a complete written report of all financial activities for the prior Fiscal Year to the Board.
- 16.5 The Agency shall either make or contract with a Certified Public Accountant to make an annual Fiscal Year audit of all accounts and records of the Agency, conforming in all respects with the requirements of the Joint Powers Law. A report of the audit shall be filed as a public record and be provided to each of the Members, and with the County Auditor of the County of Santa Clara. Costs of the audit shall be considered a general expense of the Agency. Any costs of the audit shall be borne by the Agency and shall be a charge against any unencumbered funds of the Agency available for this purpose.

ARTICLE 17 - RESPONSIBILITIES FOR FUNDS AND PROPERTY

- 17.1 The Secretary/Treasurer, or his or her designee, shall have the custody of and disburse the Agency's funds. Proceeds of similar obligations of the Agency may be deposited with a trustee, agent or other depository and shall not be considered the Agency's funds for purposes of this Article. The Secretary/Treasurer may delegate disbursements to persons as may be authorized by the Board or the Executive Committee to perform that function, subject to the requirements of Section 17.2 below.

- 17.2 The Secretary/Treasurer or designee shall perform all functions then required to be performed by the Treasurer under the Joint Powers Law. The Secretary/Treasurer shall review the financial statements and the annual audit of the Agency.
- 17.3 Pursuant to Government Code Section 6505.1, as amended, the Executive Director, the Secretary/Treasurer, and other persons as the Board may designate, shall have charge of, handle, and have access to the property of the Agency. The Agency shall secure and pay for a fidelity bond or bonds, in an amount or amounts and in a form specified by the Board of Directors, covering any officers or agents of the Agency who are authorized to hold or disburse funds of the Agency and any officers or agents who are authorized to have charge of, handle and have access to property of the Agency.

ARTICLE 18 - MEMBER RESPONSIBILITIES

- 18.1 Each Member shall have the following responsibilities:
- 18.1.1 To appoint its Director and Alternate to, or remove its Director and Alternate, from the Board, as set forth in Article 8;
 - 18.1.2 To consider proposed amendments to this Agreement as set forth in Article 29;
 - 18.1.3 To make contributions in the form of annual membership assessments and fees, if any, determined by the Board for the purpose of defraying the costs of providing the annual benefits accruing directly to each party from this Agreement; and
 - 18.1.4 If a Member provides written notice to the Agency of its election to relinquish its status as a Member, or if a Member fails to be represented at four (4) or more consecutive regular meetings of the Board of Directors, then that Member may be deemed to be a suspended Member, with all the rights and duties of an Associate Member, upon action of the Board of Directors duly adopted. Prior to the suspension, the President shall contact the Mayor and request that another Council Member be appointed or that reinstatement for the current Member be requested. The suspension shall be approved by the Board of Directors. Promptly following that action by the Board of Directors, the Member may be reinstated by informing the Board of its intent to be reinstated within thirty (30) days and to attend all future meetings either via the Director or Alternate. Removal of a Member for failure of the Director to attend meetings shall not relieve the Member from its obligations under any outstanding agreements relating to the Agency's financial obligations, except in accordance with this Agreement.

ARTICLE 19 - NEW MEMBERS

With the approval of the Board, any city located within the County of Santa Clara may become a party as a Member to this Agreement. A city requesting membership shall apply by presenting to the Agency, a resolution of the Legislative Body of the City, evidencing its approval of this Agreement. The date that the applying city will become a Member will be determined by the Board. The Agency shall

accept new Members upon a majority affirmative vote of the entire Board and upon payment of any Board determined assessments and fees.

ARTICLE 20 - WITHDRAWAL

A Member may terminate its membership in the Agency at any time upon giving one hundred and eighty (180) days written notice of withdrawal to the Agency. The notice shall be given to the Board of Directors. The effective date shall be the conclusion of the first Board Meeting which occurs after the one hundred and eighty (180) day notice period has passed. Any Member who withdraws shall remain obligated to pay its share of all debts, liabilities, and obligations incurred or accrued through the end of the current fiscal year of the Agency. The withdrawal does not in any way impair any contracts, resolutions, indentures, or other obligations of the Agency then in effect. In the event of a disagreement between the Agency and the withdrawing Member as to whether the withdrawal shall cause the impairment of any contracts, resolutions, indentures, or other obligations of the Agency, the determination shall be made by a majority vote of the Board of Directors. Any Member that withdraws and later seeks reinstatement to the Agency shall provide funds to the Agency, proportionate to their responsibility for the current fiscal year, as if the Member had never left the Agency. A withdrawing Member shall, in all events, remain liable for its proportionate share of: (i) its full amount of its proportionate share of the adopted fiscal year budget; (ii) any call for funds or assessment levied by the Agency prior to the date it provides its notice of withdrawal; (iii) any contribution in existence at the time of the notice of withdrawal.

ARTICLE 21 - REMOVAL

If the Board of Directors determines that reasonable cause exists to remove a Director from the Board, it can remove the Director and request that the Member who appointed the Director appoint a new Director. The Board may, by two-thirds majority vote of the entire Board, remove a Member based on a Member's breach of any material term of this Agreement, and the failure to cure that breach within sixty (60) days written notice. A terminated Member shall remain liable for any obligation under this Agreement as described above. Failure to pay dues within 60 days following notice shall result in a Member becoming suspended with all the rights of an Associate Member. A suspended Member shall immediately have its voting rights restored upon full payment of dues.

ARTICLE 22 - OBLIGATIONS OF AGENCY

The debts, liabilities, and obligations of the Agency shall not be the debts, liabilities, and obligations of the Members. Any Member may separately contract for, or assume responsibility for, specific debts, liabilities, or obligations of the Agency. Nothing in this Agreement shall be interpreted to limit the applicability of the provisions of Government Code Section 895.6.

ARTICLE 23 - TERMINATION AND DISTRIBUTION OF ASSETS

This Agreement may be terminated at any time that no financial obligations of the Agency are outstanding, with the approval of two-thirds of the Members. Upon termination of this Agreement, all assets of the Agency shall, after payment of all unpaid costs, expenses and charges incurred under this Agreement, be distributed among the parties to this Agreement, in accordance with the respective contributions of each of the Parties.

ARTICLE 24 - LIABILITY OF BOARD OF DIRECTORS, OFFICERS, AND COMMITTEE MEMBERS

- 24.1 The Members of the Board of Directors, Officers, and Committee Members of the Agency shall use ordinary care and reasonable diligence in the exercise of their powers and in the performance of their duties pursuant to this Agreement. They shall not be individually liable for any mistake of judgment, or any other action made, taken, or omitted by them in good faith, nor for any act or omission by any agent, consultant or independent contractor selected with reasonable care, nor for loss incurred, resulting from any action made, taken, or omitted by them in good faith and with reasonable care through investment of Agency funds, or failure to invest.
- 24.2 No Director, Officer, or Committee Member shall be responsible for any act or omission of any other Director, Officer, or Committee Member. Unless otherwise required by law, no Director, Officer, or Committee Member shall be required to give a bond or other security to guarantee the faithful performance of his or her duties pursuant to this Agreement.
- 24.3 The funds of the Agency shall be used to defend, indemnify, and hold harmless the Agency for any Director, Officer, or Committee Member, for their actions taken within the scope of the Agency. Nothing herein shall limit the right of the Agency to purchase insurance to provide coverage for these types of losses.
- 24.4 These indemnification and defense obligations shall survive the termination of the Agreement as to any acts or omissions occurring before such termination.

ARTICLE 25 - INDEMNIFICATION

To the fullest extent allowed by law, the Agency shall defend, indemnify, and save harmless the Members and their governing bodies, officers, agents and employees from all claims, losses, damages, costs, injury, and liability of every kind, nature, and description directly or indirectly arising from the performance of any of the activities of the Agency or the activities undertaken pursuant to this Agreement.

ARTICLE 26 - BYLAWS

The Board shall adopt Bylaws consistent with this Agreement which shall provide for the administration and management of the Agency. The provisions of the Bylaws, as modified from time to time, shall establish the operating procedures and standards for the Agency.

ARTICLE 27 - NOTICES

The Agency shall address notices, billings, and other communications to a Member as directed by that Member. Each Member shall provide the Agency with the email and physical address to which communications are to be sent. Members shall address notices and other communications to the Agency, at the office address of the Agency, or the email address of the Agency as directed by the Member and as set forth in the Bylaws.

ARTICLE 28 - CODES

The Agency shall adopt and observe a Code of Conduct and Conflict of Interest Policy. The Agency shall comply with all requirements of the Fair Political Practices Commission as required by law or regulation.

ARTICLE 29 - AMENDMENT

This Agreement may be amended at any time by vote of the Members, acting through their Legislative Bodies. Any amendment of this Agreement shall become effective upon receipt by the Agency of notice of the approval of the amendment by two thirds of the Legislative Bodies of the Members.

ARTICLE 30 - SEVERABILITY

Should any portion, term, condition, or provision of this Agreement be decided by a court of competent jurisdiction to be illegal or in conflict with any law of the State of California, or be otherwise rendered unenforceable or ineffectual, the validity of the remaining portions, terms, conditions, and provisions shall not be affected.

ARTICLE 31 - PROHIBITION AGAINST ASSIGNMENT

No Member may assign any right, claim, or interest it may have under this Agreement, and no creditor, assignee or third-party beneficiary of any Member shall have any right, claim, or title to any part, share, interest, fund, or asset of the Agency. This Agreement shall be binding upon and shall inure to the benefit of successors of the Members. This Agreement is intended solely for the benefit of the

Agency and its Members. No third party shall be deemed a beneficiary of this Agreement or have any rights against the Agency or its Members.

ARTICLE 32 - ASSOCIATE MEMBERS

Any Public Agency located within the jurisdictional authority of the County of Santa Clara may, with the approval of the Board of Directors, become an Associate Member of the Agency by executing and delivering to the Agency an Associate Membership Agreement and providing an Associate Membership fee and as further provided in the Bylaws. An Associate Member shall not be entitled to representation on the Board of Directors, or to vote on any matter coming before the Board of Directors or the Agency, unless a separate written agreement is entered into between the Associate Member and the Agency.

ARTICLE 33 - LIBERAL CONSTRUCTION

The provisions of this Agreement shall be liberally construed as necessary or reasonably convenient to achieve the purposes of the Agency.

ARTICLE 34 - NON-WAIVER

No waiver of the breach of default of any of the covenants, agreements, restrictions, or conditions of this Agreement by any Member shall be construed to be a waiver of any succeeding breach of the same or other covenants, restrictions, or conditions of this Agreement. No delay or omission of exercising any right, power, or remedy in the event of a breach or default shall be construed as a waiver or a variation of any of the terms of this Agreement or any applicable agreement.

ARTICLE 35 - REMEDIES FOR BREACH

If any Member shall default on any obligation contained in this Agreement, the default shall not excuse any other Member from fulfilling its respective obligations under this Agreement. Any Member shall be entitled to pursue all legal and equitable remedies against another Member in response to any alleged default under this Agreement. Any and all of the remedies provided to the Members, hereunder or by law now or hereafter enacted, are cumulative and the exercise of one right or remedy shall not impair the Members to any other remedy.

ARTICLE 36 - ARTICLE HEADINGS

All article headings are for reference only and are not intended to define or limit the scope of any provision of this Agreement.

ARTICLE 37 - DISPUTE RESOLUTION

- 37.1 The Members agree that any dispute regarding the enforcement or interpretation of any term, covenant, or condition of this Agreement ("Dispute") may first, for a period of not less than thirty (30) days, be submitted to mediation before a mutually acceptable mediator prior to initiation of litigation, or any other binding arbitration or adjudicative dispute resolution process. The Members shall: (i) mediate in good faith; (ii) exchange all documents which each believes to be relevant and material to the issue(s) in the Dispute; (iii) exchange written position papers stating their position on the Dispute and outlining the subject matter and substance of the anticipated testimony of persons having personal knowledge of the facts underlying the Dispute; and (iv) engage and cooperate in such further discovery as the Members agree or mediator suggests may be necessary to facilitate effective mediation.
- 37.2 Each Member shall bear its own costs, attorney's fees, and expenses of the mediation. Venue of the mediation shall be a mutually agreeable city within Santa Clara County, California.

ARTICLE 38 – INSURANCE

If available, the Agency shall obtain insurance for all Members, appointed Members, and Committee Members, including, but not limited to, Directors and Officers liability insurance and general liability insurance containing policy limits in such amounts as the Board of Directors shall deem will be necessary to adequately insure against the risks of liability that may be incurred by the Agency. Insurance under this provision may include an insurance pool program.

ARTICLE 39 - FILING WITH SECRETARY OF STATE

The Executive Director of the Agency shall file a notice of this Agreement with the office of the California Secretary of State within thirty (30) days of its effective date, as required by Government Code Section 6503.5, as amended and within seventy (70) days of its effective date as required by Government Code Section 53051, as amended.

ARTICLE 40 - COUNTERPARTS

This Agreement may be executed in parts or counterparts, each part or counterpart being an exact duplicate of all other parts or counterparts, and all parts or counterparts shall be considered as constituting one complete original and may be attached together when executed by the Members hereto. Facsimile and electronic signatures shall be binding.

ARTICLE 41 - AGREEMENT COMPLETE

This Agreement constitutes the full and complete Agreement of the parties and supersedes any prior written Agreement between the Members on the same topic.

CITY COUNCIL STAFF REPORT

MEETING DATE: December 6, 2023

PREPARED BY:

David Gittleson, Associate Engineer

APPROVED BY: City Manager

APPROVE SIXTH AMENDMENT TO DESIGN SERVICES AGREEMENT WITH HYDROSCIENCE ENGINEERS, INC. FOR THE NEW SEWER TRUNK LINE PROJECT FOR AN ADDITIONAL AMOUNT OF \$280,246

RECOMMENDATION(S)

1. Approve Sixth Amendment to Service Agreement for Design Professionals with HydroScience Engineers, Inc. to provide additional services for the New Sewer Trunk Line to Gilroy project for an additional \$280,246, for a total not-to-exceed amount of \$2,059,956; and
2. Authorize the City Manager to execute and administer the amended services agreement.

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Enhancing Public Safety

Protecting the Environment and Preserving Open Space and Agricultural Land

Maintaining and Enhancing Infrastructure

2022-2023 Strategic Priorities

Fiscal Sustainability

Guiding Documents

Public Safety Master Plan

Wastewater System Master Plan

REPORT NARRATIVE:

The Cities of Morgan Hill and Gilroy maintain a Joint Trunk System that conveys sewer flow from both cities to the South County Regional Wastewater Authority (SCRWA) Wastewater Treatment Plant south of the City of Gilroy. Currently, Morgan Hill's wastewater is conveyed by a single trunk line that traverses south of Morgan Hill, within unincorporated San Martin, and the City of Gilroy. The City's Sewer Master Plan calls for a second trunk line to be built to the treatment plant to provide the necessary capacity for the City's growth over the horizon of the 2035 General Plan. Construction of the secondary trunk line began in 2006, with the most recent phase from California

Avenue to Highland Avenue completed in 2016. The final segment, currently under design by Hydrosience Engineers, Inc. totals approximately 7 miles in length and extends from Highland Avenue to Renz Lane (Attachment 1).

HydroScience Engineers, Inc. were awarded a professional design services agreement on May 4, 2016 for \$651,760 to prepare plans & specifications to design a portion of the new sewer trunk line from Highland Avenue to Cohansey Avenue. Then, on April 19, 2017, City Council approved a First Amendment to provide design services to extend the design to Renz Lane for an additional \$521,900, thereby completing the entire design between Morgan Hill and Gilroy. A Second Amendment was then approved by City Council on December 4, 2019 for additional design services to complete the design (\$531,050) and lastly, a Fourth Amendment was approved by City Council on December 15, 2021 for additional services for (\$75,000).

At the 60% design completion level, the Gilroy City Council approved the sewer trunk alignment within their City limits in spring 2019. This effort put the design process on hold in order to establish the preferred alignment of the sewer trunk line through the City of Gilroy. The project is now currently reaching the 100% design completion level. One of the next time-sensitive steps is to complete the acquisition of easements necessary to install the new sewer trunk. A total of five easements will be required, one from PG&E, one from the City of Gilroy, and three from privately owned property. The City has purchased two of the private property easements and the remaining private easement is in the process of being dedicated to the City of Gilroy as part of a housing development. The City of Gilroy has agreed to provide an easement through their maintenance yard for the project and is currently working on the documents. Thus, only the PG&E easement is left to acquire. Multiple conversations have taken place between the City and PG&E, with the City feeling confident that we will acquire the easement before the project reaches the bidding phase.

Additional funds in the amount of \$280,246 along with a contract time extension are needed in order for Hydrosience to complete the design and secure the permits. The additional funding will be utilized by Hydrosience to: investigate and incorporate any recent development activity within project limits, additional coordination with the City of Gilroy, design modification within PG&E property, additional groundwater monitoring, address additional stakeholder comments, increased permit coordination with Caltrans, Valley Water, Union Pacific, PG&E, City of Gilroy and the County, and provide engineering support during bidding.

Thus, the proposed sixth amendment with HydroScience represents the overall effort to complete the sewer trunk line design from this point forward for a cost not to exceed \$280,246. Construction support services are not included in this contract, as the actual timing to construct the project has not been established. If approved by City Council, the total not-to-exceed contract amount would become \$2,059,956 (\$651,760 original + \$521,900 first amendment + \$531,050 second amendment + \$75,000 fourth amendment + \$280,246 sixth amendment) for services rendered from May 2016 through December 2024. The third and fifth amendments only extend the contract time.

The final design is nearly complete. However, there are a few items preventing the

project from being bid; securing the numerous permits, acquiring the remaining easements, and finalizing the funding plan. Construction is anticipated to begin by the end of 2024.

COMMUNITY ENGAGEMENT:

City staff is coordinating with the City of Gilroy and the County of Santa Clara to provide regular project status updates. All impacted property owners and businesses will be contacted and consulted prior to construction, which includes residents of San Martin. This project is unique as it will affect other communities to the south of the City, but have no significant construction impacts for City residents.

ALTERNATIVE ACTIONS:

City Council could decide not to amend the HydroScience Engineer's contract. However, this would prevent the completion of the plans and specifications and delay the overall project delivery.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On May 4, 2016, City Council approved a design agreement with HydroScience Engineers, Inc. for \$651,760 for the preparation of design plans and specifications for the sewer trunk segment between Highland and Cohansey.

On April 19, 2017, City Council approved the acceleration of the sewer trunk line and an award of a first amendment with Hydroscience Engineers, Inc. for design services for a total contract amount of \$1,173,660.

On December 4, 2019, City Council approved a Second Amendment with Hydroscience Engineers, Inc. for an additional amount of \$531,050 for additional engineering services.

On December 15, 2021, City Council approved the Mitigated Negative Declaration and Fourth Amendment with Hydroscience Engineers for additional services related to the new Sewer Trunk line between Morgan Hill and Gilroy.

FISCAL AND RESOURCE IMPACT:

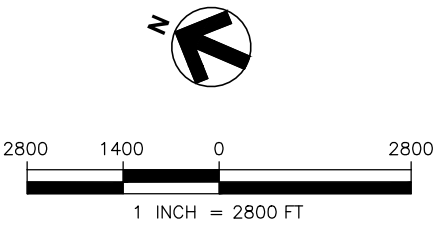
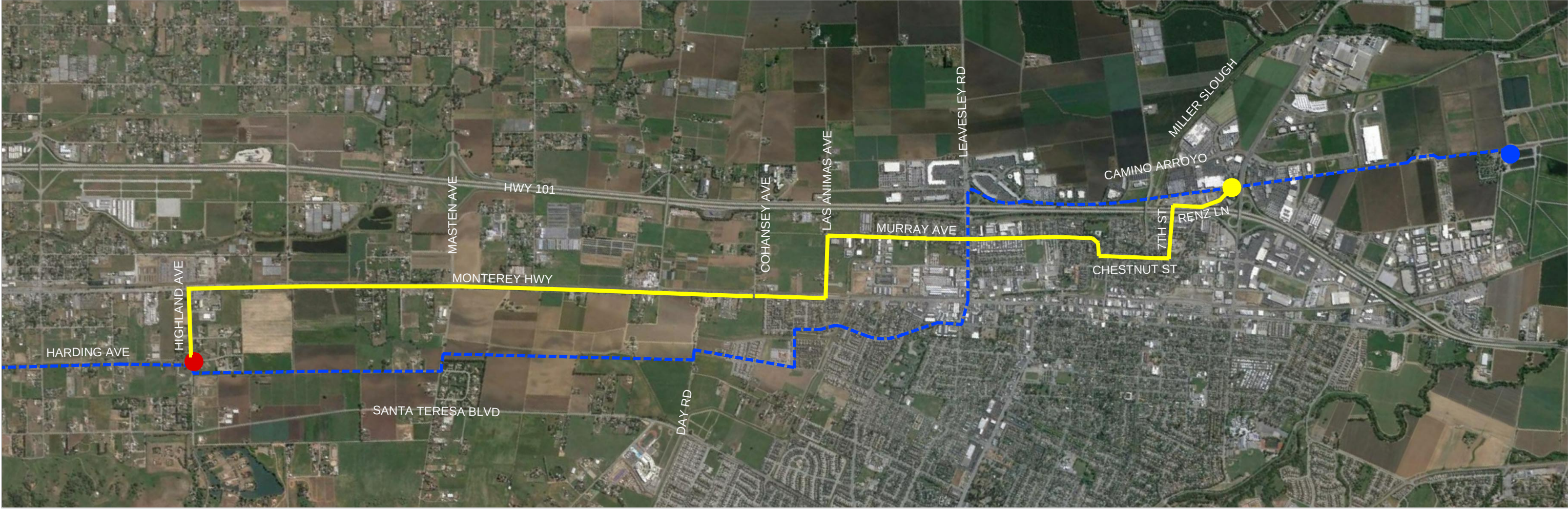
There are sufficient funds available in the FY 2020-26 Capital Improvement Program (CIP) budget under CIP Project 308A08, New Trunk Line, utilizing Sewer Impact Fund (Fund 641). The cost of the original design services agreement (\$651,760) plus the First Amendment (\$521,900), plus the Second Amendment (\$531,050), plus the Fourth Amendment (\$75,000) is \$1,779,710.

With City Council's approval of the Sixth Amendment, the total not to exceed contract amount would become \$2,059,956 (\$651,760 original + \$521,900 first amendment + \$531,050 second amendment + \$75,000 fourth amendment + \$280,246 sixth amendment = \$2,059,956).

CEQA (California Environmental Quality Act):

Project

David J. Powers prepared an Initial Study (IS) to identify and mitigate all environmental impacts as defined in Section 15378 of the State CEQA Guidelines. On December 15, 2021, City Council approved the Mitigated Negative Declaration for the new Sewer Trunk line between Morgan Hill and Gilroy.



- LEGEND:
- EXISTING JOINT SEWER TRUNK
 - SOUTH COUNTY REGIONAL WASTEWATER AUTHORITY WASTEWATER TREATMENT PLANT
 - TRUNK SEWER SOUTH OF HIGHLAND
 - TIE-IN TO HARDING AVE RELIEF SEWER TRUNK
 - TIE-IN TO CITY OF GILROY/MORGAN HILL RELIEF SEWER TRUNK

FIGURE 1
CITY OF MORGAN HILL
TRUNK SEWER SOUTH OF HIGHLAND
PROJECT AREA

SIXTH AMENDMENT TO AGREEMENT HYDROSCIENCE ENGINEERS, INC.

This SIXTH AMENDMENT TO AGREEMENT is entered into and becomes effective on _____ (Effective Date), by THE CITY OF MORGAN HILL, a municipal corporation, ("CITY") and HYDROSCIENCE ENGINEERS, 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 Sixth Amendment to Agreement is entered into pursuant to the action of the Morgan Hill City Council taken on _____, _____, 20____.
2. The CITY and CONSULTANT entered into that "SERVICE AGREEMENT FOR DESIGN PROFESSIONALS" made as of May 6, 2016, for consultant services for a maximum compensation of Six-Hundred Fifty-One Thousand and Seven-Hundred Sixty Dollars (\$651,760) ("SERVICE AGREEMENT FOR DESIGN PROFESSIONALS").
3. The CITY and CONSULTANT entered into a "First Amendment to Agreement" made as of May 5, 2017, under which the maximum compensation under the SERVICE AGREEMENT FOR DESIGN PROFESSIONALS, as amended, was increased to One Million One-Hundred Seventy-Three Thousand Six-Hundred Sixty Dollars (\$1,173,660) and the term extended until December 31, 2019.
4. The CITY and CONSULTANT entered into a "Second Amendment to Agreement" made as of December 9, 2019, under which the maximum compensation under the SERVICE AGREEMENT FOR DESIGN PROFESSIONALS, as amended, was increased to One Million Seven Hundred Four Thousand Seven Hundred Ten Dollars (\$1,704,710) and the term extended until December 31, 2020.
5. The CITY and CONSULTANT entered into a "Third Amendment to Agreement" made as of December 6, 2020, under which the term of the agreement was extended until December 31, 2021.
6. The CITY and CONSULTANT entered into a "Fourth Amendment to Agreement" made as of December 30, 2021, under which the term was extended until December 31, 2022, and the maximum compensation was increased to One Million Seven Hundred Seventy-Nine Thousand Seven Hundred Ten Dollars (\$1,779,710).
7. The CITY and CONSULTANT entered into a "Fifth Amendment to Agreement" made as of December 29, 2022, under which the term of the agreement was extended until December 31, 2023. The SERVICE AGREEMENT FOR DESIGN PROFESSIONALS, and the First, Second, Third, Fourth, and Fifth Amendments thereto are attached as Exhibit "1" to this Agreement.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **Amendments:** All terms and conditions of the CONSULTANT AGREEMENT 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 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 May 6, 2016, until December 31, 2024."

B. Paragraph 3 shall be amended by adding the following:

"The services to be performed by CONSULTANT shall consist of the following additional services set forth in Exhibit "2" dated November 10, 2023:

The CONSULTANT to provide additional investigations and final design services and bid phase support."

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 TWO MILLION FIFTY-NINE THOUSAND NINE HUNDRED FIFTY-SIX DOLLARS (\$2,059,956.00) and shall be billed based on the rate and basis set forth in Exhibit B dated April 20, 2016, Exhibit B dated April 5, 2017, Exhibit A dated November 6, 2019, Attachment A under Exhibit 2 dated October 29, 2021, and Exhibit 2 dated November 10, 2023."

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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 SIXTH AMENDMENT to Agreement and the terms and provisions of the CONSULTANT AGREEMENT FOR DESIGN PROFESSIONALS or any earlier amendment, the terms of this SIXTH 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:

HYDROSCIENCE ENGINEERS, INC.

Donald A. Larkin, City Attorney
Date: _____

By: William J. Slenter
Title: Vice President

Print Name and Title of Signer.

If Corporate: Chairman, President or
Vice President

Date: 11/14/2023

By: *William J. Harris*
Title: CFO

Print Name and Title of Signer.

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

Date: 11-24-23

Date: October 30, 2023
Client: City of Morgan Hill
Contact: David Gittleson, P.E.
Project: Sewer Relief Trunk Line Project (from Renz to Highland)

HydroScience Engineers, Inc.
10569 Old Placerville Road
Sacramento, CA 95827
T: 916.364.1490
F: 916.364.1491

CONTRACT AMENDMENT REQUEST FOR ADDITIONAL ENGINEERING SERVICES

Original Professional Services Agreement Date: May 4, 2016

Amendment Request No.: 6

Amendment Subject: Term Extension and Additional Design and Bid Support

Amendment Description: The agreement for Phase 1 of the Sewer Trunk Line South of Highland Avenue Project (Project) was executed on May 4, 2016, with the City of Morgan Hill (City). The following summarizes the project's prior executed amendments:

- **Amendment No. 1** amended the project scope to include detailed design of Phase 2 of the Project, as well as other related tasks.
- **Amendment No. 2** amended the project scope to detail the additional tasks to complete the project design after resuming the project in 2019 and receiving City of Gilroy support to proceed with the project.
- **Amendment No. 3** extended the project contract terms of agreement through December 31, 2021.
- **Amendment No. 4** extended the project contract terms of agreement through December 31, 2022 and added design scope to perform additional investigations related to bore and jack trenchless options evaluation at the Leavesley Rd Crossing and alternative alignments on PG&E's property on Renz Lane.
- **Amendment No. 5** extended the project contract terms of agreement through December 31, 2023.

This Contract Amendment No. 6 summarizes the proposed scope of work and tasks to provide additional investigations and final design services and bid phase support. This scope is summarized as follows:

- Investigations to capture recent development activity within project extents since the original project survey
- Additional coordination with City of Gilroy
- Design a requested alignment modification within PG&E property
- Additional groundwater monitoring readings per Geotechnical Engineer recommendations
- Allowance for additional stakeholder comment resolution and corresponding design updates
- Additional permit application coordination, additional permit packages, and permit meetings
- Provide engineering support to the City during the bid phase of the project

ESDC services during construction of the project is not included. This task will be separately scoped at a later date.

The following provides an itemized scope of services for the additional services included in this amendment. The billing rates for these services will be based on HydroScience's current published Standard Schedule of Billing Rates, updated annually. A 3% annual rate escalation is incorporated into the fee calculation.

Scope of Services: The current contract will be amended to include the scope of services detailed herein.

Task A – Project Management:

This scope is for additional project management during the extended contract term and for the additional engineering investigations and design tasks. The scope and deliverables to be provided are similar to the scope in Amendment No. 2: project management work includes project coordination and management, progress meetings, and QA/QC.

This task includes the following:

- Additional project management and administration effort has been required of HydroScience due to the extended schedule. Amendment No. 5 anticipated design completion prior to December 31, 2022. Design completion is now scheduled for completion in March 2024. Stakeholder coordination and permitting is driving the design schedule.
- Additional PM effort to complete the design (12 months duration assuming 11/1/23 NTP)
- Additional meetings: one City Council meeting and one public information meeting.

This task also includes City-requested management of the stakeholder coordination effort, which was not accounted for in the original scope of work:

- Tracking the progress of communications and negotiations with each stakeholder.
- Reviewing and responding to technical queries from stakeholders.
- Supporting the City with public outreach (affected property owners in Gilroy)

The cost to complete the stakeholder coordination effort has been estimated based on our experience with the project to date. The total effort included in this scope shall be up to the total number of hours shown in Attachment A.

Task B – Final Design – Additional Investigations and Design:

The project is currently at approximately a 95% level of completion. Stakeholder input received to date has begun to affect the pipeline alignment, and an allowance needs to be made for additional design changes anticipated from ongoing stakeholder coordination. Additionally, the extended schedule of the project has resulted in the need to perform additional investigations to capture recent development within the project extents to identify and resolve any conflicts and reflect current information in the plans.

This additional scope is described as follows:

Review additional existing documents

- HydroScience is reviewing additional drawings that were only made available recently due to unforeseen development activity within the project extents.
- The new developments are located on Lewis St, Las Animas Avenue, Monterey & Cohansey, and miscellaneous telecom installations.

- The review will identify potential conflicts affecting the pipe alignment and the information included in the Drawings

Site investigations

- Based on the age of the original topographic survey and recent development activity, HydroScience will conduct a site investigation for the entire alignment. This will be an opportunity to check for any changes to the existing conditions as shown on the design drawings. Two members of our engineering team will traverse the alignment and document conditions over a two-day period.
- This task also includes a Gilroy corporation yard site visit to present and discuss our draft staging area plan to Gilroy.

Alignment change in PG&E property

- To minimize impacts to PG&E, the City instructed HydroScience to incorporate an alignment modification within PG&E property. HydroScience will implement the alignment modification and address impacts of this change to other drawing sheets.

Additional modifications to pipeline alignment

- Based on the current status of stakeholder engagement and our communications with the City, we anticipate there could be additional modifications to up to two alignment sections: Highland Avenue and Las Animas Avenue. After receiving confirmation from the City, HydroScience will modify the pipeline alignment accordingly including updating all drawing sheets that are impacted by these changes.

Groundwater monitoring well readings

- As recommended by DCM, our trenchless specialist subconsultant, our geotechnical engineer (Geo-Logic) has taken groundwater readings at the five trenchless crossings over the course of the project. Geo-Logic would take 2 more sets of readings: 1 in Fall of this year 2023, and 1 in the spring of 2024, in accordance with their recommendation.

Incorporate Stakeholder Comments & Prepare Bid Documents

- This task provides an allowance up to the number of hours shown in Attachment A for HydroScience to incorporate unanticipated design changes requested by stakeholders, affected property owners, and permitting agencies.
- We have allowed for 44 hours of HydroScience effort for addressing stakeholder review comments including any redesign.

Deliverables:

- Signed and Stamped 100% Bid Set, PDF format

Assumptions:

- Allowance scope items are limited to the maximum number of hours shown in Attachment A. Substantial design changes resulting from stakeholder input may require additional budget to address.
- All permit fees and costs will be the responsibility of the City.

Task C – Permitting:

HydroScience shall perform the following additional project permitting services:

Update permit application packages

- New regulatory requirements became effective after HydroScience began preparing permit applications and subsequent to approval of the original scope of work and prior amendments. These included:
 - a. Caltrans (2020 and 2022) – updated encroachment permit manual, application forms, and application review procedures and processes.
 - b. CA Water Boards, 2023 Construction General Permit and SWPPP regulations
- This task includes HydroScience effort to update permit application packages, and the draft SWPPP & Permit Registration Documents (PRDs) to meet current regulations.

Additional permit application packages (3)

- As the design progressed, additional permits were required but were not anticipated in the original scope or prior amendments. These include:
 - a. Valley Water permit to construct the proposed pipeline within their existing maintenance easement located in the PG&E property on Renz Lane.
 - b. CDFW lake and streambed alteration agreement/permit. Valley Water requires the City apply for this permit as part of the ValleyWater permitting process.
 - c. CalOSHA Mining & Tunneling Classification

Permit meetings:

- The allocated number of permit consultation meetings has been expended. This task includes effort for HydroScience to coordinate and lead permit consultation meetings for: Gilroy, Caltrans, and the County (3 meetings total). Meetings are assumed to be virtual. HydroScience effort for preparing meeting materials and meeting minutes is included.

Task D – Bid Phase Support:

HydroScience will assist the City with responding to prospective bidders' questions; preparation of addenda as needed to clarify the design; and a review and evaluation of the submitted bids.

Addressing up to 40 technical questions and preparing 2 technical addenda are included.

An allowance is included for our geotechnical engineering and trenchless specialist subconsultants to review and respond to bidders' questions relevant to their areas of expertise.

HydroScience will attend the bid opening and prepare the bid tabulation summaries. HydroScience will also assist City staff in making recommendations for contract award.

HydroScience will prepare for and attend the Pre-bid Conference and will prepare the agenda, minutes, sign-in sheet, and other documents needed.

Deliverables:

- Pre-bid conference agenda, sign-in sheet, and minutes
- Addenda

- Formalized responses to contractor questions
- Electronic copy of bid tabulation summary (MS Excel and PDF).

Optional Items:

This task addresses the following optional services that may be required to complete the project:

Groundwater monitoring well destruction

- Our amendment No. 2 includes this task as an optional item in the case that Valley Water requires the destruction of the five (5) groundwater monitoring wells. The current fee estimate to complete this task exceeds the original estimate from 2019. The estimated fee as shown in Attachment A consists of the additional fee that would be needed to cover the balance.

Re-Survey Las Animas Avenue

- In prior correspondence with the City, it was suggested that the alignment along Las Animas Avenue, as currently shown on the 90% Design, could be modified to avoid impacting private improvements that have been constructed inside public right-of-way. These improvements (new iron fencing, pavement, etc.) were constructed after the date of our topographic survey. If the City decides to maintain the alignment as-is, then HydroScience's recommendation is to re-survey the area so that the drawings more accurately reflect current conditions. We have included this optional item for our surveyor, HMM, to perform the additional survey effort.

Modify surface restoration design details

- Based on prior Gilroy review meetings and pavement moratorium information published on Gilroy's website, we anticipate that Gilroy could request pavement restoration additional to what is shown on the standard trench detail (1 foot T-cut). In addition, after reviewing several drawings from planned development projects, this project could be trenching through relatively new pavement. This could also trigger special pavement restoration work. This task addresses the effort required to develop special pavement restoration details.

Review of geotechnical specifications

- We have included an allowance of 40 hours for our geotechnical engineering subconsultant, Geo-Logic, to perform QAQC review of the geotechnical aspects of the technical specifications: trenching, bedding, backfill, compaction, excavation support, and dewatering. This is recommended to obtain verification that the specifications are consistent with the intent of the geotechnical recommendations.

Proposed Fee

The fee to complete the Amendment No. 6 scope of work is presented in Attachment A. The breakdown of labor hours by task and subtask is a guide only; the total fee governs.

Billing rates have been adjusted to the current 2023 rates for all staff classifications. Professional services will be billed on a time-and-materials basis, not to exceed the total fee without prior approval by the City.

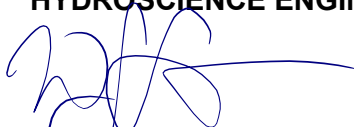
Contract Summary	Fee
Phase 1 Original Contract	\$651,760
Contract Amendment No. 1	\$521,900
Contract Amendment No. 2	\$531,050
Contract Amendment No. 3 (term extension only)	\$0
Contract Amendment No. 4	\$75,000
Contract Amendment No. 5 (term extension only)	\$0
Total Contract Budget (Original Contract + CA #1 - CA#5)	\$1,779,710
CA No. 6 Request	\$280,246
Total Contract Budget + CA No. 6 Request	\$2,059,956
Recommended Contingency (not included above)	\$15,000

Contract Term Extension

The contract term duration would be extended to December 31, 2024.

HydroScience appreciates the opportunity to continue providing professional engineering services to you on this important project. Should you have any questions regarding this proposal, please contact me at (916) 273-6035, or bslechter@hydroscience.com.

Sincerely,
HYDROSCIENCE ENGINEERS, INC.



Bill Slechter, P.E.
Principal

Attachments:

Attachment A – Amendment No. 6 Consultant Fee

Amendment Authorization Request:

This will confirm your authorization for HydroScience to undertake the added (or changed) engineering services described above pursuant to our original Contract Agreement.

Please confirm your authorization by signing in the space provided and emailing a copy back to us as soon as practical so we may proceed with these additional engineering services.

Approved:

Authorized Signature

Date

By:

Printed Name, City of Morgan Hill

Attachment A

City of Morgan Hill

Sewer Relief Trunk Line Project (from Renz Lane to Highland Ave)

Contract Amendment No. 6 - Term Extension and Add'l Services

October 30, 2023

Task	Description	PIC	Project Manager	QA/QC	Civil Staff Engineer	Junior Engineer	CAD	Hours	Fee	Repro. and ODCs	Surveying - HMM	Geotech - Geo-Logic	Trenchless - DCM	Direct Charges Markup @ 10%	Expense Subtotal	Total Fee
		Labor Classification Average Billing Rate (2023-2026)														
		Slenter	Le	Petrel	Fernandez	Sangco	Perez									
		Principal	E-V	E-IX	E-IV	E-II	CAD									
		\$296	\$236	\$285	\$226	\$199	\$154									
A	Project Management	28	116	24	0	24	0	192	\$47,280	\$0	\$0	\$0	\$0	\$0	\$0	\$47,280
	Project Management and QA/QC	16	68	20				104	\$26,480					\$0	\$0	\$26,480
	Meetings: Council, public meeting	8	8					16	\$4,260					\$0	\$0	\$4,260
	Stakeholder coordination	4	40	4		24		72	\$16,540					\$0	\$0	\$16,540
B	Final Design / Bid Documents	0	84	0	112	0	44	240	\$51,910	\$600	\$0	\$3,500	\$0	\$410	\$4,510	\$56,420
	Realignment - PG&E property		4		12		4	20	\$4,270					\$0	\$0	\$4,270
	Review additional documents from Gilroy		10					10	\$2,360					\$0	\$0	\$2,360
	Site investigation - entire alignment		18		18			36	\$8,320	\$400				\$40	\$440	\$8,760
	Gilroy Corp Yard site visit		2		8			10	\$2,280	\$200				\$20	\$220	\$2,500
	Alignment modifications - Highland and Las Animas		12		24		8	44	\$9,490					\$0	\$0	\$9,490
	Incorporate stakeholder comments		12		24		8	44	\$9,490					\$0	\$0	\$9,490
	Groundwater well readings (fall 2023, spring 2024)		2		2			4	\$920			\$3,500		\$350	\$3,850	\$4,770
	Prepare Bid Documents		24		24		24	72	\$14,780					\$0	\$0	\$14,780
C	Permitting	2	75	7	101	0	9	194	\$44,500	\$0	\$0	\$0	\$0	\$0	\$0	\$44,500
	Update Caltrans permit applications (2)	1	24	2	32		2	61	\$14,070					\$0	\$0	\$14,070
	Additional permit application packages (3)	1	30	3	48		3	85	\$19,540					\$0	\$0	\$19,540
	Update SWPPP & PRDs		12	2	12		4	30	\$6,730					\$0	\$0	\$6,730
	Permit meetings (3)		9		9			18	\$4,160					\$0	\$0	\$4,160
D	Bid Phase Support	0	66	0	102	0	16	204	\$41,100	\$100	\$0	\$10,000	\$10,000	\$2,010	\$22,110	\$68,050
	Pre-Bid Conference & site walk		10		10			20	\$4,620	\$200				\$20	\$220	\$4,840
	Bid Opening Meeting	0	8	0	0		0	8	\$1,890	\$100				\$10	\$110	\$2,000
	Bid Tabulation and Recommendation	0	2	0	6		0	8	\$1,830					\$0	\$0	\$1,830
	Bidder's inquiries (40) and Addenda (2)		56		96		16	168	\$37,380			\$10,000	\$10,000	\$2,000	\$22,000	\$59,380
	Optional Items	0	35	0	25	0	16	76	\$16,370	\$0	\$5,000	\$38,296	\$0	\$4,330	\$47,626	\$63,996
	Monitoring well destruction (5)	0	25	0	15			40	\$9,290			\$27,296		\$2,730	\$30,026	\$39,316
	Geotechnical review of earthwork specifications		4					4	\$940			\$11,000		\$1,100	\$12,100	\$13,040
	Re-survey Las Animas Ave		2		6		4	12	\$2,440		\$5,000			\$500	\$5,500	\$7,940
	Modify surface restoration details for select areas		4		4		12	20	\$3,700					\$0	\$0	\$3,700
OVERALL TOTAL		30	376	31	340	24	85	906	\$201,160	\$700	\$5,000	\$51,796	\$10,000	\$6,750	\$74,246	\$280,246
Additional Recommended Contingency									\$50,000							\$15,000

EXHIBIT 1**FIFTH AMENDMENT TO AGREEMENT
HYDROSCIENCE ENGINEERS, INC.**

This FIFTH AMENDMENT TO AGREEMENT is entered into and becomes effective on 12/29/2022 (Effective Date), by THE CITY OF MORGAN HILL, a municipal corporation, ("CITY") and HYDROSCIENCE ENGINEERS, INC., a California Corporation ("CONSULTANT").

RECITALS

The following recitals are a substantive part of this Agreement:

1. This Fifth Amendment to Agreement is entered into pursuant to the action of the Morgan Hill City Council taken on December 15, 2021.
2. The CITY and CONSULTANT entered into that "SERVICE AGREEMENT FOR DESIGN PROFESSIONALS" made as of May 6, 2016, for consultant services for a maximum compensation of Six-Hundred Fifty-One Thousand and Seven-Hundred Dollars (\$651,700) ("SERVICE AGREEMENT FOR DESIGN PROFESSIONALS").
3. The CITY and CONSULTANT entered into a "First Amendment to Agreement" made as of May 5, 2017, under which the maximum compensation under the SERVICE AGREEMENT FOR DESIGN PROFESSIONALS, as amended, was increased to One Million One-Hundred Seventy-Three Thousand Six-Hundred Sixty Dollars (\$1,173,660).
4. The CITY and CONSULTANT entered into a "Second Amendment to Agreement" made as of December 9, 2019, under which the maximum compensation under the SERVICE AGREEMENT FOR DESIGN PROFESSIONALS, as amended, was increased to One Million Seven Hundred Four Thousand Seven Hundred Ten Dollars (1,704,710).
5. The CITY and CONSULTANT entered into a "Third Amendment to Agreement" made as of December 6, 2020, under which the maximum compensation was not increased.
6. The CITY and CONSULTANT entered into a "Fourth Amendment to Agreement" made as of December 30, 2021, under which the term was extended until December 31, 2022, and the maximum compensation was increased to One Million Seven Hundred Seventy-Nine Thousand Seven Hundred Ten Dollars (\$1,779,710). The SERVICE AGREEMENT FOR DESIGN PROFESSIONALS, and the First, Second, Third and Fourth Amendments thereto are attached as Exhibit "1" to this Agreement.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **Amendments:** All terms and conditions of the SERVICE 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 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 May 6, 2016, until December 31, 2023.

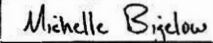
2. **Electronic Signatures.** Unless otherwise prohibited by law or CITY policy, the Parties agree that an electronic copy of a signed contract, or an electronically signed contract, has the same force and legal effect as a contract executed with an original ink signature. The term "electronic copy of 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 FIFTH AMENDMENT to Agreement and the terms and provisions of the SERVICE AGREEMENT FOR DESIGN PROFESSIONALS or any earlier amendment, the terms of this FIFTH AMENDMENT to Agreement shall govern and control.

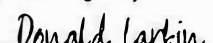
TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS:

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

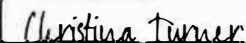
ATTEST:

DocuSigned by:

 Michelle Bigelow, City Clerk
 Date: 1/3/2023

APPROVED AS TO FORM:

DocuSigned by:

 Donald A. Larkin, City Attorney
 Date: 12/16/2022

CITY OF MORGAN HILL

DocuSigned by:

 Christina Turner, City Manager
 Date: 12/29/2022

HYDROSCIENCE ENGINEERS, INC.


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

Date: 11/1/2022


 By: HILDEGARD HARRIS
 Title: TREASURER
 Print Name and Title of Signer.
 If Corporate: Secretary, Assistant
 Secretary, Chief Financial Officer, or
 Assistant Treasurer

Date: 11-1-2022

EXHIBIT 1

**FOURTH AMENDMENT TO AGREEMENT
HYDROSCIENCE ENGINEERS, INC.**

This FOURTH AMENDMENT TO AGREEMENT is entered into and becomes effective on 12/30/2021 (Effective Date), by THE CITY OF MORGAN HILL, a municipal corporation, ("CITY") and HYDROSCIENCE ENGINEERS, INC., a California Corporation ("CONSULTANT").

RECITALS

The following recitals are a substantive part of this Agreement:

1. This Fourth Amendment to Agreement is entered into pursuant to the action of the Morgan Hill City Council taken on December 15, 2021.
2. The CITY and CONSULTANT entered into that "SERVICE AGREEMENT FOR DESIGN PROFESSIONALS" made as of May 6, 2016, for consultant services for a maximum compensation of Six Hundred Fifty-One Thousand and Seven Hundred-Sixty Dollars (\$651,760) ("SERVICE AGREEMENT FOR DESIGN PROFESSIONALS").
3. The CITY and CONSULTANT entered into a "First Amendment to Agreement" made as of May 5, 2017, under which the maximum compensation under the SERVICE AGREEMENT FOR DESIGN PROFESSIONALS, as amended, was increased to One Million One Hundred Seventy-Three Thousand Six Hundred Sixty Dollars (\$1,173,660).
4. The CITY and CONSULTANT entered into a "Second Amendment to Agreement" made as of December 9, 2019, under which the maximum compensation under the SERVICE AGREEMENT FOR DESIGN PROFESSIONALS, as amended, was increased to One Million Seven Hundred Four Thousand Seven Hundred Ten and no/100 Dollars (\$1,704,710).
5. The CITY and CONSULTANT entered into a "Third Amendment to Agreement" made as of December 8, 2020, under which the maximum compensation was not increased. The SERVICE AGREEMENT FOR DESIGN PROFESSIONALS, and the First, Second and Third Amendments thereto are attached as Exhibit "1" to this Agreement.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **Amendments:** All terms and conditions of the SERVICE 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 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 May 6, 2016 until December 31, 2022. 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 by adding the following:

"The services to be performed by CONSULTANT shall consist of the additional services set forth in Exhibit "2" dated October 29, 2021.

Additional Investigation and Design services."

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 ONE MILLION SEVEN HUNDRED SEVENTY-NINE THOUSAND SEVEN HUNDRED TEN AND NO/100 DOLLARS (\$1,779,710) and shall be billed based on the rate and basis set forth in Exhibit B dated April 20, 2016, Exhibit B dated April 5, 2017, Exhibit A dated November 6, 2019, and Attachment A dated October 29, 2021, under Exhibit 2. If the City Manager extends the term of this Agreement for up to one year pursuant to the provisions of Section 2 above, the City Manager shall have the authority to increase the maximum compensation allowed to be paid to CONSULTANT during that extended term period, so long as City Council has appropriated sufficient funds therefor, the Parties mutually agree to such amount in a writing signed by both Parties to this Agreement and provided further that in no event shall such maximum compensation allowed for the extended term exceed the City Manager's authority pursuant to Chapter 3.04 of the Morgan Hill Municipal Code, unless otherwise authorized by City Council."

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Signatures on the Next Page

2. **Conflicts.** In the event of a conflict between the terms and provisions of this Fourth Amendment to Agreement and the terms and provisions of the SERVICE AGREEMENT FOR DESIGN PROFESSIONALS or any earlier amendment, the terms of this Fourth 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 Sigelow

Michelle Sigelow, City Clerk

Date: 12/30/2021

APPROVED AS TO FORM:

DocuSigned by:

Donald Larkin

Donald Larkin, City Attorney

Date: 12/21/2021

CITY OF MORGAN HILL

DocuSigned by:

Christina Turner

Christina Turner, City Manager

Date: 12/30/2021

HYDROSCIENCE ENGINEERS, INC.

Mary Strong

By: Vice President

Title: Vice President

Print Name and Title of Signer.

If Corporate: Chairman, President or Vice President

Date: 11/11/21

William H. Varnis

By: TREASURER

Title: TREASURER

Print Name and Title of Signer.

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

Date: NOV 11, 2021

EXHIBIT I

**THIRD AMENDMENT TO AGREEMENT
HYDROSCIENCE ENGINEERS, INC.**

This THIRD AMENDMENT TO AGREEMENT is entered into and becomes effective on 12/8/2020 (Effective Date), by THE CITY OF MORGAN HILL, a municipal corporation, ("CITY") and HYDROSCIENCE ENGINEERS, INC., a California Corporation ("CONSULTANT").

RECITALS

The following recitals are a substantive part of this Agreement:

1. This Third Amendment to Agreement is entered into pursuant to the action of the Morgan Hill City Council taken on December 4, 2019.
2. The CITY and CONSULTANT entered into that "SERVICE AGREEMENT FOR DESIGN PROFESSIONALS" made as of May 6, 2016, for consultant services for a maximum compensation of Six Hundred Fifty-One Thousand and Seven Hundred-Sixty Dollars (\$651,760) ("SERVICE AGREEMENT FOR DESIGN PROFESSIONALS").
3. The CITY and CONSULTANT entered into a "First Amendment to Agreement" made as of May 5, 2017, under which the maximum compensation under the SERVICE AGREEMENT FOR DESIGN PROFESSIONALS, as amended, was increased to One Million One Hundred Seventy-Three Thousand Six Hundred Sixty Dollars (\$1,173,660).
4. The CITY and CONSULTANT entered into a "Second Amendment to Agreement" made as of December 9, 2019, under which the maximum compensation under the SERVICE AGREEMENT FOR DESIGN PROFESSIONALS, as amended, was increased to One Million Seven Hundred Four Thousand Seven Hundred Ten and no/100 Dollars (\$1,704,710). The SERVICE AGREEMENT FOR DESIGN PROFESSIONALS, and the First and Second Amendments thereto are attached as Exhibit "1" to this Agreement.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **Amendments:** All terms and conditions of the SERVICE 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 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 May 6, 2016, until December 31, 2021."

B. Paragraph 5.1. shall be added as follows:

"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.

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

TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS:

(1) CHAIRPERSON OF THE BOARD, PRESIDENT, OR VICE PRESIDENT; **AND**

(2) SECRETARY, ASSISTANT SECRETARY, CHIEF FINANCIAL OFFICER OR ASSISTANT TREASURER.

ATTEST:

DocuSigned by:
Michelle Bigelow
Michelle Bigelow, Deputy City Clerk
Date: 12/9/2020

APPROVED AS TO FORM:
Donald Larkin, City Attorney

DocuSigned by:
By: Donald Larkin
45E8F0273EA24D4...
Date: 12/7/2020

CITY OF MORGAN HILL

DocuSigned by:
Christina Turner
Christina J. Turner, City Manager
Date: 12/8/2020

HYDROSCIENCE ENGINEERS, INC.

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

Date: _____

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

Date: _____

EXHIBIT 1

126-04-16-031

**SECOND AMENDMENT TO AGREEMENT
HYDROSCIENCE ENGINEERS, INC.**

This SECOND AMENDMENT TO AGREEMENT is entered into and becomes effective on 12/9/19 (Effective Date), by THE CITY OF MORGAN HILL, a municipal corporation, ("CITY") and HYDROSCIENCE ENGINEERS, INC., a California Corporation ("CONSULTANT").

RECITALS

The following recitals are a substantive part of this Agreement:

1. This Second Amendment to Agreement is entered into pursuant to the action of the Morgan Hill City Council taken on December 4, 2019.
2. The CITY and CONSULTANT entered into that "SERVICE AGREEMENT FOR DESIGN PROFESSIONALS" made as of May 6, 2016, for consultant services for a maximum compensation of Six Hundred Fifty-One Thousand and Seven Hundred-Sixty Dollars (\$651,760) ("SERVICE AGREEMENT FOR DESIGN PROFESSIONALS").
3. The CITY and CONSULTANT entered into a "First Amendment to Agreement" made as of May 5, 2017, under which the maximum compensation under the SERVICE AGREEMENT FOR DESIGN PROFESSIONALS, as amended, was increased to One Million One Hundred Seventy-Three Thousand Six Hundred Sixty Dollars (\$1,173,660). The SERVICE AGREEMENT FOR DESIGN PROFESSIONALS 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 SERVICE 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 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 May 6, 2016 until December 31, 2020. 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 by adding the following:

"The services to be performed by CONSULTANT shall consist of the additional services, as set forth in Exhibit "2" dated November 6, 2019 and incorporated herein by 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 ONE MILLION SEVEN HUNDRED FOUR THOUSAND SEVEN HUNDRED TEN AND NO/100 DOLLARS (\$1,704,710.) shall be billed effective the date of this Amendment, the rate and basis set forth

in Exhibit B dated April 20, 2016, Exhibit B dated April 5, 2017, and Exhibit A dated November 6, 2019 under Exhibit "2". If the City Manager extends the term of this Agreement for up to one year pursuant to the provisions of Section 2 above, the City Manager shall have the authority to increase the maximum compensation allowed to be paid to CONSULTANT during that extended term period, so long as City Council has appropriated sufficient funds therefor, the Parties mutually agree to such amount in a writing signed by both Parties to this Agreement and provided further that in no event shall such maximum compensation allowed for the extended term exceed the City Manager's authority pursuant to Chapter 3.04 of the Morgan Hill Municipal Code, unless otherwise authorized by City Council."

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

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

E. Paragraph 6 is amended and replaced in its entirety to read as follows:

"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", as updated by the revised Exhibit C in the First Amendment and Exhibit 2 dated November 6, 2019, 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."

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

"7.2.2. **Workers Compensation**

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

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

"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."

H. Paragraph 20.1 shall be amended and replaced in its entirety by the following:

"20.1. 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."

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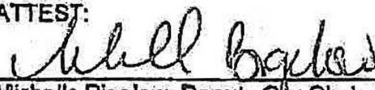
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2. **Conflicts.** In the event of a conflict between the terms and provisions of this Second Amendment to Agreement and the terms and provisions of the SERVICE AGREEMENT FOR DESIGN PROFESSIONALS or any earlier amendment, the terms of this Second Amendment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

TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS:

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

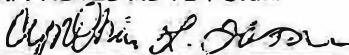
ATTEST:



Michelle Bigelow, Deputy City Clerk

Date: 12/9/19

APPROVED AS TO FORM:



Donald A. Larkin, City Attorney

Date: 12-9-19

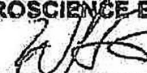
CITY OF MORGAN HILL



Christine J. Turner, City Manager

Date: 12/9/19

HYDROSCIENCE ENGINEERS, INC.

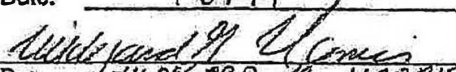


By: William J. Skenter
Title: Vice President

Print Name and Title of Signer.

If Corporate: Chairman, President or Vice President

Date: 9-27-19



By: HILDEGARD M. HARRIS
Title: CFO

Print Name and Title of Signer.

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

Date: 9-27-19

EXHIBIT I

126-04-16-031

**FIRST AMENDMENT TO AGREEMENT
HYDROSCIENCE ENGINEERS, INC.**

This FIRST AMENDMENT TO AGREEMENT is entered into and becomes effective on 5/5/17 (Effective Date), by THE CITY OF MORGAN HILL, a municipal corporation, ("CITY") and, HYDROSCIENCE ENGINEERS, INC., a California Corporation ("CONSULTANT").

RECITALS

The following recitals are a substantive part of this Agreement:

1. This First Amendment to Agreement is entered into based upon City of Morgan Hill City Council approval on April 19, 2017.

2. The CITY and CONSULTANT entered into that "Consultant Agreement" Service Agreement for Design Professionals made as of May 4, 2016, for consultant services for a maximum compensation of (\$651,760) Six Hundred Fifty-One Thousand Seven Hundred Sixty dollars ("CONSULTANT AGREEMENT"). The CONSULTANT AGREEMENT is attached as Exhibit "A" to this Agreement.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **Amendments:** All terms and conditions of the CONSULTANT AGREEMENT, as amended, as attached as Exhibit "A," 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 May 4, 2016, until December 31, 2019. 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 by adding the following:

"The services to be performed by CONSULTANT shall consist of the following additional services set forth in Exhibit "B": Design services shall include preparing construction level plans and specifications for extending the Sewer trunk Line Phase II Project, between Cohansey Avenue and Renz Lane.

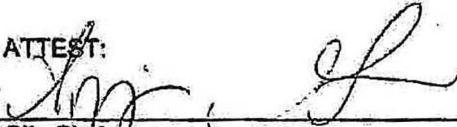
C. Paragraph 4.1 shall be amended and replaced in its entirety by the following:

"4.1. **Amount.** Compensation under this Agreement shall not exceed the original agreement amount of \$651,760 plus the First Amendment amount of \$521,900, for a total not to exceed contract amount of One Million One Hundred Seventy-Three Thousand Six Hundred Sixty Dollars (\$1,173,660).

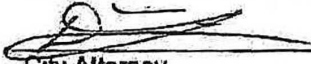
2. **Conflicts.** In the event of a conflict between the terms and provisions of this First Amendment to Agreement and the terms and provisions of the CONSULTANT AGREEMENT, the terms of this First Amendment to Agreement shall govern and control.

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:

Deputy City Clerk
Date: 5/8/17

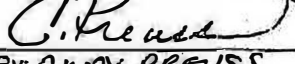
APPROVED AS TO FORM:


City Attorney
Date: 5/2/2017

CITY OF MORGAN HILL


City Manager
Date: 5/5/15

HYDROSCIENCE ENGINEERS, INC.


By: CINDY PREUSS
Title: VICE-PRESIDENT
Print Name and Title of Signer.
If Corporate: Chairman, President or Vice President

Date: 4-24-17

By: JAMES H. HARRIS
Title: TREASURER
Print Name and Title of Signer.
If Corporate: Secretary, Assistant Secretary, Chief Financial Officer or Assistant Treasurer

Date: 4-24-17

EXHIBIT A

12/11/18

**SERVICE AGREEMENT FOR DESIGN PROFESSIONALS
HYDROSCIENCE ENGINEERS, INC.**

THIS AGREEMENT is entered into and becomes effective on 5/6/18 (Effective Date), by and between the CITY OF MORGAN HILL, a municipal corporation, ("CITY"), and HydroScience Engineers, Inc. a California corporation ("CONSULTANT") hereinafter referred to collectively as "Parties." In consideration of the promises and the mutual covenants contained in this Agreement, the Parties agree as follows:

1. **City Authority.** This Agreement is entered into pursuant to action of the Morgan Hill City Council taken on May, 7, 2018.
2. **Term of Agreement.** This Agreement shall cover services rendered from the Effective Date of this Agreement until December 31, 2018 at which time CONSULTANT'S services shall be completed. The City Manager is authorized to extend the term of this Agreement for a maximum period of one year. Any such extension shall be in writing and signed by both Parties to this Agreement.
3. **Scope of Service.** The services to be performed by CONSULTANT shall be to design a 30" sewer trunk line from Highland Avenue to Las Animas Avenue as further described in Exhibit A.
4. **Compensation.** CONSULTANT shall be compensated as follows:
 - 4.1. **Amount.** \$651,760.00. Total compensation to CONSULTANT under this Agreement during its initial term set forth in Section 2 above shall not exceed Six-Hundred-Fifty-One-Thousand-and-Seven-Hundred-Sixty dollars and shall be billed based on the rate and basis set forth in Exhibit B. If the City Manager extends the term of this Agreement for up to one year pursuant to the provisions of Section 2 above, the City Manager shall have the authority to increase the maximum compensation allowed to be paid to CONSULTANT during that extended term period, so long as City Council has appropriated sufficient funds therefor, the Parties mutually agree to such amount in a writing signed by both Parties to this Agreement and provided further that in no event shall such maximum compensation allowed during the extended term period exceed an additional five percent (5%) above the compensation allowed to be paid to CONSULTANT during the initial term of this Agreement.
 - 4.2. **Billing.** CONSULTANT shall provide CITY with a monthly invoice containing the dated, detailed, and itemized descriptions of all services performed and expenses incurred (if such expenses are reimbursable pursuant to Exhibit B) by CONSULTANT. Any rate charged shall be prorated where services are interrupted or not provided for any rate period (for example, any monthly rate charge should be prorated when services were interrupted or provided for only part of the month). For services billed on an hourly rate, the minimum unit of billed time shall not exceed one tenth of one hour. CITY shall pay for services and expenses (if so provided in Exhibit B) up to the limit of compensation set forth above, that in the CITY's judgment were necessary and reasonable. Services for work performed and expenses incurred in excess of the total compensation set forth in paragraph 4.1 above shall be at no cost to CITY.
5. **Termination.** CITY or CONSULTANT shall have the right to terminate this Agreement, without cause, by giving thirty (30) days' written notice or less under urgent circumstances. Upon such termination, CONSULTANT shall submit to CITY an itemized statement of services performed for which compensation has not been paid. CITY may require CONSULTANT to complete certain work product or documents and CONSULTANT shall deliver to CITY all documents in its possession without additional compensation to

CONSULTANT. The CITY Manager of CITY is authorized to terminate this AGREEMENT on behalf of CITY.

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

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

7.1. **Insurance Types and Amounts.**

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

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

7.1.3. **Workers' Compensation Insurance and Employer's Liability.** CONSULTANT shall maintain Workers Compensation coverage, as required by law, in the minimum

amount of: (i) one million dollars (\$1,000,000.00) for any one accident or occurrence, or (ii) the maximum amount of such insurance available to CONSULTANT under CONSULTANT's combined insurance policies (including any excess or "umbrella" policies), whichever is greater. If CONSULTANT is self-insured, CONSULTANT shall provide its Certificate of Permission to Self-Insure, duly authorized by the Department of Industrial Relations.

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

7.1.5. Professional Liability.

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

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

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

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

7.2.1. **General Liability.**

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

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

7.2.1.3. insurance shall be primary non-contributing.

7.2.2. **Workers Compensation.**

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

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

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

Certificate Holder address:

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

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

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

10. Independent Contractor. CONSULTANT is an independent contractor and not an agent or employee of CITY.

11. Confidentiality. All data, documents, or other information received by CONSULTANT from CITY or prepared in connection with CONSULTANT'S services under this Agreement are deemed confidential and shall not be disclosed to any third party by CONSULTANT without prior written consent by CITY.

12. Conflict of Interest and Reporting. CONSULTANT shall at all times avoid conflict of interest or appearance of conflict of interest in performance of this Agreement.

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

Address of CONSULTANT is as follows:

HydroScience Engineers, Inc.
4055 Evergreen Village Square, Suite 250
San Jose, CA 95135

Address of CITY is as follows.

Mr. Karl Bjarke	with a copy to:
City of Morgan Hill	City Clerk
17575 Peak Avenue	City of Morgan Hill
Morgan Hill, CA 95037	17575 Peak Avenue
	Morgan Hill, CA 95037

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

15. Maintenance of Records.

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

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

45

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

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

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

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

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

20. Defense and Indemnification.

20.1. Defense and Indemnification 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").

20.2. Defense and Indemnification for Non-Design Professional Services. For all services performed under this agreement not covered by Section 20.1 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").

20.3. 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.

- 20.4. 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.
- 20.5. 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 (20) and any amount due CITY from CONSULTANT arising from CONSULTANT's failure either to (i) pay taxes on amounts received pursuant to this Agreement or (ii) comply with applicable workers' compensation laws.
- 20.6. 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.
21. Entire Agreement; Modification; Conflicting Provisions. This Agreement constitutes the entire Agreement between the Parties and supersedes any previous agreements, oral or written. This Agreement may be modified or provisions waived only by a subsequent mutual written agreement executed by CITY and CONSULTANT. If the provisions contained in the main body of this Agreement conflict with any provision contained in an exhibit to this Agreement, the provisions of the main body of this Agreement shall govern and control over any provision contained in an exhibit to this Agreement.
22. Governing Law and Venue. This Agreement shall be construed in accordance with the laws of the State of California. This Agreement was entered into and is to be performed in the County of Santa Clara. Any action or dispute arising out of this Agreement shall only be brought in Santa Clara County.
23. Interpretation. This Agreement is a negotiated document and shall be deemed to have been drafted jointly by the Parties, and no rule of construction or interpretation shall apply against any particular Party based on a contention that the Agreement was drafted by one of the Parties including, but not limited to, California Civil Code § 1654, the provisions of which are hereby waived. This Agreement shall be construed and interpreted in a neutral manner.
24. Preservation of Agreement. If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the rest of the Agreement shall remain in full force and effect and shall in no way be affected or invalidated.
25. Binding Agreement. Notwithstanding the provisions of Section 18 above, this Agreement shall bind any and all successors in interest, legal representatives and/or other permitted assignees or transferees of CONSULTANT in the same manner as if those successors in interest, legal representatives or other permitted assignees or transferees had entered into this Agreement originally.

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

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

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

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

ATTEST:

CITY OF MORGAN HILL

City Michelle Wilson Deputy City Clerk

Acting City Manager

Michelle Wilson
Print Name

Steve Rymer
Print Name

Date:

Date:

APPROVED AS TO FORM:

HYDROSCIENCE ENGINEERS, INC.

Gary M. Baum
Interim City Attorney

By:

Gary M. Baum
Print Name

Title:

Curtis Lam, President
Print Name and Title of Signer.
If Corporate: Chairman, President or
Vice President

Date:

Date:

05/05/16

02/16/16

By:

Title:

HILDEGARD M. HARRIS, CFO
Print Name and Title of Signer.
If Corporate: Secretary, Assistant
Secretary, Chief Financial Officer or
Assistant Treasurer

Date:

2/16/2016

EXHIBIT A

Scope of Services - Phase 1

HydroScience proposes the following scope of work. In preparing the level of effort, we have made the following assumptions:

1. As shown in Figure 1, the alignment for City's new 30-inch sewer trunk project is from Highland Avenue and Harding Avenue (constructed as part of the City's Harding Avenue Sewer Trunk Line project) until the connection to the City of Gilroy's new 36-inch sewer trunk near Renz Road. The new 30-inch new sewer trunk pipeline is approximately 27,000 lineal feet (LF) total.
2. This project will be constructed in two phases as described below:
 - a. Phase 1- Design, bid, and construction of approximately 21,000 LF from Harding Ave/H Highland Ave to Monterey Hwy/Las Animas Ave.
 - This phase includes predesign of the entire alignment (from Highland Ave and Harding Ave through connection to the City of Gilroy's sewer trunk near Renz Road). The predesign tasks are described in Task 2 below.
 - We anticipate that this pipeline segment will require minimal permit approvals.
 - b. Phase 2- Design, bid, and construction of approximately 16,000 LF from Monterey Hwy/Las Animas Ave to tie-in connection point with the City of Gilroy's 36-inch sewer near Renz Road.
 - Alignment includes sewer pipeline installations within private property.
 - Alignment also includes the following crossings:
 - o Under the UPRR tracks near Las Animas Ave and Monterey Hwy
 - o Under Hwy 101 at Las Animas Ave.
 - o Under Leavesley Rd. near Hwy 101 off-ramp (on fringe of State right-of-way)
 - o Under Miller Slough near R. 6th Street
 - We anticipate that this pipeline segment will require additional permit approvals and coordination.
3. The topographic survey and geotechnical investigation work will proceed following the City's selection of the preferred alignment for each pipe reach (for entire alignment included in Phases 1 and 2).
4. Based on our current project work with the City, we anticipate the City may want aerial topographic mapping for the new sewer trunk. The base fee estimate for topographic survey work does not include cost for aerial mapping. Since aerial mapping/topography is highly recommended for Phase 2's pipe segments, we have included this as an optional cost to be performed if directed by the City.
5. Construction work will be within publicly owned sanitary sewer easements and/or right of ways (ROW). For Phase 2 segments, some of these easements are within private property. Although not included in our previous base fee, we highly recommend performing title searches and incorporating title report information into the topographic survey. Therefore, we have added the cost for title reports as an optional cost to be performed if directed by the City.
6. Our fee estimate includes effort to contact known utilities in the project area to obtain their mapping for design purposes. The mapping will be used as reference/supplemental information to the topographic survey's existing utility information developed in Task 2.
7. It is assumed that environmental permitting efforts and community relations support, if needed, will be performed by the City and/or others.

EXHIBIT A

- 8. Phase 2 will require permits from UPRR and Caltrans to cross under the railroad tracks and adjacent Hwy 101, respectively. Phase 2 will also require additional coordination with UPRR, Caltrans, and Santa Clara Valley Water District (SCVWD) during the Phase 2 design. Phase 2 will also require coordination with private property owners (e.g., Gilroy Outlets, Costco, etc.).

Figure 1 – Proposed Phase 1 and 2 - Alignment of 30-inch Relief Trunk from Harding Ave/Highland Ave to Benz Road

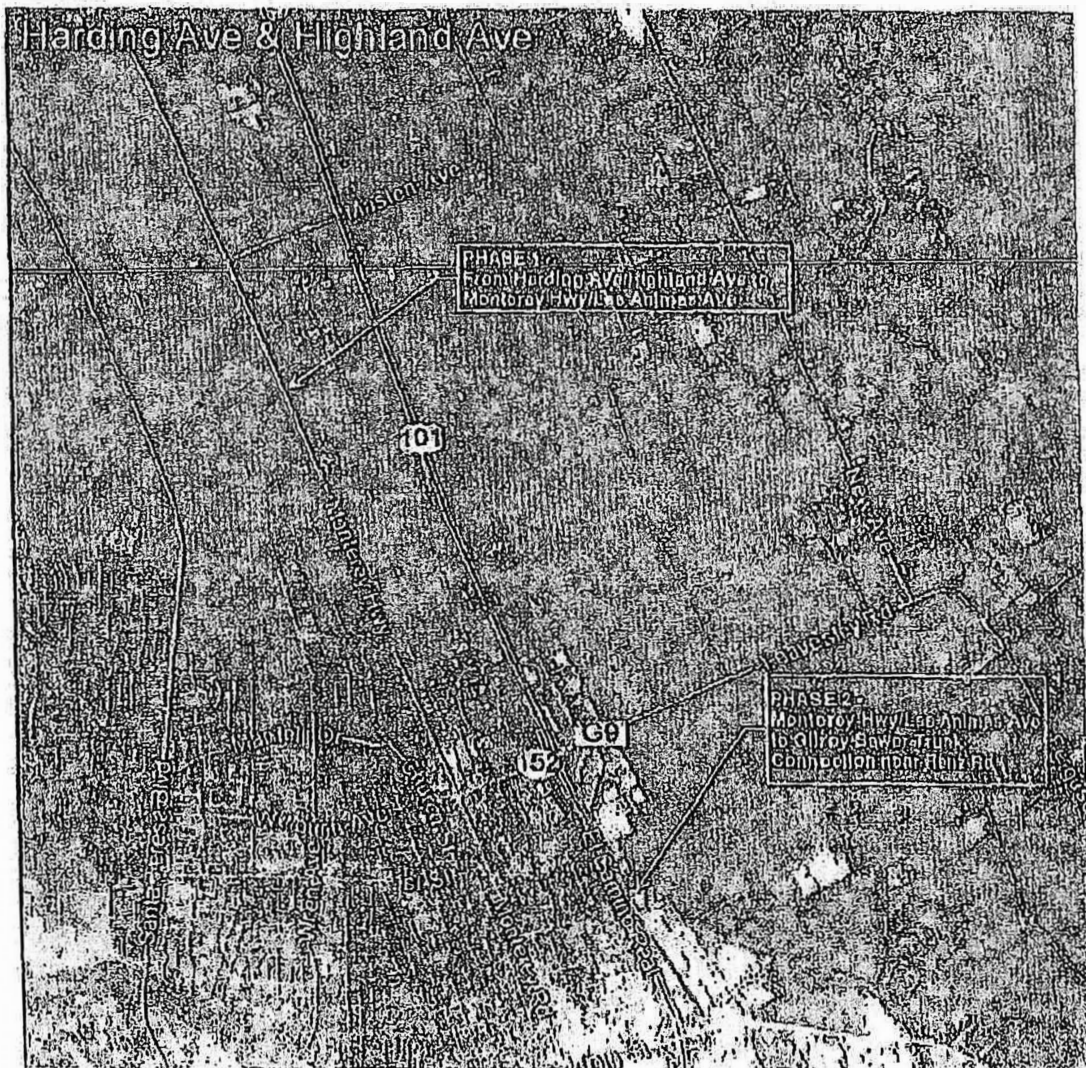


EXHIBIT A

TASK 1 -- PRELIMINARY DESIGN

HydroScience will begin the Phase 1 project with a kickoff meeting to establish a collaborative approach and will be the first step to ensure good coordination and communication throughout the project. The goals for this meeting include establishing an understanding of the project's objectives, the City's expectations, project schedule, and the various roles and responsibilities for the entire project team. This meeting is also a good opportunity to identify concerns and potential pitfalls. This process is extremely helpful in getting the design team members in tune with the City's real needs and objectives, and in recognizing the critical decisions and hurdles that may have to be addressed during the project. HydroScience will prepare agenda, handouts, and minutes to document this meeting.

Since Akel Engineering is currently updating the proposed sewer trunk's hydraulic parameters, our scope includes one meeting with Akel Engineering and the City to review Akel's latest evaluation results. The goals for this meeting include verifying the sewer trunk's pipe diameter for each segment and pipe reach, preliminary pipe invert elevations and rim elevations, and other recommendations based on the City's latest sewer master plan.

Technical Memorandum and Preliminary Design Workshop

The technical memorandum (TM) will evaluate all pipeline segments to be installed during Phases 1 and 2. HydroScience will make recommendations for a preferred design approach, which will be presented in the Preliminary Design Workshop, and the decisions reached in this workshop will serve as the basis for the subsequent design efforts in Phases 1 and 2. The preferred approach will be based on a set of criteria including cost, construction schedule, and ease of maintenance.

The TM that will summarize our preliminary design findings based on existing utility information and other information provided by the City. For segments in Phase 1, we will evaluate the City's three proposed routes shown in the RFP between the limits of Harding Ave/Highland Ave and Day Road. Out of this assessment, up to two of the three routes will be discussed and included in the TM, as well as a discussion on the proposed route from Day Road to Monterey/Las Animas. For segments in Phase 2, we will evaluate up to two possible alignments only if the proposed routing shown on Figure 1 is prohibitive. For each segment's preferred alignment, we will evaluate up to two construction methods (trenchless versus open-cut) for each segment.

For each segment's preferred alignment, the TM shall include the following:

- Exhibit of the preferred pipeline alignment (no preliminary drawings will be developed)
- Design criteria and high-level project description (for CH2A's initial studies)
- Recommendations for the preferred method of construction: 1) Open-cut or 2) Trenchless (pending confirmation of existing utility locations as part of Task 2).
- Preliminary construction estimate
- Preliminary design and construction schedule
- Identification of easements/ROW that may need construction easements, title reports, and/or Plat and Legal Descriptions for the City to obtain utility easements.
- Identification of permits required and approach to expediting any approvals from UPRR, Caltrans, and SCVWD.

EXHIBIT A

To facilitate design of the preferred alignment, HydroScience proposes a design review workshop with the City to review the TM findings. The pipeline alignment alternatives along with the preferred alignments will be discussed at this workshop. It is anticipated that the alignment and construction method for each segment will be validated by the end of this workshop. Following the workshop, the topographic survey and geotechnical investigation work will proceed on the selected alignment of the sewer pipe to be installed in both Phases 1 and 2.

Deliverables

TM: Turn hand-drawn and electronic PDF file

Preliminary Design Review Workshop meeting agenda, minutes, invitation, and sign-in sheet

Meetings

Agenda and minutes

Preliminary Design Review Workshop

TASK 2 – PREPARE PLANS, SPECIFICATIONS AND ESTIMATES

A. Perform Topographic Survey

HydroScience's subconsultant, HMM Engineering, will provide record right-of-way and title reports; record utility research; field topographic survey; and aerial topographic mapping. Our base fee is based on performing topographic survey work associated with the alignment shown in Figure 1. These limits may be adjusted to match the preferred alignment if different from what is shown in Figure 1 following completion of Task 1.

Record Right-of-Way. Using current Assessor's maps, title report information, and recorded maps and documents from the County of Santa Clara, HMM will prepare a record boundary in AutoCAD format.

Field Topographic Survey. HMM will perform field topographic surveying to obtain location, rim, invert, pipe size, and direction of flow of accessible sanitary sewer manholes, storm drain manholes, and storm drain inlets; location of all USA-marked utilities and vaults from curb to curb; location, rim, top of cut, and length of extension of water valves; and location of street monuments. HMM will prepare a topographic exhibit at a scale of 1 inch = 40 feet in AutoCAD format. The exhibit will be a composite of the record right-of-way, record utility research, and field topographic survey.

Aerial Topographic Mapping.

HMM will establish thirty field pre-marks and field control for an aerial flight to obtain topographic information within the streets. HMM will also engage a photogrammetric subconsultant to perform an flight services and compile a topographic map showing photo-visible surface features, structures within a 100 feet wide strip, one-foot contours, spot elevations, and breaklines at a scale of 1 inch = 40 feet.

Title Reports

HMM will obtain current preliminary title report for the following areas (private properties):

- Southeast corner of Las Animas Ave and Highway 101
- Cilmy Outlets parking lot (south of Leavesley Road)
- Vacant lot between Arroyo Circle And E. 6th Street (south of Kaiser Permanente Medical Offices)
- Costen parking lot (west side)

EXHIBIT A

- Lowe's parking lot (west side)
- Vacant lot south of Lowe's/Renz Road (west of Chill's parking lot)

Plat and Legal Description - OPTIONAL

LMH may prepare plat and legal description if requested by the City. Depending on the alignment selected during the Task 1 preliminary design evaluations, the City may need to obtain utility easements, which will require plat and legal descriptions. Since the number of plat-and-legal descriptions will not be known until after the alignment is selected, our revised costs includes optional costs for up to 10 plat-and-legal descriptions.

Deliverables

Final topographic exhibit at a scale of 1 inch = 40 feet in AutoCad format, electronic, and/or printed copy to the City.

B. Coordinate with Utility Companies Including PG&E; Perform Potholing

HydroScience will perform utility investigations to identify buried utilities in the project area. We will first contact known utility providers in the project area, prepare any applications to request maps showing the locations of their utilities, and meet with the utility companies if needed. Equipped with the mapping information, Underground Services Alert (USA) markings, visible trenches, vaults, valves and other surface evidence, we will update the topographic survey information as needed.

Potholing. It is expected that some potholing will be required, particularly to confirm the tie-in locations and key utility crossings to more precisely locate critical and/or conflicting utilities within the proposed sewer trunk alignment. We assumed up to 20 potholes (1' x 1') up to five feet in depth may be needed. These locations will be selected based on the potential conflict with existing underground utilities. We will procure services of a subcontractor to perform this work.

During design, if an existing utility relocation is needed along the City's selected sewer trunk alignment, HydroScience shall coordinate with the applicable utility company, prepare the application, and meet with them on site if necessary. Any application fees and costs associated with the utility relocation will be paid by the City. Our fee is based on one anticipated utility relocation.

Deliverables

An application for utility relocation

C. Geotechnical Investigation

Geo Logic Associates will perform up to 39 exploratory borings using a truck-mounted drilling rig to characterize the native soils in the project areas. The proposed boring locations and depths are shown in the table below.

EXHIBIT A

Geotechnical Investigation's Proposed Number of Borings

Project Segment	Proposed Number and Depth of Borings (below ground surface)
Highland Avenue	2 borings up to 20 feet each
Monterey Hwy to Las Animas Ave	17 borings up to 20 feet each
UPRR Crossing at Las Animas Ave	2 borings up to 50 feet each
Las Animas Ave	1 borings up to 20 feet each
Las Animas Ave/Highway 101 Crossing	2 borings up to 60 feet each
San Ysidro Ave, Gilroy Outlets parking lot, and Arroyo Circle	9 borings up to 30 feet each
Leavesley Crossing (at San Ysidro Ave)	2 borings up to 50 feet each
Miller Slough Crossing	2 borings up to 60 feet each
Costco and Lowe's parking lots	2 borings up to 30 feet each
Total of 39 Borings	

The deepest borings are near access pit locations for crossing under UPRR, Hwy 101, and Miller Slough. No borings are planned within Caltrans right-of-way. Geo-Logic will field mark and notify USA of proposed test boring locations prior to drilling.

Borings located in County R/W will be backfilled with soil cuttings (preferred by the County based on Geo-Logic's recent experience) and excess soil cuttings will be spread in unpaved shoulder areas. Borings located in the City of Gilroy and SCVWD right-of-way and in private properties will be backfilled with cement grout. In existing pavement areas, the borings will be capped at the top with cold-patch asphalt. Excess soil cuttings from borings in City of Gilroy, SCVWD, and private properties will be placed in 55-gallon drums and the drums moved to a temporary storage area. Samples will be collected from soil cuttings for CM 17 metals, hydrocarbons, VOC (B250H), and pesticides. Our fee also includes cost for disposal of the drums assuming the soil cuttings are non-hazardous. Additional testing may be necessary if excess levels of hazardous materials are indicated in the initial testing. In existing pavement areas, all borings will be capped at the top with cold-patch asphalt.

As an optional task for landfill soil disposal preliminary screening, Geo-Logic may also perform laboratory testing on 10 selected samples from the project's test borings. This preliminary screening will provide basic information for off-site disposal, and the soil properties needed for the design specifications. Tests to be performed include CM 17 metals, total petroleum hydrocarbons (gasoline, diesel and motor oil), VOCs, semi-VOCs, pesticides, and PCBs. During the Harding Avenue Sewer Trunk construction project, the City encountered challenges with landfill disposal of the excess excavated soils. This optional task will provide soil classification information needed to evaluate potential off-site disposal options during construction. The actual type and number of tests will depend on the materials encountered in our borings.

Geo-Logic will obtain encroachment permit and a boring permit from SCVWD. Geo-Logic will provide complete application information for the City to obtain encroachment permits from Santa Clara County.

EXHIBIT A

and City of Gilroy for the geotechnical field work. By having the City submit the applications, the permit fees are usually waived. Any other associated permit fees will be paid by the City.

A geotechnical engineering report in PDF electronic format will be prepared. The report will present the field data, the results of laboratory analyses, and geotechnical recommendations for various construction methods for the new pipeline.

Deliverables

Information on the sewerline replacement program and traffic control plans for geotechnical permits needed to provide chemical field work.

Geotechnical Report - Four hard copies and electronic PDF

D. Phase 1 Final Design

This scope of work is based on preparation of signed and stamped plans and specifications for the Phase 1 new sewer trunk construction contract (from Highland Avenue to Las Animas Avenue).

Progress Review Meetings with City and Stakeholders

The contract documents will refer to standard details and specifications for the Cities of Morgan Hill and Gilroy, Santa Clara County, Caltrans, and SCVWD as applicable. Special provisions will be added to the City of Morgan Hill documents as needed to meet the specific needs of each segment. We propose progress review meetings prior to submittal of the 30% and 60% designs for the City and project stakeholders to attend. HydroScience will present preliminary geotechnical and survey findings and recommendations and an overview of the current design approach for each segment. These meetings provide the City and stakeholders the opportunity to ask questions and make suggestions to the design prior to completing the design submittals.

Quality Assurance

The 30%, 60%, and 100% design submittals will be reviewed for QA/QC by a senior member of HydroScience's staff who is not directly involved with the project design prior to delivering those submittals to the City.

Design Submittals

Contract documents will be delivered to the City at the 30%, 60%, and 100% design completion levels for City review and comment. The 30% review submittal will include plan and profile drawings and list of technical specifications. The plan and profile drawings will include information needed to verify the selected alignment and make adjustments based on surveying and geotechnical findings. The 60% review submittal will include plan and profile drawings, standard details, and technical specifications. The 100% design and Bid Set submittals will include complete plan set, technical specifications, and City-provided front end documents that have been modified to meet the project needs.

Additionally, the design submittals will include updated design and construction schedules, the engineer's opinion of probable costs, and responses to comments from the 30% and 60% design submittals. Our schedule assumes the City will have two weeks to comment on the 30% and 60% submittal and one week

EXHIBIT A

for the 100% submittal. City comments on the 30% and 60% design submittals will be incorporated into the 60% and 100% design submittal, respectively. The 100% design submittal will also further develop the detailed design to a level suitable for any permit application submittals and bid advertisement, pending City review.

HydroScience will submit final design drawings and specifications, which will reflect any comments and modifications from the 100% review, as appropriate. HydroScience will prepare the bid schedule and delineate the anticipated construction time period. In addition, HydroScience will provide the final Engineer's opinion of probable cost, tabulation of quantities of all work items and materials, and recommendation for allowed construction time period.

Design Submittal Review Meetings

After the 30% and 60% submittals, the project manager and project engineer will meet with City staff to review the City's comments during a design review meeting.

We propose a 100% design review workshop to be held within the City's one week review period to facilitate review of the design and capture editing/comments. HydroScience will document the design review workshop via email. Changes in the design are not anticipated at this point. Review is mainly to capture minor edits or changes in the notes. Significant design changes such as realignment of the pipeline and/or additional design details may result in delays in the schedule and additional fee.

Deliverables

Deliverables regarding submittal review and design review

Four (4) full size hard copies and PDF of the 30%, 60% and 100% bid set design submittals (drawings, specifications, schedule, and estimate). One (1) full size stapled and signed set of copies of the 30% AutoCAD and Word files for final bidding documents.

Meetings

Two (2) proposed meetings with City and stakeholders (up to 1 hour each meeting)

Design review meetings at 30% 60% and 100% submittal milestones (up to 1 hour each meeting)

Assumptions

For Phase 1, approximately 26 drawing sheets to be provided, as follows: 12 plan and profile sheets at 1:30 scale plus 4 front end sheets and 4 detail sheets.

E. Permitting/Environmental Documentation Assistance

The various permits that may be required are itemized below:

- Phase I Construction:
 - o Santa Clara County Encroachment Permit

HydroScience will assist the City with preparing encroachment permit applications. We will compile the required information for each permit and submit applications on the City's behalf. Any permit applications will be paid by the City.

EXHIBIT A

Since City staff or its consultant will perform the CEQA required environmental studies and reporting, HydroScience will provide the City and/or its consultant the required project and design descriptions to complete the environmental documentations. Any required mitigated measures will be incorporated into the sewer trunk's design plans and specifications.

TASK 3 - BIDDING SUPPORT

HydroScience will provide assistance to the City during the contract bid period. Services include attendance at the project pre-bid meeting; responding to prospective bidders' questions (20 each); preparation of addenda (including sketches or revisions to plans) as needed to clarify the design (2 each); and a review and evaluation of the submitted bids up to the subtask budget.

Deliverables:

Meeting minutes, question responses, addenda if required, and bid review comments.
Contract plans and specifications (PDF), Word and AutoCAD

TASK 4 - CONSTRUCTION SUPPORT

The City will provide the construction management, special inspections services, and the daily inspection. HydroScience will provide engineering services during construction. Our fee for construction support services shall include:

- Attendance at the pre-construction meetings (up to 4 hours per meeting)
- Attendance at construction meetings and/or field visits (up to 8 total; up to 4 hours per meeting/field visit)
- Review of contractor submittals and resubmittals and response to request for information (up to 20 total)
- Minor adjustments to the design plans and specifications (5 each) to address unforeseen conditions or City requests.
- Review change orders (up to 5 total).
- Preparation of record drawings based on the contractor's markups.

The HydroScience team will review technical submittals (including product substitution requests) from the contractor in sufficient detail to determine whether or not the submitted item conforms to the intent of the plans and specifications. HydroScience will respond to RFIs and RFCs throughout construction as directed by the City. HydroScience will attend construction meetings and/or site visits to address conflicts or other design issues.

Once the project construction is complete, HydroScience will prepare record drawings to reflect the as-built project condition. Red-line drawings from the contractor and/or City Inspector will be used as the basis for preparing the as-built drawings.

EXHIBIT A

Deliverables:

Responses to Submittals: All (i.e., partial) submittal requests, and change order requests, regardless of whether they are approved or not.

One (1) full size record drawings (on mylar) plus PDF and AutoCAD format

ANTICIPATED INVOLVEMENT OF CITY STAFF

The City shall provide record drawings of recent street improvements and of any City owned underground utilities along the project alignments. The City shall provide HydroScience with the most current front end documents, standard provisions, and special provisions for incorporation into the design submittals. The City shall provide the necessary hydraulic modeling information; perform CEQA for this project; obtain any necessary additional easements; provide inspection services; review all design submittals in a timely manner; and make available City personnel to address issues that may arise during the design phase.

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61

EXHIBIT B
SCHEDULE OF COMPENSATION RATES

[illegible]

EXHIBIT C

SCHEDULE OF PERFORMANCE

[illegible]

EXHIBIT B



Date: April 5, 2017
Client: City of Morgan Hill
Contact: David Gittleton, P.E.
Project: Sewer Trunk Line South of Highland Avenue

HydroScience Engineers, Inc.
10509 Old Placentille Road
Sacramento, CA 95827
T: 916.364.1490
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CONTRACT AMENDMENT REQUEST FOR ADDITIONAL ENGINEERING SERVICES

Original Professional Services Agreement Date: May 4, 2016

Amendment Request No.: 1

Amendment Subject: Additional engineering services for flow meter design, bidding support, and construction support as part of Phase 1 design services; storm water pollution prevention plan (SWPPP) development services for Phase 1 and Phase 2; Phase 1 engineering services for change in pipe size from 30" to 36" diameter and additional design investigation efforts; additional survey, geotechnical investigation, and engineering services required to complete preliminary design of Phase 2 alignment as part of preliminary design services; engineering services for Phase 2 final design, bidding support and construction support.

Amendment Description: The Sewer Trunk South of Highland Avenue to Renz Ln (Project) was broken into two (2) design and construction phases: Phase 1 (from Highland Ave to Cohansey Ave) and Phase 2 (from Cohansey Ave to Renz Ln). HydroScience's original contract includes the following services:

Phase 1	Preliminary design, final design, bidding & construction support
Phase 2	Preliminary design & alignment alternatives

The City desires to accelerate the entire project at this time by advancing Phase 2 final design, bidding, and construction services.

Stakeholder coordination with the City of Gilroy to determine a Phase 2 alignment through Gilroy has required more effort and iterations of alignment alternatives than allotted in the original scope. Phase 2 has been narrowed down to two alignment alternatives, pending stakeholder approval, that will allow preliminary design to be completed and final design of Phase 2 to commence. This amendment requests scope be added for the additional preliminary design effort expended to date and anticipated effort to complete the task.

The Project's survey, potholing, and geotechnical investigations were split into two phases, increasing the total costs for those services due to dual mobilizations. Additional survey, potholing, and geotechnical effort is required to address a longer and more complex Phase 2 alignment than was assumed in the original Project scope. The currently proposed Phase 2 alignments include additional trenchless crossings and require utility easements within private property.

The proposed trunk sewer was originally assumed to be 30-inches in diameter. Following the 30% design submittal, the pipe diameter was increased to 36-inches to provide additional capacity within the system. Alignment and profile constraints will be reevaluated and refined to accommodate the increased diameter and reflected in Phase 1 and Phase 2 final design.

The South County Regional Wastewater Authority (SCRWA) Inter-City Boundary Agreement Line is located along Highland Avenue. Based on discussions with the City, the existing sewer trunk has a

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flow meter located near the intersection of Harding Avenue and Highland Avenue. City's new flow meter will measure Morgan Hill's additional sewer flows delivered to the SCRWA treatment facility via the new sewer trunk.

Develop a SWPPP for Phase 1 and Phase 2 to be compliant with current construction storm water discharge regulations. HydroScience will provide engineering support services to assist the City in the preparation and submittal of Permit Registration Documents (PRD) for Phase 1 and Phase 2 construction. A certified Qualified SWPPP Designer (QSD) will prepare documents necessary for the electronic submittals of the PRDs.

Scope of Services: Based on discussions with City personnel, this additional work consists of the following key scope elements:

Task 1 – Flow Meter

- **Item 1.1 – Flow Meter Preliminary Design.**
 - During the preliminary design phase, verify and coordinate flow meter equipment and operating requirements with SCRWA.
 - Summarize flow meter design requirements in preliminary design's technical memorandum.
 - HydroScience's electrical engineer will conduct one site visit to verify near-by power sources for the new flow meter. Existing aboveground power poles are located along Harding Avenue and also Highland Avenue.
- **Item 2D.1 – Flow Meter Final Design and PG&E Application**
 - During the final design phase, HydroScience will work with PG&E to apply for the proper power service to the new flow meter. The proposed budget is based on power service from a nearby power pole, PG&E providing the required transformer, and the City paying for any PG&E application fees.
 - Design the flow meter within a buried vault based on the City of Morgan Hill and SCRWA operation requirements. Design will include routing of power conduit from PG&E designated power pole source to the flow meter vault.
 - Design includes instrumentation and controls to allow radio control/communication between the flow meter and the SCRWA facility in Gilroy. The proposed budget does not include a radio study. Instead, the budget is based on a clear line-of-sight between the flow meter controls and SCRWA facility (i.e., no major mountains, hills, or large trees that may impact radio signals).
 - Design includes providing plans, specifications, and cost estimates for the new flow meter equipment, vault, power, and instrumentation and controls. Proposed budget includes coordination between the civil and electrical designs.
 - Final design budget is based on developing one drawing sheet for electrical site plan and flow meter and vault details. The budget does not include providing profile drawings for the electrical conduit between the power source and flow meter vault.
- **Items 3.1 and 4.1 – Flow Meter Bidding Support and Construction Support**
 - Provide bidding support and construction support services for the flow meter work. Construction support budget is based on submittal reviews of flow meter equipment and instrumentation/controls.

Deliverables:

- Inclusion of flow meter in the design submittals and specification package prepared for Phase 1.

Task II – Storm Water Permit Compliance

- **Items 2.E1 and 2.E2 – Assist the City in the preparation and submittal of Permit Registration Documents for Phase 1 and Phase 2.**
 - HydroScience will assist the City in the preparation and submittal of Permit Registration Documents (PRDs) in compliance with the Construction Activities Storm Water General Permit. Based on the criteria established by the State Water Resources Control Board, Phase 1 and Phase 2 Sanitary Sewer Construction Projects are considered Linear Utility Projects (LUP), and therefore, the Project is required to comply with the General Permit. The PRDs must be electronically submitted by the City (prior to commencement of construction activities) in the Storm Water Multi-Application Report Tracking System (SMARTS) and include the following:
 - Notice of Intent (NOI)
 - Risk Assessment
 - Post-Construction Calculation
 - Site Map
 - Stormwater Pollution Prevention Plan (SWPPP)
 - Signed Certification by the Legally Responsible Person (LRP)
 - First Annual Fee
 - The SWPPP is a document that outlines how a construction project will minimize stormwater pollution. The SWPPP document will be prepared by a HydroScience Qualified SWPPP Developer (QSD) and will describe the measures that will be put in place by the contractor to prevent stormwater pollution. This document will need to be maintained onsite at all times and updated as needed throughout the duration of construction.
 - The SWPPP will include both procedural and engineered control devices as Best Management Practices (BMPs) for minimizing erosion, sediment flow, and prevention of non-stormwater discharges. The SWPPP will also include site inspection, BMP maintenance, and laboratory sampling and analysis.
 - As a first order of work, HydroScience will perform a risk assessment of the construction project to best outline the complexity of the SWPPP and the extent of the inspection, monitoring, and reporting requirements.

Assumptions:

- All permit fees and costs will be the responsibility of the City.
- LUP Type 1 assumed for both Phase 1 and Phase 2 based on risk level.

Deliverables:

- Permit Registration Documents (pdf version) for electronic submission via the SMARTS system, and electronic copies of said documents.

Task III – Phase 1 Additional Design

- **Item 1.1 – Preliminary design investigation for temporary interconnect (February 2017)**
 - At the direction of City staff, investigate feasibility of a temporary interconnect of the proposed relief sewer to the existing trunk sewer in the vicinity of Day Rd, not included in original project scope. Research existing trunk profile and possible connection points. Evaluate available slope for relief trunk interconnect and identify potential alternate locations. Interconnect would alleviate wet weather surcharge conditions at the intersection of Harding Ave and Highland upon construction of Phase 1, prior to construction of Phase 2. Provide email summary of finding to City staff.
- **Item 2D.1 – Evaluation and redesign of relief trunk to accommodate 36" diameter pipe**
 - Following 30% design submittal, City staff decided to upsize the proposed sewer trunk from 30-inches in diameter to 36-inches in diameter. Due to tight horizontal and vertical constraints, verify through additional engineering evaluations that minimum slope, cover, and clearance requirements can be met with the larger pipe diameter. Reexamine all existing utility crossings and assess any impact to the completed 30% design due to the increase in pipe diameter. Modify alignment as required to meet minimum clearance requirements.

Deliverables:

- Email summary of interconnect feasibility evaluation findings.
- Incorporation of alignment redesign to address diameter increase in 60% design submittal drawings.

Task IV – Phase 2 Design

- **Item 1.1 – Preliminary Design for Phase 2 (partially completed)**
 - Following coordination meeting with the City of Gilroy (August 1, 2016), develop and evaluate six (6) alternative alignments in addition to those evaluated in the Draft Preliminary Design Memorandum. Evaluation of each additional alignment includes site visit; solicitation for and review of existing utility mapping and City of Gilroy record drawings not included in the original alternatives evaluation; hydraulic calculations to determine feasibility; evaluation of construction methods and constraints; and development of preliminary construction costs. Conduct two (2) conference calls (August 9 & 11, 2016) with City staff to discuss evaluation of additional alternatives and select preferred alternatives. Prepare figures of revised alignments for City of Morgan Hill to discuss with City of Gilroy.
 - Attend additional coordination meeting with the City of Gilroy (February 2017) to discuss revised preferred alternative alignment. Prepare meeting materials, including agenda, figures, and minutes. Perform site visit following meeting.
 - Following February 2017 coordination meeting with the City of Gilroy, develop and evaluate two (2) additional alternative alignments for 7th Street and Old Gilroy Street. Evaluation of each additional alignment includes solicitation for and review of existing utility mapping and City of Gilroy record drawings, and were not included in the previous two alternative evaluation efforts; hydraulic calculations to confirm feasibility;

evaluation of construction methods and constraints; and development of preliminary construction costs.

- o Attend one final stakeholder meeting with City of Gilroy to confirm final alignment.
- o Upon selection of a Phase 2 alignment, update Preliminary Design Memorandum with additional alternative alignment analysis performed and selection criteria used to determine the new preferred Phase 2 alignment.

Deliverables:

- o Prepare figures of revised alignments for City of Morgan Hill to discuss with the City of Gilroy.
- o Meeting materials, agenda, figures, and minutes for February 2017 meeting with the City of Gilroy to discuss preferred alternative alignments.
- o Updated Preliminary Design Memorandum.
- o **Item 1.2 – Additional Directed Design Work**
 - o As needed and as requested by the City, additional design analyses and evaluations performed to satisfy City and/or stakeholder requests.
- o **Item 2A.1 – Phase 2 Topographic Survey**
 - o HydroScience's subconsultant, HMM Engineering, will provide record right-of-way and title reports; record utility research; field topographic survey; and aerial topographic mapping per the terms of the scope of the original contract dated May 4, 2016 with the following modifications:
 - The base fee is based on performing topographic survey work associated with the alignment shown in Figure 1. These limits may be adjusted to match the preferred alignment if different from what is shown in Figure 1 following completion of Item 1.1 as described above.
 - HMM will obtain current preliminary title report for the following areas (private properties) in lieu of those listed in the original scope:
 - o Apartment Building located at 611 East 7th Street
 - o PG&E Property at 731 Renz Ln
 - o Vacant lot west of Chili's parking lot on Renz Rd
- o **Plat and Legal Description - OPTIONAL**
 - o HMM may prepare plat and legal description if requested by the City. Depending on the alignment selected during the Item 1.1 preliminary design evaluations, the City may need to obtain utility easements, which will require plat and legal descriptions. Since the number of plat-and-legal descriptions will not be known until after the alignment is selected, our revised costs includes optional costs for up to 10 plat-and-legal descriptions.

Deliverables

- o Final topographic exhibit at a scale of 1 inch = 40 feet in AutoCad format; electronic data becomes property of the City.

Assumptions:

- All permit fees and costs will be the responsibility of the City.
- **Item 2B.1 – Phase 2 Geotechnical Investigation**
 - Geo-Logic Associates were required to perform subsurface exploration by means of 20 exploratory borings using a truck-mounted drilling rig. Based upon the alignment provided as Figure 1, a total of 23 borings will now be required, averaging about 1,000 feet between borings plus two borings at each of the five identified trenchless crossing locations. The proposed boring locations and depths are tabulated below.

Project Segment	Proposed Number and Depth of Borings
Monterey Road, S of Cohansey Avenue	1 boring up to 20 feet
Las Animas Avenue/UPRR crossing	2 borings up to 50 feet
Las Animas	1 boring up to 20 feet
Murray Avenue	6 borings up to 20 feet
Murray Avenue/Miller Slough crossing	2 borings up to 60 feet each
Murray Avenue/Leavesley Road crossing	2 borings up to 50 feet each
Chestnut Street	2 borings up to 20 feet each
Chestnut Street/Miller Slough crossing	2 borings up to 50 feet each
7 th Street	1 boring up to 20 feet each
7th Street/Highway 101 crossing	2 borings up to 60 feet each
Renz Lane	2 borings up to 20 feet each
	Total of 23 borings

- In the borings, soil sampling and penetration testing will be performed at about 5 foot intervals except for the ten borings at the five crossings which will have continuous sampling within a 10-foot deep tunnel zone.
- Borings located in County right-of-way will be backfilled with soil cuttings (preferred by the County based on our recent experience) and excess soil cuttings will be spread in unpaved shoulder areas. Borings located in City of Gilroy and SCVWD right-of-way will be backfilled with cement grout. In existing pavement areas, the borings will be capped at the top with cold-patch asphalt.
- Excess soil cuttings from borings in City of Gilroy and SCVWD right-of-way will be placed in 55-gallon drums and the drums will be moved to a temporary storage area. Samples will be collected from the soil cuttings for testing of CAM 17 metals, total hydrocarbons, VOC (8260B), and pesticides. Additional testing may be necessary if excess levels of hazardous materials are indicated in the initial testing. Fee includes cost for disposal of the drums assuming the soil cuttings are non-hazardous. Additional testing and disposal of the drums other than as non-hazardous materials will require additional fees. Fee includes up to 40 drums.
- Install an open pipe piezometer in one of the borings at each crossing. The piezometers will have 2-inch diameter pipe. Measure the groundwater level in the five piezometers. Four measurements within the 12-month period after completion of the piezometers are assumed. Cost for destruction of the piezometers is not included.

- o Geo-Logic will obtain encroachment permit and a boring permit from SCVWD. Geo-Logic will provide complete application information for the City to obtain encroachment permits from Santa Clara County and City of Gilroy for the geotechnical field work. By having the City submit the applications, the permit fees are usually waived. Any other associated permit fees will be paid by the City.
- o A geotechnical engineering report in PDF electronic format will be prepared. The report will present the field data, the results of laboratory analyses, and geotechnical recommendations for various construction methods for the new pipeline.

Deliverables

- o Information on the subsurface exploration program and traffic control plans for encroachment permits needed for geotechnical field work.
- o Geotechnical Report – Four hard copies and electronic PDF.

Item 2B.2 – Geotechnical Trenchless Construction Expert Consultation

- o Due to the complexity of the trenchless crossings and increase in size of the pipe, HydroScience recommended to the City that the services of a geotechnical trenchless construction expert be added to the geotechnical investigation in order to provide Geo-Logic with site specific guidance with regard to soils investigations for the construction methods proposed. DCM Consulting will provide the following services to support the geotechnical investigation of Geo-Logic and preliminary design of Phase 2.
 - Complete an alignment reconnaissance at the five trenchless crossings identified to assess the site conditions and surface constraints as related to trenchless constructability elements. Provide recommendations to Geo-Logic for execution of borings in the vicinity of the trenchless crossings.
 - Review available historic data and data contained in the Phase 2 geotechnical investigation report pertinent to the trenchless crossings.
 - Provide a geotechnical and trenchless engineering Technical Memorandum for the five identified trenchless crossings summarizing design groundwater elevations; Tunnelman's Ground Classification; the feasibility of microtunneling; possible alternatives to microtunneling; appropriate shaft construction methods; shaft dewatering criteria; tunnel portal ground improvement criteria; anticipated jacking forces as a function of pipe O.D., casing O.D., soil types and installation lengths; anticipated systemic settlement as a function of tunnel overcut, cover depths and soil types; potential for obstructions; and preliminary estimated microtunneling cost.
- o In order to support DCM Consulting efforts, HydroScience will research the existence of reference borings (i.e. existing data), historic aerial photography and available site information in close proximity to the five identified trenchless crossings from sources such as Caltrans, historic societies and public and private developments as made available from the City and/or County public works and building departments. All available information will be collected and made available to DCM Consulting.

Deliverables

- o Email containing subsurface investigation recommendations based on site visit.

- Geotechnical and trenchless engineering Technical Memorandum in electronic format (pdf)
- **Item 2C.1 – Phase 2 Utility Coordination and Potholing**
 - 20 Potholes are part of the original scope for the Phase 2 sewer segment. The current proposed Phase 2 alignment traverses residential areas, increasing the number of anticipated existing gravity utilities. Consequently, we recommend ten (10) additional potholes be added to the preliminary investigation associated with Phase 2.
 - Additional cost for two (2) separate mobilizations to accommodate the two design package schedules.

Deliverables

- Pothole results (30 ea) in ledger and/or included on plan & profile drawings

Assumptions

- Caltrans may require additional potholing to locate high priority existing utilities (e.g., gas pipes) located near new work in their ROW. Additional potholes may also be needed if new work is longitudinally in ROW. Additional potholing as a result of Caltrans-directed potholing is not included in this scope of services at this time.
- **Item 2D.1 – Phase 2 Final Design**
 - This scope of work is based on preparation of signed and stamped plans and specifications for the Phase 2 new sewer trunk construction contract (from Cohansey Avenue to Renz Lane).
 - Progress Review Meetings with City and Stakeholders
 - The contract documents will refer to standard details and specifications for the Cities of Morgan Hill and Gilroy, Santa Clara County, Caltrans, the city of Gilroy, and SCVWD as applicable. Special provisions will be added to the City of Morgan Hill documents as needed to meet the specific needs of the Project. We propose progress review meetings prior to submittal of the 30% and 60% designs for the City and project stakeholders to attend. HydroScience will present preliminary geotechnical and survey findings and recommendations and an overview of the current design approach. These meetings provide the City and stakeholders the opportunity to ask questions and make suggestions to the design prior to completing the design submittals.
 - Quality Assurance
 - The 30%, 60%, and 100% design submittals will be reviewed for QA/QC by a senior member of HydroScience's staff who is not directly involved with the project design prior to delivering those submittals to the City.
 - Design Submittals
 - Contract documents will be delivered to the City at the 30%, 60%, and 100% design completion levels for City review and comment. The 30% review submittal will include plan and profile drawings and list of technical specifications. The plan and profile drawings will include information needed to verify the selected alignment and make adjustments based on surveying

and geotechnical findings. The 60% review submittal will include plan and profile drawings, standard details, and technical specifications. The 100% design and Bid Set submittals will include complete plan set, technical specifications, and City-provided front end documents that have been modified to meet the project needs.

- Additionally, the design submittals will include updated design and construction schedules, the engineer's opinion of probable costs, and responses to comments from the 30% and 60% design submittals. Our schedule assumes the City will have two weeks to comment on the 30% and 60% submittal and one week for the 100% submittal. City comments on the 30% and 60% design submittals will be incorporated into the 60% and 100% design submittal, respectively. The 100% design submittal will also further develop the detailed design to a level suitable for any permit application submittals and bid advertisement, pending City review.
- HydroScience will submit final design drawings and specifications, which will reflect any comments and modifications from the 100% review, as appropriate. HydroScience will prepare the bid schedule and delineate the anticipated construction time period. In addition, HydroScience will provide the final Engineer's opinion of probable cost, tabulation of quantities of all work items and materials, and recommendation for allowed construction time period.
- Design Submittal Review Meetings
 - After the 30% and 60% submittals, the project manager and project engineer will meet with City staff to review the City's comments during a design review meeting.
 - We propose a 100% design review workshop to be held within the City's one week review period to facilitate review of the design and capture edits/comments. HydroScience will document the design review workshop via email. Changes in the design are not anticipated at this point. Review is mainly to capture minor edits or changes in the notes. Significant design changes such as realignment of the pipeline and/or additional design details may result in delays in the schedule and additional fee.
- **OPTIONAL - Geotechnical Trenchless Construction Expert Consultation**
 - Due to the complexity of the trenchless crossings, DCM Consulting may provide, as needed by the design team, trenchless design constructability consultations to HydroScience. Services may include one or more of the following:
 - Assistance with required jacking and receiving shaft sizes and topside equipment area requirements.
 - Determination of specific dewatering requirements and/or ground improvement requirements for tunnel portal stabilization at jacking and receiving shafts.
 - Recommendations for geotechnical instrumentation (e.g. surface and subsurface settlement monitoring and vibration monitoring).
 - Assistance with specification review including microtunneling, shaft construction, dewatering, ground improvement, contact grouting, and geotechnical instrumentation specifications.
 - Final trenchless constructability review.

- Assistance with permit acquisition (e.g., responding to Caltrans encroachment permit questions).
- Project design meeting(s) at HydroScience, Concord.

Deliverables

- Meeting agendas, minutes, and decision logs
- Four (4) half-size hardcopies and PDF of 30%, 60%, and 100% Bid Set design submittals (drawings, specifications, schedule, and estimate). One (1) full-size stamped and signed set of mylars of the 100%, AutoCAD and Word files for final bidding documents.

Meetings

- One additional progress meeting held February 2017 with City of Morgan Hill and City of Gilroy staff to discuss Phase 2 alignment alternatives.
- Two (2) conference calls with City staff (August 2016) to discuss Phase 2 alignment alternative evaluations (2 hours each meeting).
- Two (2) progress meetings with City and stakeholders (up to 4 hours each meeting) to facilitate final design.
- Design review meetings at 30%, 60%, and 100% submittal milestones (up to 4 hours each meeting).

Assumptions

- For Phase 2, approximately 30 drawing sheets to be provided, including 17 plan and profile sheets at 1:40 scale plus 4 front-end sheets, and 8 detail sheets.

Fee Adjustment: The increase in cost for these services is \$521,900. A detailed breakdown of costs are provided in Attachment A.

Tasks	Fee
Contract Amendment No. 1 – Flow Meter, SWPPP, Additional Phase 1 Design, Phase 2 Design	\$521,900
Phase 1 Original Contract	\$651,760
Total Adjusted Budget (Original Contract + CA #1)	\$1,173,660

Additional services will be billed on a time-and-materials basis, not to exceed the total fee without prior approval by the City.

Schedule Adjustment: The modified scope will have a slight impact on the Phase 1 project schedule in order to alter the 30% design documents for an increased size trunk sewer (add two weeks to preliminary design plans), although the remaining durations under all tasks yet to be undertaken are unchanged. Phase 2 schedule will be prepared following NTP with selected alignment.

Sincerely,
HydroScience Engineers, Inc.



By: Cindy Preuss, P.E., Project Manager

Enclosure: Attachment A – Fee Proposal for Amendment No. 1 Services

Amendment Authorization Request:

This will confirm your authorization for HydroScience to undertake the added (or changed) engineering services described above pursuant to our original Contract Agreement.

Please confirm your authorization by signing in the space provided and emailing a copy back to us as soon as practical in order they we may proceed with these additional engineering services.

Approved: _____
(signature) Date

By: _____
City Representative, City of Morgan Hill

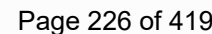


EXHIBIT "2"



Date: November 6, 2019
Client: City of Morgan Hill
Contact: David Gittleson, P.E.
Project: Joint Sewer Relief Trunk from Renz to Highland

HydroScience Engineers, Inc.
10569 Old Placerville Road
Sacramento, CA 95827
T: 916.364.1490
F: 916.364.1491

CONTRACT AMENDMENT REQUEST FOR ADDITIONAL ENGINEERING SERVICES

Original Professional Services Agreement Date: May 4, 2016

Amendment Request No.: 2

Amendment Subject: Project restart and extended project design and coordination

Amendment Description: The agreement for Phase 1 of the Sewer Trunk Line South of Highland Avenue Project (Project) was executed on May 4, 2016. Subsequently, the project scope was amended in Amendment No. 1 to include detailed design of Phase 2 of the Project, as well as other related tasks.

Both phases of the project were put on hold during 2018 to obtain approval from the City of Gilroy City Council on the proposed pipeline alignment within the Gilroy City limits. Putting the project on hold was necessary to allow for a preferred pipeline alignment to be selected, minimize further iterations and rework to analyze multiple optional pipeline alignments, and confirm that the parties were comfortable moving forward with a basis of design. When the project was halted, the design plans of Phases 1 and 2 had been developed approximately to a 60% level of completion, outside of trenchless crossings and constrained areas compelling possible movement of other existing utilities.

On April 29, 2019, the Gilroy City Council supported proceeding with the recommended alignment. This contract amendment summarizes the proposed scope and tasks to update the scope for the original agreement and Amendment No. 1. The following serves to represent the overall effort to complete the design portion of the project, based on the updated scope of work, a \$30M construction estimate, and updated billing rates and project schedule.

Scope of Services: The following scope of services is intended to detail the tasks to complete the project design from this point forward. The initial text of each task represent whether the tasks of that scope of services are complete new tasks, updates of previously authorized tasks, or are in the existing scope. In total, Amendment No. 2 represents the overall scope and fee required to complete the project design, superseding the previous agreement and Amendment No. 1 in their entirety. Bid services and engineering services during construction are not included at the direction of the City due to the unknown construction schedule; the City will issue an amendment for those services at the time they may be required.

Task A – Project Management:

Previously, there was not a separate project management task. This work was embedded in other project tasks. HydroScience has separated project management into its own task for the purpose of scoping this amendment.

Task A includes project coordination and management, meetings including the kickoff meeting and milestone meetings, and QA/QC. Each item is further discussed below.

Project Management: HydroScience shall provide Project Management of all design activities. HydroScience shall monitor labor utilization, project schedule, and project budget on a regular basis, and maintain action item and decision item logs throughout the design phase of the project. Invoices will be submitted to the client monthly that document the work performed during the invoice period. HydroScience's Project Manager will be responsible for the performance of the engineering team, managing the team's and the subconsultant's efforts for the duration of the extended project schedule.

HydroScience will also review and update the decision tracking log.

Meetings and Public Outreach: HydroScience shall attend a second kickoff meeting with the City to confirm critical path items and updated scope items. All key staff representing major engineering disciplines shall attend. Kickoff meeting agenda will include: review scope of work and schedule, responsibilities of each party, project costs and funding mechanisms, current design status, and Project goals, objectives, and critical success factors.

Up to five additional meetings and/or conference calls will be held with the City and external stakeholders to review the project status and receive comments on the 60% and 90% PS&Es. One will be held at each submittal level (60% and 90%) to review PS&E comments, and the remaining three meetings will be held at a milestone to be determined by the Project Manager.

Additionally, it is expected that HydroScience will make one presentation each to the City of Morgan Hill and Gilroy City Councils. City staff will coordinate the scheduling and staff reports for these presentations. HydroScience will assist with PowerPoint slides, and be available to respond to questions as appropriate.

HydroScience will also be available to represent the engineering team at up to two community workshops. It is expected that no new marketing material will be required to be prepared by HydroScience for either community workshop, and the City will organize and lead the workshop with support from HydroScience.

All meetings will have meeting agenda and minutes prepared by HydroScience.

Stakeholder Coordination: HydroScience will review available information and provide outreach to stakeholders (City of Morgan Hill, City of Gilroy) as well as Caltrans, the County, the E. 7th St. apartment owner, and utility agencies to coordinate project implementation.

QA/QC: HydroScience shall perform in-progress quality management reviews to verify that the project objectives are realized prior to submittal of the 60%, 90% and Bid Set PS&E. Each design submittal will be reviewed for QA/QC by a HydroScience senior manager who is not directly involved with the project design prior to delivering those submittals to the City.

Deliverables:

- Monthly progress reporting to accompany invoice (pdf)
- Meeting agendas and minutes (6 total)
- Council presentations (2 total, PowerPoint)
- QA/QC review comments, if requested (pdf)
- Action item and decision item logs, if/as requested (pdf)

Assumptions:

- The City will provide one consolidated set of submittal review comments at the 60% and 90% submittal levels.
- The City will assist with coordinating stakeholder comments where contradictory to City's design direction.
- No major design changes will be requested beyond the 60% submittal level.

Task B – Final Design:

This scope of work updates Task 2 from the original agreement and Task IV from Amendment No. 1. Preliminary design and portions of other items from this task are completed. The remaining scope to be completed in this amendment are further detailed below.

Additional Topographic Survey: The original topographic survey for this project was completed in 2016. Since that time, new development has occurred along the project alignment, including at Harvest Park I) which is a new subdivision near the intersection of Monterey Rd and Cohanesy Ave. This subdivision includes offsite improvements that will impact the project. Hence, this task item is needed to conduct a new field survey of said improvements along the proposed alignment.

Title Reports, Plat and Legal Descriptions: Plat and legal descriptions was originally an optional service, but is now modified and included as a base service for pairing with preliminary title reports. Three permanent easements are required to construct the project based on the current, in-progress 60% design alignment. These easements are located on 611 East 7th Street (apartment building; private owner), 731 Renz Lane (PG&E property), and a vacant lot west of the Chili's parking lot on Renz Road (PG&E property). The Caltrans easements at the Leavesley and Hwy 101 crossings will be secured through the Caltrans pipeline crossing permit; all other easements will require preliminary title and survey documentation.

HMH will obtain a preliminary title report and prepare a plat and legal description for each of the three needed easements. All plats and legal descriptions will be stamped by a registered land surveyor in the State of California. As an optional task, HMH will obtain up to two additional easements in case preliminary title reports reveal more than one private owner owning land within the proposed pipeline corridor, or in case the alignment shifts outside the public right of way in lieu of existing utility relocation(s) to allow construction of the pipeline within the right of way.

Utility Outreach: HydroScience will send a new round of utility map requests to utility agencies to confirm that HydroScience has the most current mapping of utilities along the project alignment. Information received will be compared with previous mapping transmittals and current basemap information. Basemap will be updated in AutoCAD based on the information received. At the 90% PS&E submittal level, plan and profiles will be sent to the utility agencies for a last appeal to alert us to any missing or misrepresented facilities against their mapping, record drawings, or agency knowledge. This last step may also prompt alerts of new or planned utility construction projects that otherwise hadn't been furnished to us during design development.

Utility Locating: Potholing is expected to be required to locate fiber-optic lines near the Las Animas railroad crossing, within the Caltrans right-of-way, and as required along the project alignment to determine the location of existing utilities. Utility locating will also be needed at key tie-in locations, utility crossings, and to more accurately locate critical or conflicting utilities along the proposed sewer alignment.

It is expected that up to 60 discrete locations may require utility locating within these areas (assumed to consist of 27 potholes and 33 electronic). The budget shown includes a \$25K contingency should any issues arise during or associated with utility locating, and is allocated toward combination of potholing, GPR and electronic utility location. Which locating method is best suited will be assessed based on quantity needed, existing utility materials and depths, location relative to traffic and access, and permitting requirements associated with each utility.

As additional information from the utility locating is obtained, a licensed land surveyor will collect the field-marked locations and build into the project basemap, and HydroScience will update the PS&E accordingly. The locating services include traffic control, permitting coordination with the UPRR, Caltrans, and the County, and backfilling and hot-patching of potholes. It should be noted that UPRR permits can take as much as three months to process.

In addition to the utility locating noted above, the utility locating budget also includes:

- one 19-foot deep pothole to confirm the tie-in elevation on Renz Lane, and
- three CCTV inspections to verify existing sewer details: 310 feet on Renz Lane, 100 feet on Chestnut St near the pedestrian bridge, and 600 feet near the intersection of Highland & Monterey.

Geotechnical Investigation, Well Monitoring and Design Support: HydroScience will review the geotechnical investigation report prepared as part of the base work and Amendment No. 1. This investigation included borings located along the project alignment plus borings at each of the five trenchless crossing locations. Preliminary screening was also performed on samples throughout the alignment and found to be non-hazardous.

Piezometers installed in the monitoring wells installed by GeoLogic will also be monitored during July – December 2019 to monitor groundwater levels at each of the five trenchless crossing locations. Information about groundwater levels is important for selecting the most appropriate trenchless construction method and informing construction activities.

HydroScience will coordinate with GeoLogic, the author of the geotechnical report, and DCM Consulting, the author of the TM appending the report, during the design phase to address any geotechnical related questions. GeoLogic will also review project plans and specifications and provide geotechnical comments, as necessary. Alignment shifts will also require geotechnical consideration in case the substrate is anticipated to vary from previous characterization of adjacent substrate (where original borings were taken).

Geotechnical Well Destruction: As an optional task, GeoLogic will properly destruct each of the five geotechnical monitoring wells. The work associated with this optional task includes:

- Applying for and obtaining a total of five separate well destruction permits from the Santa Clara Valley Water District (SCVWD). All SCVWD permit fees will be paid by GeoLogic.
- Applying for and obtaining an encroachment permit from City of Gilroy for the field work (traffic control will be included). We have assumed that the City of Gilroy will waive all permit fees.

- Coordinating field work with HydroScience, City of Gilroy, driller, and traffic control subs.
- Destructing the wells per SCVWD guidelines. Traffic control will be provided during field work.
- Submitting well destruction reports to the SCVWD.

Trenchless Geotechnical Engineering Support. This was originally an optional service, but the remainder of this task is now a base service. Due to the complexity of the trenchless crossings, DCM Consulting will provide trenchless design constructability consultation to HydroScience in the context of the geotechnical setting associated with each crossing location. Services to be provided by DCM will be performed as directed by HydroScience, and are expected to include the following:

- Assistance with required jacking and receiving shaft sizes and topside equipment area requirements.
- Determination of specific dewatering requirements and/or ground improvement requirements for tunnel portal stabilization at jacking and receiving shafts.
- Recommendations for geotechnical instrumentation (e.g. surface and subsurface settlement monitoring and vibration monitoring).
- Review of microtunneling, shaft construction, dewatering, ground improvement, contact grouting, and geotechnical instrumentation specifications.
- Final trenchless constructability review.
- Assistance with response to questions from Caltrans;
- Meetings with HydroScience as appropriate.

Deliverables:

- Preliminary title reports, plats and legals (3 total, hard copy)
- Utility outreach letters, if requested (pdf)
- Utility locating results (ledger format, pdf and electronic format, AutoCad)
- Groundwater level measurements (to DCM Consulting)
- Optional tasks:
 - Up to two additional preliminary title reports, and plat and legal descriptions
 - Well destruction reports (to SCVWD)

Assumptions:

- Caltrans may require additional potholing to locate high priority existing utilities (e.g., gas pipes) located near new work in their ROW (whether crossing or parallel). Additional potholes may also be needed for critical PG&E facilities based on their developing new requirements. Additional potholing as a result of these potential directed agency requirements is not yet known and therefore not included in this scope of services.
- Further analytical testing/screening of soils is not included in this scope. The testing already done for this project as part of the previous geotechnical investigation serves to provide general information to the contractors. Summary results are provided in the geotechnical report, and full testing reports will be provided to the City for their or the contractor's reference. The testing performed does not replace actual analytical testing required for the contractors to dispose their soils during construction; the receiving party of the soils will dictate the type and frequency of testing before accepting the soils.
- All permit fees and costs will be the responsibility of the City.

Task C – Detailed Design PS&E:

This design includes the remainder of the 60% PS&E, changes the 100% PS&E to a 90% level PS&E, and updates the Bid Set PS&E scope to reflect the currently recommended project alternative. This effort includes:

- Detailed design will include the design of the sewer trunk pipeline from Highland Avenue to Renz, as detailed in the recommended project alternative.
- Design of the trenchless pipeline crossings and incorporation of geotechnical information as required to select the appropriate construction methods and requirements.
- Supplemental coordination with utilities on the use or relocation of sewer or water facilities to accommodate new trunk sewer at three possible locations (Las Animas, Chestnut, Renz).
- Siphon redundancy TM.
- Design of a new flow meter, as further detailed below.

Contract documents will be delivered to the City at the 60% and 90% design completion levels for City review and comment. The 60% PS&E will include the plan and profile drawings, standard details, technical specifications, and the engineers opinion of probable costs for the recommended project alignment. The contract documents will refer to standard details and specifications for the Cities of Morgan Hill and Gilroy, Santa Clara County, Caltrans, and SCVWD as applicable. HydroScience will also prepare a calculation of estimated construction working days and calculate appropriate daily liquidated damages and include those values in the 60% specifications. The front end specifications and special provisions will be based on the City of Morgan Hill standard and updated as needed to meet the specific needs of the Project.

It is expected that the City will route and coordinate review and comment of the 60% PS&E by external stakeholders, including:

- San Martin
- Santa Clara County
- Caltrans
- City of Gilroy
- PG&E
- SCVWD
- Owner of Apartment Complex at 611 East 7th Street

It is expected that up to two additional conference calls or in person meetings may be required to receive 60% comments on the PS&E from external stakeholders. Those meetings have been incorporated into the Project Management task.

Comments on the 60% PS&E will be incorporated into the 90% PS&E. Where comments from stakeholders conflict, City is to provide direction to HydroScience as to how to address conflicting comments. It is not expected that any significant design changes, additional design details, or other substantive changes will occur after receiving the 60% Submittal review comments.

The 90% PS&E will include complete plans, specifications, and the engineer's opinion of probable costs. All work will be developed to a level of detail that would result in the PS&E being suitable for advertisement, permit applications, and construction without being stamped. We propose a 90%

design review workshop to be held within the City's one week review period to facilitate review of the design and capture edits/comments.

The Bid Set PS&E will incorporate any comments from the 90% design review workshop and comments provide by the City of Morgan Hill. It is expected that only minor changes will be required after the 90% Submittal. The Bid Set PS&E will be stamped by a civil engineer registered in the state of California.

At the request of the City, a \$50,000 allocation for supplemental design services is also included in this scope task in order to address out-of-scope items should they arise during final design.

Siphon Redundancy TM: At the request of the City, HydroScience will also prepare a TM on siphon redundancy as a new scope item. An analysis will be performed for the locations where siphons cannot be avoided without pressurizing the pipeline to promote flow (targets trenchless crossings compelling deeper installations than the grade allows). Elements to be reviewed will consider risk, constructability, cost, operations and maintenance for one siphon versus two in these areas.

Flow Meter: A new flow meter will be incorporated into the PS&E to coordinate operating requirements with SCRWA, as originally presented in Amendment No. 1. This scope covers most of Item 2D.1 from Amendment No. 1, which includes the final design and PG&E application for the proposed flow meter.

- HydroScience will submit the proposed flow meter with current junction structure concept design to SCRWA to verify acceptance of flow meter equipment and operating requirements.
- HydroScience will work with PG&E to apply for a new power drop to the new flow meter. It is assumed that power can be provided from overhead electrical lines along Harding Avenue or Highland Avenue. It is assumed that the City of Morgan Hill will pay any PG&E fees.
- The flow meter will be located in a below grade, traffic rated vault containing the flow meter equipment, plumbing, electrical, and instrumentation and controls.
- One drawing sheet for electrical site plan and flow meter and vault details is assumed. The budget does not include providing profile drawings for the electrical conduit between the power source and flow meter vault.
- Design includes instrumentation and controls to allow radio control/communication between the flow meter and the SCRWA WWTP in Gilroy, CA. It is assumed that there is line-of-sight between the flow meter vault location and the SCRWA antenna, and no separate radio study is required.

The design of the flow meter will be incorporated into the PS&E for the overall project. No separate submittal will be provided for the flow meter.

Deliverables:

- 60%, 90% and Bid Set PS&E (Four (4) half-size hardcopies and PDF of 60%, 90% and Bid Set design submittals (drawings, specifications, schedule, and estimate). One (1) full-size stamped and signed set of mylars, word files and AutoCAD of the Bid Set documents.
- Siphon Redundancy TM (pdf)
- Inclusion of flow meter in the PS&E design submittals
- Up to three (3) applications for utility relocations (electronic, pdf)

Assumptions:

- Approximately 56 drawing sheets to be provided, including 33 plan and profile sheets at 1:40 scale plus 5 front-end sheets, 8 detail sheets, and 10 striping plans at 1:80 scale.
- Estimate of probable construction costs was last estimated at \$30M. Bidding climate and economy may significantly impact the estimate beyond the control of the City and HydroScience.
- Supplemental design allocation amount provided herein may be used at the discretion and advance authorization of the City only.

Task D – Permitting

This task was partially completed but requires additional work to ensure that all permitting work reflects the recommended project alternative.

Environmental Documentation Support: HydroScience will continue to coordinate with the City's environmental consultant to update information on scope of work, alignment, equipment and other contributors during construction affecting biological or air quality impacts, and the location and depth of required excavations.

HydroScience will respond to public comments assigned to HydroScience that are related to the design efforts of HydroScience.

HydroScience has allocated a total of 50 hours to provide support to coordinate with the environmental consultant and respond to comments on the environmental documentation.

Stakeholder permits: This is a new task that has been expanded from the task presented in the original agreement or Amendment No. 1.

Implementation of the recommended project alternative requires obtaining permits from multiple external agencies, including:

- Caltrans: Utility Encroachment Permit @ Highway 101
- PG&E: Coordination with facility on site work/access for construction encroachment (Third Party Request to Use PG&E Real Property and License Agreement for Invasive Investigation Activities)
- Santa Clara Valley Water District : Crossing of both Miller Slough and Chestnut Creek
- UPRR: Permit to cross railway at Las Animas
- City of Gilroy: Encroachment permit and crossing of Chestnut Creek
- County – construction encroachment; paving requirements

HydroScience will assist the City with preparing encroachment permit applications. HydroScience will compile information required for each permit and submit permit applications to the stakeholders on the City's behalf. All permit application fees will be paid by the City.

Stormwater Permit Compliance: HydroScience shall assist the City in the preparation and submittal of Permit Registration Documents in order to comply with the Construction Activities Storm Water General Permit. HydroScience will receive access permission from the City to be able to electronically submit PRDs on the City's behalf into the Storm Water Multi-Application Report Tracking System (SMARTS). The information submitted to SMARTS will include the following:

- Notice of Intent (NOI)
- Risk assessment

- Post-construction calculation
- Site map
- Stormwater Pollution Prevention Plan (SWPPP)
- Signed certification by the Legally Responsible Person (LRP)
- First annual fee (to be paid by City of Morgan Hill)

HydroScience will prepare a SWPPP to outline how this construction project will minimize stormwater pollution and describe the measures that will be put in place by the contractor to prevent stormwater pollution. This document will need to be maintained onsite at all times and updated as needed throughout the duration of construction. The SWPPP will include both procedural and engineered control devices as Best Management Practices (BMPs) for minimizing erosion, sediment flow, and prevention of non-stormwater discharges. The SWPPP will also include requirements for site inspection, BMP maintenance, and laboratory sampling and analysis.

Deliverables:

- Permit Registration Documents (pdf version) for electronic submission via the SMARTS system, and electronic copies of said documents.
- Permits/approvals (pdf)

Assumptions:

- All permit fees and costs will be the responsibility of the City.
- LUP Type 1 assumed for both Phase 1 and Phase 2 based on risk level.
- Inspection services for SWPPP implementation during construction are not included in this scope of services.

Proposed Fee: The fee to complete the Amendment No. 2 scope of work is presented in Exhibit A. The breakdown of labor hours by task and subtask is a guide only; the total fee governs. The fee associated with Amendment No. 2 was compared to the budget remaining from authorization of the original agreement and Amendment No. 1 in the table below to determine the overall required budget for Amendment No. 2.

Billing rates have been adjusted to the year when services are to be performed (assumed to be during 2019 and 2020) for all staff classifications. Professional services will be billed on a time-and-materials basis, not to exceed the total fee without prior approval by the City.

Tasks	Fee
Phase 1 Original Contract	\$651,760
Contract Amendment No. 1	\$521,900
Total Contract Budget (Original Contract + CA #1)	\$1,173,660
Cost-to-Complete Budget Request (Base + Optional Services)	\$769,900
Less Budget Remaining* (Original Contract + CA #1)	\$238,850
Budget Augmentation Request (Cost-to-Complete minus Budget Remaining)	\$531,050

*Through August 2019.

Project Schedule: The updated project schedule assumes Council approval of this amendment on November 20, 2019.

HydroScience appreciates the opportunity to continue providing design services to you on this project. Should you have any questions regarding this proposal, please contact me at (925) 332-5221 X201, or cpreuss@hydroscience.com.

Sincerely,
HYDROSCIENCE ENGINEERS, INC.



Cindy Preuss, P.E.
Principal, Project Manager

Attachments:

Exhibit A – Consultant Fee

Exhibit B – Project Schedule

Amendment Authorization Request:

This will confirm your authorization for HydroScience to undertake the added (or changed) engineering services described above pursuant to our original Contract Agreement.

Please confirm your authorization by signing in the space provided and emailing a copy back to us as soon as practical in order they we may proceed with these additional engineering services.

Approved:

Authorized Signature

Date

By:

Printed Name, City of Morgan Hill

HydroScience

November 5, 2019

Page 237 of 419

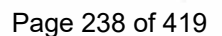


EXHIBIT "2"



Date: October 29, 2021
Client: City of Morgan Hill
Contact: David Gittleson, P.E.
Project: Joint Sewer Relief Trunk from Renz to Highland

HydroScience Engineers, Inc.
10569 Old Placerville Road
Sacramento, CA 95827
T: 916.364.1490
F: 916.364.1491

CONTRACT AMENDMENT REQUEST FOR ADDITIONAL ENGINEERING SERVICES

Original Professional Services Agreement Date: May 4, 2016

Amendment Request No.: 4

Amendment Subject: Term Extension and Additional Investigations and Design

Amendment Description: The agreement for Phase 1 of the Sewer Trunk Line South of Highland Avenue Project (Project) was executed on May 4, 2016, with the City of Morgan Hill (City). The following summarizes the project's prior executed amendments:

- **Amendment No. 1** amended the project scope to include detailed design of Phase 2 of the Project, as well as other related tasks.
- **Amendment No. 2** amended the project scope to detail the additional tasks to complete the project design after resuming the project in 2019 and receiving City of Gilroy support to proceed with the project.
- **Amendment No. 3** extended the project contract terms of agreement through December 31, 2021.

This Contract Amendment No. 4 summarizes the proposed scope of work and tasks to provide additional investigations and final design services related to the following elements of the project:

- Leavesley Rd Crossing – Evaluate bore and jack trenchless option
- Highway 101 Crossing – Evaluate an alternative alignment that minimizes the easement needed on PG&E's property located at 731 Renz Lane.

The following serves to represent the overall effort to complete the design portion of the project, based on the additional engineering investigations and design and updated billing rates.

Scope of Services: The current contract will be amended to include the scope of services detailed herein.

Task A – Project Management:

This scope is for additional project management during the extended contract term and for the additional engineering investigations and design tasks. The scope and deliverables to be provided are similar to the scope in Amendment No. 2: project management work includes project coordination and management, progress meetings, and QA/QC.

Task B – Final Design – Additional Investigations and Design:

The project is currently in the 90% Design stage. During design development, the team identified opportunities to reduce construction impacts and total construction costs. This task includes the additional engineering investigations needed to determine feasibility of the alternative design options noted below. The results of the additional investigations will be used to confirm the alignment and installation method to be included in the 90% design submittal.

Leavesley Rd Crossing – Evaluate Bore and Jack Option

The 60% Design proposed the Horizontal Directional Drilling (HDD) method to cross underneath Leavesley Road (CA 152). With the HDD method, an inverted sewer siphon would be required. However, during the 90% design development, it was identified that the bore-and-jack method could also be a viable installation method. This method would enable the City's sewer trunk to cross underneath Leavesley Rd as a conventional gravity sewer without an inverted sewer siphon, which would present many benefits including substantial cost savings, minimizing impacts, and improved constructability.

It should be noted that additional field and engineering investigations are required before the feasibility of the bore-and-jack alternative can be confirmed. The vertical clearance between the proposed sewer pipe and the bottom of the main obstruction (33" VCP Sewer) needs further investigation. This task includes the following investigations:

- CCTV inspection through the 33" sewer is needed to identify the quantity, location, and severity of any pipe sags that may exist. A pipe sag could render this option infeasible.
- A pothole on top of the 33" sewer is needed to verify it's vertical location.
- Our subconsultant, Bess Testlabs has sufficient remaining budget under the current contract to cover this pothole. Therefore, their current scope and budget will be utilized for this single pothole.

This task also includes the design of pipe improvement(s) to the existing 33" sewer to strengthen the pipe and minimize potential for damage during the bore-and-jack operation. Leavesley Rd is Caltrans right-of-way and the existing 33" sewer is owned by the City of Gilroy. Therefore, this task includes an allowance for stakeholder coordination and permitting support.

If the bore-and-jack method is agreed upon by the City of Morgan Hill, City of Gilroy, and Caltrans, this task includes engineering services to develop revised plan & profile drawings and detail drawings for this crossing. The revised design drawings will be included in the 90% design submittal.

Highway 101 Crossing – Evaluate Alternative Alignment:

The current design is based on the alignment agreed upon with the City of Gilroy, which included a Highway 101 crossing using bore and jack trenchless method. The currently designed crossing includes a jacking pit on PG&E's property (on 731 Renz Lane) and receiving pit on the City of Gilroy's Corporation Yard.

The City of Morgan Hill was recently informed by PG&E that they intend to build out their parcel to the maximum extent. Therefore, the sewer easement may not be allowed. The City will be entering discussions with PG&E with some potential design alternatives including reducing the length of the sewer easement needed.

This additional work includes evaluating one alternative alignment that minimizes the sewer length and access pit footprint on PG&E's property.

- The alternative alignment will require additional topographic surveying. This amendment provides an allowance to perform this additional survey work (scope of services similar to work described in Amendment No. 2).
- This work includes additional engineering services to evaluate the alternative alignment option and prepare exhibits to support the City in their negotiations to minimize impacts from the proposed sewer easement.
- If the alternative alignment is agreed upon by the City and PG&E, this task includes engineering services to develop revised plan & profile drawings and detail drawings for this crossing. The revised design drawings will be included in the 90% design submittal.

Deliverables:

- Exhibits of the proposed alignment alternative to facilitate discussions with PG&E.
- Exhibits and sketches of the proposed bore-and-jack crossing design to facilitate discussions with Caltrans and the City of Gilroy.
- Three updated Plan & Profile Drawings: one for Leavesley Rd crossing, and two for the Hwy-101 crossing.
- Updated civil and structural details as required for Leavelsey Rd and Hwy-101.

Assumptions:

- The prepared geotechnical findings are appropriate for the Highway 101 crossing alternative alignment and no additional geotechnical investigation is needed.
- The City will initiate and lead the coordination efforts with PG&E to obtain the proposed sewer easement through the PG&E property at 731 Renz Lane.
- Only one pothole investigation is needed on Leavesley Road.
- All permit fees and costs will be the responsibility of the City.

Proposed Fee

The fee to complete the Amendment No. 4 scope of work is presented in Attachment A. The breakdown of labor hours by task and subtask is a guide only; the total fee governs.

Billing rates have been adjusted to the current 2021 rates for all staff classifications. Professional services will be billed on a time-and-materials basis, not to exceed the total fee without prior approval by the City.

Contract Summary	Fee
Phase 1 Original Contract	\$651,760
Contract Amendment No. 1	\$521,900
Contract Amendment No. 2	\$531,050
Contract Amendment No. 3 (term extension only)	\$0
Total Contract Budget (Original Contract + CA #1 + CA #2 + CA#3)	\$1,704,710
CA No. 4 Request	\$75,000
Total Contract Budget + CA No. 4 Request	\$1,779,710

Contract Term Extension

The contract term duration would be extended to December 31, 2022.

HydroScience appreciates the opportunity to continue providing design services to you on this project. Should you have any questions regarding this proposal, please contact me at (916) 806-2798, or lkohagura@hydroscience.com.

Sincerely,
HYDROSCIENCE ENGINEERS, INC.



Ligaya C. Kohagura, P.E.
Project Manager

Attachments:

Attachment A – Amendment No. 4 Consultant Fee

AMENDMENT AUTHORIZATION REQUEST SIGNATURE ON THE NEXT PAGE

Amendment Authorization Request:

This will confirm your authorization for HydroScience to undertake the added (or changed) engineering services described above pursuant to our original Contract Agreement.

Please confirm your authorization by signing in the space provided and emailing a copy back to us as soon as practical so we may proceed with these additional engineering services.

Approved:

Authorized Signature

Date

By:

Printed Name, City of Morgan Hill

Attachment A



City of Morgan Hill

Joint Sewer Relief Trunk from Renz to Highland

Contract Amendment No. 4 - Term Extension and Add'l Investigations & Design

October 29, 2021

Task	Description	PIC, QA/QC Reviewer	Project Manager	Project Engineer	Design Support	Admin.	Hours	Fee	Repro. and ODCs	Surveying - HMM	CCTV - Subtronic	Direct Charges Markup @ 10%	Expense Subtotal	Total Fee
		Hoang	Kohagura	Le	Fernandez									
	Labor Classification	Principal	Eng VIII	Eng IV	Eng III	Admin.								
	2021 Hourly Rate	\$255	\$235	\$195	\$185	\$80								
A	Project Management and Quality Assurance/Control	3	18	20	0	0	41	\$8,900	\$0	\$0	\$0	\$0	\$0	\$8,900
	Project Management and Quality Control	3	18	20	0	0	41	\$8,900				\$0	\$0	\$8,900
B	Final Design - Additional Investigations and Design	4	32	95	90	0	221	\$43,720	\$520	\$13,225	\$6,600	\$2,035	\$22,380	\$66,100
	Leavesley Crossing - Evaluate Bore and Jack Option	2	24	75	70	0	171	\$33,730	\$300		\$6,600	\$690	\$7,590	\$41,320
	Hwy 101 Crossing - Evaluate Alternative Alignment	2	8	20	20	0	50	\$9,990	\$220	\$13,225		\$1,345	\$14,790	\$24,780
OVERALL TOTAL		7	50	115	90	0	262	\$52,620	\$520	\$13,225	\$6,600	\$2,035	\$22,380	\$75,000



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, November 15, 2023 6:00 PM

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

CALL TO ORDER

Mayor Turner called the City Council meeting to order at 6:00 p.m.

ROLL CALL ATTENDANCE

City Clerk Michelle Bigelow called the roll.

PRESENT	Rene Spring, Gino Borgioli, Yvonne Martinez Beltran, Mark Turner, Marilyn Librers
ABSENT	None

DECLARATION OF POSTING AGENDA

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

PROCLAMATIONS

Proclaiming the month of November as Morgan Hill Community Philanthropy Month

PRESENTATIONS

YAC Presentation

CITY COUNCIL REPORTS

Council Member Librers had nothing to report.

CITY MANAGER'S REPORT

City Manager Christina Turner announced that the Recreation Winter/Spring Activity Guide is available on our website. She mentioned that the Transportation Master Plan updates will be heard later tonight and the Community Survey is out through the end of November. There will be a Spanish community meeting on Thursday, November 16, 2023, from 7 - 9 p.m. in the Council Chambers. The I BELONG, Morgan Hill Survey is available on our website, in both English and Spanish, through December. She discussed the Buy Local Campaign, which we are partnering with the Chamber of Commerce. Sidewalks Saturdays will continue through November 25, 2023 with the addition of the Holiday Market on December 16, 2023 from 9 a.m. to 1 p.m. Small Business Saturday is on November 25, 2023, where you can shop locally. She also wished everyone a Happy Thanksgiving and shared that City offices will be closed on Thursday and Friday, November 23-24, 2023.

CITY ATTORNEY'S REPORT

City Attorney Donald Larkin announced that Council met in closed session following the November 1, 2023 meeting at which there was no reportable action. He reported that subsequent to that meeting agreements were reached with all three represented bargaining units.

OTHER REPORTS

Mayor Turner thanked the City Clerk and her team for their work on the website update. He attended a Cities Association meeting last week that discussed Build the Future for a Stronger Economy, regarding affordable childcare and would like to discuss it further with the Council. The Caltrain Policy Makers Group is having additional strategy meetings around electric trains and grade separation. VTA is having a discussion around a tax measure through the Metropolitan Transportation Commission. The type of tax is yet to be determined.

Council Member Martinez Beltran attended the Peninsula Division Executive board meeting for Cal Cities. They are working on putting together a legislative session with state legislators in January. The SVCE board meeting appointed and selected a new CEO, Monica Padilla who has been with SVCE for about 8 years.

PUBLIC COMMENT

Public comment opened at 6:18 p.m. The following people were called to speak:

Mandi Santiago

Miguel Jimenez

Joe Baranowski

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

ADOPTION OF AGENDA

MOTION:

Adopting the agenda as posted.

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

CONSENT CALENDAR

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

MOTION:

Approving consent calendar items 1 through 10.

RESULT:	Passed
MOVER:	Mayor Pro Tem Spring
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

1. **ACCEPT DONATION OF UP TO \$20,000 FOR INSTALLATION OF IMPROVEMENTS AT COMMUNITY PARK FROM THE ROTARY CLUB OF MORGAN HILL**

Recommendation:

Authorize the City Manager to accept a donation of funding and services valued up to \$20,000 for the installation of new pathways, trees, tables, landscaping and associated improvements.

2. **APPROVE AMENDMENT TO ON-CALL WATER AND SEWER REPAIR**

CONTRACT WITH GOLDEN BAY CONSTRUCTION

Recommendation:

Authorize the City Manager to execute an amendment to the on-call water and sewer repair contract with Golden Bay Construction with compensation up to \$750,000.

3. APPROVE PUBLIC IMPROVEMENTS FINANCING AGREEMENT WITH ADVENT LUTHERAN CHURCH OF MORGAN HILL

Recommendation:

1. Approve a Public Improvements Financing Agreement with Advent Lutheran Church of Morgan Hill; and
2. Authorize the City Manager to execute, administer and further negotiate the Financing Agreement as necessary.

4. APPROVE A REIMBURSEMENT AGREEMENT WITH NORDSTROM CAL HOMES, LLC FOR OUT-OF-TRACT PUBLIC IMPROVEMENTS ADJACENT TO THE DUNNE MURPHY SUBDIVISION (TRACT NO. 10387)

Recommendation:

1. Approve a Reimbursement Agreement with NORDSTROM CAL HOMES, LLC;
2. Authorize the City Manager to execute the Reimbursement Agreement; and
3. Adopt a resolution to amend FY 2023-24 budget to appropriate \$305,748 in the Traffic Impact Fund (309).

5. APPROVE CONSULTANT AGREEMENT WITH IMS INFRASTRUCTURE MANAGEMENT SERVICES, LP FOR SIDEWALK ASSESSMENT IN THE AMOUNT OF \$156,950

Recommendation:

1. Approve and authorize the City Manager to execute a consultant agreement with IMS Infrastructure Management Services in the amount of \$156,950 for the completion of a sidewalk and curb ramp assessment; and
2. Adopt a resolution to amend the FY 2023-24 budget to appropriate \$156,950 in the Public Facilities Fund (346).

6. APPROVE MEMORANDUM OF UNDERSTANDING (MOU) WITH MORGAN HILL POLICE OFFICERS' ASSOCIATION (POA), MOU WITH COMMUNITY

SERVICE OFFICERS' ASSOCIATION (CSOA) AND MOU WITH THE AMERICAN FEDERATION OF STATE, COUNTY, AND MUNICIPAL EMPLOYEES (AFSCME) AND CORRESPONDING SALARY SCHEDULES; AND APPROVE MANAGEMENT, PROFESSIONAL, AND CONFIDENTIAL EMPLOYEES RESOLUTION, ELECTED OFFICIALS AND COUNCIL APPOINTED AND PART-TIME TEMPORARY AND SEASONAL EMPLOYEES SALARY SCHEDULES

Recommendation:

1. Approve a Memorandum of Understanding (MOU) with POA effective December 24, 2023 - December 31, 2025 and corresponding salary schedules;
2. Approve a MOU with CSOA effective December 24, 2023 - December 31, 2025 and corresponding salary schedules;
3. Approve a MOU with AFSCME effective December 24, 2023 - December 31, 2025 and corresponding salary schedules pending ratification;
4. Approve the Management, Professional, and Confidential Employees Resolution effective December 24, 2023 and corresponding salary schedules;
5. Approve the Part-Time Temporary and Seasonal Employees salary schedule effective December 24, 2023;
6. Approve the Elected Officials and Council Appointed salary schedules; and
7. Receive update regarding the salaries of the Elected Officials and potential future amendment of Sections 2.04.020 Salary of Council Members and 2.04.030 Salary of the Mayor of the Chapter 2.04 City Council of the Municipal Code of the City of Morgan Hill.

7. APPROVE SECOND AMENDMENT TO MISSION LINEN SUPPLY SERVICE AGREEMENT

Recommendation:

1. Approve the Second Amendment to the Service Agreement with Mission Linen Supply for a fourth year of services for \$20,000, for a total contract amount of \$80,000; and
2. Authorize the City Manager to execute and administer one additional one-year extension of the Service Agreement subject to future budget appropriations.

8. APPROVE THE NOVEMBER 1, 2023 CITY COUNCIL MEETING MINUTES

Recommendation:

Approve minutes.

9. APPROVE THE 2024 CITY COUNCIL MEETING SCHEDULE

Recommendation:

Review, discuss, if needed, amend, and approve the 2024 City Council meeting schedule.

10. RECEIVE REPORT REGARDING UPCOMING 2024 COMMISSION VACANCIES PER MADDY ACT

Recommendation:

Receive report.

PUBLIC HEARINGS

11. AFFIRM OR MODIFY PLANNING COMMISSION APPROVAL OF A CONDITIONAL USE PERMIT AND DESIGN PERMIT TO ALLOW AN APPROXIMATELY 5,000 SQUARE FOOT DRIVE-THROUGH RESTAURANT (CHICK-FIL-A) ON A 1.82 ACRE SITE AT SUTTER AND COCHRANE

Recommendation:

1. Open/close public hearing; and
2. Adopt a resolution affirming the decision of the Planning Commission to adopt Resolution No. 23-08 approving the Conditional Use Permit and Resolution No. 23-09 approving the Design Permit.

Development Services Director Jennifer Carman provided a presentation and report.

The meeting recessed at 6:59 p.m. and reconvened at 7:06 p.m.

The public hearing opened at 7:06 p.m. The following people were called to speak:

Keith Gilbert, Applicant

Nick Gaich, Chamber of Commerce

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

MOTION:

Approving the recommended action.

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

NAYS:	None
ABSTAIN:	None
ABSENT:	None

**12. ADOPT AMENDMENT TO THE MORGAN HILL MUNICIPAL CODE TO
CREATE A VEHICLE SALES OVERLAY ZONE (-VS) AT COCHRANE AND US
101**

Recommendation:

1. Open/close public hearing;
2. Waive first and second reading of the Ordinance Amendment; and
3. Introduce Ordinance Amendment

Economic Development Director Matt Mahood, Development Services Director Jennifer Carman, and Assistant City Manager Edith Ramirez provided a presentation and report.

The public hearing opened at 8:30 p.m. The following people were called to speak:

Nick Gaich, Chamber of Commerce

Miguel Jimenez

Susie Jimenez

Joe Baranowski

Rick Kent

Sean Bayard, Police Officers Association

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

MOTION:

Waiving the first and second reading of the ordinance modifying the 60% to 65%.

RESULT:	Failed
MOVER:	Council Member Borgioli
SECONDER:	None
AYES:	None
NAYS:	None
ABSTAIN:	None
ABSENT:	None

SUBSTITUTE MOTION:

Waiving the first and second reading of the ordinance modifying the 60% to 70% including Planning Commission changes.

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

MOTION:

Introducing the ordinance.

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

OTHER BUSINESS**13. RECEIVE UPDATE AND PROVIDE INPUT ON THE TRANSPORTATION MASTER PLAN**

Recommendation:

1. Receive an update on the Transportation Master Plan; and
2. Provide input to the project team.

Public Services Director Chris Ghione, along with Robert Del Rio with Hexagon Transportation Consultants provided a presentation and report.

Public comment opened at 9:31 p.m. The following people were called to speak:

Miguel Jimenez

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

The City Council provided direction.

14. PROVIDE DIRECTION REGARDING POTENTIAL MUNICIPAL CODE TEXT AMENDMENTS TO THE CITY OF MORGAN HILL'S AMUSEMENT & ENTERTAINMENT AND NOISE ORDINANCES

Recommendation:

Provide Strategic Direction for amending the identified chapters of the Municipal Code.

Management and Talent Exchange Fellow, Justin Burks provided a presentation and report.

Public comment opened at 10:01 p.m.

Krista Rupp, Visit Morgan Hill, was called to speak.

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

The City Council provided direction.

15. DIRECT THE CITY MANAGER TO NEGOTIATE AGRO-TOURISM USE ON CITY-OWNED AGRICULTURAL PROPERTY WITH TERRA AMICO, INC.

Recommendation:

Authorize the City Manager to negotiate an agreement for agro-tourism development on City-owned property located at the southeast corner of Highway 101 and Tennant Avenue with Terra Amico, Inc.

Public Services Director Chris Ghione provided the report.

Public comment opened at 10:32 p.m. The following people were called to speak:

Joe Raineri, Terra Amico Farms

Nick Gaich, Chamber of Commerce

Julie F. Morris, Santa Clara County Agricultural Liaison

Sam Thorp

Krista Rupp, Visit Morgan Hill

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

MOTION:

Approving the recommended action.

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

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

Recommendation:

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

1. Consider providing more lead time for posting City Council agendas;
2. Consider a discussion on the Agricultural Mitigation Policy 18.152.050 - Mitigation ratio;
3. Consider a discussion on potential funding mechanisms for public art;
4. Consider revisiting City Council Policy 21-02, City Council Funding Requests; and
5. Consider a discussion on options for providing public comment and the transparency of remote meeting participants.

Public comment opened at 10:47 p.m.

Brian Sullivan was called to speak.

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

The City Council directed staff to agendize the discussion regarding public comment on Zoom (Item 5) at the next meeting. The remaining items, 1 through 4, will be continued to the next meeting for consideration.

FUTURE COUNCIL INITIATED AGENDA ITEMS

Council Member Borgioli requested to look into fining the owners of properties with empty storefronts.

Council Member Martinez Beltran requested an item to not allow items to go to back-to-back meetings.

Mayor Turner, Council Member Martinez Beltran, and Mayor Pro Tem Spring would like a resolution regarding Build America Childcare for All.

ADJOURNMENT

There being no further business, Mayor Turner adjourned the meeting at 10:58 p.m.

Minutes Prepared by:

Michelle Bigelow, City Clerk

CITY COUNCIL STAFF REPORT

MEETING DATE: December 6, 2023

PREPARED BY:

Spring Andrews, Information Technology Director

APPROVED BY: City Manager

AUTHORIZE THE CITY MANAGER TO EXECUTE A PURCHASE AGREEMENT WITH CADENCE TEAM FOR THE NETWORK EQUIPMENT IN THE NOT-TO-EXCEED AMOUNT OF \$242,241, INCLUDING CONTINGENCY

RECOMMENDATION(S)

Authorize the City Manager to execute a purchase agreement for network equipment with Cadence Team in the amount of \$242,241, including a 10% contingency of \$22,022.

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Enhancing Public Safety

Protecting the Environment and Preserving Open Space and Agricultural Land

Maintaining and Enhancing Infrastructure

Supporting our Youth, Seniors, and Entire Community

Fostering a Positive Organizational Culture

2022-2023 Strategic Priorities

Fiscal Sustainability

Guiding Documents

GIS Strategic Plan

Morgan Hill 2035 General Plan

Public Safety Master Plan

Waste System Master Plan

Wastewater System Master Plan

REPORT NARRATIVE:

Background:

The City's current network equipment is end of life resulting in the following challenges:

1. Regulatory compliance
2. Equipment is in a failing state

3. No resiliency
4. Lack of business continuity

Proposal:

1. Replace network equipment
2. Leverage existing National Association of State Procurement Officials (NASPO) contract

Replacing our network equipment will provide regulatory compliance and resiliency, resulting in a stable environment for our teammates and community.

Cadence Team is a sole source vendor. The Cadence Team's in-depth knowledge of the City's network provides the City with the best solution to ensure there are no delays in services provided to our community. Morgan Hill Municipal Code Section 3.04.50 allows the City Council to make a sole source determination where required supplies or services are available from a single source as determined by the City's Purchasing Officer; and the determination has been made by the Purchasing Officer that Cadence Team is the only source for the required supplies and services that meet the City's needs.

COMMUNITY ENGAGEMENT:

Inform

This staff report serves to inform the Community of the City's recommended purchase of network equipment with Cadence Team.

ALTERNATIVE ACTIONS:

Council could direct staff to seek and contract with an alternative provider; however, this will likely result in additional costs. Re-engaging another vendor to purchase equipment would not only result in additional costs, but also pose significant delays, furthering our risk.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The City of Morgan Hill has been leveraging Cadence Team for the purchase of hardware, software, and maintenance contracts since 2020.

FISCAL AND RESOURCE IMPACT:

There is sufficient funding available for the one-time purchase. Funding for future replacements and the annual licensing fee will be included in the next budget development process.

CEQA (California Environmental Quality Act):

Not a CEQA Project. This action will not have a direct or indirect impact on the environment.

Remittance Address:
4010 Foothills Blvd, Ste 103 PMB205
Roseville, CA 95747



Phone: 844.934.8326
Fax: 844.923.5878
www.cadence.team

Company: City of Morgan Hill
Attn: Spring Andrews
Project: Price Summary
Contract #: NASPO # AR3228

Date:	11/27/2023	Expiration:	12/27/2023
Shipping Method:	GROUND	Sales Rep:	Jeremy_Caudill
Est. Delivery:	TBD	Direct:	916.710.8264
Terms:	NET30	Email:	jeremy@cadence.team

Part Number	Description	Qty.	List Price	Unit Price	Extended	Tx	Disc %
Price Summary							
	Aquatic Center	1	\$16,505.60	\$16,505.60	\$16,505.60	N	0%
	Community Cultural Center	1	\$16,783.22	\$16,783.22	\$16,783.22	N	0%
	CRC	1	\$25,182.49	\$25,182.49	\$25,182.49	N	0%
	Corp Yard	1	\$11,519.67	\$11,519.67	\$11,519.67	N	0%
	Civic Center	1	\$20,239.13	\$20,239.13	\$20,239.13	N	0%
	City Hall	1	\$16,502.24	\$16,502.24	\$16,502.24	N	0%
	MHPD	1	\$42,110.31	\$42,110.31	\$42,110.31	N	0%
	CRC Parking	1	\$5,247.82	\$5,247.82	\$5,247.82	N	0%
	Magical Bridge	1	\$5,247.82	\$5,247.82	\$5,247.82	N	0%
	Transceiver	1	\$60,881.22	\$60,881.22	\$60,881.22	N	0%

Sub Total: \$0.00
Non Taxable: \$220,219.52
Tax: \$0.00
Credit: \$0.00
Freight: \$0.00
Total: \$220,219.52
Tax Rate: 9.125%

Terms and Conditions

Warranty: NA
Maintenance: NA
Terms: No Returns
Equipment: All orders invoice upon receipt of purchase order

Customer Signature authorizes Cadence Team to process the order in place of a purchase order. Prices are subject to change after the expiration date of the quote.

Customer Signature: _____
Print: _____
Title: _____
Date: _____

Remittance Address:
4010 Foothills Blvd, Ste 103 PMB205
Roseville, CA 95747



Phone: 844.934.8326
Fax: 844.923.5878
www.cadence.team

Company: City of Morgan Hill
Attn: Spring Andrews
Project: Aquatic Center
Contract #: NASPO # AR3228

Date:	11/27/2023	Expiration:	12/27/2023
Shipping Method:	GROUND	Sales Rep:	Jeremy_Caudill
Est. Delivery:	TBD	Direct:	916.710.8264
Terms:	NET30	Email:	jeremy@cadence.team

Part Number	Description	Qty.	List Price	Unit Price	Extended	Tx	Disc %
Office 24p PoE							
JL662A	Aruba 6300M 24-port 1GbE Class 4 PoE and 4-port SFP56 Switch	1	\$8,709.00	\$4,354.50	\$4,354.50	T	50%
JL086A	Aruba X372 54VDC 680W 100-240VAC Power Supply	2	\$929.00	\$464.50	\$929.00	T	50%
Pool Room 12p PoE							
R8Q72A	HPE Aruba Networking 6200F 12G Class4 PoE 2G/2SFP+ 139W Switch	1	\$2,699.00	\$1,349.50	\$1,349.50	T	50%
Attic 24p PoE Rugged							
JL818A	Aruba CX 4100i 24-port 1GbE (20-port Class 4 POE and 4-port Class 6 POE) 4-port SFP+ Switch	1	\$11,549.00	\$5,774.50	\$5,774.50	T	50%
JL820A	Aruba CX 4000i POE 54VDC 480W 100-240VAC DIN Power Supply	1	\$3,209.00	\$1,604.50	\$1,604.50	T	50%
Aruba Central							
Q9Y79AAE	Aruba Central 63xx or 38xx Switch Foundation 3 year Subscription E-STU	1	\$1,485.00	\$742.50	\$742.50	N	50%
Q9Y74AAE	Aruba Central Switch 6200/29xx Foundation 3 year Subscription E-STU	1	\$945.00	\$472.50	\$472.50	N	50%

Sub Total:	\$14,012.00
Non Taxable:	\$1,215.00
Tax:	\$1,278.60
Credit:	\$0.00
Freight:	\$0.00
Total:	\$16,505.60
Tax Rate:	9.125%

Remittance Address:
4010 Foothills Blvd, Ste 103 PMB205
Roseville, CA 95747



Phone: 844.934.8326
Fax: 844.923.5878
www.cadence.team

Company: City of Morgan Hill
Attn: Spring Andrews
Project: Community Cultural Center
Contract #: NASPO # AR3228

Date:	11/27/2023	Expiration:	12/27/2023
Shipping Method:	GROUND	Sales Rep:	Jeremy_Caudill
Est. Delivery:	TBD	Direct:	916.710.8264
Terms:	NET30	Email:	jeremy@cadence.team

Part Number	Description	Qty.	List Price	Unit Price	Extended	Tx	Disc %
CCC 24p PoE							
JL662A	Aruba 6300M 24-port 1GbE Class 4 PoE and 4-port SFP56 Switch	1	\$8,709.00	\$4,354.50	\$4,354.50	T	50%
JL086A	Aruba X372 54VDC 680W 100-240VAC Power Supply	2	\$929.00	\$464.50	\$929.00	T	50%
JL487A	HPE Aruba 25G SFP28 to SFP28 0.65m Direct Attach Copper Cable	1	\$289.00	\$144.50	\$144.50	T	50%
CCC 48p							
JL663A	Aruba 6300M 48-port 1GbE and 4-port SFP56 Switch	1	\$11,759.00	\$5,879.50	\$5,879.50	T	50%
JL086A	Aruba X372 54VDC 680W 100-240VAC Power Supply	2	\$929.00	\$464.50	\$929.00	T	50%
Playhouse 12p PoE							
R8Q72A	HPE Aruba Networking 6200F 12G Class4 PoE 2G/2SFP+ 139W Switch	1	\$2,699.00	\$1,349.50	\$1,349.50	T	50%
Aruba Central							
Q9Y79AAE	Aruba Central 63xx or 38xx Switch Foundation 3 year Subscription E-STU	2	\$1,485.00	\$742.50	\$1,485.00	N	50%
Q9Y74AAE	Aruba Central Switch 6200/29xx Foundation 3 year Subscription E-STU	1	\$945.00	\$472.50	\$472.50	N	50%

Sub Total:	\$13,586.00
Non Taxable:	\$1,957.50
Tax:	\$1,239.72
Credit:	\$0.00
Freight:	\$0.00
Total:	\$16,783.22
Tax Rate:	9.125%

Remittance Address:
4010 Foothills Blvd, Ste 103 PMB205
Roseville, CA 95747



Phone: 844.934.8326
Fax: 844.923.5878
www.cadence.team

Company: City of Morgan Hill
Attn: Spring Andrews
Project: Community Rec Center
Contract #: NASPO # AR3228

Date:	11/27/2023	Expiration:	12/27/2023
Shipping Method:	GROUND	Sales Rep:	Jeremy_Caudill
Est. Delivery:	TBD	Direct:	916.710.8264
Terms:	NET30	Email:	jeremy@cadence.team

Part Number	Description	Qty.	List Price	Unit Price	Extended	Tx	Disc %
Front Desk 24p							
JL664A	Aruba 6300M 24-port 1GbE and 4-port SFP56 Switch	1	\$7,839.00	\$3,919.50	\$3,919.50	T	50%
JL086A	Aruba X372 54VDC 680W 100-240VAC Power Supply	2	\$929.00	\$464.50	\$929.00	T	50%
Closet 48p PoE							
JL661A	Aruba 6300M 48-port 1GbE Class 4 PoE and 4-port SFP56 Switch	1	\$14,329.00	\$7,164.50	\$7,164.50	T	50%
JL086A	Aruba X372 54VDC 680W 100-240VAC Power Supply	2	\$929.00	\$464.50	\$929.00	T	50%
Main 48p PoE							
JL661A	Aruba 6300M 48-port 1GbE Class 4 PoE and 4-port SFP56 Switch	1	\$14,329.00	\$7,164.50	\$7,164.50	T	50%
JL086A	Aruba X372 54VDC 680W 100-240VAC Power Supply	2	\$929.00	\$464.50	\$929.00	T	50%
Aruba Central							
Q9Y79AAE	Aruba Central 63xx or 38xx Switch Foundation 3 year Subscription E-STU	3	\$1,485.00	\$742.50	\$2,227.50	N	50%

Sub Total:	\$21,035.50
Non Taxable:	\$2,227.50
Tax:	\$1,919.49
Credit:	\$0.00
Freight:	\$0.00
Total:	\$25,182.49
Tax Rate:	9.125%

Remittance Address:
4010 Foothills Blvd, Ste 103 PMB205
Roseville, CA 95747



Phone: 844.934.8326
Fax: 844.923.5878
www.cadence.team

Company: City of Morgan Hill
Attn: Spring Andrews
Project: Corp Yard
Contract #: NASPO # AR3228

Date:	11/27/2023	Expiration:	12/27/2023
Shipping Method:	GROUND	Sales Rep:	Jeremy_Caudill
Est. Delivery:	TBD	Direct:	916.710.8264
Terms:	NET30	Email:	jeremy@cadence.team

Part Number	Description	Qty.	List Price	Unit Price	Extended	Tx	Disc %
Corp Yard 48p PoE							
JL661A	Aruba 6300M 48-port 1GbE Class 4 PoE and 4-port SFP56 Swit	1	\$14,329.00	\$7,164.50	\$7,164.50	T	50%
JL086A	Aruba X372 54VDC 680W 100-240VAC Power Supply	2	\$929.00	\$464.50	\$929.00	T	50%
Streets bay							
R8Q72A	HPE Aruba Networking 6200F 12G Class4 PoE 2G/2SFP+ 139W Switch	1	\$2,699.00	\$1,349.50	\$1,349.50	T	50%
Aruba Central							
Q9Y79AAE	Aruba Central 63xx or 38xx Switch Foundation 3 year Subscription E-STU	1	\$1,485.00	\$742.50	\$742.50	N	50%
Q9Y74AAE	Aruba Central Switch 6200/29xx Foundation 3 year Subscription E-STU	1	\$945.00	\$472.50	\$472.50	N	50%

Sub Total: \$9,443.00
Non Taxable: \$1,215.00
Tax: \$861.67
Credit: \$0.00
Freight: \$0.00
Total: \$11,519.67
Tax Rate: 9.125%

Remittance Address:
4010 Foothills Blvd, Ste 103 PMB205
Roseville, CA 95747



Phone: 844.934.8326
Fax: 844.923.5878
www.cadence.team

Company: City of Morgan Hill
Attn: Spring Andrews
Project: Civic Center
Contract #: NASPO # AR3228

Date:	11/27/2023	Expiration:	12/27/2023
Shipping Method:	GROUND	Sales Rep:	Jeremy_Caudill
Est. Delivery:	TBD	Direct:	916.710.8264
Terms:	NET30	Email:	jeremy@cadence.team

Part Number	Description	Qty.	List Price	Unit Price	Extended	Tx	Disc %
MDF 48p							
JL663A	Aruba 6300M 48-port 1GbE and 4-port SFP56 Switch	1	\$11,759.00	\$5,879.50	\$5,879.50	T	50%
JL086A	Aruba X372 54VDC 680W 100-240VAC Power Supply	2	\$929.00	\$464.50	\$929.00	T	50%
East Wing 24p							
JL664A	Aruba 6300M 24-port 1GbE and 4-port SFP56 Switch	1	\$7,839.00	\$3,919.50	\$3,919.50	T	50%
JL086A	Aruba X372 54VDC 680W 100-240VAC Power Supply	2	\$929.00	\$464.50	\$929.00	T	50%
AV Room 24p							
JL664A	Aruba 6300M 24-port 1GbE and 4-port SFP56 Switch	1	\$7,839.00	\$3,919.50	\$3,919.50	T	50%
JL086A	Aruba X372 54VDC 680W 100-240VAC Power Supply	2	\$929.00	\$464.50	\$929.00	T	50%
Aruba Central							
Q9Y79AAE	Aruba Central 63xx or 38xx Switch Foundation 3 year Subscription E-STU	3	\$1,485.00	\$742.50	\$2,227.50	N	50%

Sub Total:	\$16,505.50
Non Taxable:	\$2,227.50
Tax:	\$1,506.13
Credit:	\$0.00
Freight:	\$0.00
Total:	\$20,239.13
Tax Rate:	9.125%

Remittance Address:
4010 Foothills Blvd, Ste 103 PMB205
Roseville, CA 95747



Phone: 844.934.8326
Fax: 844.923.5878
www.cadence.team

Company: City of Morgan Hill
Attn: Spring Andrews
Project: City Hall
Contract #: **NASPO # AR3228**

Date:	11/27/2023	Expiration:	12/27/2023
Shipping Method:	GROUND	Sales Rep:	Jeremy_Caudill
Est. Delivery:	TBD	Direct:	916.710.8264
Terms:	NET30	Email:	jeremy@cadence.team

Part Number	Description	Qty.	List Price	Unit Price	Extended	Tx	Disc %
IDF 96p							
JL663A	Aruba 6300M 48-port 1GbE and 4-port SFP56 Switch	2	\$11,759.00	\$5,879.50	\$11,759.00	T	50%
JL086A	Aruba X372 54VDC 680W 100-240VAC Power Supply	4	\$929.00	\$464.50	\$1,858.00	T	50%
JL487A	HPE Aruba 25G SFP28 to SFP28 0.65m Direct Attach Copper Cable	1	\$289.00	\$144.50	\$144.50	T	50%
Aruba Central							
Q9Y79AAE	Aruba Central 63xx or 38xx Switch Foundation 3 year Subscription E-STU	2	\$1,485.00	\$742.50	\$1,485.00	N	50%

Sub Total:	\$13,761.50
Non Taxable:	\$1,485.00
Tax:	\$1,255.74
Credit:	\$0.00
Freight:	\$0.00
Total:	\$16,502.24
Tax Rate:	9.125%

Remittance Address:
4010 Foothills Blvd, Ste 103 PMB205
Roseville, CA 95747



Phone: 844.934.8326
Fax: 844.923.5878
www.cadence.team

Company: City of Morgan Hill
Attn: Spring Andrews
Project: MHPD
Contract #: NASPO # AR3228

Date:	11/27/2023	Expiration:	12/27/2023
Shipping Method:	GROUND	Sales Rep:	Jeremy_Caudill
Est. Delivery:	TBD	Direct:	916.710.8264
Terms:	NET30	Email:	jeremy@cadence.team

Part Number	Description	Qty.	List Price	Unit Price	Extended	Tx	Disc %
New MDF							
JL661A	Aruba 6300M 48-port 1GbE Class 4 PoE and 4-port SFP56 Switch	1	\$14,329.00	\$7,164.50	\$7,164.50	T	50%
JL663A	Aruba 6300M 48-port 1GbE and 4-port SFP56 Switch	1	\$11,759.00	\$5,879.50	\$5,879.50	T	50%
JL086A	Aruba X372 54VDC 680W 100-240VAC Power Supply	4	\$929.00	\$464.50	\$1,858.00	T	50%
J9283D	HPE Aruba 10G SFP+ to SFP+ 3m Direct Attached Copper Cable	4	\$195.00	\$97.50	\$390.00	T	50%
Old MDF							
JL661A	Aruba 6300M 48-port 1GbE Class 4 PoE and 4-port SFP56 Switch	1	\$14,329.00	\$7,164.50	\$7,164.50	T	50%
JL663A	Aruba 6300M 48-port 1GbE and 4-port SFP56 Switch	1	\$11,759.00	\$5,879.50	\$5,879.50	T	50%
JL086A	Aruba X372 54VDC 680W 100-240VAC Power Supply	4	\$929.00	\$464.50	\$1,858.00	T	50%
JL487A	HPE Aruba 25G SFP28 to SFP28 0.65m Direct Attach Copper Cable	1	\$289.00	\$144.50	\$144.50	T	50%
EOC							
JL664A	Aruba 6300M 24-port 1GbE and 4-port SFP56 Switch	1	\$7,839.00	\$3,919.50	\$3,919.50	T	50%
JL086A	Aruba X372 54VDC 680W 100-240VAC Power Supply	2	\$929.00	\$464.50	\$929.00	T	50%
Aruba Central							
Q9Y79AAE	Aruba Central 63xx or 38xx Switch Foundation 3 year Subscription E-STU	5	\$1,485.00	\$742.50	\$3,712.50	N	50%

Sub Total:	\$35,187.00
Non Taxable:	\$3,712.50
Tax:	\$3,210.81
Credit:	\$0.00
Freight:	\$0.00
Total:	\$42,110.31
Tax Rate:	9.125%

Remittance Address:
4010 Foothills Blvd, Ste 103 PMB205
Roseville, CA 95747



Phone: 844.934.8326
Fax: 844.923.5878
www.cadence.team

Company: City of Morgan Hill
Attn: Spring Andrews
Project: CRC Parking
Contract #: NASPO # AR3228

Date:	11/27/2023	Expiration:	12/27/2023
Shipping Method:	GROUND	Sales Rep:	Jeremy_Caudill
Est. Delivery:	TBD	Direct:	916.710.8264
Terms:	NET30	Email:	jeremy@cadence.team

Part Number	Description	Qty.	List Price	Unit Price	Extended	Tx	Disc %
CRC Parking							
JL817A	Aruba CX 4100i 12-port 1GbE (8-port Class 4 POE and 4-port Class 6 POE) 2-port SFP+ DIN Mount Switch	1	\$6,409.00	\$3,204.50	\$3,204.50	T	50%
JL820A	Aruba CX 4000i POE 54VDC 480W 100-240VAC DIN Power Supply	1	\$3,209.00	\$1,604.50	\$1,604.50	T	50%

Sub Total: \$4,809.00
Non Taxable: \$0.00
Tax: \$438.82
Credit: \$0.00
Freight: \$0.00
Total: \$5,247.82
Tax Rate: 9.125%

Remittance Address:
4010 Foothills Blvd, Ste 103 PMB205
Roseville, CA 95747



Phone: 844.934.8326
Fax: 844.923.5878
www.cadence.team

Company: City of Morgan Hill
Attn: Spring Andrews
Project: Magical Bridge
Contract #: NASPO # AR3228

Date:	11/27/2023	Expiration:	12/27/2023
Shipping Method:	GROUND	Sales Rep:	Jeremy_Caudill
Est. Delivery:	TBD	Direct:	916.710.8264
Terms:	NET30	Email:	jeremy@cadence.team

Part Number	Description	Qty.	List Price	Unit Price	Extended	Tx	Disc %
Magical Bridge							
JL817A	Aruba CX 4100i 12-port 1GbE (8-port Class 4 POE and 4-port Class 6 POE) 2-port SFP+ DIN Mount Switch	1	\$6,409.00	\$3,204.50	\$3,204.50	T	50%
JL820A	Aruba CX 4000i POE 54VDC 480W 100-240VAC DIN Power Supply	1	\$3,209.00	\$1,604.50	\$1,604.50	T	50%

Sub Total: \$4,809.00
Non Taxable: \$0.00
Tax: \$438.82
Credit: \$0.00
Freight: \$0.00
Total: \$5,247.82
Tax Rate: 9.125%

Remittance Address:
4010 Foothills Blvd, Ste 103 PMB205
Roseville, CA 95747



Phone: 844.934.8326
Fax: 844.923.5878
www.cadence.team

Company: City of Morgan Hill
Attn: Spring Andrews
Project: Transceivers
Contract #: NASPO # AR3228

Date:	11/27/2023	Expiration:	12/27/2023
Shipping Method:	GROUND	Sales Rep:	Jeremy_Caudill
Est. Delivery:	TBD	Direct:	916.710.8264
Terms:	NET30	Email:	jeremy@cadence.team

Part Number	Description	Qty.	List Price	Unit Price	Extended	Tx	Disc %
Transceivers							
J9151E	Aruba 10G SFP+ LC LR 10km SMF Transceiver	43	\$3,707.00	\$1,297.45	\$55,790.35	T	65%

Sub Total:	\$55,790.35
Non Taxable:	\$0.00
Tax:	\$5,090.87
Credit:	\$0.00
Freight:	\$0.00
Total:	\$60,881.22
Tax Rate:	9.125%

Terms and Conditions

Warranty: NA
Maintenance: NA
Terms: No Returns
Equipment: All orders invoice upon receipt of purchase order

Customer Signature authorizes Cadence Team to process the order in place of a purchase order. Prices are subject to change after the expiration date of the quote.

Customer Signature: _____
Print: _____
Title: _____
Date: _____

CITY COUNCIL STAFF REPORT

MEETING DATE: December 6, 2023

PREPARED BY:

Inga Alonzo, Management Analyst

APPROVED BY: City Manager

AWARD AND APPROVE AN AGREEMENT WITH IRISH EXCAVATION IN THE AMOUNT OF \$74,780 FOR CONSTRUCTION OF THE WOODLAND BOOSTER STATION RETAINING WALLS

RECOMMENDATION(S)

Approve and authorize the City Manager to execute and administer an agreement with Irish Excavation in the amount of \$74,780 to install two retaining walls at the Woodland Booster Station.

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Enhancing Public Safety

Maintaining and Enhancing Infrastructure

2022-2023 Strategic Priorities

Fiscal Sustainability

Guiding Documents

Water System Master Plan

REPORT NARRATIVE:

The City has an active capital improvement project to increase security at its water facilities. These improvements include increased fencing at infrastructure sites. The Woodland Booster Station is one of the sites where new fencing is planned for installation. Because that site is located on the side of the mountain, the existing fence is sliding down the hill causing concerns not only for the water pipes but also for the station itself. To stabilize and reinforce the ground, and install the new security fencing, staff is recommending building two retaining walls prior to replacing the fence.

The project's scope of work consists of the removal and disposal of the existing fence, furnishing all materials, labor, equipment, and the installation of two concrete masonry (CMU) retaining walls. The walls will each be approximately 30 feet in length and will be constructed, one on the upper side of the station and the other on the lower side. The Public Works informal bidders list was utilized for this bid and a mandatory meeting was attended by potential bidders. The engineer's estimate for the retaining walls was \$70,000. The recommended fencing around the facility will be installed by another

contractor after the walls are built.

The bid opening was held on November 8, 2023, and three bids were received and are listed below:

<u>Contractor</u>	<u>Total Base Bid</u>
Castlewood Construction	\$84,000
Irish Excavation	\$74,780
Pacific Underground	\$118,280

Staff recommends that the City Council authorize the City Manager to execute an agreement with Irish Excavation in the amount of \$74,780 to install two retaining walls at the Woodland Booster Station.

COMMUNITY ENGAGEMENT:

Not Applicable

As maintenance and security of an existing facility is expected to be performed by the City, no community engagement was performed for this bid process.

ALTERNATIVE ACTIONS:

Staff recommends that the Council awards the retaining wall contract to Irish Excavation. The Council could reject the bid, but this action will hinder security improvements to the water infrastructure.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

No prior action.

FISCAL AND RESOURCE IMPACT:

Funding for this agreement is in the Council approved Capital Improvement Program Budget under project WA6010 Utilities Security Enhancement.

CEQA (California Environmental Quality Act):

Categorical Exemption

This project is Categorically Exempt pursuant to Section 15301 of CEQA Guidelines because the work to be performed is repair, maintenance and/or minor alteration of an existing booster station facility involving no expansion of existing use.

CONTRACT

This public works contract ("Contract") is entered into by and between the City of Morgan Hill ("City") and Irish Excavation, a California Corporation ("Contractor") for work on the Woodland Booster CMU Retaining Wall Project ("Project").

The parties agree as follows:

1. **Award of Contract.** In response to the Notice Inviting Informal Bids, Contractor has submitted a Bid Proposal to perform work on the Project, and on _____, 20____, (Contract Date) City authorized award of this Contract to Contractor for the amount of Contractor's bid.
2. **Contract Documents.** The Contract Documents incorporated into this Contract include and are comprised of all of the following:
 - 2.1 Notice Inviting Informal Bids;
 - 2.2 Instructions to Bidders;
 - 2.3 Addenda, if any;
 - 2.4 Bid Proposal and attachments thereto;
 - 2.5 Technical Specifications;
 - 2.6 Bidders Questionnaire;
 - 2.7 Contract;
 - 2.8 Payment and Performance Bonds;
 - 2.9 General Conditions;
 - 2.10 Special Conditions;
 - 2.11 Change Orders, if any;
 - 2.12 Notice of Award;
 - 2.13 Notice to Proceed.
3. **Contractor's Obligations.** Contractor agrees to perform all of the Work required for the Project, as specified in the Contract Documents. Contractor must provide, furnish, and supply all things necessary and incidental for the timely performance and completion of the Work, including all necessary labor, materials, equipment, transportation, and utilities, unless otherwise specified in the Contract Documents. Contractor must use its best efforts to complete the Work in a professional and expeditious manner and to meet or exceed the performance standards required by the Contract Documents.

4. **Payment.** As full and complete compensation for Contractor's timely performance and completion of the Work in strict accordance with the terms and conditions of the Contract Documents, City will pay Contractor Seventy-Four Thousand Seven Hundred Eighty Dollars (\$74,780) (the "Contract Price"), in accordance with the payment provisions in the General Conditions. The Contract Price includes all applicable federal, state, and local taxes.
5. **Time for Completion.** Contractor will fully complete the Work for the Project within 60 calendar days from the commencement date given in the Notice to Proceed ("Contract Time"). By signing below, Contractor expressly waives any claim for delayed early completion.
6. **Liquidated Damages.** If Contractor fails to complete the Work within the Contract Time, City will assess liquidated damages in the amount of Five Hundred Dollars (\$500.00) for each day of unexcused delay in completion, and the Contract Price will be reduced accordingly.
7. **Labor Code Compliance.**
 - 7.1 **General.** This Contract is subject to all applicable requirements of Chapter 1 of Part 7 of Division 2 of the Labor Code, including requirements pertaining to wages, working hours and workers' compensation insurance.
 - 7.2 **Prevailing Wages.** This Project is subject to the prevailing wage requirements applicable to the locality in which the Work is to be performed for each craft, classification or type of worker needed to perform the Work, including employer payments for health and welfare, pension, vacation, apprenticeship and similar purposes. Copies of these prevailing rates are available online at <http://www.dir.ca.gov/DLSR>.
 - 7.3 **DIR Registration.** City will not accept a Bid Proposal from or enter into the Contract with a bidder, without proof that the bidder and its Subcontractors are registered with the California Department of Industrial Relations ("DIR") to perform public work under Labor Code Section 1725.5, subject to limited legal exceptions.
8. **Workers' Compensation Certification.** Under Labor Code Section 1861, by signing this Contract, Contractor certifies as follows: "I am aware of the provisions of Labor Code Section 3700 which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the Work on this Contract."

9. **Notice.** Any notice required by the Contract Documents must be made in writing, and sent to the other party by personal delivery, U.S. Mail, a reliable overnight delivery service, facsimile, or by email as a PDF (or comparable) file. Notice is deemed effective upon delivery unless otherwise specified. Notice for each party must be given as follows:

City:

City of Morgan Hill
17575 Peak Avenue
Morgan Hill, CA 95037
Phone: (409) 779-7259
Attn: City Clerk
Email: michelle.bigelow@morganhill.ca.gov
Copy to: inga.alonzo@morganhill.ca.gov

Contractor:

Name: Irish Excavation
Address: 305 Vinyard Town Center, Suite #109
City/State/Zip: Morgan Hill, CA 95037
Phone: 408-659-6136
Attn: Sean O'Donoghue
Email: sean@irishexcavation.com

10. General Provisions.

- 10.1 Assignment and Successors.** Contractor may not assign its rights or obligations under this Contract, in part or in whole, without City's written consent. This Contract is binding on Contractor's successors and permitted assigns.
- 10.2 Third Party Beneficiaries.** There are no intended third-party beneficiaries to this Contract except as expressly provided in the General Conditions or Special Conditions.
- 10.3 Governing Law and Venue.** This Contract will be governed by California law and venue will be in the Superior Court of Santa Clara County, and no other place.
- 10.4 Amendment.** No amendment or modification of this Contract will be binding unless it is in a writing duly authorized and signed by the parties to this Contract.
- 10.5 Integration; Severability.** This Contract and the Contract Documents incorporated herein, including authorized amendments or

Change Orders thereto, constitute the final, complete, and exclusive terms of the agreement between City and Contractor. If any provision of the Contract Documents, or portion of a provision, is determined to be illegal, invalid, or unenforceable, the remaining provisions of the Contract Documents will remain in full force and effect.

10.6 Authorization. Each individual signing below warrants that he or she is authorized to do so by the party that he or she represents, and that this Contract is legally binding on that party. If Contractor is a corporation, signatures from two (2) officers of the corporation are required pursuant to California Corporation Code Section 313.

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

[Signatures are on the following page.]

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

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

The parties agree to this Contract as witnessed by the signatures below:

CITY OF MORGAN HILL:

Christina J. Turner
City Manager

Date: _____

Attest:

Michelle Bigelow
City Clerk

Date: _____

Approved as to Form:

Donald A. Larkin
City Attorney

Date: _____

**CONTRACTOR:
[NAME OF CONTRACTOR]**

Signature

Name/Title [print]

Date: _____

*Corporate entities must provide a
second signature:*

Signature

Name/Title [print]

Date: _____

1084826
Contractor's License Number(s)

12/31/2023
Expiration Date(s)

Seal:

100096897
Contractor's DIR Registration Number(s)

6/30/2024
Expiration Date

END OF CONTRACT

CITY COUNCIL STAFF REPORT

MEETING DATE: December 6, 2023

PREPARED BY:

Cynthia Iwanaga, Management Analyst

APPROVED BY: City Manager

AWARD A TWO-YEAR LANDSCAPE MAINTENANCE AGREEMENT TO MEDALLION LANDSCAPE MANAGEMENT, LLC IN THE AMOUNT OF \$371,712 FOR CITY FACILITIES AND ASSESSMENT DISTRICTS

RECOMMENDATION(S)

1. Award a two-year contract to Medallion Landscape Management, LLC in the amount of \$371,712 to service Group 2 - City Facilities, Group 4 - Landscape Assessment Districts, including an extra services allocation of \$30,000 per year; and
2. Authorize the City Manager to execute and administer the Maintenance Service Agreement with Medallion Landscape Management, LLC. and to extend the agreement for up to three (3) additional one-year terms.

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

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

2022-2023 Strategic Priorities

Fiscal Sustainability

REPORT NARRATIVE:

The purpose of this item is to provide the City Council with an opportunity to consider awarding a maintenance service agreement to Medallion Landscape Management, LLC, in the amount of \$371,712 to service City facilities and landscape assessment districts for the next two years (January 2024-December 2025).

The City has contracted with professional landscape contractors for various landscape maintenance services for many years as an approach to serve the City cost-effectively. The work has been divided into five groups to diversify the City's bidding opportunities. On October 2, 2023, a Request for Proposals (RFP) was released for two years of service for both Group 2 (critical City facilities) and Group 4 (northern group of landscape assessment districts). The RFP was posted on the City website, Public

Purchase, Builder's Exchange of Santa Clara County, San Francisco Builders Exchange, and the Bay Area Builders Exchange.

Group 2 includes the Civic Center, Community and Cultural Center, Centennial Recreation Center, Skate Park, Wildlife Trail, Aquatic Center, and Police Facility. Group 4 includes the landscape assessment districts at Fox Hollow/Murphy Springs, Llagas Creek Estates, Sparhawk, Chang/Bertelone, Llagas/Obata, Belle Estates, Diana Estates, Stone Creek, and Sandalwood as well as the East Main well site, which was added to the scope in this agreement. The current agreement for these groups expires on December 31, 2023.

Eight landscape firms attended the non-mandatory pre-bid meeting, and four submitted proposals by November 7, 2023. The City evaluated the proposals using a "Best Value" methodology in a two-step process. Proposals were first evaluated based on narrative responses to questions. A team of evaluators from the Maintenance Division independently evaluated and scored the proposals based on the contractors' narrative, qualifications, experience, and references. There were 40 points available for this section, and contractors were required to score at least 30 out of 40 points to proceed in the evaluation process. The final scores for this section were:

Company	Score
Alpine Landscapes	32.7
Brightview Landscape Services	31.0
Medallion Landscape Management	35.5
New Image Landscape Co.	27.3

New Image Landscape Company did not score the minimum 30 out of 40 points to proceed in the RFP review process. Their proposal was eliminated from further consideration.

In the second evaluation step, the contractors' cost proposals were evaluated based on weighted scores for each firm's pricing for Group 2 and Group 4 and the average hourly rates for extra services. Interviews were conducted with the top-scoring contractors, Alpine Landscapes and Medallion Landscape Management, to verify evaluators' scores. Based on a review of the narrative responses and the weighted cost proposal scoring, the evaluation team recommended awarding the contract to Medallion Landscape Management, LLC.

Following the evaluation, City staff identified two sub-areas within the City's Landscape Assessment District where the proposed pricing by Medallion was higher than could be funded by these areas. City staff negotiated lower pricing and lower service frequencies for the Sparhawk and Diana Estates sub-areas. City staff will work with residents of these sub-areas to discuss increasing assessments to the sub-area to restore

previously received service levels if residents are interested.

Staff recommends that the City Council authorize the City Manager to execute a two-year Maintenance Service Agreement with Medallion Landscape Management, LLC for \$371,712 for Groups 2 and 4 and associated extra services. The recommended amount of the contract is \$30,000 per year, higher than the bid amount needed to fund scheduled services solely for the two-year term. This increased amount allows additional services to be provided above and beyond routine services. Examples of these services include irrigation valve replacements, exceptional tree trimming, and the rejuvenation of a landscape area. The contract specifies that these additional services are only to be provided with the prior approval of the City's contract manager. The base two-year agreement includes options to extend the agreement for up to three (3) additional one-year terms in amounts not to exceed the prior year's annual amount by 5%.

COMMUNITY ENGAGEMENT:

Staff will continue to post landscape maintenance updates on the City's website, Next Door Morgan Hill, Facebook, and X (Formerly Twitter) to inform residents of any landscape maintenance work done by the contractor that will affect right-of-way or pedestrian access to facilities and services. Engagement also occurs informally through resident discussion with Public Services Department team members.

ALTERNATIVE ACTIONS:

An alternative action would be to reject all proposals and release another RFP in an attempt to obtain more proposals. This alternative is not recommended as it would jeopardize ongoing landscape maintenance and safety. It is also not likely to result in a better value to the City.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The City has contracted landscape maintenance services for over a decade. The maintenance services agreement for these work groups was last awarded on November 28, 2018 by the City Council.

FISCAL AND RESOURCE IMPACT:

Medallion Landscape Management LLC's annual pricing of \$119,772 for City facilities and \$36,084 for Landscape Assessment Districts are within budgeted amounts for facilities and the landscape assessment districts' landscape maintenance. There is an additional allocation of \$30,000 per year for extra services. No additional appropriations are needed.

CEQA (California Environmental Quality Act):

Categorical Exemption

Maintaining existing landscapes is 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.

2023 Landscape Maintenance Groups 2 and 4 Scoring Matrix

NARRATIVE SCORING						NARRATIVE SCORING				
						Points Available	Alpine Landscape	Brightview Landscape	Medallion Landscape	New Image Landscape
Previous Experience						15.0	12.7	12.3	13.8	10.3
Work Quality - References						10.0	8.5	7.7	8.5	7.2
Qualifications of Staff						5.0	3.5	3.7	3.8	3.2
Organized Communication Systems						10.0	8.0	7.3	9.3	6.7
SUBTOTAL- NARRATIVE POINTS						40.0	32.7	31.0	35.5	27.3
BID PRICING						BID PRICING SCORING				
Item	Price from Lowest Bidder	Alpine Landscape	Brightview Landscape	Medallion Landscape	New Image Landscape	Points Available	Alpine Landscape	Brightview Landscape	Medallion Landscape	New Image Landscape
Group 2 Total Bid	105,060.00	105,060.00	144,263.00	119,772.00		25.0	25.0	18.2	21.9	
Group 4 Total Bid	39,984.00	48,660.00	42,748.00	39,984.00		25.0	20.5	23.4	25.0	
Extra Services: Average of Hourly Rates*	59.50	72.38	77.00	59.50		8.0	6.6	6.2	8.0	
% Material Mark-Up Over Costs	10.00	15.00	10.00	15.00		2.0	1.3	2.0	1.3	
SUBTOTAL-PRICING POINTS						60.0	53.5	49.8	56.3	-
GRAND TOTAL						100.0	86.1	80.8	91.8	
							#2	#3	#1	

*=Average Hourly Rate of:
Laborer, Skilled Technician, Supervisor
& Emergency/After Hours Response

Point Score is lowest bidder's item price divided by each Contractor's item price times the number of points available. For example, Brightview's Group 2 Bid Amount = 144,263/105,060 X 25 points = 18.2 points

MAINTENANCE SERVICE AGREEMENT
Medallion Landscape Management, LLC.

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

1. **City Authority.** This Agreement is entered into pursuant to the action of the Morgan Hill City Council taken on _____, _____, 20____.

2. **Term of Agreement.** This Agreement shall cover services rendered from the Effective Date of this Agreement until December 31, 2025 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 landscape maintenance services to Group 2-city facilities and Group 4-landscape assessment districts and associated extra services as further described in **Exhibit A.**

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

4.1. **Amount.** \$371,712.00. Total compensation to SERVICE PROVIDER under this Agreement during its initial term set forth in Section 2 above shall not exceed Three Hundred Seventy-One Thousand Seven Hundred Twelve 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 is liable for any property damage caused by SERVICE PROVIDER or its Subcontractors during performance of the services and shall notify the CITY of damage within 24 hours of the occurrence. SERVICE PROVIDER must promptly repair or replace any real or personal property damage, and must promptly restore the property to its original or intended condition. CITY may repair or replace the real or personal property damage if SERVICE PROVIDER fails to do so, and the cost of the repairs or replacement may be deducted or offset from any compensation due to SERVICE PROVIDER.

6.1. **Schedule.** SERVICE PROVIDER shall perform all work and services under this Agreement in conformance with the time schedule set forth on **Exhibit C**, "Schedule of

Performance," attached hereto and incorporated herein by this reference. The City Manager is authorized on behalf of CITY to modify the timeframes set forth on the Schedule of Performance within the term of this Agreement.

- 6.2. **Storage of Service Provider's Equipment.** If SERVICE PROVIDER desires to leave or store any of SERVICE PROVIDER'S equipment at a CITY site while SERVICE PROVIDER is performing work or service pursuant to this Agreement, SERVICE PROVIDER will first obtain the consent of the City Manager, or his/her delegate, to do so, and any such storage shall occur only in the manner and location allowed by such CITY official and entirely at SERVICE PROVIDER'S sole risk.

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

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

8.1. **Insurance Types and Amounts.**

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

8.1.2. **Automobile Liability.** SERVICE PROVIDER shall maintain Automobile Liability covering all owned, non-owned and hired automobiles (if SERVICE PROVIDER does not own automobiles, then SERVICE PROVIDER shall maintain Hired/Non-owned Automobile Liability) against claims and liabilities for personal injury, death, or property damage providing protection in the minimum amount of: (i) one million dollars (\$1,000,000.00) combined single limit for any one accident or occurrence, or (ii) the maximum amount of such insurance available to SERVICE

PROVIDER under SERVICE PROVIDER'S combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

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

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

8.1.5. Professional Liability.

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

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

combined insurance policies (including any excess or “umbrella” policies), whichever is greater.

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

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

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

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

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

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

8.2.2. Workers Compensation.

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

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

8.4. **Certificates**. SERVICE PROVIDER shall furnish CITY with copies of all certificates as outlined herein, whether new or modified, promptly upon receipt. In the event of a claim or legal action, SERVICE PROVIDER shall promptly furnish CITY of Morgan Hill with copies of all policies outlined herein. No policy subject to SERVICE PROVIDER'S agreement with CITY shall be canceled or materially changed except after thirty (30) days' notice by the insurer to CITY. A "material change" is a change that results in non-

compliance with any insurance requirements in this section 8. Certificates, including renewal certificates, may be mailed electronically to riskmgmt@morganhill.ca.gov or delivered to the Certificate Holder address provided herein.

Certificate Holder address:

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

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

10. **Compliance with Law.**

- 10.1. SERVICE PROVIDER and its officers, employees, agents, and subcontractors shall comply with all applicable laws, ordinances, administrative regulations, and permitting requirements in carrying out their obligations under this Agreement. SERVICE PROVIDER and its officers, employees, agents, and subcontractors covenant there shall be no discrimination based upon any basis prohibited by State or Federal law, including but not limited to, race, color, creed, religion, gender, marital status, age, sexual orientation, national origin, mental disability, physical disability, medical condition, or ancestry, in any activity pursuant to this Agreement.
- 10.2. Without limiting the provisions of Section 10.1 above, each worker performing work under this Agreement shall be paid at a rate not less than the prevailing wage as defined in Sections 1771 and 1774 of the Labor Code. The prevailing wage rates are available online at <http://www.dir.ca.gov/dlsr>. SERVICE PROVIDER shall post a copy of the applicable prevailing rates at the Worksite. Pursuant to Labor Code Section 1775, SERVICE PROVIDER and any Subcontractor shall forfeit to CITY as a penalty up to two hundred dollars (\$200.00) for each calendar day, or portion thereof, for each worker paid less than the applicable prevailing wage rate. SERVICE PROVIDER shall also pay each worker the difference between the applicable prevailing wage rate and the amount actually paid to that worker.
- 10.3. DIR Registration. CITY will not accept a Bid Proposal from or enter into a contract with a SERVICE PROVIDER, without first receiving proof to the satisfaction of CITY that SERVICE PROVIDER and its subcontractors are registered with the California Department of Industrial Relations to perform public work under Labor Code Section 1725.5, subject to limited legal exceptions. Under Labor Code section 1771.4, this Agreement is subject to compliance monitoring and enforcement by the California Department of Industrial Relations.
- 10.4. Compliance with Wage and Hour Laws: SERVICE PROVIDER, and any subcontractor it employs to complete work under this Agreement, shall comply with all applicable federal, state, and local wage and hour laws. Applicable laws may include, but are not limited to, the Federal Fair Labor Standards Act and the California Labor Code.

Final Judgments, Decisions, and Orders: For purposes of this Section, a “final judgment, decision, or order” refers to one for which all appeals have been exhausted or the time

to appeal has expired. Relevant investigatory government agencies include: the federal Department of Labor, the California Division of Labor Standards Enforcement, or any other governmental entity or division tasked with the investigation and enforcement of wage and hour laws.

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

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

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

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

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

11. **Independent Contractor**. SERVICE PROVIDER is an independent contractor and not an agent or employee of CITY.

12. **Confidentiality**. All data, documents, or other information received by SERVICE PROVIDER from CITY or prepared in connection with SERVICE PROVIDER'S services under this Agreement are deemed confidential and shall not be disclosed to any third party by SERVICE PROVIDER without prior written consent by CITY.

13. **Conflict of Interest and Reporting**. SERVICE PROVIDER shall at all times avoid conflict of interest or appearance of conflict of interest in performance of this Agreement.

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

Address of SERVICE PROVIDER is as follows:

Medallion Landscape Management, LLC.
10 San Bruno Avenue
Morgan Hill, CA 95037

Address of CITY is as follows:

Keri Russell, Maintenance Manager	with a copy to: City Clerk
City of Morgan Hill	City of Morgan Hill
17575 Peak Avenue	17575 Peak Avenue
Morgan Hill, CA 95037	Morgan Hill, CA 95037

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

16. **Service Provider's Proposal**. If applicable, this Agreement shall include SERVICE PROVIDER'S proposal or bid which is incorporated herein. In the event of any inconsistency between the terms of the proposal and this Agreement, this Agreement shall govern.

17. **Maintenance of Records**.

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

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

matters connected with the performance of this Agreement for a period of three years after final payment under the Agreement.

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

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

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

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

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

22. **Defense and Indemnification.**

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

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

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

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

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

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

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

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

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

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

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

///

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Signatures are on the following page.

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

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

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

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

ATTEST:

CITY OF MORGAN HILL

City Clerk/Deputy City Clerk

City Manager

Michelle Bigelow
Print Name

Christina J. Turner
Print Name

Date: _____

Date: _____

APPROVED AS TO FORM:

MEDALLION LANDSCAPE MANAGEMENT,
LLC.

City Attorney

By: _____

Donald A. Larkin
Print Name

Raitis Raisian, CEO

Print Name and Title of Signer.

If Corporate: Chairman, President or
Vice President

Date: _____

Date: 11/21/23

Rich Bronstein

By: _____

Rich Bronstein, CFO

Print Name and Title of Signer.

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

Date: 11 / 21 / 2023

713234

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

1001118453

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

Expiration Date(s) 09/30/2025

Expiration Date(s) 6/30/2024

EXHIBIT A SCOPE OF SERVICES

The scope of services includes landscape maintenance, irrigation management, emergency repairs, and non-emergency routine work per the specifications below:

2-1 NORMAL HOURS AND DAYS OF MAINTENANCE SERVICES

- A. For the Community & Cultural Center, Gavilan College & Morgan Hill Playhouse, unless otherwise specified, work hours shall be 7:00 am-noon Monday-Thursday.
- B. At all other locations, the Contractor shall perform the required maintenance services between the hours of 7:00 a.m. and 5:00 pm Monday - Friday and on weekends with prior City approval.
- C. The Contractor shall conduct the work at all times in a manner which will not interfere with normal recreation programs, school programs, pedestrian traffic on adjacent sidewalks, or vehicular traffic on adjacent streets.
- D. Any modification in the hours and days of maintenance services as stated in the Contractor's service schedule is subject to approval by the City.

2-2 PERIODIC PROJECT INSPECTIONS

Upon request, the Contractor will walk the project with the City's representative for the purpose of determining compliance with the specifications or to discuss required work. The Contractor's representative must be authorized to sign documents and make changes to the work.

2-3 PERFORMANCE DURING INCLEMENT WEATHER

During periods of excessive rainfall that hinders normal operations, the Contractor shall adjust its workforce to accomplish those activities that are not affected by weather. The prime factors in assigning work shall be the safety of the workforce and damage to parks and landscaping.

2-4 NOTICE TO PROCEED

After receipt of acceptable insurance certificates by City, a written Notice to Proceed will be mailed to the Contractor. The effective date of the Notice to Proceed will be the date stated as such in the Notice, provided that the effective date will not be earlier than the day following the issuance of the Notice to Proceed.

2-5 ACCEPTANCE

- A. Acceptance by the City of any services furnished under the Contract shall occur only subsequent to the final review of authorized employees of the City.
- B. The City shall reject and refuse to pay for any and all non-conforming services.
- C. Nothing in this section shall limit or restrict the warranty and remedy obligations of the Contractor specified in the Standard Consultant Agreement.

2-6 LICENSES REQUIRED FOR DURATION OF CONTRACT

- C-27 Landscape Contractor License
- City of Morgan Hill Business License
- Qualified Applicator License (includes Santa Clara County Registration)
- Registered with the California Dept. of Industrial Relations PWC-100 website
-

2-7 SAFETY

Safety provisions shall conform to Cal-OSHA Safety Orders, and all other applicable federal, state, county, and local laws, ordinances, codes, and regulations in performing the work under this Contract. Where any of these are in conflict, the more stringent requirement shall be followed. The Contractor's failure to thoroughly familiarize itself with the aforementioned safety provisions shall not relieve it from compliance with the obligations and penalties set forth therein.

The Contractor shall develop and maintain for the duration of the Contract, a safety program that will effectively incorporate and implement all required safety provisions. The Contractor shall appoint an employee who is qualified and authorized to supervise and enforce compliance with the safety program.

2-8 RESPONSE

Contract supervision shall be immediately available at all times when Contractor employees are working on sites, must be available from 7:00 am to 10:00 pm each day via telephone, and must respond to an emergency situation/major discrepancy in the Contract within two (2) hours of initial contact.

2-9 QUALIFIED CONTRACTOR SUPERVISION

All of Contractor's supervisors must be qualified, proficient in English, trained and capable of providing adequate supervision and direction to all Contractors' employees and must demonstrate verbal and written communication skills sufficient for the work required herein.

2-10 CONTRACTOR'S EMPLOYEES

This Contract is intended to be a "partnership" between the City and the Contractor. The Contractor and his/her employees are agents of the City of Morgan Hill and represent the City in the performance of their work. Only Contractor's employees or subcontractors are allowed on City premises where work is being performed. The City shall have the right to have Contractor remove from assignment to City facilities such Contractor and/or subcontractor employees as shall be deemed incompetent, careless, insubordinate, or in any way objectionable, or any personnel whose actions may be contrary to the public interest or inconsistent with the best interest of the City. Contractor's employees and subcontractors shall not smoke tobacco on any City property.

2-11 EMPLOYER PROVIDED UNIFORMS

The Contractor shall provide each of its employees with uniforms. Uniform apparel shall be kept neat, clean, and in good repair. All uniforms shall include the Contractor's name and logo. Contractor and subcontractor personnel shall wear uniforms at all times.

2-12 CONTRACTOR'S EQUIPMENT

The on-site supervisor shall ensure that all contractor-supplied equipment is in good working order. Any damaged equipment or equipment in need of repair shall be removed from the site. Contractor shall be responsible for any damage to the work sites, City or private property, or any injuries caused by Contractor's equipment or personnel.

2-13 LOCKS AND KEYS

The Contractor shall be responsible for the series of keys assigned to it and shall assign these keys to its personnel for use in maintaining the facilities. The Contractor shall properly use and keep safe all keys or locks issued by the City to the Contractor.

The Contractor shall report all lost or stolen keys or locks to the City within twenty-four (24) hours of discovery. The Contractor shall reimburse the City for the total cost of replacement keys and/or locks that have been lost.

Upon termination or cancellation of the Contract, the Contractor shall immediately return all keys, cards, remotes, etc., to the City. The Contractor shall reimburse the City for the total cost of lost items.

2-14 VANDALISM AND ACCIDENTAL DAMAGE

City assumes responsibility for the cost of repairing or replacing appurtenances significantly damaged by persons other than the Contractor or its agents. Vandalism or accidental damage repair costs shall be based on unit costs submitted by Contractor in the proposal or on time and materials quotes for work not called out in the proposal. Contractor shall be responsible for reporting damage to City and repairing or replacing all appurtenances damaged by Contractor or Contractor's agents.

2-15 WATER MANAGEMENT PROGRAM

Monthly, from March through November, the Landscape Maintenance Contractor must provide to the City a report of irrigation controller settings for the current month in electronic format. This report will include the following information:

- A. All irrigation programs set on controllers.
- B. Irrigation schedule start times for each irrigation program.
- C. Irrigation run days for each irrigation program.
- D. Irrigation cycle length, in minutes for each station in an irrigation program.
- E. Number of repeat cycles for each station in an irrigation program.

All required scheduling and operation of the automatic irrigation controllers reflecting weather changes and water needs will be covered under this Contract. Contractor shall make all adjustments and setting of automatic controllers to establish frequency and length of watering periods. Any malfunction of controllers must be reported to the City along with a proposal for correction with costs.

All systems shall be programmed as needed to maintain plants in a healthy, vigorous condition. The irrigation controller program is to be sufficient to keep the plant material healthy without excessive water use.

- A. Controller programs shall incorporate the following conditions: Meet City Water Management requirements
- B. Program around Park and Facility use and events
- C. Reflect actual evapotranspiration (E.T.) requirements
- D. Reflect actual requirements of soil and plants
- E. Eliminate runoff onto streets, sidewalks, and other non-target areas

The Water Management Program is designed to optimize park and landscape water usage through field testing and irrigation schedule development. Soil moisture levels can be compared to irrigation schedules and plant water requirements to assist in responsible management of each park and landscape irrigation valve zone.

A. Irrigation Schedule Analysis:

Monthly during irrigation season (March through November), the Contractor will provide the City with the current month's irrigation schedules no later than the 10th day of the month. The

irrigation schedules are analyzed by comparing the minutes of irrigation run time, plant water requirement and the level of environmental demand (evapotranspiration). Valve areas appearing to be over or under watered are to be further tested by the Contractor as outlined below.

B. Soil Moisture Testing:

Valve areas suspected to be over or under watered should be tested between May and October by the Contractor by removing a soil sample and testing the moisture content. Soil probing is conducted to determine soil moisture levels for automated overhead irrigation circuits.

C. Irrigation Base Schedule Development:

A monthly irrigation base schedule is developed based upon current controller settings and the feedback of moisture probing results. Adjustments are made at the controller either up or down where soil is found to be too dry or too wet. Once the Contractor has the correct run times for any given month, the starting "base schedule" is acquired. Adjustments to the "base schedule" shall occur throughout the month to accommodate changes in area use and/or environmental changes to individual sites.

D. Drought Impact on Irrigation:

The Contractor shall comply with all water use regulations and restrictions. In addition, Contractor shall comply with City directed changes in irrigation in response to drought conditions.

E. Irrigation System Evaluation:

December through February of each year the Contractor shall perform a complete system check of every irrigation system. The Contractor shall supply the City with a written report of every system as it is completed. Needed repairs shall occur throughout that same time period, and with the approval of the City, to ensure a fully operational system at the beginning of each spring. System evaluations of head, valves, quick couplers, etc. shall also occur monthly, at a minimum, March through November.

For any controller schedule not supplied by the 10th day of the current month by Contractor in any month, a \$50.00 penalty per controller will be assessed.

City will provide all the water and electricity necessary for the Contractor to perform the services except instances where excessive costs are incurred by the City due to waste or negligence by the Contractor. If the City determines that excessive utility costs due to waste or negligence have occurred and are a result of Contractor's actions, the City may withhold from payment to Contractor those funds necessary to reimburse the City for these additional costs. If there is a difference of opinion between the City and the Contractor as to the whether or not there has been waste due to the negligence of the Contractor, the opinion of the City will prevail.

Irrigation system repair shall occur and be compensated as stated below.

A. Irrigation system repair will be the responsibility of the Contractor. All replacement materials are to be with new original types and models, unless a substitute is approved by the City. The Contractor shall implement repairs in accordance with all effective warranties, and no separate payment shall be made for repairs on equipment covered by warranties.

B. Maintenance, repair, and replacement of malfunctioning sprinkler heads and quick couplers, including risers, swing joints, shall be included in the Contractor's base bid. The Contractor shall provide labor for the above items at no extra charge and shall bill the City for the required parts with a maximum mark up of 10% over cost.

C. Maintenance and repair of valves, filters, valve boxes, batteries and wiring shall be covered in the Contractor's base bid. The Contractor shall provide labor for the above items at

no extra charge and shall bill the City for the required parts with the agreed upon mark up over cost.

D. Replacement of valves, filters, valve boxes, and wiring shall be considered "extra work" in their entirety. Decisions regarding repair verses replacement will be made by the Contractor and the City jointly. In the event that there is a disagreement with regards to how to proceed, the City's choice will prevail.

E. Repair and replacement of lateral lines, main lines, check valves, and controllers shall be considered "extra work" in their entirety.

F. Repairs and replacements of any irrigation component or property damaged by the Contractor or as a result of negligence, error, or omission by the Contractor shall not be submitted to the City for payment and are the responsibility of the Contractor.

G. Repair and replacement of any irrigation components or property that is a result of vandalism, or unintentional damage, caused by the public shall be considered "extra work" in its entirety. All vandalized components must be presented to the City within one working day of the repair or replacement in order for the Contractor to be compensated for the repair or replacement. If the vandalized components are not presented within one working day the Contractor will be paid based on the above stated criteria for repair and replacement.

H. When the Contractor observes or is notified of water waste due to excessive overspray, overwatering for irrigation system malfunction, he/she shall respond within 24 hours. Repairs/adjustments shall be completed promptly to prevent damage to the landscape.

2-16 PLANT LOSS

It is one of the Contractor's prime responsibilities to prevent loss of plants caused by pests, diseases, insects, soil conditions, nutrient, micro-climatic conditions, improper planting, or problems in irrigation.

Contractor agrees to be continuously alert in locating and defining problems and agrees to exercise prompt and proper corrective action. A preliminary written report shall be submitted for major corrective problems not covered in the Contract along with the costs.

Contractor agrees to replace, at the Contractor's cost, any dead, stunted, or damaged that are the result primarily of the Contractor's negligence including, but not limited to, irrigation malfunctions that are not addressed within a reasonable amount of time based on environmental conditions. Plants lost from Contractor's negligence shall be replaced, at the Contractor's expense, within thirty (30) days of discovery. Replacement plants shall be comparable in size to the lost plant up to a maximum size of a thirty-six (36) inch box, or if smaller, the size shall be approved by the City.

The Contractor shall not be held responsible for plant losses due to maladies beyond the Contractor's control; this includes, but is not limited to, disease or insect attack for which there is no legal recommended control, acts of vandalism, earthquakes, fires, storms, freezing/frost, and related events. Contractor shall report all such conditions to the City in writing within seventy-two (72) hours of occurrence, and submit a proposal for the work or repairs along with the costs. The Contractor shall obtain City's written permission/direction or authorization prior to proceeding with the work. Failure to notify the City within seventy-two (72) hours of occurrence will result in replacement at the Contractor's cost as if the cause was Contractor negligence.

The City shall approve all replacement plants that differ in species. However, it is agreed that replacing plants shall not be used by the Contractor as a substitute for proper care. The City will consider Contractor negligence a major breach of contract with full responsibility for costs and losses.

Dead plants and those in a state of decline shall be brought to the City's attention immediately and before removal. The City shall pay labor and material for plant replacement not caused by Contractor negligence, as deemed by the City, on an actual time and material basis.

All new plant material and irrigation installations or repairs shall be guaranteed for a period of ninety (90) days for unhealthy plant installation and/or poor workmanship. Exceptions include damage or death of plant material due to wind or storm, or vandalism, theft, or other willful acts over which the Contractor has no control. Existing plants shall be replaced by Contractor if they die due to Contractor's negligence. All replacement plants and materials shall be inspected and approved by City prior to installation.

At the end or termination of the Contract, the City reserves the sole right to withhold final payment(s) in the amount necessary to replace any damaged or dying plant material that is a result of Contractor negligence or to restore any site which is in a condition that is worse than when the Contract was executed.

2-17 TURF AERATION

The Contractor shall perform core aerations of turf (no mow areas excluded) as part of the base bid. Two (2) aerifications are required in all turf areas each year. Aeration plugs shall be properly destroyed so as to not pose a safety issue or interfere with the use of parks and facilities. The aeration schedule shall be coordinated with the City during the first month of the contract period. Additional turf aerations may be proposed, as "extra work" by the Contractor, in order to meet the designated standard. All proposals, and costs, must be approved by the City prior to additional turf aerations occurring.

2-18 FERTILIZATION

The Contractor will be responsible for performing all fertilizations of turf and landscape and shall be included in the base bid. The fertilization schedule shall be coordinated with the City during the first month of the contract period.

All turf areas (excluding no-mow) shall receive fertilizer applications four times per year. Approximate dates of these are April 1, June 1, September 1, and November 1. Turf is to be maintained in good condition with horticultural acceptable growth and color, and additional fertilization may be required as extra work. Variations to these dates may be required under individual circumstances. All fertilizer shall be approved by the City prior to application.

All shrub, groundcover and no-mow turf areas shall receive fertilizer applications two times per year. Approximate dates of these are March 1 and September 1. Intent is to maintain plants in good condition with horticultural acceptable growth and color. Variations to these dates may be required under individual circumstances. All fertilizer shall be approved by the City prior to application.

2-19 BARK AND MULCH

The Contractor will be responsible for notifying the City when areas are in need of new bark or mulch. The City reserves the right to have the bark installed in any manner that it sees fit and by whomever it sees fit. In the event that the City requests that new bark mulch be added by the Contractor, it will be considered "extra work" in its entirety.

2-20 TREE PRUNING

The Contractor shall prune trees for clearance as part of the base bid. Pedestrian clearance shall be eight feet (8') and vehicular clearance shall be fifteen feet (15'). Responsibility for

structural grid pruning, weight reduction pruning, etc. shall not be contained in the base bid and will be considered "extra work". The City reserves the right to perform this work in any manner that it deems appropriate.

2-21 MOWING AND EDGING

Lawn mowing and edging shall be performed as needed to meet the City landscape standards. When lawns cannot be cut on the scheduled day due to rain, they must be cut as soon as weather and ground conditions permit. This trimming shall include cutting all grass along walls, fences, foundations, curbs, sidewalks, shrubs, tree basins, poles, guy wires, irrigation & utility boxes, and any other object within or immediately adjacent to the lawn areas. Turf and plantings around sprinkler heads shall be trimmed to provide maximum water coverage. Trimming shall be done by power edgers or by hand, but in no case will herbicides be permitted without prior written approval. Clippings shall be removed from all adjacent walkways and other paved surfaces immediately after each mowing/edging.

Seed heads on no-mow turf shall be removed on an annual basis. No-mow turf shall be edged as needed to keep from encroaching on walls, fences, sidewalks, etc.

2-22 REFUSE DISPOSAL

All refuse and recycling materials are to be placed in the trash dumpsters and recycling containers located at the Morgan Hill Corporation Yard. Green waste is to be placed in bins provided by the City at the Bus Yard across the street from the Corporation Yard.

2-23 TRAFFIC CONTROL

Traffic control shall conform to the latest Caltrans Standards to ensure safe flow of traffic and safety of workers in traffic zones. All traffic control costs shall be included in the prices paid for the various contract items of work and no additional compensation will be allowed therefore.

The Maintenance Manager shall be notified prior to any road closures. No traffic lanes on Dunne Avenue, Cochrane Road, Butterfield Blvd., Tennant Ave., or Monterey Road may be closed before 9:00 a.m. or after 3:00 p.m. without written permission from the Maintenance Manager. Access to driveways shall be maintained at all times.

When entering or leaving roadways which bear public traffic, the Contractor's equipment, whether empty or loaded, shall in all cases yield to public traffic.

The provisions in this section may be modified or altered if, in the opinion of the Maintenance Manager, public traffic will be better served and work expedited. Such modifications or alterations shall not be adopted until approved in writing by the Maintenance Manager.

2-24 FINGERPRINTING AND BACKGROUND CHECKS

All Contractor staff who will be working on City facilities during business hours must pass a background check a State of California Department of Justice Criminal Records Check. The Record Check may be performed at the Morgan Hill Police Department located at: 16200 Vineyard Boulevard, Morgan Hill, CA 95037.

The Contractor is responsible for maintaining and updating background check information for their employees.

SECTION 3

LOCATIONS AND SERVICES REQUIRED

3-1 GROUP 2 – Civic Center, Recreation Facilities, Police Department

Group 2 services shall include complete landscape maintenance services as described in this document. Service frequencies shall be as described in this document and as needed to maintain Morgan Hill landscape standards. Minimum frequencies for trash & recycling material removal, stocking mutt mitts dispensers, litter removal, pavement and site furnishing cleaning frequencies are:

Group 3 Locations	Apr to Oct	Nov & Mar	Dec to Feb
Civic Center	Mon, Wed, Fri	Mon, Wed, Fri	Mon, Wed, Fri
Community & Cultural Center *	Daily (7 days/week)	Daily (7 days/week)	Daily (7 days/week)
Centennial Recreation Center	Daily (7 days/week)	Daily (7 days/week)	Daily (7 days/week)
Skate Park	Daily (7 days/week)	Daily (7 days/week)	Daily (7 days/week)
Wildlife Trail	Daily (7 days/week)	Daily (7 days/week)	Daily (7 days/week)
Aquatics Center	Daily (7 days/week)	Daily (7 days/week)	Mon, Wed, Fri
Police Department	Mon, Wed, Fri	Mon, Wed, Fri	Mon, Wed, Fri

*Note: the Community Center includes the Playhouse and Building B grounds.

3-2 GROUP 4 – Assessment Districts, North/East

Group 4 services shall include complete landscape maintenance services as described in this document. Service frequencies shall be as described in this document and as needed to maintain Morgan Hill landscape standards. Minimum frequencies for trash & recycling material removal, stocking mutt mitts dispensers, litter removal, pavement and site furnishing cleaning frequencies are:

Group 4 Locations	Year Round
Fox Hollow/Murphy Springs	Weekly
Llagas Creek Estates	Weekly
Sparhawk	Weekly
Chang/Bertelone	Biweekly
Llagas/Obata	Biweekly
Belle Estates	Weekly
Diana Estates	Weekly
Stone Creek	Weekly
Sandalwood	Monthly
E Main Well Site	Weekly

EXHIBIT B
SCHEDULE OF COMPENSATION RATES

Please see next two (2) pages

Exhibit B- Schedule of Compensation

January 1, 2024 - December 31, 2025

Medallion Landscape Management, LLC Maintenance Service Agreement

Group 2 - City Facilities	CY 24 to CY 25 Contract Annual Amount
Civic Center	28,068.00
Community and Cultural Center	28,068.00
Centennial Recreation Center	16,848.00
Skate Park	3,744.00
Wildlife Trail	3,744.00
Aquatics Center	28,068.00
Police Department	11,232.00
TOTAL - Group 2 Annual Amt.	119,772

Group 4 - Landscape Assessment Districts	CY 24 to CY 25 Contract Annual Amount
Fox Hollow/Murphy Springs	3,744.00
Llagas Creek Estates	4,752.00
Sparhawk	2,244.00
Chang/Bertelone	3,120.00
Llagas/Obata	1,752.00
Belle Estates	6,000.00
Diana Estates	3,600.00
Stone Creek	6,000.00
Sandalwood	1,752.00
E. Main Well Site	3,120.00
TOTAL - Group 4 Annual Amt.	36,084

TOTAL-Extra Services @ \$30,000 per Year	30,000
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TOTAL ANNUAL AMOUNT	
Groups 2, 4 & Extra Services	185,856
GRAND TOTAL AMOUNT	
TWO-YEAR AGREEMENT	371,712

EXHIBIT B-SCHEDULE OF COMPENSATION

January 1, 2024-December 31, 2025

EXTRA SERVICES HOURLY RATES

Extra Work – All Locations		Hourly Rate
<u>Labor including work truck/tools</u>		
Laborer		\$ 48.00
Skilled Technician		\$ 95.00
Supervisor		\$ 0 - included
Emergency/After Hour Response		\$ 95.00
Other (describe)		\$
<u>Equipment</u>		Hourly Rate
Spray equipment		\$ 0 - included
Tractor with implements		\$ 90.00
Slit seeder		\$ 50.00
Mower		\$ 0 - included
Other (describe)		\$ -
<u>Supplies</u>		
Materials mark up over cost		% 15%

THIS FORM MUST BE USED WHEN SUBMITTING PROPOSAL

**EXHIBIT C
SCHEDULE OF PERFORMANCE**

All landscape maintenance services are to be scheduled with the City of Morgan Hill's Maintenance Manager or other designated City maintenance staff.

CITY COUNCIL STAFF REPORT

MEETING DATE: December 6, 2023

PREPARED BY:

Dat Nguyen, Finance Director

APPROVED BY: City Manager

RECEIVE MONTHLY BUDGET UPDATE AND OCTOBER 2023 FINANCIAL AND INVESTMENT REPORTS

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 October 2023 financial and investment reports.

October 2023 Financial Report

The Revenue and Expense Summary through October 2023 is included on the first page of the monthly financial report. Overall, General Fund revenues total \$9.5 million or about 18% of the budget as some of the major revenue categories are received later in the fiscal year. Expenditures, including encumbrances, amounted to \$20.6 million, of which approximately \$4.1 million is attributable to outstanding encumbrances, compared to prior year expenditures, including encumbrances, of \$19.2 million. This represents an increase of \$1.4 million, including encumbrances, compared to the prior year. Excluding the encumbrances, expenditures increased by about \$1.0 million mainly due to new programs such as Innovative Transit, continued recovery in Recreation Services, as well as overall cost increases.

Budget Update

There has been no material change to the City's revenue since the last budget update to the Council on November 1, 2023. For water revenue, Morgan Hill residents consumed about 2% less water through October compared to the prior three-year

average. As such, no revenue stabilization water rate was implemented.

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 agendaized 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
October 31, 2023 - 33% of Year Complete



CITY OF MORGAN HILL

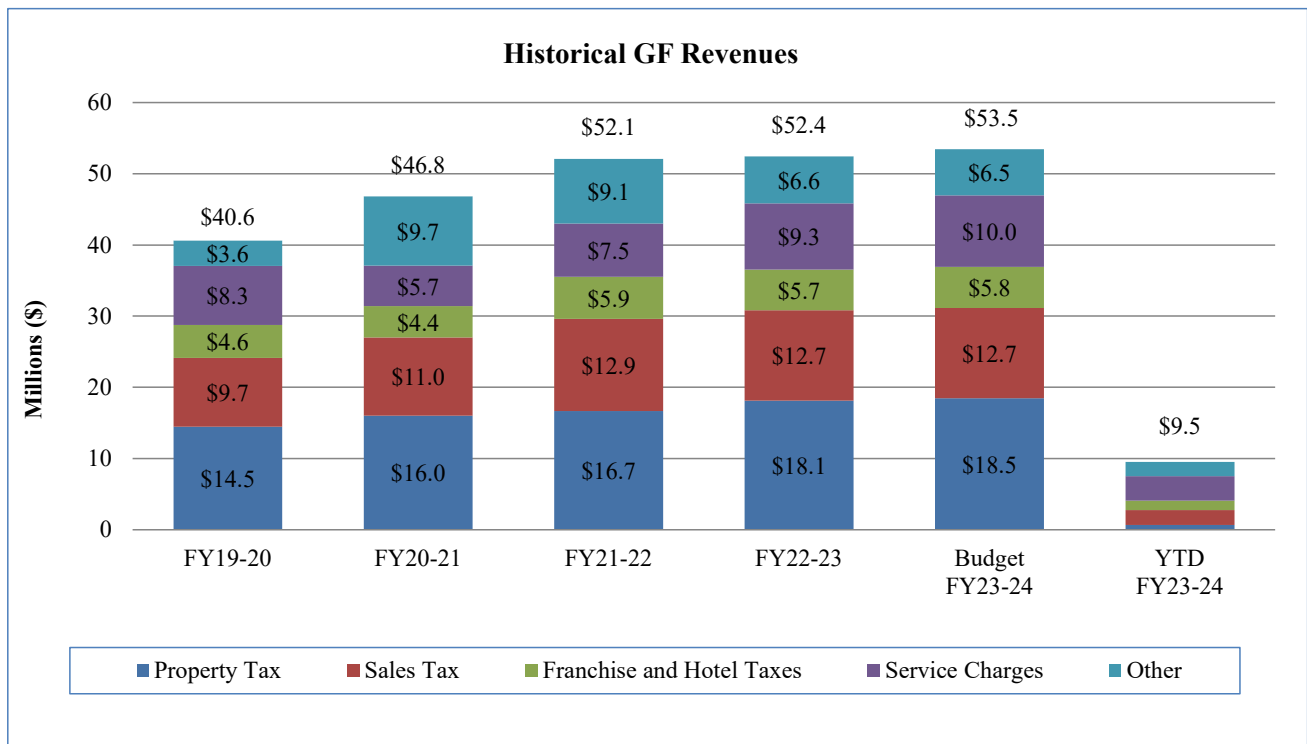
Prepared by:
FINANCE DEPARTMENT



CITY OF MORGAN HILL, CALIFORNIA
FINANCIAL STATEMENT ANALYSIS - FISCAL YEAR 2023-24
FOR THE MONTH ENDED OCTOBER 2023 – 33% OF YEAR COMPLETE

- **General Fund** – Revenues through October totaled \$9.5 million, or about 18% 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 FY22-23 Actual, FY23-24 Budget, and YTD as of October 31, 2023.



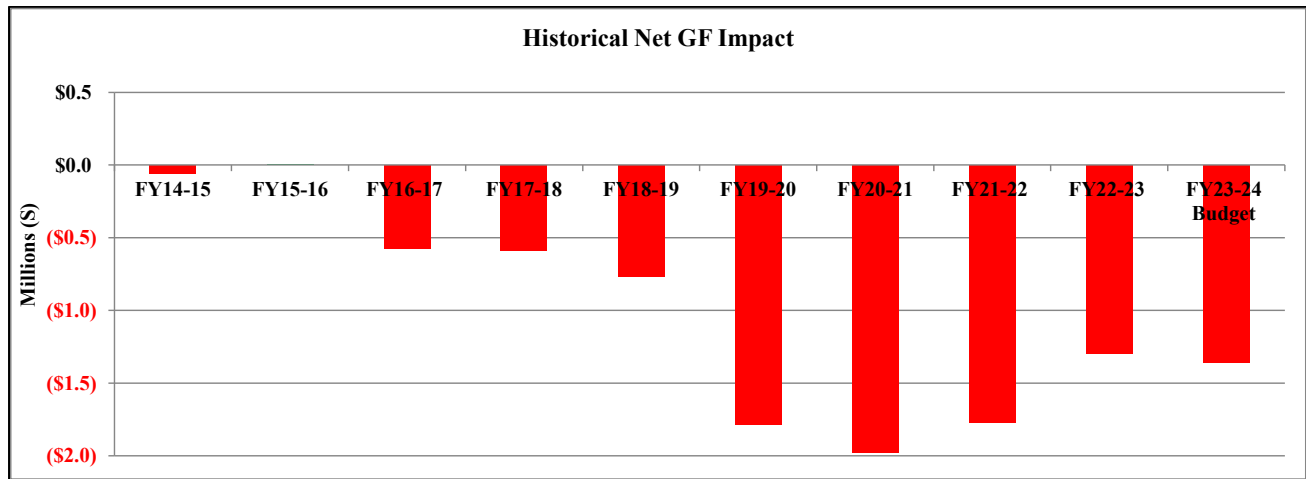
General Fund expenditures and encumbrances through October totaled \$20.6 million, of which approximately \$4.1 million is attributable to outstanding encumbrances, compared to prior year expenditures, including encumbrances, of \$19.2 million. This represents an increase of \$1.4 million, including encumbrances, compared to the prior year. Excluding the encumbrances, expenditures increased by about \$1.0 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 \$1.4 million as of October 31, 2023. Recreation Services revenues continue to recover from the pandemic and on target with budget.



CITY OF MORGAN HILL, CALIFORNIA
FINANCIAL STATEMENT ANALYSIS - FISCAL YEAR 2023-24
FOR THE MONTH ENDED OCTOBER 2023 – 33% OF YEAR COMPLETE

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 October totaled \$1.5 million compared to prior year to date amount of approximately \$2.5 million. Expenditures, including encumbrances, totaled \$2.0 million.
- **Debt Service Funds** – Expenditures through October totaled \$2,510. 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.



CITY OF MORGAN HILL, CALIFORNIA
FINANCIAL STATEMENT ANALYSIS - FISCAL YEAR 2023-24
FOR THE MONTH ENDED OCTOBER 2023 – 33% OF YEAR COMPLETE

- **Wastewater Operations** – Revenues through October 31, 2023 totaled \$3.9 million. Expenditures and outstanding encumbrances totaled \$4.4 million or 28% of the budget. The table below shows historical Wastewater Operations revenues and expenditures from FY19-20 through FY22-23 Actual, FY23-24 Budget, and YTD as of October 31, 2023.

(amount in millions)	FY19-20	FY20-21	FY21-22	FY22-23	Budget FY23-24	YTD FY23-24
Revenues	11.9	13.3	14.9	15.3	15.6	3.9
Expenditures	12.3	13.3	14.8	16.0	15.6	4.4
Operating Margin	(0.4)	-	0.1	(0.7)	-	(0.5)
Operating Margin without Encumbrances	(0.1)	-	0.1	(0.7)	-	(0.4)

- **Water Operations** – Water Operations includes Utility Billing, Water Conservation, and Water Operations. Revenues through October 31, 2023 totaled \$5.6 million. Water Operations expenditures, including outstanding encumbrances, totaled \$6.5 million. Morgan Hill residents consumed about 2% less water through October 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 FY22-23 Actual, FY23-24 Budget, and YTD as of October 31, 2023.

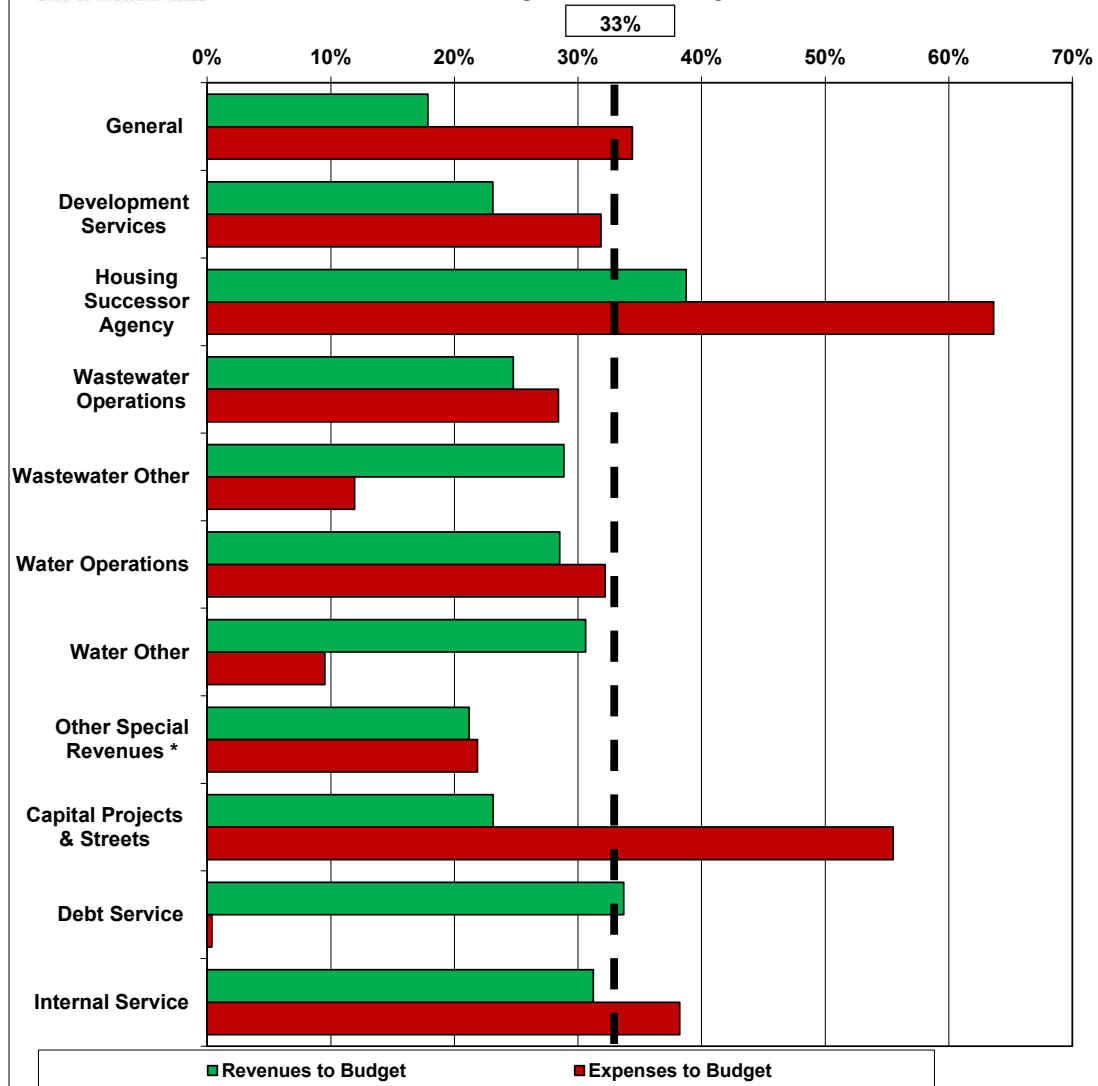
(amount in millions)	FY19-20	FY20-21	FY21-22	Un-audited FY22-23	Budget FY23-24	YTD FY23-24
Revenues	15.3	16.5	16.0	18.1	19.8	5.6
Expenditures	16.4	16.5	15.2	18.0	20.3	6.5
Operating Margin	(1.1)	-	0.8	0.1	(0.5)	(0.9)
Operating Margin without Encumbrances	(0.1)	-	0.8	0.1	(0.5)	(0.1)

- **Investments** – One security was called, and one new security was purchased. Total interest earnings received on investments were \$420,000 during the month.



Morgan Hill YTD Revenue & Expense Summary October 31, 2023 - 33% of Year Complete

Percentage of Actual to Budget



FUND NAME	REVENUES		EXPENSES	
	ACTUAL	% OF BUDGET	ACTUAL PLUS ENCUMBRANCES	% OF BUDGET
General	\$ 9,539,157	18%	\$ 20,634,694	34%
Development Services	1,463,173	23%	2,033,588	32%
Housing Successor Agency	92,668	39%	745,781	64%
Wastewater Operations	3,854,392	25%	4,422,240	28%
Wastewater Other	2,836,219	29%	5,216,456	12%
Water Operations	5,642,330	29%	6,542,383	32%
Water Other	2,663,279	31%	1,758,156	10%
Other Special Revenues *	1,774,058	21%	2,177,258	22%
Capital Projects & Streets	3,034,710	23%	23,899,988	55%
Debt Service	228,604	34%	2,510	0%
Internal Service	3,814,827	31%	5,213,197	38%
TOTAL FOR ALL FUNDS	\$ 34,943,417	24%	\$ 72,646,251	32%

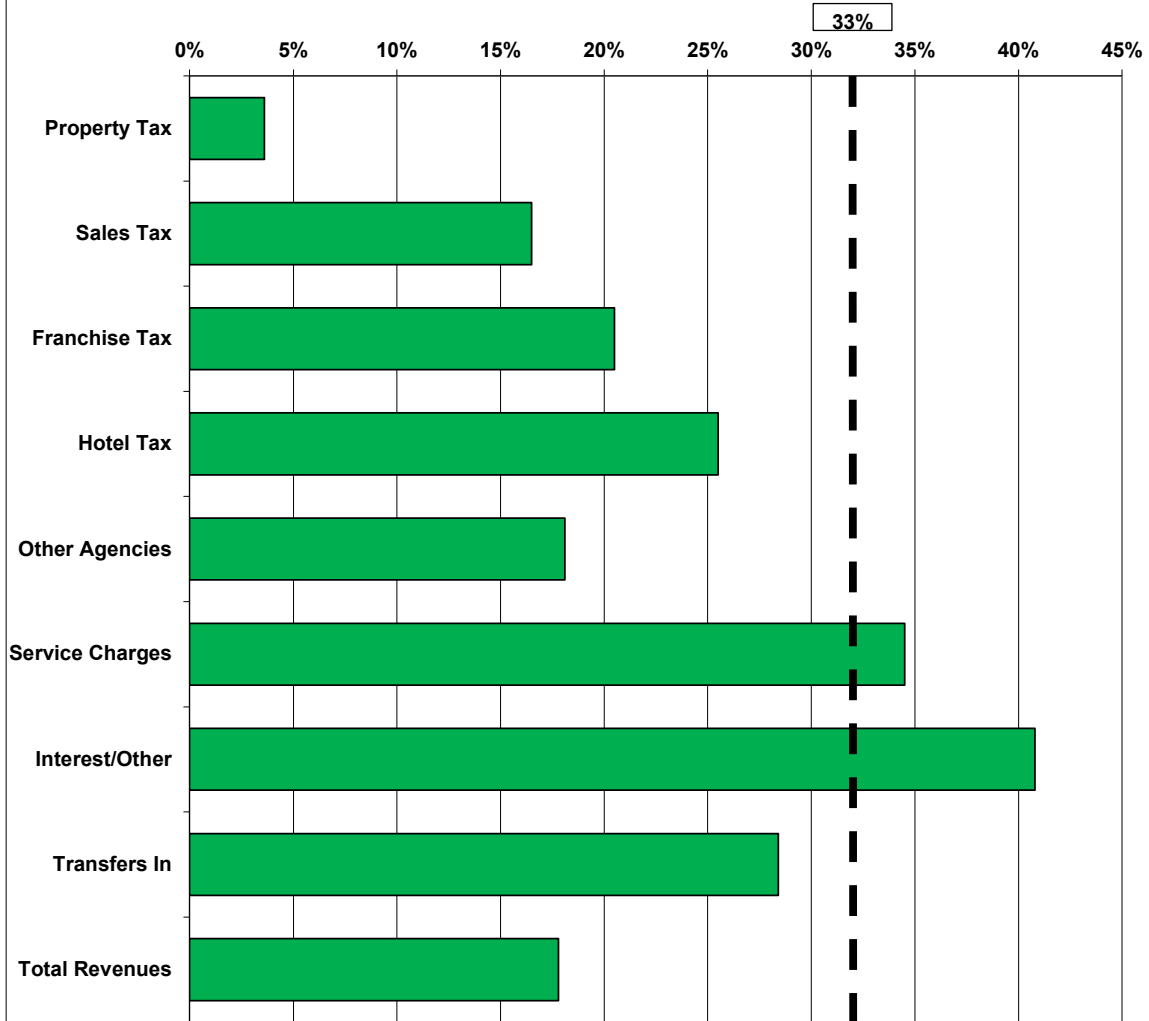
* Includes all Special Revenue Funds except Development Services Fund, Street Funds, and Housing Successor Agency.



Morgan Hill YTD General Fund Revenues

October 31, 2023 - 33% of Year Complete

Percent of Actual to Budget

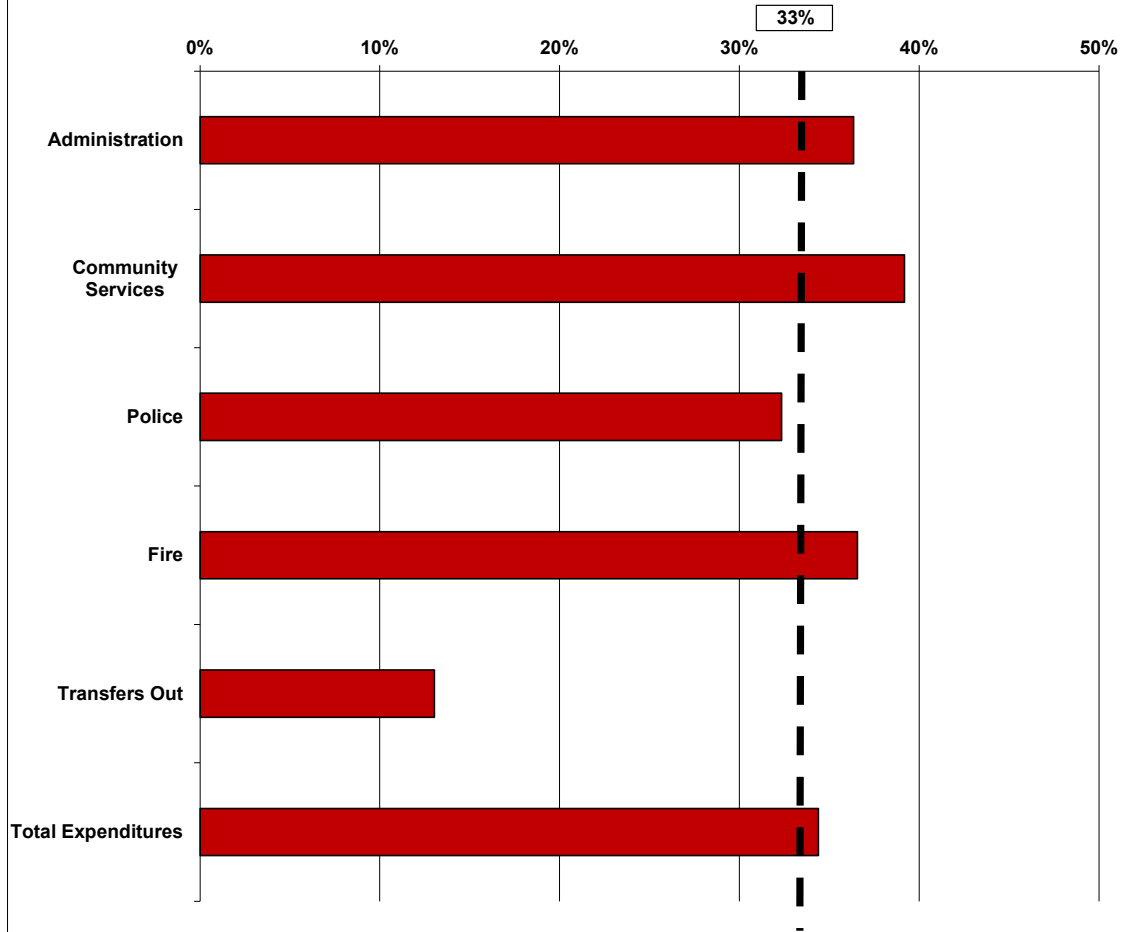


REVENUE CATEGORY	BUDGET	ACTUAL	% OF BUDGET	PRIOR YEAR TO DATE	% CHANGE FROM PRIOR YEAR
Property Tax	\$ 18,472,000	\$ 659,718	4%	\$ 655,923	1%
Sales Tax	12,673,967	2,086,612	17%	1,972,719	6%
Franchise Tax	2,983,800	610,729	21%	438,964	39%
Hotel Tax	2,800,000	714,264	26%	762,662	-6%
Other Agencies	1,011,233	182,976	18%	262,974	-30%
Service Charges	10,036,079	3,458,705	35%	3,047,214	14%
Interest/Other	2,143,687	875,692	41%	583,747	50%
Transfers In	3,342,540	950,463	28%	917,438	4%
TOTAL REVENUES	\$ 53,463,306	\$ 9,539,157	18%	\$ 8,641,641	10%



Morgan Hill YTD General Fund Expenditures October 31, 2023 - 33% of Year Complete

Percent of Actual to Budget



EXPENDITURE CATEGORY	BUDGET	ACTUAL PLUS ENCUMBRANCES	% OF BUDGET	PRIOR YTD PLUS ENCUMBRANCES	% CHANGE FROM PRIOR YEAR
Administration	\$ 6,489,162	\$ 2,358,649	36%	\$ 2,475,307	-5%
Community Services	18,016,113	7,060,430	39%	6,472,464	9%
Police	22,995,404	7,438,401	32%	6,602,095	13%
Fire	9,139,905	3,342,624	37%	3,211,274	4%
Transfers Out	3,333,767	434,589	13%	429,105	1%
TOTAL EXPENDITURES	\$ 59,974,351	\$ 20,634,694	34%	\$ 19,190,245	8%

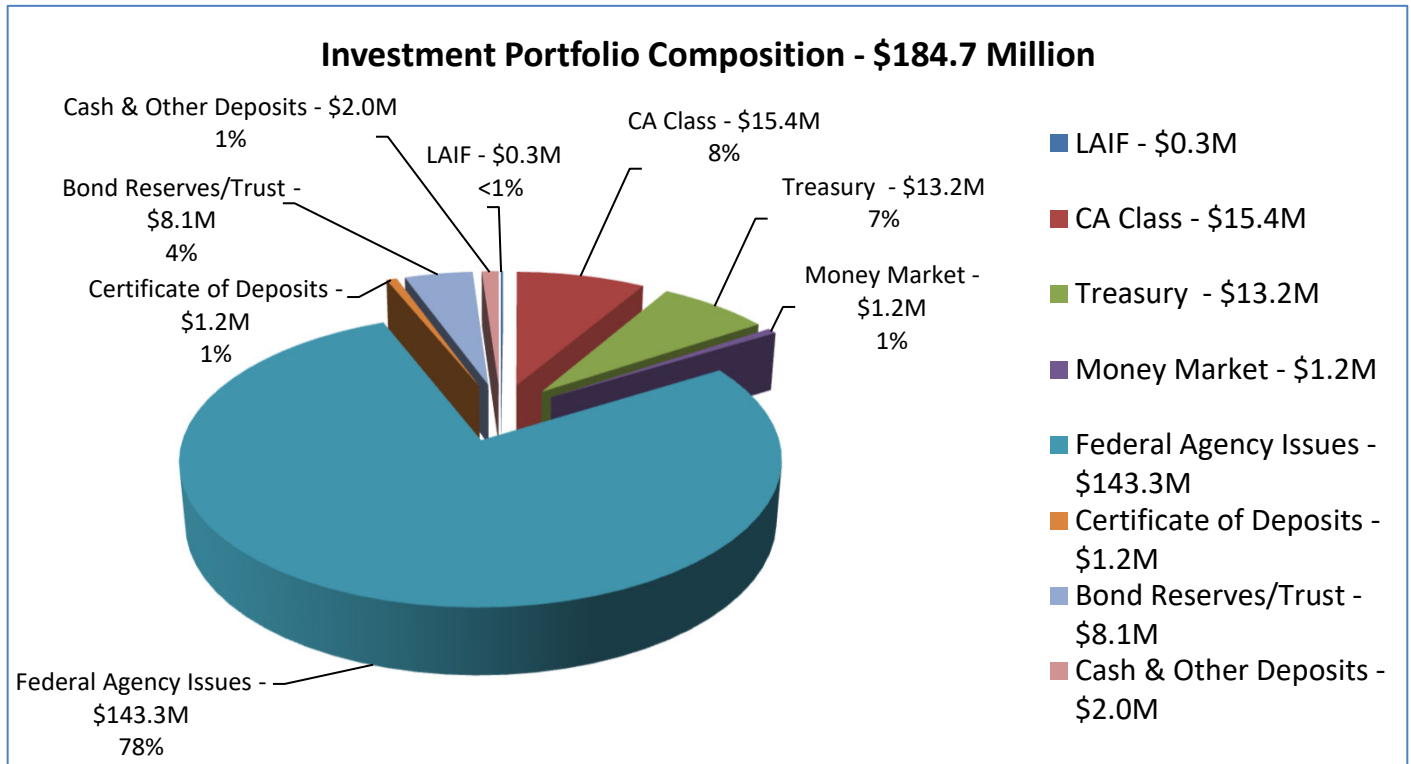


City of Morgan Hill
Recreation Report - Fiscal Year 2023-24
For the Month Ended October 31, 2023
33% of Year Complete

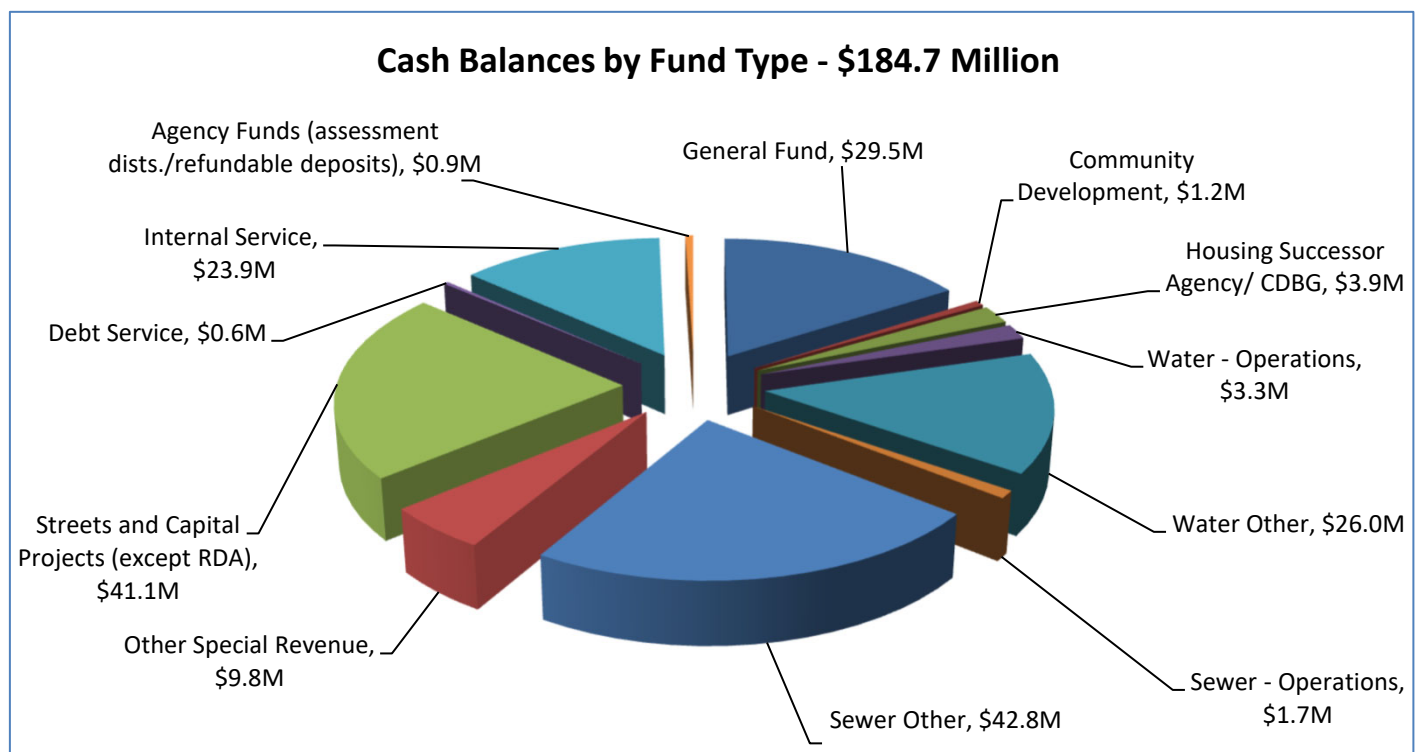
	<u>Budget</u>	<u>October 2023</u>	<u>YTD</u>	<u>% of Budget</u>
Revenues				
Membership Services & Rec Programs	\$ 5,656,265	\$ 425,760	\$ 2,098,498	
Facility Rentals	1,203,269	61,886	482,401	
Community Services	152,498	2,434	9,980	
Transfers in	75,000	6,250	25,000	
Total Revenues	<u>\$ 7,087,032</u>	<u>\$ 496,331</u>	<u>\$ 2,615,879</u>	37%
Less: Expenditures				
Membership & Program Services	\$ 7,572,987	\$ 507,376	\$ 2,241,372	
Facility Rentals	573,524	51,277	176,374	
Community Services	694,975	50,441	163,488	
Total Expenditures	<u>\$ 8,841,487</u>	<u>\$ 609,093</u>	<u>\$ 2,581,234</u>	29%
Net Impact without encumbrances	<u>\$ (1,754,455)</u>	<u>\$ (112,762)</u>	<u>\$ 34,645</u>	
Encumbrances	-	-	1,466,313	
Net Impact with encumbrances	<u>\$ (1,754,455)</u>	<u>\$ (112,762)</u>	<u>\$(1,431,668)</u>	

City of Morgan Hill Monthly Investment Report - October 31, 2023

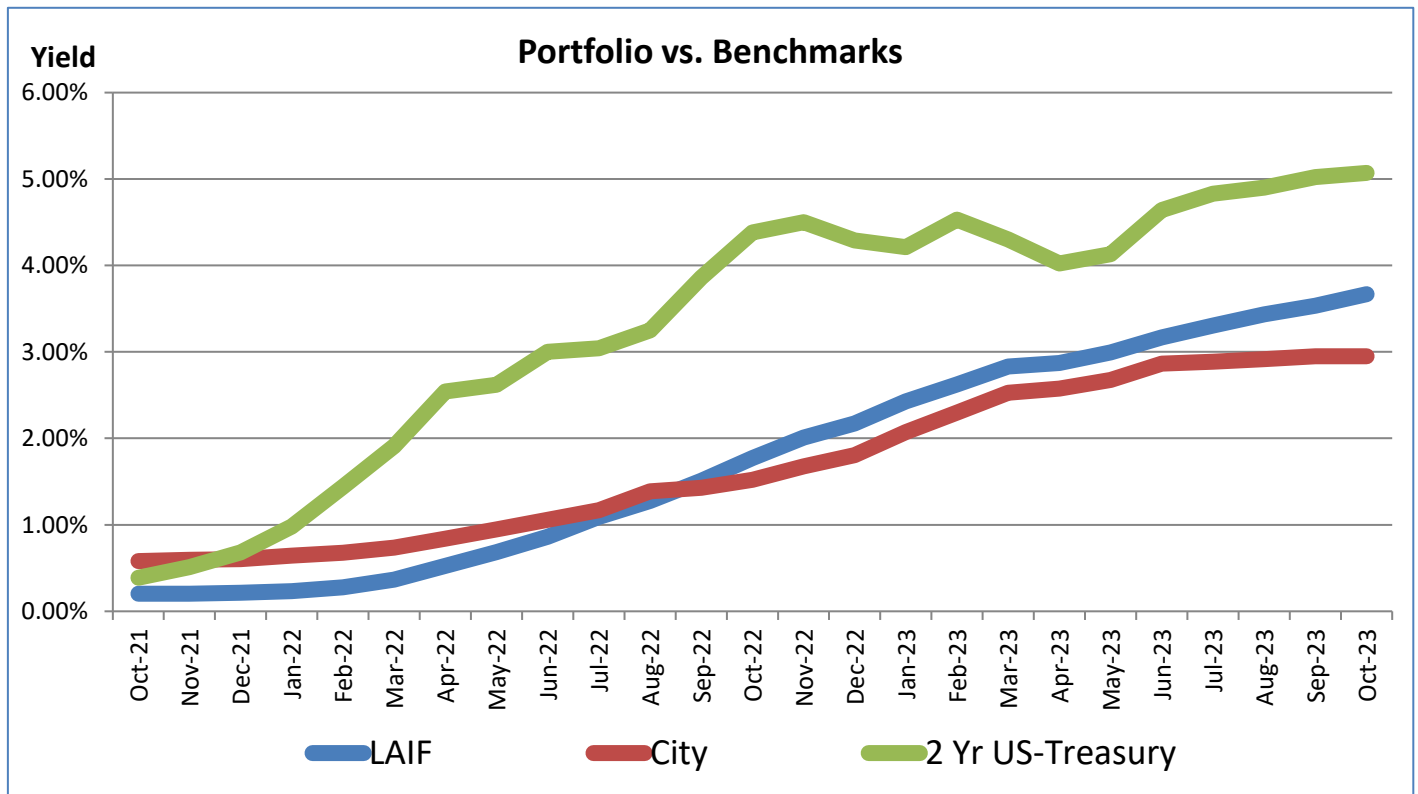
The following are the snapshots of City's investment portfolio as of October 31, 2023. The first chart shows the portfolio composition by investment type:



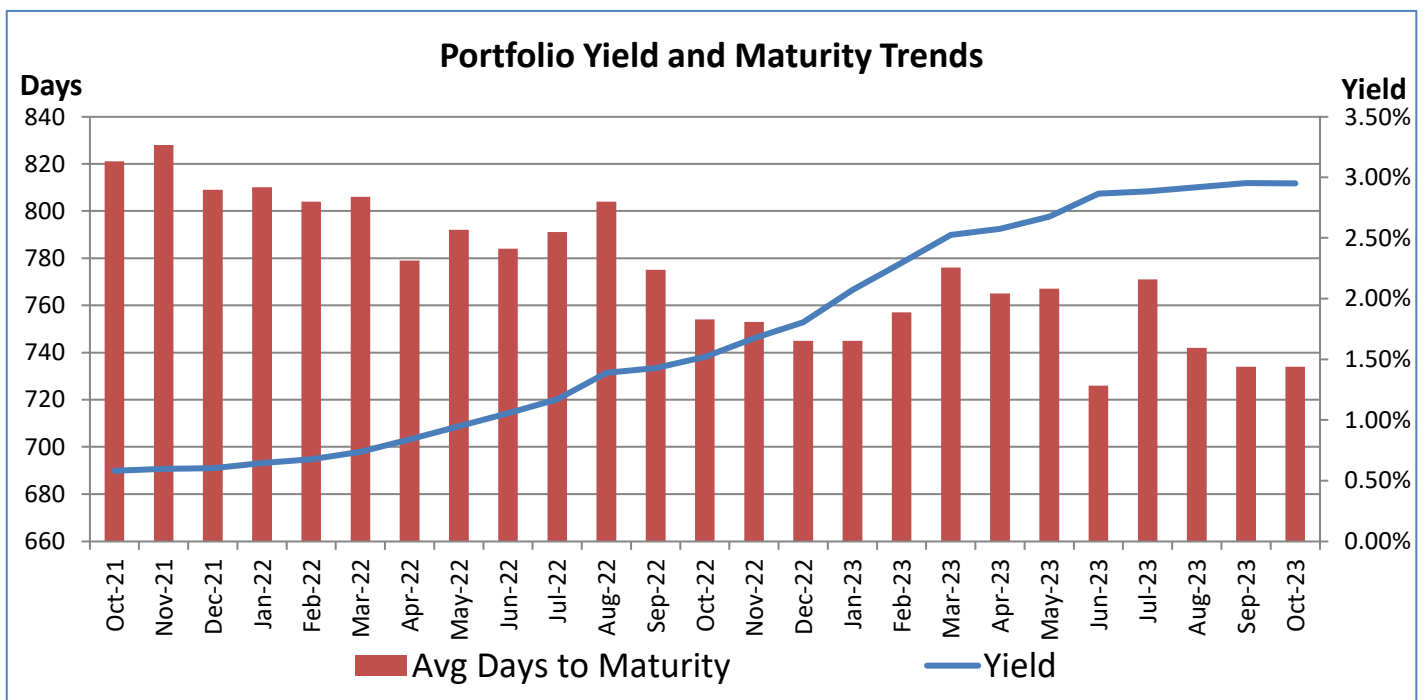
The chart below shows cash balances by fund type reconciled to City's financial system:



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
Investment Portfolio Detail
As of October 31, 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			\$ 258,174	\$ 258,174	0.14%	\$ 254,639	3.67%		
California C L A S S			15,372,775	15,372,775	8.32%	\$ 15,372,775	5.51%		
City Managed									
Treasury Note	91282CCZ2	10/8/2021	1,987,656	1,992,769	1.08%	1,785,620	1.00%	9/30/2026	9/30/2026
Treasury Note	91282CDR9	1/4/2022	1,999,141	1,999,928	1.08%	1,984,680	0.77%	12/31/2023	12/31/2023
Treasury Note	91282CDR9	1/19/2022	1,989,688	1,999,115	1.08%	1,984,680	1.02%	12/31/2023	12/31/2023
Treasury Note	91282CDV0	2/11/2022	1,977,969	1,997,181	1.08%	1,977,660	1.44%	1/31/2024	1/31/2024
Treasury Note	9128286R6	3/28/2022	1,996,320	1,999,123	1.08%	1,968,040	2.34%	4/30/2024	4/30/2024
Treasury Note	912828U24	6/13/2022	1,904,688	1,934,473	1.05%	1,837,740	3.16%	11/15/2026	11/15/2026
Treasury Note	91282CAW1	11/17/2022	1,246,984	1,297,809	0.70%	1,297,478	4.49%	11/15/2023	11/15/2023
FFCB Bond	3133ELVX9	4/8/2020	2,000,000	2,000,000	1.08%	1,959,560	0.88%	4/8/2024	4/8/2024
FFCB Bond	3133ELC28	5/27/2020	2,000,000	2,000,000	1.08%	1,861,460	0.73%	11/27/2023	5/27/2025
FHLMC Bond	3134GVYN2	6/3/2020	2,000,000	2,000,000	1.08%	1,901,360	0.60%	12/3/2023	12/3/2024
FHLMC Bond	3134GWZG4	10/20/2020	2,000,000	2,000,000	1.08%	1,829,200	0.60%	4/20/2024	10/20/2025
FHLMC Bond	3134GW3X2	10/27/2020	2,000,000	2,000,000	1.08%	1,828,900	0.63%	4/27/2024	10/27/2025
FHLMC Bond	3134GW6E1	11/2/2020	2,000,000	2,000,000	1.08%	1,999,720	0.32%	11/2/2023	11/2/2023
FFCB Bond	3133EMFR8	11/3/2020	2,000,000	2,000,000	1.08%	1,824,380	0.54%	11/3/2023	11/3/2025
FNMA Bond	3135GA4P3	11/18/2020	2,000,000	2,000,000	1.08%	1,825,200	0.65%	11/18/2023	11/18/2025
FHLMC Bond	3134GXEJ9	11/24/2020	2,000,000	2,000,000	1.08%	1,823,600	0.64%	11/24/2023	11/24/2025
FFCB Bond	3133EMHF2	11/24/2020	1,000,000	1,000,000	0.54%	911,030	0.60%	11/24/2023	11/24/2025
FHLMC Bond	3134GXCS1	11/25/2020	3,000,000	3,000,000	1.62%	2,734,200	0.63%	11/25/2023	11/25/2025
FHLMC Bond	3134GXFA7	11/30/2020	2,000,000	2,000,000	1.08%	1,823,560	0.65%	11/26/2023	11/26/2025
FFCB Bond	3133EMLC4	12/22/2020	2,000,000	2,000,000	1.08%	1,809,280	0.47%	12/22/2023	12/22/2025
FHLB Bond	3130AKQ74	1/22/2021	2,000,000	2,000,000	1.08%	1,809,420	0.63%	1/22/2024	1/22/2026
FNMA Bond	3135G06R9	1/28/2021	2,000,000	2,000,000	1.08%	1,805,140	0.55%	1/28/2024	1/28/2026
FHLB Bond	3130AKRN8	1/28/2021	2,000,000	2,000,000	1.08%	1,809,320	0.65%	1/28/2024	1/28/2026
FHLB Bond	3130ALCV4	2/24/2021	2,000,000	2,000,000	1.08%	1,808,720	0.75%	2/24/2024	2/24/2026
FHLB Bond	3130ALDB7	2/25/2021	2,000,000	2,000,000	1.08%	1,804,660	0.66%	2/25/2024	2/25/2026
FHLB Bond	3130AKZ25	2/26/2021	2,000,000	2,000,000	1.08%	1,804,020	0.65%	2/26/2024	2/26/2026
FHLB Bond	3130ALGS7	3/10/2021	2,000,000	2,000,000	1.08%	1,810,100	0.85%	3/10/2024	3/10/2026
FHLB Bond	3130ALEP5	3/16/2021	2,000,000	2,000,000	1.08%	1,802,440	0.70%	3/16/2024	3/16/2026
FHLB Bond	3130ALDN1	3/16/2021	2,000,000	2,000,000	1.08%	1,806,840	0.80%	3/16/2024	3/16/2026
FHLB Bond	3130AMNH1	6/9/2021	2,000,000	2,000,000	1.08%	1,804,620	1.08%	12/9/2023	6/9/2026
FHLB Bond	3130AMYJ5	6/30/2021	2,000,000	2,000,000	1.08%	1,797,060	1.00%	12/30/2023	6/30/2026
FHLB Bond	3130AMYP1	7/15/2021	3,000,000	3,000,000	1.62%	2,698,680	1.13%	1/15/2024	7/15/2026
FHLB Bond	3130AMYS5	7/15/2021	2,000,000	2,000,000	1.08%	1,855,520	0.85%	1/15/2024	7/15/2025
FHLB Bond	3130ANJC5	8/26/2021	2,000,000	2,000,000	1.08%	1,774,800	0.80%	2/26/2024	8/26/2026
FHLB Bond	3130ANLW8	8/26/2021	3,000,000	3,000,000	1.62%	2,677,710	1.00%	2/26/2024	8/26/2026
FHLB Bond	3130ANLZ1	8/26/2021	2,000,000	2,000,000	1.08%	1,779,980	0.90%	2/26/2024	8/26/2026
FHLB Bond	3130A8XY4	9/13/2021	2,103,340	2,059,199	1.11%	1,830,960	0.82%	3/11/2024	9/11/2026
FFCB Bond	3133EM4X7	9/28/2021	1,982,960	1,990,160	1.08%	1,773,360	0.98%	3/10/2024	9/10/2026
FHLB Bond	3130APCH6	9/29/2021	3,000,000	3,000,000	1.62%	2,677,710	1.13%	3/29/2024	9/29/2026
FHLB Bond	3130ANZE3	9/30/2021	2,000,000	2,000,000	1.08%	1,779,340	0.88%	3/30/2024	9/30/2026
FHLB Bond	3130AP6N0	9/30/2021	3,000,000	3,000,000	1.62%	2,671,530	1.05%	3/30/2024	9/30/2026
FHLB Bond	3130AP6M2	9/30/2021	3,000,000	3,000,000	1.62%	2,669,130	1.02%	3/30/2024	9/30/2026
FHLB Bond	3130APCG8	10/19/2021	2,000,000	2,000,000	1.08%	1,776,940	1.00%	4/19/2024	10/19/2026
FHLB Bond	3130APNX9	11/18/2021	2,000,000	2,000,000	1.08%	1,787,340	1.30%	11/18/2023	11/18/2026
FHLB Bond	3130AQFL2	12/29/2021	2,000,000	2,000,000	1.08%	1,984,820	0.75%	12/29/2023	12/29/2023
FHLB Bond	3130AQHU0	1/19/2022	2,000,000	2,000,000	1.08%	1,824,700	1.74%	1/19/2024	1/19/2027
FHLB Bond	3130AQKT9	1/25/2022	2,000,000	2,000,000	1.08%	1,887,100	1.51%	1/25/2024	7/25/2025
FHLB Bond	3130AR4F5	3/10/2022	2,000,000	2,000,000	1.08%	1,916,220	3.48%	3/10/2024	3/10/2027
FHLMC Bond	3134GXUZ5	6/15/2022	2,000,000	2,000,000	1.08%	1,931,520	3.28%	12/15/2023	12/15/2025
FHLB Bond	3130ASPE3	7/28/2022	2,000,000	2,000,000	1.08%	1,923,780	4.30%	1/28/2024	7/28/2027
FNMA Bond	3135GACZ2	11/25/2022	2,000,000	2,000,000	1.08%	1,990,580	5.40%	11/25/2023	11/25/2024
FHLMC Bond	3134GY4B5	11/28/2022	2,000,000	2,000,000	1.08%	1,987,960	5.00%	11/15/2023	8/26/2024
FHLB Bond	3130AUFT6	1/27/2023	2,000,000	2,000,000	1.08%	1,989,580	5.43%	1/27/2024	1/27/2025
FHLB Bond	3130AUP32	1/27/2023	2,250,000	2,250,000	1.22%	2,219,715	5.98%	1/27/2024	1/27/2028
FHLMCMTN Bond	3134GYGB2	1/30/2023	2,000,000	2,000,000	1.08%	1,955,240	5.20%	1/26/2024	1/26/2028

Investment Type	CUSIP	Settlement Date	Cost Value	Book Value	% of Portfolio	Market Value	YTM at Cost	Next Call Date	Date of Maturity
FHLMCMTN Bond	3134GYG22	2/16/2023	3,000,000	3,000,000	1.62%	2,951,760	5.13%	11/16/2023	11/16/2026
FHLB Bond	3130AUTZ7	2/24/2023	2,000,000	2,000,000	1.08%	1,978,040	6.44%	2/24/2024	2/24/2028
FHLB Bond	3130AUZH0	3/6/2023	2,000,000	2,000,000	1.08%	1,992,520	6.33%	12/6/2023	3/6/2026
FHLB Bond	3130AUZZ0	3/13/2023	2,000,000	2,000,000	1.08%	1,989,600	6.23%	12/13/2023	3/13/2026
FHLB Bond	3130AVZ24	3/15/2023	2,000,000	2,000,000	1.08%	1,998,060	5.35%	3/15/2024	3/15/2024
FHLB Bond	3130AV3P5	3/20/2023	2,000,000	2,000,000	1.08%	1,992,840	5.50%	3/20/2024	9/20/2024
FHLB Bond	3130AVK92	4/5/2023	3,000,000	3,000,000	1.62%	2,991,840	5.00%	4/5/2024	4/5/2024
FHLB Bond	3130AVL83	4/6/2023	2,000,000	2,000,000	1.08%	1,988,360	5.20%	1/7/2024	10/7/2024
FHLB Bond	3130AVQ96	4/17/2023	2,000,000	2,000,000	1.08%	1,995,160	5.15%	1/17/2024	4/17/2024
FHLB Bond	3130AVNT5	4/28/2023	1,000,000	1,000,000	0.54%	994,100	5.50%	11/25/2023	4/25/2025
FHLMCMTN Bond	3134GYQZ8	5/11/2023	3,000,000	3,000,000	1.62%	2,983,530	6.09%	2/11/2024	5/11/2026
FHLMCMTN Bond	3134GYSV5	5/25/2023	2,000,917	2,000,000	1.08%	1,998,160	5.50%	11/22/2023	06/18/2024
FHLB Bond	3130AWF62	6/13/2023	2,000,000	2,000,000	1.08%	1,990,700	5.50%	12/13/2023	12/13/2024
FHLB Bond	3130AWEB2	6/26/2023	2,000,000	2,000,000	1.08%	1,991,120	5.55%	3/26/2024	12/26/2024
FHLB Bond	3130AWHD5	6/29/2023	2,000,000	2,000,000	1.08%	1,982,020	5.90%	12/29/2023	6/29/2027
FHLMCMTN Bond	3134GYUY6	7/12/2023	2,000,000	2,000,000	1.08%	1,977,920	6.29%	1/12/2024	7/12/2028
FHLMCMTN Bond	3134GYWC2	7/26/2023	2,000,000	2,000,000	1.08%	1,977,380	6.00%	1/26/2024	7/26/2028
FHLMCMTN Bond	3134GYW57	7/27/2023	2,000,000	2,000,000	1.08%	1,989,480	6.00%	11/27/2023	7/27/2026
FHLMCMTN Bond	3134H1CJ0	9/28/2023	2,000,000	2,000,000	1.08%	1,981,940	6.25%	12/28/2023	9/28/2028
FHLMCMTN Bond	3134H1HC0	10/30/2023	2,000,000	2,000,000	1.08%	1,988,760	6.38%	1/30/2024	10/30/2028
CD - Ally Bank	02007GM83	3/30/2023	250,000	250,000	0.14%	249,560	5.15%	3/28/2024	3/28/2024
CD - Western Alliance Bank	95763PLA7	3/30/2023	250,000	250,000	0.14%	249,933	5.30%	1/2/2024	1/2/2024
CD - Zions Bancorp	98970LC43	3/31/2023	250,000	250,000	0.14%	249,435	5.40%	9/27/2024	9/27/2024
CD - Pacific Western Bank	69506YYD5	4/5/2023	250,000	250,000	0.14%	250,128	5.65%	4/5/2024	4/5/2028
CD - US Bank	90354KBR8	5/17/2023	250,000	250,000	0.14%	249,298	5.10%	5/16/2024	5/16/2024
Sub Total/Average			\$ 157,689,662	\$ 157,769,758	85.40%	\$ 149,175,546	2.68%		
US Bank Money Market			\$ 184,895	\$ 184,895	0.10%	\$ 184,895	5.24%		
WFB Money Market			\$ 1,012,234	\$ 1,012,234	0.55%	\$ 1,012,234	5.24%		
Total City Managed/Average			\$ 174,517,740	\$ 174,597,836	85.64%	\$ 166,000,089	2.95%		
Bond Reserve Accounts - Held By Trustees			\$ 928,020	\$ 928,020	0.50%	\$ 928,020			
Cash/Deposits			\$ 2,029,254	\$ 2,029,254	1.10%	\$ 2,029,254			
PARS and CALPERS CERBT Trust			\$ 7,187,404	\$ 7,187,404	3.89%	\$ 7,300,464			
GRAND TOTAL/AVERAGE			\$ 184,662,417	\$ 184,742,513	99%	\$ 176,257,826			



CITY OF MORGAN HILL CASH AND INVESTMENT REPORT
FOR THE MONTH OF OCTOBER 31, 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	3.67%	\$ 258,174	0.14%	\$ 254,639
California CLASS	All Funds Pooled	5.51%	15,372,775	8.32%	15,372,775
Federal Issues	All Funds Pooled	2.66%	143,299,360	77.57%	135,091,295
Treasury	All Funds Pooled	1.89%	13,220,398	7.16%	12,835,898
Certificate of Deposits	All Funds Pooled	5.32%	1,250,000	0.68%	1,248,353
Dreyfus Treas Cash Mgmt & WFB MMA	All Funds Pooled	5.24%	1,197,129	0.65%	1,197,129
	SUBTOTAL		\$ 174,597,836	94.51%	\$ 166,000,089
Bond Reserve Accounts - held by trustees					
Zions Bank - Civic Center/Library Facility	Debt Service	4.47%	245,353	0.13%	245,353
Blackrock Liq Fund	Debt Service	4.47%	312,267	0.17%	312,267
Zions Bank - MH Police Facility Lease Revenue Bonds	Debt Service	4.47%	312,267	0.17%	312,267
Blackrock Liq Fund	Debt Service	4.47%	312,267	0.17%	312,267
BNY - RDA Bonds	Agency Fund	4.98%	103,884	0.06%	103,884
Dreyfus Cash Mgmt 521	Agency Fund	4.98%	103,884	0.06%	103,884
Zions Bank - Madrone Bus Park Taxable/ Tax Exempt 2015	Agency Fund	4.47%	266,516	0.14%	266,516
Blackrock Liquidity Temp Fund-2015	Agency Fund	4.47%	266,516	0.14%	266,516
	SUBTOTAL		928,020	0.50%	928,020
Other Cash/Deposits					
General Checking	All Funds		1,983,154	1.07%	1,983,154
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			4,887,404	2.65%	4,908,293
PARS - PENSION Trust			2,300,000	1.24%	2,392,171
	SUBTOTAL		9,216,658	4.99%	9,329,718
Total Cash and Investments			\$ 184,742,513	100.00%	\$ 176,257,826

CASH ACTIVITY SUMMARY
FY 2023-24

Fund Type	07/01/2023 Balance	Change in Cash Balance	10/31/2023 Balance
General Fund	\$ 32,352,753	\$ (2,823,144)	\$ 29,529,608
Community Development	1,831,559	(632,228)	1,199,331
Housing Successor Agency/ CDBG	4,202,736	(309,072)	3,893,664
Water - Operations	2,585,170	663,628	3,248,798
Water Other	23,673,105	2,352,496	26,025,601
Sewer - Operations	907,428	788,189	1,695,618
Sewer Other	44,135,046	(1,299,296)	42,835,751
Other Special Revenue	8,827,861	930,339	9,758,201
Streets and Capital Projects (except RDA)	40,486,238	663,250	41,149,488
Debt Service	342,534	226,148	568,682
Internal Service	25,139,787	(1,233,356)	23,906,430
Agency Funds (assessment dists./refundable deposits)	8,515,969	(7,584,627)	931,342
Total	\$ 193,000,187	\$ (8,257,674)	\$ 184,742,513

Note: See Investment Portfolio 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

Approved by:

Reviewed by: 
 Dat Nguyen, Finance Director


 Caitlin Jachimowicz, Treasurer



City of Morgan Hill
Year to Date Revenues - Fiscal Year 2023-24
For the Month Ended October 31, 2023
33% 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	\$ 617,874	4%	\$ 594,999	\$ 22,874	4%
Property Tax - RPTTF Residual Distribution	2,527,000	2,527,000	-	n/a	-	-	n/a
Property Tax - Supplemental Roll	200,000	200,000	41,844	21%	60,924	(19,080)	-31%
Sales Tax	12,218,967	12,218,967	2,017,523	17%	1,937,351	80,172	4%
Public Safety Sales Tax	455,000	455,000	69,089	15%	35,368	33,721	95%
Transient Occupancy Taxes	2,800,000	2,800,000	714,264	26%	762,662	(48,398)	-6%
Franchise (Refuse ,Cable ,PG&E)	2,873,800	2,983,800	610,729	20%	438,964	171,765	39%
Property Transfer Tax	510,000	510,000	118,882	23%	124,553	(5,671)	-5%
TOTAL TAXES	36,829,767	37,439,767	4,190,204	11%	3,954,820	235,383	6%
LICENSES/PERMITS							
Business License	170,000	170,000	152,263	90%	120,567	31,696	26%
Other Permits	53,975	53,975	12,726	24%	20,918	(8,192)	-39%
TOTAL LICENSES/PERMITS	223,975	223,975	164,990	74%	141,485	23,504	17%
FINES AND PENALTIES							
Parking Enforcement	3,019	3,019	3,594	119%	1,845	1,749	95%
Bails & Fines	47,875	47,875	18,190	38%	7,565	10,625	140%
Administrative Citations	20,000	20,000	15,733	79%	1,285	14,448	1124%
TOTAL FINES AND PENALTIES	70,894	70,894	37,517	53%	10,695	26,822	251%
OTHER AGENCIES							
Motor Vehicle in-Lieu	40,800	40,800	-	n/a	-	-	n/a
Other Revenue - Other Agencies	971,089	1,011,233	182,976	18%	262,974	(79,998)	-30%
TOTAL OTHER AGENCIES	1,011,889	1,052,033	182,976	17%	262,974	(79,998)	-30%
CHARGES CURRENT SERVICES							
Police False Alarm Charge	33,248	33,248	9,936	30%	8,072	1,865	23%
Business License Application Review	53,000	83,000	59,194	71%	13,643	45,552	334%
Membership Services & Rec Programs	5,656,265	5,656,265	2,098,498	37%	1,778,099	320,398	18%
Facility Rentals	1,203,269	1,203,269	482,401	40%	305,185	177,216	58%
Community Services	152,498	152,498	9,980	7%	8,637	1,343	16%
General Administration Overhead	1,822,869	1,822,869	590,706	32%	591,803	(1,096)	0%
Other Charges Current Services	1,084,930	1,084,930	207,989	19%	341,776	(133,787)	-39%
TOTAL CURRENT SERVICES	10,006,079	10,036,079	3,458,705	34%	3,047,214	411,490	14%
OTHER REVENUE							
Use of money/property	583,850	683,850	459,330	67%	253,592	205,738	81%
Other Revenues	234,168	614,168	94,973	15%	53,421	41,552	78%
TOTAL OTHER REVENUE	818,018	1,298,018	554,303	43%	307,013	247,290	81%
TRANSFERS IN							
One Time Transfer	180,000	180,000	60,000	33%	60,000	-	0%
Public Safety Facilities Fund	50,000	50,000	16,667	33%	16,667	-	0%
Supplemental Law Enforcement Fund	100,000	100,000	-	n/a	-	-	n/a
Countywide Solid Waste	373,000	468,680	124,333	27%	118,333	6,000	5%
Streets	949,760	949,760	218,096	23%	203,737	14,359	7%
Park Maintenance	650,000	650,000	216,667	33%	216,668	(1)	0%
Sewer Operations	394,000	394,000	131,333	33%	125,000	6,333	5%
Water Operations	394,000	394,000	131,333	33%	125,000	6,333	5%
Open Space	81,100	81,100	27,033	33%	27,033	-	n/a
Park Development	75,000	75,000	25,000	33%	25,000	-	n/a
TOTAL TRANSFERS IN	3,246,860	3,342,540	950,463	28%	917,438	33,024	4%
TOTAL GENERAL FUND	52,207,482	53,463,306	9,539,157	18%	8,641,641	897,517	10%
SPECIAL REVENUE FUNDS							
202 STREET MAINTENANCE							
Gas Tax 2105 - 2107.5	954,952	954,952	216,741	23%	202,993	13,748	7%
Interest / Other Revenue/Other Charges	78	78	1,355	1738%	744	611	82%
202 STREET MAINTENANCE	955,030	955,030	218,096	23%	203,737	14,359	7%



City of Morgan Hill
Year to Date Revenues - Fiscal Year 2023-24
For the Month Ended October 31, 2023
33% 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	2,940	154%	871	2,069	237%
Police Grant/SLEF/JAG	100,000	100,000	94,492	94%	73,605	20,888	28%
205 SUPPLEMENTAL LAW ENFORCEMENT FUND	101,905	101,905	97,433	96%	74,476	22,957	31%
206 DEVELOPMENT SERVICES							
Building Fees	3,455,600	3,495,600	1,017,076	29%	1,380,843	(363,767)	-26%
Planning Fees	1,645,444	1,645,444	223,249	14%	179,086	44,163	25%
Engineering Fees	1,190,852	1,190,852	170,406	14%	758,138	(587,732)	-78%
Other Revenue/Current Charges	-	-	52,442	n/a	147,817	(95,375)	-65%
206 DEVELOPMENT SERVICES	6,291,896	6,331,896	1,463,173	23%	2,465,884	(1,002,711)	-41%
207 LONG RANGE PLANNING	1,013,392	1,013,392	251,314	25%	383,055	(131,741)	-34%
215 and 216 HCD BLOCK GRANT							
Interest Income/Other Revenue	325	325	564	174%	223	341	153%
215 and 216 HCD BLOCK GRANT	325	325	564	174%	223	341	153%
225 ASSET SEIZURE	1,298	1,298	865	67%	360	505	140%
229 LIGHTING AND LANDSCAPE	200,028	200,028	1,906	1%	579	1,327	229%
230 COMMUNITY FACILITIES DISTRICT	37,914	37,914	1,337	4%	341	996	292%
232 ENVIRONMENTAL PROGRAMS	590,223	590,223	190,211	32%	180,279	9,932	6%
234 MOBILE HOME PARK RENT STAB.	584	584	644	110%	790	(145)	-18%
236 HOUSING MITIGATION	4,456,924	4,456,924	699,116	16%	216,700	482,416	223%
240 EMPLOYEE ASSISTANCE	20,889	20,889	2,686	13%	2,524	162	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	1,188	88%	472	716	152%
255 HOUSING SUCCESSOR AGENCY	239,202	239,202	92,668	39%	184,795	(92,128)	-50%
TOTAL SPECIAL REVENUE FUNDS	15,556,107	15,894,969	3,547,995	22%	4,116,116	(568,121)	-14%
CAPITAL PROJECTS FUNDS							
301 PARK DEVELOPMENT	1,673,505	1,673,505	144,019	9%	1,337,102	(1,193,083)	-89%
302 PARK MAINTENANCE	83,038	83,038	31,003	37%	10,153	20,851	205%
303 LOCAL DRAINAGE	447,897	447,897	211,245	47%	682,759	(471,514)	-69%
304 LOCAL DRAINAGE/NON AB1600	30,901	30,901	11,974	39%	68,841	(56,866)	-83%
306 AGRICULTURE & OPEN SPACE PRESERVATION	4,036	4,036	52,690	1306%	26,326	26,364	100%
308 STREET CIP	3,926,656	3,926,656	782,439	20%	988,911	(206,472)	-21%
309 TRAFFIC IMPACT	1,276,925	1,276,925	191,304	15%	54,044	137,260	254%
315 PUBLIC SAFETY FACILITIES IMPACT	801,703	801,703	121,539	15%	36,674	84,865	231%
346 PUBLIC FACILITIES NON-AB1600	822,102	822,102	124,605	15%	370,020	(245,415)	-66%
347 PUBLIC FACILITIES IMPACT	176,602	176,602	35,309	20%	10,279	25,030	244%
348 LIBRARY	657,457	657,457	111,604	17%	30,752	80,852	263%
350 UNDERGROUNDING	22,520	22,520	14,497	64%	5,764	8,733	152%
355 SCHOOL PEDESTRIAN/TRAFFIC SAFETY	492,717	492,717	752	0%	208,410	(207,658)	-100%
360 COMMUNITY/REC IMPACT FUND	1,142,697	1,142,697	192,904	17%	52,149	140,754	270%
375 QUIMBY FEE	610,860	610,860	790,728	129%	1,538,915	(748,186)	-49%
TOTAL CAPITAL PROJECTS FUNDS	12,169,616	12,169,616	2,816,614	23%	5,421,098	(2,604,483)	-48%
DEBT SERVICE FUNDS							
420 CIVIC CENTER DEBT	290,850	290,850	98,741	34%	98,046	694	1%
441 POLICE FACILITY BOND	387,792	387,792	129,863	33%	129,359	504	0%
TOTAL DEBT SERVICE FUNDS	678,642	678,642	228,604	34%	227,406	1,198	1%



City of Morgan Hill
Year to Date Revenues - Fiscal Year 2023-24
For the Month Ended October 31, 2023
33% 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	3,758,590	25%	3,766,985	(8,394)	0%
Interest Income/Transfers	39,704	39,704	16,312	41%	10,469	5,842	56%
Other Revenue/Current Charges	329,403	329,403	79,490	24%	150,280	(70,789)	-47%
640 WASTEWATER OPERATION	15,569,107	15,569,107	3,854,392	25%	3,927,734	(73,341)	-2%
641 WASTEWATER EXPANSION							
Interest Income	40,173	40,173	189,751	472%	75,187	114,565	152%
Development Impact Fee	4,388,986	4,388,986	713,863	16%	216,973	496,890	229%
Transfer From-643 (Sewer Replacement)	-	-	-	n/a	6,429,447	(6,429,447)	-100%
641 WASTEWATER EXPANSION	4,429,159	4,429,159	903,614	20%	6,721,607	(5,817,993)	-87%
642 WASTEWATER RATE STABILIZATION	192,000	192,000	89,165	46%	26,400	62,765	238%
643 WASTEWATER CAPITAL PROJECT	5,204,512	5,204,512	1,843,439	35%	2,245,311	(401,872)	-18%
TOTAL SEWER FUNDS	25,394,778	25,394,778	6,690,611	26%	12,921,052	(6,230,441)	-48%
650 WATER OPERATION							
Water Sales	18,500,000	18,500,000	5,162,321	28%	4,829,137	333,184	7%
Meter Install & Service	50,000	50,000	46,653	93%	57,837	(11,184)	-19%
Transfers-In / Interest Income	606,318	606,318	223,717	37%	196,783	26,934	14%
Other Revenue/Current Charges	630,464	630,464	209,638	33%	294,760	(85,121)	-29%
650 WATER OPERATION	19,786,782	19,786,782	5,642,330	29%	5,378,517	263,812	5%
651 WATER EXPANSION							
Interest Income/Other Revenue/Transfer	28,855	28,855	26,361	91%	10,235	16,127	158%
Development Impact Fee	1,720,216	1,720,216	179,424	10%	55,519	123,905	223%
651 WATER EXPANSION	1,749,071	1,749,071	205,785	12%	65,754	140,032	213%
652 WATER RATE STABILIZATION	-	-	28,382	n/a	11,232	17,150	153%
653 WATER CAPITAL PROJECT	6,948,348	6,948,348	2,429,112	35%	1,723,225	705,887	41%
TOTAL WATER FUNDS	28,484,201	28,484,201	8,305,609	29%	7,178,728	1,126,881	16%
TOTAL ENTERPRISE FUNDS	53,878,979	53,878,979	14,996,220	28%	20,099,780	(5,103,560)	-25%
INTERNAL SERVICE FUNDS							
730 INFORMATION SYSTEMS	2,493,922	2,493,922	836,303	34%	747,284	89,019	12%
740 BUILDING MAINTENANCE	1,675,215	1,675,215	558,962	33%	551,915	7,047	1%
741 BUILDING REPLACEMENT	859,973	859,973	314,259	37%	283,106	31,153	11%
745 CIP ADMINISTRATION	2,059,092	2,059,092	388,245	19%	536,618	(148,373)	-28%
760 UNEMPLOYMENT INSURANCE	2,940	2,940	2,453	83%	1,051	1,402	133%
770 WORKERS COMPENSATION	997,442	997,442	289,431	29%	267,436	21,995	8%
790 EQUIPMENT REPLACEMENT	1,165,990	1,165,990	437,073	37%	373,777	63,296	17%
791 EMPLOYEE BENEFITS	849,796	849,796	284,566	33%	269,998	14,568	5%
795 GENERAL LIABILITY INSURANCE	2,103,483	2,103,483	703,534	33%	660,966	42,567	6%
TOTAL INTERNAL SERVICE FUNDS	12,207,853	12,207,853	3,814,827	31%	3,692,152	122,675	3%
TOTAL FOR ALL FUNDS	\$ 146,698,679	\$ 148,293,365	\$ 34,943,417	24%	\$ 42,198,192	\$ (7,254,775)	-17%



City of Morgan Hill
Year to Date Expenses - Fiscal Year 2023-24
For the Month Ended October 31, 2023
33% 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	\$ 51,994	\$ 435,652	\$ 117,409	\$ -	\$ 117,409	27%	\$ 162,480
	CITY ATTORNEY	68,538	1,081,241	262,799	116,497	379,296	35%	251,093
	CITY MANAGER	61,052	886,041	209,381	37,365	246,746	28%	185,832
	HUMAN RESOURCES	77,080	898,203	261,282	-	261,282	29%	259,759
	COUNCIL SVCS & RECORDS MGMT							
	Council Svcs & Records Mgmt	45,441	628,281	174,222	-	174,222	28%	175,089
	Elections	2,573	37,728	9,382	-	9,382	25%	3,528
	COUNCIL SVCS & RECORDS MGMT	48,014	666,009	183,603	-	183,603	28%	178,617
	FINANCE	199,130	2,522,016	632,432	537,882	1,170,313	46%	562,691
	TOTAL ADMINISTRATION	505,808	6,489,162	1,666,906	691,743	2,358,649	36%	1,600,472
II. COMMUNITY SERVICES								
	Membership Services & Rec. Programs	507,376	7,572,987	2,241,372	1,354,396	3,595,767	47%	1,993,600
	Recreation Facility Rentals	51,277	573,524	176,374	39,728	216,102	38%	157,785
	Innovative Transit	55,904	850,612	171,881	618,352	790,233	93%	87,133
	Community Services	50,441	694,975	163,488	72,189	235,677	34%	173,260
	Park Maintenance	115,774	1,560,828	339,777	68,634	408,411	26%	369,952
	Environmental Services	50,765	705,264	108,935	4,446	113,381	16%	71,786
	Countywide Solid Waste Program	33,583	583,892	120,248	-	120,248	21%	109,500
	Street Maintenance	234,249	3,031,799	677,960	221,409	899,369	30%	683,361
	Downtown Maintenance	20,938	345,237	78,482	28,937	107,419	31%	59,019
	Cable Television	7,770	74,940	28,878	-	28,878	39%	5,872
	COMMUNITY SERVICES	1,128,077	15,994,058	4,107,395	2,408,091	6,515,486	41%	3,711,269
	CODE COMPLIANCE	16,962	340,153	58,720	-	58,720	17%	55,717
	INFRASTRUCTURE PLANNING & CONGESTION MGMT	27,994	414,110	99,287	-	99,287	24%	97,796
	ECONOMIC DEVELOPMENT PROGRAMS	100,189	1,267,792	330,380	56,559	386,938	31%	282,113
	TOTAL COMMUNITY SERVICES	1,273,222	18,016,113	4,595,781	2,464,650	7,060,430	39%	4,146,895
III. PUBLIC SAFETY								
	POLICE							
	PD Administration	123,504	1,735,700	463,594	53,771	517,365	30%	546,229
	Field Operations	935,998	11,150,613	3,506,151	37,604	3,543,755	32%	3,116,535
	Support Services	223,466	3,585,524	919,002	583,800	1,502,802	42%	903,277
	Emergency Services/Haz Mat	18,786	222,865	66,356	-	66,356	30%	63,599
	Special Operations	303,700	4,098,765	1,198,225	-	1,198,225	29%	1,261,750
	Dispatch Services	169,520	2,201,937	609,898	-	609,898	28%	630,497
	POLICE	1,774,973	22,995,404	6,763,226	675,175	7,438,401	32%	6,521,887
	FIRE	697,734	9,139,905	3,042,698	299,927	3,342,624	37%	2,841,750
	TOTAL PUBLIC SAFETY	2,472,707	32,135,309	9,805,923	975,102	10,781,025	34%	9,363,637
IV. TRANSFERS								
	Other	108,647	3,333,767	434,589	-	434,589	13%	429,105
	TOTAL TRANSFERS	108,647	3,333,767	434,589	-	434,589	13%	429,105
	TOTAL GENERAL FUND	4,360,384	59,974,351	16,503,199	4,131,495	20,634,694	34%	15,540,108



City of Morgan Hill
Year to Date Expenses - Fiscal Year 2023-24
For the Month Ended October 31, 2023
33% 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	219,827	-	219,827	23%	205,417
205	PUBLIC SAFETY/SUPP.LAW	107	101,289	430	-	430	0%	417
206	DEVELOPMENT SERVICES FUND							
	Planning	139,879	1,847,544	522,959	339	523,297	28%	501,212
	Building	192,592	2,563,441	751,488	104,694	856,182	33%	653,598
	Engineering	145,359	1,974,680	523,084	131,025	654,109	33%	491,196
206	DEVELOPMENT SERVICES FUND	477,829	6,385,665	1,797,530	236,058	2,033,588	32%	1,646,005
207	LONG RANGE PLANNING	64,858	1,581,133	269,971	18,178	288,149	18%	270,043
215/216	CDBG	7	83	28	-	28	33%	27
225	ASSET SEIZURE	65	782	261	-	261	33%	253
229	LIGHTING AND LANDSCAPE	4,658	234,554	42,667	8,121	50,789	22%	48,140
230	COMMUNITY FACILITIES DISTRICT	2,349	41,249	10,475	-	10,475	25%	11,828
232	ENVIRONMENT PROGRAMS	42,400	561,335	128,544	18,999	147,542	26%	140,151
234	MOBILE HOME PARK	76	907	302	-	302	33%	294
236	HOUSING MITIGATION	72,951	1,541,126	254,888	137,500	392,388	25%	265,784
240	EMPLOYEE ASSISTANCE	79	20,946	2,315	-	2,315	11%	4,237
246	COUNTYWIDE SOLID WASTE PROGRAM	31,083	2,078,493	262,418	1,022,161	1,284,580	62%	310,563
255	HOUSING SUCCESSOR AGENCY	54,730	1,172,110	424,947	320,833	745,781	64%	404,991
TOTAL SPECIAL REVENUE FUNDS		751,626	14,674,624	3,414,603	1,761,851	5,176,454	35%	3,326,143
CAPITAL PROJECT FUNDS								
301	PARK DEVELOPMENT	227,411	2,285,298	349,861	135,673	485,534	21%	619,015
302	PARK MAINTENANCE	54,238	660,850	216,956	-	216,956	33%	217,868
303	LOCAL DRAINAGE	7,357	7,119,361	223,438	3,807,134	4,030,572	57%	687,010
304	LOCAL DRAIN. NON-AB1600	19,556	410,006	20,310	35,961	56,272	14%	13,563
306	AGRICULTURE & OPEN SPACE PRESERVATION	8,133	247,600	32,533	-	32,533	13%	41,951
308	STREET CIP	1,613,976	5,499,004	1,642,347	2,759,124	4,401,471	80%	5,411,041
309	TRAFFIC IMPACT	36,787	5,827,301	188,472	3,748,052	3,936,525	68%	1,956,082
315	PUBLIC SAFETY FACILITIES IMPACT	55,982	10,717,603	293,047	9,259,832	9,552,879	89%	194,684
346	PUBLIC FAC. NON AB1600	40,806	1,321,382	50,825	13,711	64,536	5%	16,531
347	PUBLIC FACILITIES IMPACT	22,440	1,529,278	69,759	55,000	124,759	8%	9,718
348	LIBRARY IMPACT	18,529	222,349	74,116	-	74,116	33%	74,305
350	UNDERGROUNDING	98	1,194,738	392	-	392	0%	380
355	SCHOOL PEDESTRIAN & TRAFFIC SAFETY	11,817	916,562	16,949	3,428	20,377	2%	6,789
360	COMM/REC CENTER IMPACT	1,331	2,756,259	92,245	575,810	668,055	24%	544,239
375	QUIMBY FEE	-	1,403,605	15,184	-	15,184	1%	72,025
TOTAL CAPITAL PROJECTS FUNDS		2,118,462	42,111,196	3,286,435	20,393,726	23,680,161	56%	9,865,203
DEBT SERVICE FUNDS								
420	CIVIC CENTER DEBT	270	290,852	1,080	-	1,080	0%	234,549
441	POLICE FACILITY BOND DEBT	358	387,792	1,430	-	1,430	0%	315,882
TOTAL DEBT SERVICE FUNDS		628	678,644	2,510	-	2,510	0%	550,431



City of Morgan Hill
Year to Date Expenses - Fiscal Year 2023-24
For the Month Ended October 31, 2023
33% 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	2,069,223	15,560,361	4,342,110	80,131	4,422,240	28%	4,493,325
641	WASTEWATER CAPITAL EXPANSION	151,885	26,223,607	473,128	460,544	933,671	4%	369,092
642	WASTEWATER RATE STABILIZATION	156	1,872	624	-	624	33%	606
643	WASTEWATER CAPITAL PROJECTS	215,292	17,522,286	1,182,047	3,100,114	4,282,161	24%	8,996,401
TOTAL SEWER FUND(S)		2,436,557	59,308,126	5,997,908	3,640,788	9,638,696	16%	13,859,424
WATER								
	Water Operations	1,183,447	18,485,381	5,411,057	717,245	6,128,302	33%	4,496,370
	Utility Billing	78,454	1,192,638	283,377	40,380	323,757	27%	278,316
	Water Conservation	28,118	644,730	90,324	-	90,324	14%	79,664
650	WATER OPERATIONS	1,290,018	20,322,749	5,784,758	757,625	6,542,383	32%	4,854,350
651	WATER CAPITAL EXPANSION	61,775	2,479,364	243,097	18,077	261,174	11%	238,907
652	WATER RATE STABILIZATION	117	1,403	468	-	468	33%	454
653	WATER-CAPITAL PROJECTS	559,734	16,010,730	600,418	896,096	1,496,514	9%	61,494
TOTAL WATER FUND(S)		1,911,645	38,814,246	6,628,740	1,671,799	8,300,538	21%	5,155,205
TOTAL ENTERPRISE FUNDS		4,348,202	98,122,372	12,626,648	5,312,587	17,939,235	18%	19,014,629
INTERNAL SERVICE FUNDS								
730	INFORMATION SYSTEMS	178,654	2,683,931	825,101	43,017	868,118	32%	509,974
740	BUILDING MAINTENANCE	144,410	1,781,790	440,035	85,137	525,172	29%	397,189
741	BUILDING REPLACEMENT	-	1,501,100	31,730	19,761	51,491	3%	68,526
745	CIP ADMINISTRATION	146,995	2,061,046	535,241	1,666	536,907	26%	569,223
760	UNEMPLOYMENT	-	15,000	11,826	-	11,826	79%	-
770	WORKERS COMPENSATION	16,120	1,048,265	609,012	-	609,012	58%	535,143
790	EQUIPMENT REPLACEMENT	-	1,245,240	77,219	144,002	221,222	18%	234,232
791	EMPLOYEE BENEFITS FUND	32,874	750,000	90,740	-	90,740	12%	178,440
795	GEN. LIABILITY INSURANCE	10,112	2,551,193	2,298,709	-	2,298,709	90%	1,667,342
TOTAL INTERNAL SERVICE FUNDS		529,166	13,637,565	4,919,613	293,584	5,213,197	38%	4,160,069
REPORT TOTAL		\$ 12,108,468	\$ 229,198,752	\$ 40,753,008	\$ 31,893,243	\$ 72,646,251	32%	\$ 52,456,583



City of Morgan Hill
Fund Activity Summary - Fiscal Year 2022-23
For the Month Ended October 31, 2023
33% of Year Complete

Fund No.	Fund Description	Beginning Fund Balance 07-01-23	Revenues		Expenses		Year to-Date Deficit or Carryover	Preliminary Ending Fund Balance	
			YTD Actual	% of Budget	YTD Actual	% of Budget		Reserved ¹	Unreserved
010	GENERAL FUND	\$ 33,175,566	\$ 9,539,157	18%	\$ 16,503,199	28%	\$ (6,964,042)	\$ 4,131,495	\$ 22,080,029
TOTAL GENERAL FUND		\$ 33,175,566	\$ 9,539,157	18%	\$ 16,503,199	28%	\$ (6,964,042)	\$ 4,131,495	\$ 22,080,029
202	STREET MAINTENANCE	68,927	\$ 218,096	23%	\$ 219,827	29%	\$ (1,731)	\$ -	\$ 67,196
205	PUBLIC SAFETY/SUPPL. LAW	319,867	97,433	96%	430	26%	97,003	-	416,870
206	DEVELOPMENT SERVICES	(426,677)	1,463,173	23%	1,797,530	28%	(334,357)	236,058	(997,092)
207	LONG RANGE PLANNING	1,276,770	251,314	25%	269,971	17%	(18,657)	18,178	1,239,935
215 / 216	CDBG	30,767	564	174%	28	33%	537	-	31,304
225	ASSET SEIZURE	102,496	865	67%	261	33%	605	-	103,101
229	LIGHTING AND LANDSCAPE	191,949	1,906	1%	42,667	18%	(40,761)	8,121	143,066
230	COMMUNITY FACILITIES DISTRICT	150,651	1,337	4%	10,475	25%	(9,137)	-	141,514
232	ENVIRONMENTAL PROGRAMS	328,270	190,211	32%	128,544	23%	61,668	18,999	370,939
234	MOBILE HOME PK RENT STAB.	76,297	644	110%	302	33%	342	-	76,639
235	SENIOR HOUSING	239,361	-	n/a	-	n/a	-	-	239,361
236	HOUSING MITIGATION	5,698,654	699,116	16%	254,888	17%	444,228	137,500	6,005,382
240	EMPLOYEE ASSISTANCE	61,893	2,686	13%	2,315	11%	371	-	62,264
246	COUNTYWIDE SOLID WASTE	239,294	526,793	88%	262,418	13%	264,374	1,022,161	(518,493)
247	ENVIRONMENT REMEDIATION	140,690	1,188	88%	-	n/a	1,188	-	141,878
255	HOUSING SUCCESSOR AGENCY	4,001,427	92,668	39%	424,947	36%	(332,280)	320,833	3,348,314
TOTAL SPECIAL REVENUE FUNDS		\$ 12,500,636	\$ 3,547,995	22%	\$ 3,414,603	23%	\$ 133,392	\$ 1,761,851	\$ 10,872,177
301	PARK DEV. IMPACT FUND	\$ 1,426,990	\$ 144,019	9%	\$ 349,861	15%	\$ (205,842)	\$ 135,673	\$ 1,085,475
302	PARK MAINTENANCE	2,489,205	31,003	37%	216,956	33%	(185,952)	-	2,303,253
303	LOCAL DRAINAGE	11,817,863	211,245	47%	223,438	3%	(12,193)	3,807,134	7,998,537
304	LOCAL DRAINAGE/NON-AB1600	1,343,736	11,974	39%	20,310	5%	(8,336)	35,961	1,299,439
306	AG. AND OPEN SPACE PRESERVATION	541,496	52,690	1306%	32,533	13%	20,157	-	561,653
308	STREET CIP	4,078,203	782,439	20%	1,642,347	30%	(859,908)	2,759,124	459,171
309	TRAFFIC IMPACT FUND	3,727,580	191,304	15%	188,472	3%	2,832	3,748,052	(17,641)
315	PUBLIC SAFETY FACILITIES IMPACT	3,050,728	121,539	15%	293,047	3%	(171,508)	9,259,832	(6,380,612)
346	PUBLIC FACILITIES NON-AB1600	2,943,797	124,605	15%	50,825	4%	73,780	13,711	3,003,866
347	PUBLIC FACILITIES IMPACT FUND	1,099,809	35,309	20%	69,759	5%	(34,450)	55,000	1,010,359
348	LIBRARY IMPACT FUND	1,408,238	111,604	17%	74,116	33%	37,488	-	1,445,726
350	UNDERGROUNDING	1,626,301	14,497	64%	392	0%	14,105	-	1,640,406
355	SCHOOL PEDESTRIAN/TRAFFIC SFTY	92,077	752	0%	16,949	2%	(16,197)	3,428	72,452
360	COMM/REC CTR IMPACT FUND	992,228	192,904	17%	92,245	3%	100,659	575,810	517,077
375	QUIMBY FEE	1,621,885	790,728	129%	15,184	1%	775,544	-	2,397,429
TOTAL CAPITAL PROJECT FUNDS		\$ 38,260,136	\$ 2,816,614	23%	\$ 3,286,435	8%	\$ (469,821)	\$ 20,393,726	\$ 17,396,589
420	CIVIC CENTER DEBT	\$ 175,864	\$ 98,741	34%	\$ 1,080	0%	\$ 97,660	\$ 76	\$ 273,448
441	POLICE FACILITY BOND DEBT	166,725	129,863	33%	1,430	0%	128,433	97	295,061
TOTAL DEBT SERVICE FUNDS		\$ 342,589	\$ 228,604	34%	\$ 2,510	0%	\$ 226,094	\$ 173	\$ 568,510
640	WASTEWATER OPERATIONS	\$ 4,670,817	\$ 3,854,392	25%	\$ 4,342,110	28%	\$ (487,717)	\$ 80,131	\$ 4,102,969
641	WASTEWATER IMPACT FUND*	21,350,081	903,614	20%	473,128	2%	430,486	460,544	21,320,024
642	WASTEWATER RATE STABILIZATION	2,799,081	89,165	46%	624	33%	88,541	-	2,887,622
643	WASTEWATER CAPITAL PROJECTS	15,601,623	1,843,439	35%	1,182,047	7%	661,392	3,100,114	13,162,901
650	WATER OPERATIONS	4,444,824	5,642,330	29%	5,784,758	28%	(142,428)	757,625	3,544,771
651	WATER IMPACT FUND*	2,969,960	205,785	12%	243,097	10%	(37,311)	18,077	2,914,572
652	WATER RATE STABILIZATION	3,183,868	28,382	n/a	468	33%	27,914	-	3,211,782
653	WATER -CAPITAL PROJECT	15,548,298	2,429,112	35%	600,418	4%	1,828,694	896,096	16,480,896
TOTAL ENTERPRISE FUNDS		\$ 70,568,552	\$ 14,996,220	28%	\$ 12,626,648	13%	\$ 2,369,572	\$ 5,312,587	\$ 67,625,537
730	INFORMATION SERVICES	\$ 793,101	\$ 836,303	34%	\$ 825,101	31%	\$ 11,202	\$ 43,017	\$ 761,286
740	BUILDING MAINTENANCE	7,256	558,962	33%	440,035	25%	118,928	85,137	41,046
741	BUILDING REPLACEMENT	4,309,501	314,259	37%	31,730	2%	282,529	19,761	4,572,269
745	CIP ENGINEERING	9,209	388,245	19%	535,241	26%	(146,996)	1,666	(139,453)
760	UNEMPLOYMENT	303,137	2,453	83%	11,826	79%	(9,373)	-	293,764
770	WORKERS COMPENSATION	2,152,498	289,431	29%	609,012	58%	(319,581)	30,000	1,802,917
790	EQUIPMENT REPLACEMENT	7,665,968	437,073	37%	77,219	6%	359,853	144,002	7,881,819
791	EMPLOYEE BENEFITS FUNDS	(124,893)	284,566	33%	90,740	12%	193,826	-	68,933
795	GEN. LIABILITY INSURANCE	932,477	703,534	33%	2,298,709	90%	(1,595,175)	-	(662,698)
TOTAL INTERNAL SERVICE FUNDS		\$ 16,048,254	\$ 3,814,827	31%	\$ 4,919,613	36%	\$ (1,104,786)	\$ 323,584	\$ 14,619,884

 CITY OF MORGAN HILL City of Morgan Hill Fund Activity Summary - Fiscal Year 2022-23 For the Month Ended October 31, 2023 33% of Year Complete								
Beginning Fund Balance 07-01-23	Revenues		Expenses		Year to-Date Deficit or Carryover	Preliminary Ending Fund Balance		
	YTD Actual	% of Budget	YTD Actual	% of Budget		Reserved ¹	Unreserved	

SUMMARY BY FUND TYPE

GENERAL FUND GROUP	\$ 33,175,566	\$ 9,539,157	18%	\$ 16,503,199	28%	\$ (6,964,042)	\$ 4,131,495	\$ 22,080,029
SPECIAL REVENUE GROUP	12,500,636	3,547,995	22%	3,414,603	23%	133,392	1,761,851	10,872,177
DEBT SERVICE GROUP	342,589	228,604	34%	2,510	0%	226,094	173	568,510
CAPITAL PROJECTS GROUP	38,260,136	2,816,614	23%	3,286,435	8%	(469,821)	20,393,726	17,396,589
ENTERPRISE GROUP	70,568,552	14,996,220	28%	12,626,648	13%	2,369,572	5,312,587	67,625,537
INTERNAL SERVICE GROUP	16,048,254	3,814,827	31%	4,919,613	36%	(1,104,786)	323,584	14,619,884
TOTAL ALL GROUPS	\$ 170,895,733	\$ 34,943,417	24%	\$ 40,753,008	18%	\$ (5,809,591)	\$ 31,923,416	\$ 133,162,726

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 COUNCIL STAFF REPORT

MEETING DATE: December 6, 2023

PREPARED BY:

Tanya Carothers, Environmental Services Administrator

APPROVED BY: City Manager

REVIEW SECTION 15.63 OF THE MUNICIPAL CODE AND PROVIDE DIRECTION REGARDING THE PROHIBITION OF NATURAL GAS INFRASTRUCTURE IN NEW BUILDINGS

RECOMMENDATION(S)

1. Review Section 15.63 of the Municipal Code and discuss the prohibition of natural gas infrastructure in new buildings; and
2. Take no action to amend Section 15.63 of the Municipal Code, which prohibits natural gas infrastructure in new buildings.

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Protecting the Environment

Advancing Regional Initiatives

Guiding Documents

Climate Action Plan

REPORT NARRATIVE:

BACKGROUND

In 2019, the City of Morgan Hill became a leader in addressing the impacts from climate change by adopting an ordinance that eliminated gas infrastructure in new buildings, thereby upgrading them to all-electric, see Attachment A - Municipal Code Section 15.63 *Prohibition of Natural Gas Infrastructure in New Buildings*. This requirement has been a significant driver of the City's greenhouse gas emission reductions that are approximately equivalent to the greenhouse gas emission reductions achieved by other Silicon Valley agencies, see Attachment B. The purpose of this agenda item is to revisit Municipal Code Section 15.63 Prohibition of Natural Gas Infrastructure in New Buildings and consider the implications of allowing a return to gas infrastructure in new buildings. This item was brought forward by a City Council Member as a future Council initiated agenda item and subsequently the majority of the City Council voted to have the discussion.

In 2019, the primary drivers that led the City Council to consider the prohibition of gas

infrastructure in new buildings were largely focused on climate change, including: 1) a growing body of evidence that the climate crisis is real and demands action; 2) the abdication of the federal government in taking action to address the climate crisis – which necessitated that state and local governments play a leading role in steering societal changes that may lead to climate stability; and 3) the successful decarbonization of the region’s electricity supply in 2017, via Silicon Valley Clean Energy (SVCE), which makes electricity the cleanest fuel for building energy. Gas combustion in dual-fuel buildings is now the second largest source (after transportation) of climate-changing emissions in our community.

Additionally, Municipal Code Section 15.63 *Prohibition of Natural Gas Infrastructure in New Buildings* was adopted with the following findings: 1) substitution of electric infrastructure in new buildings is linked to significantly lower greenhouse gas emissions and is cost competitive; 2) conditions in and around Morgan Hill make the City susceptible to impacts from climate change including a wildland-urban interface that is extremely susceptible to wildfires, the City’s reliance on imported water for groundwater recharge and reductions in the amount of imported water available due to climate change, and proximity to fault lines which are capable of large earthquakes and resulting fires from gas infrastructure; 3) poor indoor and outdoor air quality results from the combustion of gas which exacerbates conditions for Morgan Hill residents who suffer from asthma and other health conditions; and 4) the most cost-effective time to integrate electrical infrastructure is in the design phase of a building project because building systems and spaces can be designed to optimize the performance of electrical systems and the project can take full advantage of avoided costs and space requirements from the elimination of gas piping and venting for combustion air safety.

REGULATORY FRAMEWORK

Below are recent regulations that are moving California communities toward a future that is dependent on electric power.

- SB 1020. Requires that renewable energy and zero-carbon resources supply 90 percent of electric retail sales to end-use customers in California by 2030 and 95 percent by 2040.
- SB 100. Requires that renewable energy and zero-carbon resources supply 100 percent of electric retail sales to end-use customers in California by 2045.
- 2022 California Energy Code. Building on the movement of nearly 50 cities and counties that adopted reach codes or ordinances to exceed minimum clean energy building standards during the 2019 code cycle, the California Energy Commission adopted a 2022 Energy Code that advances electrification by encouraging efficient electric heat pumps and establishing electric-ready requirements for new homes.
- Advanced Clean Cars II Rule. Transportation is the single largest source of greenhouse gas emissions and air pollution in the state. In November 2022 the California Air Resources Board adopted a new rule that establishes a year-by-year roadmap so that by 2035 100% of new cars and light trucks sold in California will be zero-emission vehicles.

- Nitrogen Oxides from Central Gas Furnaces and Nitrogen Oxides Emissions from Natural Gas-Fired Boilers and Water Heaters. Nitrogen Oxide (NO_x) emissions contribute to unhealthy air, particularly ozone and particulate matter, which is linked to asthma, heart attack, stroke, neurological disease, lung cancer and other serious and potentially fatal health conditions. In March 2023, the Bay Area Air Quality Management District (BAAQMD) adopted new rules that will support improvements to regional air quality and public health by implementing the following restrictions on new water heaters and furnaces:
 - By 2027 only zero NO_x water heaters such as electric heat pumps or tankless water heaters can be sold or installed in the Bay Area.
 - By 2029 only zero NO_x furnaces can be sold or installed in the Bay Area.
 - By 2031 only zero NO_x large commercial water heaters can be sold or installed in the Bay Area.

BENEFITS OF ALL-ELECTRIC NEW CONSTRUCTION IN THE COMMUNITY

Health. Gas appliances in homes release health-damaging air pollutants, with stoves typically releasing these pollutants directly into home air rather than venting them outdoors as furnaces and water heaters do. Electric appliances emit no indoor nor outdoor toxins or pollution and keep families in our community healthier and safer.

Indoor Air Quality. According to a study completed in June 2023 by researchers at Stanford University, combustion gas stoves emit toxic chemicals that significantly degrade indoor air including carbon monoxide (CO), which inhibits cellular respiration; formaldehyde, a carcinogen; and nitrogen dioxide (NO₂), a respiratory irritant linked to asthma. Furthermore, gas stoves have flames that form benzene which is a carcinogen that forms from incomplete combustion. Benzene exposure causes both cancer and noncancerous health effects. Shorter-term benzene exposure suppresses blood cell production, and chronic benzene exposure increases the risk of leukemias and lymphomas. The study found that in one out of three houses studied, a single gas burner on high for 45 minutes raised kitchen benzene concentrations to levels that exceeded benzene concentrations from secondhand tobacco smoke.

Furthermore, in 2022 a study was published in the *International Journal of Environmental Research and Public Health* which quantified gas stove use and current childhood asthma at a national and state level. The study found that 12.7% of current childhood asthma in the US is attributable to gas stove use. At the state level, California carried an even higher burden with 20.1%, or one out of every five children, experiencing asthma attributable to gas stove use in the home.

Outdoor Air Quality. Gas water heaters and furnaces are the two appliances with the highest footprint of gas use. Except for the potential for dangerous indoor carbon monoxide gas leaks, these two appliances affect primarily outdoor air quality. The BAAQMD recently passed a regulation that will make it illegal to install or purchase gas water heaters or gas furnaces in the Bay Area because they emit significant levels of

NO_x and PM_{2.5} into the atmosphere. NO_x is a greenhouse gas that is 265 times more potent than carbon dioxide (CO₂), and in addition both NO_x and PM_{2.5} have significant impacts to human health. It is estimated that the BAAQMD regulation will prevent 85 premature deaths and dozens of new asthma cases each year and avert up to \$890 million annually on health impacts. The BAAQMD states that NO_x emissions from gas combustion by buildings account for nearly one-third of the NO_x emissions from stationary sources in the Bay Area.

On-Bill Cost Savings. Affordable and predictable utility bills are important. Occupants of new buildings in the City of Morgan Hill currently enjoy on-bill monthly savings due to all-electric infrastructure. A recent study completed in September 2023 by SVCE used real customer metered data combined with standard modeled data to evaluate on-bill savings specific to our regional community. The study found that electrification reduces site energy use by nearly 60 percent and single-family homes with standard all-electric appliances could save approximately \$380 per year compared to a standard mixed-fuel home (gas + electric). Savings increased to approximately \$495 annually when switching to high-efficiency electric appliances.

While electric is often perceived to be more expensive compared to gas as a source of energy, the reduced energy use from electrification combined with the electrification-friendly rate structure provided by SVCE that incentivizes clean energy upgrades, as well as the availability of tax credits and local rebates, results in significant cost savings for occupants of all-electric buildings in our community. In addition, the perception that it is more expensive to heat homes and water with electricity is based on obsolete electric technology that has been replaced by modern heat pumps.

Resilience. Major stresses on the grid are driven by changes to the climate, and the only long-term solution is electrification as a means to reduce fossil fuel use.

It is possible to go all-electric while also being resilient to climate change impacts (e.g., power outages that result from wildfires and extreme heat events). The solution is to install backup batteries with solar in electric buildings. This allows residents to use key appliances during outages because they can draw power from their home batteries, which can be recharged by solar energy for the duration of the outage. Since nearly all modern gas appliances require some degree of electric capacity to operate, all-electric homes with solar and a battery are more resilient in a power outage than gas appliances. Requiring all-electric building makes it so that new residents can simply purchase a battery to increase their resilience during power outages, without the need to spend money on retrofitting obsolete gas appliances.

Future Readiness. Recent restrictions set by BAAQMD for the Bay Area will make it illegal to sell or install gas water heaters by 2027 and gas furnaces by 2029 (see above under Regulatory Framework). Additionally, the Clean Energy Code requires new buildings in California to be built 'electric-ready' so that gas appliances can be easily replaced with electric appliances. Prohibiting gas infrastructure in new buildings and continuing to require all-electric appliances in the Morgan Hill community will ensure

that local developers are already acclimated to the requirements of state and regional regulations as they come into effect and will also ensure that our community is doing its part to curb climate change. There is no reason to continue to invest in gas infrastructure in new buildings when the new BAAQMD regulations will require electric infrastructure and appliances throughout the Bay Area.

COMMON QUESTIONS ABOUT ELECTRIFICATION

Please see Attachment C for answers to common questions about electrification, including:

- Does the electric grid have the capacity to support all-electric infrastructure?
- What happens when the power goes out if all my appliances are electric?
- What is different in an all-electric home compared to a mixed-fuel home during a power outage?
- Is electric preferable over gas from a climate-conscious perspective?

IMPACTS OF ALL-ELECTRIC BUILDING REQUIREMENTS ON THE DEVELOPMENT COMMUNITY

Economically, it is better to go all-electric from the outset at new construction to allow integration of electrical infrastructure in the design phase of a building project. This allows building systems and spaces to be designed in a way that optimizes the performance of electrical systems. Additionally, development projects can take full advantage of avoided costs and space requirements from the elimination of gas piping and venting for combustion air safety. According to a 2022 study completed by the California Energy Commission, it costs approximately \$6,000 less to build an all-electric home compared to a mixed-fuel home (gas + electric).

IMPACTS TO THE CITY'S ADOPTED CLIMATE ACTION PLAN (CAP)

In December 2021, the City adopted the Morgan Hill [Climate Action Plan \(CAP\)](#) which includes a main goal of reducing Morgan Hill's net CO₂ emissions in the building and transportation sectors to thirty-five percent (35%) below the 2020 baseline level by 2030 and one-hundred percent (100%) below the 2020 baseline level by 2045. Additionally, the CAP has two sub-goals, and associated action items related to the Building Sector as listed below.

Sub-Goal #1

Transition 95% of existing buildings (roughly 14,000) in Morgan Hill to all-electric using 2020 as a baseline by 2045, with incremental targets every five years consisting of 1% by 2025, 10% by 2030, 35% by 2035, and 70% by 2040.

Action Items

- Initiate a program to assist property owners with the transition to all electric,

including: 1) research financial assistance programs; 2) provide energy audits; and 3) adopt an ordinance requiring retrofitting appliances at resale.

- Provide resources to property owners including a list of contractors, rebate information, and alternative appliance options.
- Coordinate training and education for contractors.
- Adopt an ordinance requiring additions over 1,000 square feet to existing buildings/properties to be all-electric unless the addition is not going to result in the addition or expansion of the existing water or space heating system.
- Launch a loaner induction program with cooking demonstrations.
- Create incentive programs for commercial buildings to convert rooftop HVAC systems to all electric.
- Look at opportunities to encourage or mandate direct access customers (those businesses that independently procure electricity) to switch to carbon-free power.
- Evaluate opportunities to facilitate permit approvals.

Sub-Goal #2

Convert all municipal buildings to all-electric by 2035.

Action Items:

- Appropriate funding to a conversion budget reserve fund annually.

The City's current prohibition of gas in new buildings is ensuring that the City is not adding to the stock of existing buildings that will ultimately need to transition to all-electric by 2045. The City cannot transition existing buildings to all-electric while simultaneously allowing gas in new buildings. Rescinding the gas ban in new buildings would conflict with CAP action items including writing an ordinance that requires retrofits of buildings to all-electric at resale. Should the City decide to rescind the gas ban in new buildings, then the recommendation is to provide direction on how to proceed with implementation of the CAP.

IMPACTS TO THE MORGAN HILL COMMUNITY SHOULD THE CITY RETURN TO GAS FOR NEW CONSTRUCTION

This report discusses gas infrastructure in new buildings, highlights the differences between gas infrastructure and all-electric buildings, and evaluates common concerns associated with all-electric infrastructure in buildings. To summarize key considerations from discussions in this report, the list below has been compiled. A return to gas in new buildings in the Morgan Hill community would:

- Allow construction of houses with gas stoves in the community which cause poor indoor air quality, resulting in exposure of residents to carcinogens and which contribute significantly to asthma in children.
- Allow the construction of houses with gas water heaters and gas furnaces in the Morgan Hill community which contribute significantly to outdoor air pollution

resulting in elevated levels of NO_x and PM_{2.5}. This would expose the community to higher risks associated with asthma, heart attack, stroke, neurological disease, lung cancer and other serious health conditions.

- Eliminate on-bill cost-saving opportunities associated with all-electric buildings compared with mixed-fuel buildings (electric + gas) of approximately \$380-\$495 per year.
- Allow installation of gas appliances in new buildings that will become obsolete in the Bay Area in less than five years with implementation of BAAQMD's ban on gas water heaters and gas furnaces. The inconsistency on what is allowed in buildings could complicate the road to compliance due to mixed messaging (i.e. gas appliances allowed until 2019, then not allowed until 2023, then allowed until 2027, after which only certain gas appliances are allowed and others are phased out).
- Reduce the opportunity for resilience in the community to impacts from climate change. Going all-electric from the beginning makes it so that new residents can simply purchase a battery to increase their resilience during power outages, without the need to spend money on retrofitting obsolete gas appliances.
- Reduce the City's impact on bending the regional climate curve and make Morgan Hill one of only two cities in Santa Clara County without a reach code that encourages/requires electric building.
- Cause the City to be in direct conflict with the goals and actions of the City's adopted Climate Action Plan.
- Be contrary to the City's vision for a safe, socially responsible, and environmentally conscious community.
- Be in conflict with the City's ongoing priorities to enhance public safety and quality of life, protecting the environment, and maintaining and enhancing infrastructure.

CONCLUSION

Recent research has shown that gas appliances have significant health effects within the community, both indoors and outdoors, and kids are especially susceptible to impacts from exposure to emissions from gas appliances. Modern electric appliances are used worldwide to provide clean heating and cooling, with no health risks. Eliminating gas appliances in new buildings ensures that Morgan Hill is being built in a way that is resilient and that promotes clean and healthy living.

CALIFORNIA RESTAURANT ASSOCIATION V. CITY OF BERKELEY

In 2019, the City of Berkeley passed a gas ban which prevented builders from installing gas infrastructure in most new projects. The California Restaurant Association, whose members include restaurateurs and chefs, challenged Berkeley's regulation claiming the ordinance was preempted by Federal Law. The district court dismissed the suit in 2021. On April 17, 2023, in *California Restaurant Association v. City of Berkeley*, the Ninth Circuit reversed the district court's dismissal and concluded that federal law does in fact

preempt the ordinance. On May 31, 2023, Berkeley petitioned for an “en banc” rehearing of the case requesting that a wider panel of judges on the appeals court reconsider the three-judge panel’s April ruling. While [“en banc” consideration is rare](#), if granted, it would mean the case would go before 11 judges and the latest decision would be on hold. The rehearing has yet to be granted nor denied. On June 10, 2023, the US Department of Energy and Department of Justice wrote a brief saying the 9th District made significant errors in its interpretation of federal law and should grant a rehearing. Berkeley’s ordinance, which went into effect in 2020, still stands as the legal process continues. The City of Morgan Hill will continue to monitor this case as it goes through the court system and in the meantime, it does not affect the status of the City of Morgan Hill’s ordinance.

COMMUNITY ENGAGEMENT:

Inform and Involve

The City informed the community of the discussion to consider amending Section 15.63 of the Municipal Code to allow gas infrastructure in new buildings via posts to digital platforms including social media and the Environmental Services Division Newsletter. Flyers were also handed out at an engagement event leading up to the December 6th Council Meeting. The City developed its Climate Action Plan with significant involvement from community members.

ALTERNATIVE ACTIONS:

The Council could choose to amend Section 15.63 of the Municipal Code to once again allow gas in new buildings. To do this, staff would strike all language in the current ordinance and return to Council with the recommendations to: 1) Waive the first and second reading of the ordinance; and 2) Introduce the ordinance rescinding the prohibition of natural gas infrastructure in new buildings. At a second meeting two weeks later, the Council could vote to approve the amended ordinance under consent and allow gas in new buildings.

A second alternative is the Council could choose to have staff return with an amended ordinance that increases climate change resiliency in the community by requiring that in addition to being all-electric, new buildings must also be designed and built to include a backup battery with solar so that houses and appliances could still work during power outages.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

Section 15.63 of the Municipal Code, *Prohibition of Natural Gas Infrastructure in New Buildings* was brought before Council in response to policy guidance received from Council on September 4, 2019. The ordinance prohibiting natural gas in new buildings was formally adopted on November 6, 2019. On December 15, 2021, [the City adopted a Climate Action Plan](#) which guides City staff to work toward achieving building electrification goals and actions. On September 6, 2023, the Council voted to agendaize a discussion to evaluate the restoration of gas in new buildings.

FISCAL AND RESOURCE IMPACT:

There are no direct fiscal impacts from this item and no budget adjustment is requested at this time. Evaluating program options is included in the work program of the Public Services Department.

CEQA (California Environmental Quality Act):

Not a Project.

In accordance with CEQA Guidelines section 15378(b)(5), this item is not a project subject to CEQA because a policy discussion is an administrative action that will not result in a physical change to the environment.

ORDINANCE NO. 2306, NEW SERIES

**AN ORDINANCE OF THE CITY OF MORGAN HILL
ADDING CHAPTER 15.63 (PROHIBITION OF NATURAL
GAS INFRASTRUCTURE IN NEW BUILDINGS) TO TITLE
15 (BUILDINGS AND CONSTRUCTION) TO THE MORGAN
HILL MUNICIPAL CODE PROHIBITING NATURAL GAS
INFRASTRUCTURE IN NEW BUILDINGS EFFECTIVE
MARCH 1, 2020**

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

Section 1. Chapter 15.63 of the Morgan Hill Municipal Code is hereby added to read as follows:

Chapter 15.63

PROHIBITION OF NATURAL GAS INFRASTRUCTURE IN NEW BUILDINGS

Sections:

15.63.010 Findings and Purpose.

15.63.020 Applicability.

15.63.030 Definitions.

15.63.040 Prohibited Natural Gas Infrastructure in Newly Constructed Buildings.

15.63.050 Public Interest Exemption.

15.63.060 Periodic Review of the Ordinance.

15.63.070 Severability.

15.63.080 Effective Date.

15.63.010 Findings and Purpose.

The Council finds and expressly declares as follows:

- A. Scientific evidence has established that natural gas combustion, procurement and transportation produce significant greenhouse gas emissions that contribute to global warming and climate change.
- B. The following addition to the Morgan Hill Municipal Code is reasonably necessary because of local climatic, geologic and topographical conditions as listed below:
 - (1) Morgan Hill is situated along a wildland-urban interface and is extremely vulnerable to wildfires and firestorms, and human activities releasing greenhouse gases into the atmosphere cause increases in worldwide average temperature, drought conditions, vegetative fuel, and length of fire seasons.
 - (2) Morgan Hill relies on water imported into the region for groundwater recharge and climate change is already causing changes in rainfall and snowfall which threaten to interrupt the supply of imported water.
 - (3) Structures in Morgan Hill are located along or near the Calaveras fault and the City is close

- enough to the San Andreas and Hayward faults. All of these faults are capable of producing large earthquakes in the Bay Area.
- C. The following addition to the Morgan Hill Municipal Code is also reasonably necessary because of health and safety concerns as Morgan Hill residents suffer from asthma and other health conditions associated with poor indoor and outdoor air quality exacerbated by the combustion of natural gas.
 - D. Substitute electric heating and cooling infrastructure in new buildings fueled by less greenhouse gas intensive electricity is linked to significantly lower greenhouse gas emissions and is cost competitive because of the cost savings associated with all- electric designs that avoid new gas infrastructure.
 - E. All-electric building design benefits the health, welfare, and resiliency of Morgan Hill and its residents.
 - F. The most cost-effective time to integrate electrical infrastructure is in the design phase of a building project because building systems and spaces can be designed to optimize the performance of electrical systems and the project can take full advantage of avoided costs and space requirements from the elimination of natural gas piping and venting for combustion air safety.
 - G. It is the intent of the council to eliminate obsolete natural gas infrastructure and associated greenhouse gas emissions in new buildings where all-electric infrastructure can be most practicably integrated, thereby reducing the environmental and health hazards produced by the consumption and transportation of natural gas.

15.63.020 Applicability.

- A. The requirements of this Chapter shall apply to Building Permit Applications submitted on or after the effective date of this Chapter for all Newly Constructed Buildings proposed to be located in whole or in part within the City, except that the requirements of this Chapter will not apply to residential projects that are subject to an executed development agreement and that have obtained building permits for more than 10% of their allotted units.
- B. The requirements of this Chapter shall not apply to the use of portable propane appliances for outdoor cooking and heating.
- C. This chapter shall in no way be construed as amending California Energy Code requirements under California Code of Regulations, Title 24, Part 6, nor as requiring the use or installation of any specific appliance or system as a condition of approval.

15.63.030 Definitions.

- A. "Applicant" shall mean an applicant for a Building Permit Application.
- B. "Energy Code" shall mean the California Energy Code as amended and adopted in MHMC Chapter 15.12.
- C. "Greenhouse Gas Emissions" mean gases that trap heat in the atmosphere.
- D. "Natural Gas" shall have the same meaning as "Fuel Gas" as defined in California Plumbing Code and Mechanical Code.
- E. "Natural Gas Infrastructure" shall be defined as fuel gas piping, other than service pipe, in or in connection with a building, structure or within the property lines of premises, extending from the point of delivery at the gas meter as specified in the California Mechanical Code and Plumbing Code.

- F. “Newly Constructed Building” shall be defined as a building that has never before been used or occupied for any purpose.

15.63.040 Prohibited Natural Gas Infrastructure in Newly Constructed Buildings.

- A. Natural Gas Infrastructure shall be prohibited in Newly Constructed Buildings.
1. Exception: Natural Gas Infrastructure may be permitted in a Newly Constructed Building if the Applicant establishes that it is not physically feasible to construct the building without Natural Gas Infrastructure. For purposes of this exception, “physically feasible” to construct the building means either an all-electric prescriptive compliance approach is available for the building under the Energy Code or the building is able to achieve the performance compliance standards under the Energy Code using commercially available technology and an approved calculation method.
- B. To the extent that Natural Gas Infrastructure is permitted, it shall be permitted to extend to any system, device, or appliance within a building for which an equivalent all-electric system or design is not available.
- C. Newly Constructed Buildings shall nonetheless be required at a minimum to have sufficient electric capacity, wiring and conduit to facilitate future full building electrification.
- D. The requirements of this section shall be deemed objective planning standards under Government Code section 65913.4 and objective development standards under Government Code section 65589.5.

15.63.050 Public Interest Exemption.

- A. Notwithstanding the requirements of this Chapter and the Greenhouse Gas Emissions and other public health and safety hazards associated with Natural Gas Infrastructure, minimally necessary and specifically tailored Natural Gas Infrastructure may be allowed in a Newly Constructed Building provided that the entitling body establishes that the use serves the public interest. In determining whether the construction of Natural Gas Infrastructure is in the public interest, the City may consider:
1. The availability of alternative technologies or systems that do not use natural gas;
 2. Any other impacts that the decision to allow Natural Gas Infrastructure may have on the health, safety, or welfare of the public.
- B. If the installation of Natural Gas Infrastructure is granted under a public interest exemption, the Newly Constructed Buildings shall nonetheless be required at the minimum to have sufficient electric capacity, wiring and conduit to facilitate future full building electrification.

15.63.060 Periodic Review of Ordinance.

The City shall review the requirements of this ordinance every 18 months for consistency with the California Energy Code and the Energy Commission’s mid-cycle amendments and triennial code adoption cycle as applicable.

Section 2. This Ordinance shall be submitted to the California Building Standards Commission following adoption as consistent with state law.

Section 3. Severability. Should any provision of this ordinance be deemed unconstitutional or unenforceable by a court of competent jurisdiction, such provision shall be severed from the ordinance, and such severance shall not affect the remainder of the ordinance.

Section 4. This Ordinance shall take effect on March 1, 2020. The City Clerk is hereby directed to publish this Ordinance or a summary thereof pursuant to Government Code Section 36933.

THE FOREGOING ORDINANCE WAS INTRODUCED AT A MEETING OF THE CITY COUNCIL HELD ON THE 23RD DAY OF OCTOBER 2019 AND WAS FINALLY ADOPTED AT A MEETING OF THE CITY COUNCIL HELD ON THE 6TH DAY OF NOVEMBER 2019 AND SAID ORDINANCE WAS DULY PASSED AND ADOPTED IN ACCORDANCE WITH THE LAW BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS: Larry Carr, Rene Spring, Yvonne Martinez Beltran,
NOES: COUNCIL MEMBERS: John McKay, Rich Constantine
ABSTAIN: COUNCIL MEMBERS: None
ABSENT: COUNCIL MEMBERS: None

APPROVED:



RICH CONSTANTINE, Mayor

ATTEST:



IRMA TORREZ, City Clerk

DATE: 11/21/19

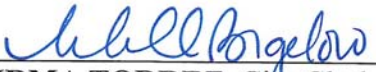
Effective: March 1, 2020

∞ **CERTIFICATE OF THE CITY CLERK** ∞

I, **IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA**, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 2306, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 6th day of November 2019.

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

DATE: 11/21/19


IRMA TORREZ, City Clerk



Attachment B - Silicon Valley Clean Energy Memo - How is Your City Doing in Bending the Carbon Curve?

October 29, 2023

From: Bruce Karney

To: SVCE Directors and Alternates, Girish Balachandran & Monica Padilla

Re: How Is Your City Doing in Bending the Carbon Curve?

SVCE's mission is to "reduce dependence on fossil fuels by providing carbon free, affordable, and reliable electricity and innovative programs for the SVCE community." In short, to bend the carbon curve.

SVCE has recently released city-level emissions data for the period from 2015 (prior to SVCE's formation) through 2022. This data can help the Board and others understand how rapidly the carbon curve has been bent and which communities are bending it the fastest. You can find the full 16-page report, including a description of its methodology, here: <https://svcleanenergy.org/research-analysis/#emissions-reporting>

The graphs on pages 2 and 3 compare the rate of GHG reduction in each jurisdiction to the average for SVCE's service territory. Only emissions from Transportation and Energy¹ are included. Smaller categories that many cities include in their own GHG emissions reports, such as emissions from solid waste, water, and wastewater processing are not included in SVCE's data. However, Transportation and Energy make up more than 90% of most cities' emissions. I also want to note that Energy emissions are **measured**, but Transportation emissions are **modeled**, and are therefore less accurate.

In all the graphs a community's emissions in 2015 are scaled to be equal to 100%. The territory-wide emission reduction was 23% from 2015 to 2022. On average, that's a decrease of 3.7% per year, but virtually all the improvement occurred between 2015 and 2018 (the first full year of SVCE's operations). Since 2019 (the last pre-COVID year) emissions have **risen** 0.3% or 0.1% per year.

You may also be interested in how PG&E's and SVCE's emissions have changed since SVCE was formed. The table shows emission factors for PG&E's default offering and SVCE's GreenStart, measured in pounds of CO₂e per MWh. PG&E's low figure in 2019 was made possible by AB1110, which essentially let them buy a mix of carbon-free and fossil-generated electricity and claim that all the electricity they sold to behind-the-meter customers was carbon-free and that virtually all their fossil-generated power was sold elsewhere.

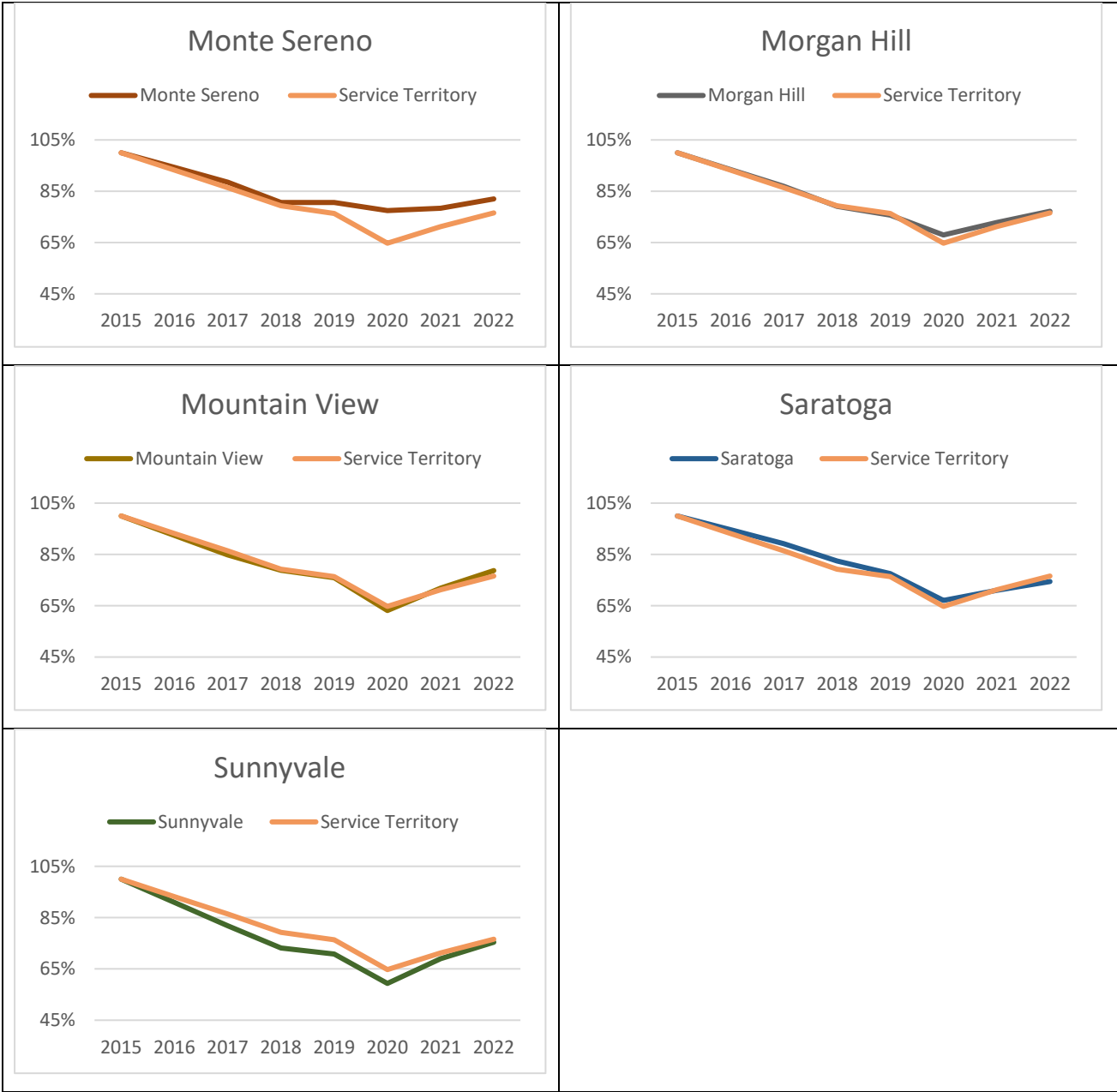
Electricity source	2015	2016	2017	2018	2019	2020	2021	2022
PG&E Base Plan	405	294	210	206	3	160	98	56
SVCE GreenStart	--	--	0	0	14 ²	7	18	72

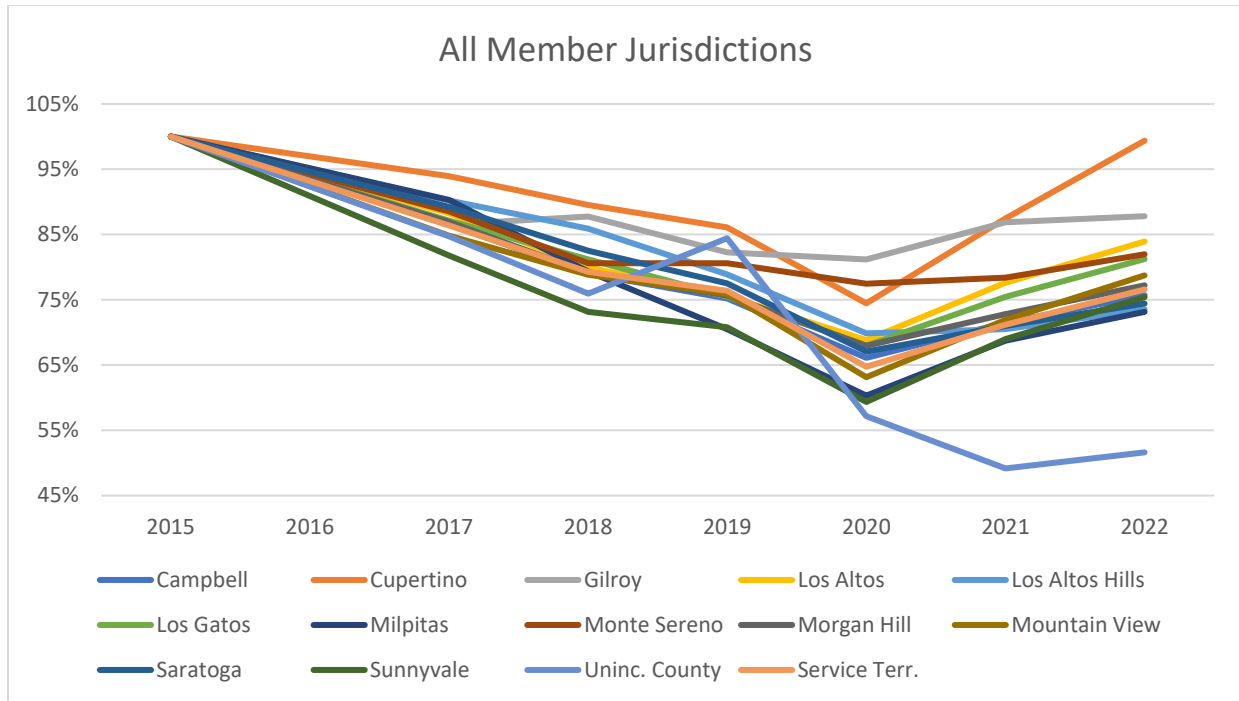
I think you will be able to use these graphs that follow to answer the question *"Is my community doing better, worse, or about the same as the SVCE average?"* And if your answer is "worse" or "about the same," I hope you will work with your City Manager and Council colleagues to accelerate your efforts to reduce emissions in your city. Our region won't continue to be seen as a climate leader if we don't push harder to bend the carbon curve. As Bill McKibben has said, when it comes to fighting climate change "winning slowly is the same as losing."

¹ Energy emissions are those from natural gas and electricity provided by SVCE, PG&E and direct access suppliers.

² This is an estimate, based on the percentage of geothermal generation in 2019's Power Content Label vs. 2020's.







Here are the emission reductions from 2015 to 2022, sorted from best to worst.

1. Unincorporated County (2022's emissions were 51.6% as high 2015's)
2. Milpitas (73.1%)
3. Los Altos Hills (73.5%)
4. Saratoga (74.4%)
5. Sunnyvale (75.4%)
6. Campbell (75.7%)
7. Morgan Hill (77.2%)
8. Mountain View (78.7%)
9. Los Gatos (81.2%)
10. Monte Sereno (82.0%)
11. Los Altos (83.9%)
12. Gilroy (87.8%)
13. Cupertino (99.4%)

COMMON QUESTIONS ABOUT ELECTRIFICATION

Developed by the City of Morgan Hill Environmental Services Division

Contents

Does the electric grid have the capacity to support all-electric infrastructure?	1
What happens when the power goes out if all my appliances are electric?.....	2
What is different in an all-electric home compared to a mixed-fuel home during a power outage?	2
Is electric preferable over gas from a climate-conscious perspective?	3

Does the electric grid have the capacity to support all-electric infrastructure?

Major stresses on the grid (e.g., extreme heat, wildfires) are driven by changes to the climate, and the only long-term solution is electrification as a means to reduce fossil fuel use. To support electrification and also increase community resilience to impacts from climate change, energy suppliers have begun taking steps to improve service reliability.

Grid readiness for electrification at the local level. Delivery of electricity to Morgan Hill is provided via infrastructure that is owned and operated by Pacific Gas & Electric (PG&E). In recent years, Morgan Hill has experienced power outages driven by PG&E equipment failures due in part to excessive load on the overhead and underground systems caused by record-breaking energy use during extreme heat events. In response, PG&E released a 2022 memo that identified projects specific to Morgan Hill that will reduce over-stress of equipment in the community, including: 1) establish a new circuit out of the Morgan Hill substation to provide increased load margins to existing circuits during future heat events; 2) install 1,000 feet of new underground cable; and 3) provide more capacity to 1,000 feet of existing overhead conductors. Additionally, PG&E has installed indicators on equipment in the Morgan Hill area to help quickly identify outage locations so that power can be restored more quickly. It is important to note that many power outages that have occurred in Morgan Hill over the last several years are related to PG&E's Enhanced Power Line Safety Settings supporting fire protection, which is not associated with grid capacity.

Grid readiness for electrification at the state level. The state continues to work on building out its infrastructure to meet the forecasted increase in demand. Per the California Energy Commission, to complement California's abundant and growing renewable energy resources, the state is focused on deploying energy storage which can be drawn from in times of energy shortages. According to the California Independent System Operator, battery storage capacity has increased by nearly 20 times since 2019 — from 250 megawatts (MW) to 5,000 MW. Today's fleet of battery storage resources can capture enough electricity to power up to 5 million California homes. By mid-century, capacity is projected to increase another 10 times to 52,000 MW. The effort to secure battery storage capacity will add dependability and backup power to the grid when energy supply is low (e.g. after dark when solar is not available, to supplement during non-windy days, etc.)

Impacts to the grid from gas infrastructure versus staying all-electric. Energy used for electric appliances in new buildings represent only a fraction of the total electricity demand during an extreme heat event. Most of the electricity demand and resulting grid stress from houses during extreme heat events is from simultaneous use of air conditioning equipment during peak-use hours. The electricity demand offset from returning to gas appliances in new buildings would be negligible during extreme heat events and would not contribute significantly to reducing power outage events in Morgan Hill.

As previously mentioned, it is possible to go all electric while also being resilient to climate change impacts (e.g., power outages that result from wildfires and extreme heat events). The solution is to require all-electric infrastructure in new buildings and in addition, also require installation of backup batteries with solar recharge. This would allow residents to use key appliances during outages because they can simply draw power from their home batteries, which can be recharged by solar energy for the duration of the outage.

What happens when the power goes out if all my appliances are electric?

Unfortunately, power outages are inconvenient regardless of the type of appliances installed. There is a misconception that gas appliances are better because they keep working when the lights go out. While gas can still flow into houses during a blackout, nearly all modern appliances installed in new buildings require some amount of electricity to operate.

Gas stoves require both a gas line and an electric outlet since modern gas stoves no longer use a pilot light for ignition. Additionally, many modern gas stoves come equipped with a feature called interlock that prevents any gas from entering the appliance unless there is electricity. It is a safety device that ensures gas stoves are operated only when the electric ventilation system is operating to prevent the build-up and/or leaking of gas.

Gas furnaces will not provide heat if they do not have electricity because the blower motor that powers the blower fan requires electrical power. The furnace can produce heat inside the combustion chamber - but that heat will not go anywhere if the blower fan is not running.

Gas water heaters require electronic ignitions or pumps.

Gas clothes dryers require electricity to run the tumbler.

The best way to be resilient in a power outage is to have an all-electric building with a backup battery to store energy which can be drawn from during the outage, and solar to recharge.

What is different in an all-electric home compared to a mixed-fuel home during a power outage?

The only appliance that may be different in a mixed-fuel home during a power outage compared to an all-electric home is the gas range, which in some gas-powered models can still be lit by hand. However, many ranges today come with a safety feature called an interlock that prevents the flow of gas when electricity is not present. Any attempt to light a gas burner with an interlock feature during a power outage will not be successful. So, it is possible that the range on a modern gas stove installed in a new building will not work depending on the model. Additionally, the oven part of a modern gas stove cannot be lit by hand and will not work.

Is electric preferable over gas from a climate-conscious perspective?

Historically, electricity has been sourced from fossil fuels which has raised questions about whether electricity is, in fact, a more climate conscious choice compared to gas. While a reasonable question in the past, the passing of SB 1020 and SB 100 has changed the landscape of electric energy by establishing milestones requiring that 100 percent of electric retail sales to end-use customers in California be from renewable energy and zero-carbon resources by 2045. This has resulted in a rapid transition in California's electricity resource portfolio, with over 60 percent of the California grid now powered by renewable energy and other carbon-free sources.

Additionally, the Morgan Hill community is automatically provided electricity mostly sourced from renewable energy and other carbon-free sources by SVCE. Therefore, requiring all-electric buildings makes exceptional sense in our community when considering the best way to reduce our community's climate footprint.

Item # 21

AGENDA DATE: 12/6/2023
Public Comment

From: [Michelle Bigelow](#)
To: [Kim Mancera](#)
Cc: [Christina Turner](#)
Subject: FW: [EXTERNAL] Do Not Support the "All Electric Rule".
Date: Wednesday, November 15, 2023 2:44:56 PM

Please hold on to this to supplement when this item comes for the 12/6 meeting.

Michelle Bigelow, MMC, CPMC
City Clerk/Public Information Officer
she | her | hers ([what's this?](#))

City of Morgan Hill
City Clerk's Office
17575 Peak Avenue, Morgan Hill, CA 95037

D: 408.310.4678 **O:** 408.779.7259
michelle.bigelow@morganhill.ca.gov
morganhill.ca.gov | [facebook](#) | [twitter](#)

From: Jeff@JeffSheets.com <jeff@jeffsheets.com>
Sent: Wednesday, November 15, 2023 2:41 PM
To: CityCouncil <CityCouncil@morganhill.ca.gov>
Cc: jeff Sheets <Jeff@Jeffsheets.com>
Subject: [EXTERNAL] Do Not Support the "All Electric Rule".

Please do not vote for the All Electric Rule. This rule will cost homeowners thousands of dollars in retrofits. We all have experienced issues with PG&E not being able to keep our power on over the last few years. This change will put a huge burden on the power grid. As you know, gas is also a cheaper and more stable to deliver to consumers. Please do not vote for this bill.

Regards,

Jeff Sheets
Broker Associate
Coldwell Banker
950 Tennant Station
Morgan Hill, CA 95037
Cell: 408-710-3963
Email: Jeff@JeffSheets.com
Web: www.JeffSheets.com
CalBRE #01399881



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CITY COUNCIL STAFF REPORT

MEETING DATE: December 6, 2023

PREPARED BY:

Ray Ramos, Police Captain

APPROVED BY: City Manager

PROVIDE DIRECTION REGARDING THE KEEPING OF ROOSTERS WITHIN CITY LIMITS

RECOMMENDATION(S)

Provide direction regarding whether to prohibit the keeping of roosters within the City of Morgan Hill.

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Protecting the Environment and Preserving Open Space and Agricultural Land

Preserving and Cultivating Public Trust

Preserving our Community History

2022-2023 Strategic Priorities

Community Outreach, Engagement, and Messaging

Guiding Documents

Morgan Hill Municipal Code

REPORT NARRATIVE:

During the May 3, 2023, meeting, City Council voted (3-2) in favor of having staff complete a report considering amending and strengthening the language of the current municipal code and/or making additional provisions in an effort to address rooster noises in the City.

A rooster is a male chicken only, while a chicken refers to a bird of either gender.

The keeping of crowing roosters as pets can be a noise nuisance for nearby neighbors. As a result, some cities prohibit roosters completely or prohibit roosters older than four months.

Current Regulations:

Currently, the Morgan Hill Municipal Code (MHMC) 6.36.170 - Poultry or Rabbits Restrictions in Noncommercial Areas, states that it is unlawful for any person to keep or maintain or cause, or permit to be kept or maintained, any poultry or rabbits in any residential or commercial district, except in accordance with the provisions of this

chapter, and the following regulations:

A. Location. All poultry and rabbits shall be kept in the rear yard of any premises as defined in this chapter. No poultry or rabbit shall be kept within twenty-five feet of any traveled street, except an alley.

B. Distance From Certain Buildings. No poultry or rabbit shall be kept within one hundred feet of any commercial establishment where food products are kept, stored, manufactured, or processed, or any school, church, or hospital, or within twenty feet of any residence or dwelling, or building used for the habitation of human beings.

C. Side and Rear Yards. All poultry and rabbits shall be kept, harbored, or maintained not less than five feet from all lateral and rear property lines, unless there is a solid fence, solid side of a structure, or a wall not less than five feet in height between such poultry or rabbits and the adjoining property, except where the property line abuts upon an alley, then the distance requirement may be dispensed with.

In addition, the Morgan Hill Municipal Code (MHMC 6.24.020) Animals--Public Nuisances, prohibits the "keeping, maintaining, causing, or permitting to be kept or maintained any dog, cat or other animal or fowl, whether licensed or not, that interferes with the reasonable and comfortable use of property in any neighborhood or community by howling, yelping, barking or other noise, frequently or for extended periods of time. Each day that such a disturbance is permitted to continue shall constitute a separate offense."

Currently, the code does not distinguish between types of poultry. Chickens--including both roosters and hens--are allowed, as well as other types of domesticated fowl. And while the code prohibits nuisances, including frequent or extensive noise that interferes with the reasonable and comfortable use of property, nuisances that may be caused by roosters are difficult to enforce. First, the noise must be witnessed by the enforcement officer in order for the officer to issue citations. Second, unlike other animals, rooster crows can be sporadic. Because the noise from roosters is difficult to regulate, the only practical way to control rooster noise is to prohibit the keeping of roosters in residential zones.

COMMUNITY ENGAGEMENT:

No community engagement.

ALTERNATIVE ACTIONS:

The following are alternative actions that can be considered by the City Council:

1. Maintain Municipal code 6.32.030 – Definitions
2. Amend Municipal Code 6.35.030, adding the definitions for “hens” and “roosters.”
3. Maintain the current Municipal Code 6.36.170, continue to allow fowl/roosters within the City limits and in residential districts/zones.
4. Amend MHMC 6.36.170 add a subsection (D) prohibiting roosters within the City

limits.

5. Amend Municipal Code 6.24.020 and add “rooster” to the list of prohibited animals.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

During the May 3, 2023, meeting, City Council voted (3-2) in favor of having staff complete a report considering amending and strengthening the language of the current municipal code and/or making additional provisions in an effort to address rooster noises in the City. No other actions by the City Council or Commission had been taken prior to this staff report.

FISCAL AND RESOURCE IMPACT:

If the City Council recommends staff to amend the current municipal code, we anticipate it would take approximately sixteen staff hours to make all the necessary changes; to include the review process of the City Attorney and including the City Council's final adoption of the new ordinance. If the Council decides to maintain the current ordinance, there will be no fiscal/resource impact.

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 COUNCIL STAFF REPORT

MEETING DATE: December 6, 2023

PREPARED BY:

Michelle Bigelow, City Clerk

APPROVED BY: City Manager

PROVIDE DIRECTION TO STAFF ON WHETHER TO ALLOW PUBLIC COMMENT ON ZOOM

RECOMMENDATION(S)

Provide direction to staff on whether to allow public comment on Zoom.

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Protecting the Environment and Preserving Open Space and Agricultural Land

Supporting our Youth, Seniors, and Entire Community

Preserving and Cultivating Public Trust

Preserving our Community History

Enhancing Diversity and Inclusiveness

2022-2023 Strategic Priorities

Community Outreach, Engagement, and Messaging

REPORT NARRATIVE:

At the October 4, 2023, City Council meeting, hateful and hostile comments were made by people participating on Zoom for public comment. This occurred in Morgan Hill and throughout the nation. In response, public comment on Zoom was no longer allowed. Several factors contributed to this decision:

- **Promoting a Safe and Inclusive Space:** The City works to create an environment where everyone feels safe and respected during public meetings. Hate speech can create a hostile atmosphere that hinders meaningful public participation and disrupts the purpose of the meetings.
- **Protection of Vulnerable Communities:** Hate speech often targets specific communities based on their characteristics, such as race, religion, gender, or sexual orientation. Taking steps to prevent hate speech protects these communities from harm and harassment. Further, as an employer, the City is required to take reasonable steps to prevent exposure to verbal conduct that is based on protected classifications (including race, religion, gender, and/or sexual orientation) and that is objectively and subjectively offensive.
- **Ensuring Efficient Meetings:** The City's goal is to conduct productive and efficient meetings that allow for the exchange of diverse opinions and ideas. Hate speech

can disrupt these meetings, making maintaining a respectful and constructive environment challenging.

Through this change, the City of Morgan Hill aimed to strike a balance between promoting free speech and protecting the safety and dignity of all participants in its public meetings.

The state's Brown Act, which governs public access to government meetings, only requires cities to offer the public a chance to comment at public sessions in person. Since the pandemic, many cities have allowed the public to comment by Zoom or phone. However, a growing number of cities in the Bay Area, including Morgan Hill, have moved to prohibit remote or telephone comments because of the increasing incidents of antisemitic callers.

A City Council discussion on public comments via Zoom and displaying the names of all Zoom participants during the meetings was requested by a Council Member and a majority of the City Council voted to have this item agendized. Staff is seeking direction from the City Council on whether they would like to allow public comments via Zoom and display the names of all Zoom participants during the meetings. Please note that while we can require registration and identification of Zoom participants, we cannot prohibit speakers from using assumed or false names.

If the Council allows public comment through Zoom, staff will research other reasonable steps to protect employees and the public from verbal conduct that would create a hostile work environment.

COMMUNITY ENGAGEMENT:

This report seeks direction from the City Council on whether to allow public comments via Zoom and display the names of all Zoom participants during the meetings.

ALTERNATIVE ACTIONS:

Not Applicable

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

At the October 4, 2023, City Council meeting, hateful and hostile comments were made by people participating on Zoom for public comment.

At the November 1, 2023, City Council Meeting, a future business item was brought forward to consider discussing whether to allow public comment on Zoom and to display the names of participants on Zoom.

At the November 15, 2023, City Council Meeting, the City Council voted to bring forward a discussion on whether to allow public comment on Zoom and to display the names of participants on Zoom.

FISCAL AND RESOURCE IMPACT:

There is no fiscal impact associated with this item.

CEQA (California Environmental Quality Act):

Not a Project.

Organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment.

CITY OF MORGAN HILL

CITY COUNCIL POLICIES AND PROCEDURES

CP-97-01

SUBJECT: RULES FOR THE CONDUCT OF CITY COUNCIL MEETINGS, PLACEMENT OF ITEMS ON THE AGENDA, AND MATTERS TO BE RECONSIDERED

EFFECTIVE DATE: May 7, 1997

REVISED DATE: March 15, 2023

ORIGINATING DEPARTMENT: CITY MANAGER

SECTION 1 - SCOPE

- 1.1** These rules shall establish the procedures for the conduct of all meetings of the City Council of the City of Morgan Hill. The purpose of these rules is to provide procedures consistent with the Ralph M. Brown Act, establish procedures which will be convenient for the public, be fair to all members of the City Council, and contribute to the orderly conduct of City business.

SECTION 2 - MEETINGS

- 2.1** Open to Public: All meetings of the City Council, whether regular or special, shall be open to the public, unless a closed session is scheduled as authorized by law.
- 2.2** Regular Meetings: The City Council shall conduct its regular meetings at the time and place established by ordinance, if specified in the ordinance or resolution.
- 2.3** Review Status of Agenda at 9:00 p.m.: The City Council may review the agenda at 9:00 p.m. to determine if it will be able to conclude its business by 10:00 p.m. If, at 10:00 p.m., the City Council has not concluded its business, before continuing the meeting it shall review and discuss the status of the remaining agenda items and determine by majority vote whether to continue any remaining items to a future regular or special meeting, adjourn the meeting to another date and time, or extend the meeting beyond 10:00 p.m. as needed. The meeting may be extended beyond 10:00 p.m. one time. Additional extensions of time will be at the Mayor's discretion.
- 2.4** Special Meetings/Workshops: A special meeting and/or workshop may be called at any time by the Mayor or Presiding Officer of the City Council or by three members of the City Council. Written notice of any such meeting must specify the purpose of the meeting. Notice of the meeting must be made in accordance with the law.
- 2.5** Closed Sessions: The City Council may hold closed sessions during a regular or special meeting, or at any time authorized by law, to consider or hear any matter which is authorized by law. At times, Closed Sessions may have to be held in an order different than presented due to the timeliness of the matter, to save the City money when an outside attorney has been retained or due to the need for extra time to discuss and deliberate an

important closed session item. Closed session items may be continued to the conclusion of the agenda.

- 2.6 Quorum:** Three (3) members of the City Council shall constitute a quorum and shall be sufficient to transact business. If less than three Council members appear at a regular meeting, the Mayor, Mayor Pro Tempore in the absence of the Mayor, any member of the City Council, or in the absence of all Council members, the City Clerk or Deputy City Clerk shall adjourn the meeting to a stated day and hour.
- 2.7 Adjourned Meetings:** The City Council may adjourn any regular, adjourned regular, special, or adjourned special meeting to a time and place specified in the order of adjournment and permitted by law.

SECTION 3 - POSTING NOTICE AND AGENDA

- 3.1 Posting of Notice and Agenda:** For every regular or special meeting, the City Clerk or other authorized person, shall post a notice of the meeting specifying the time and place at which the meeting will be held and an agenda containing a brief description of all items of business to be discussed at the meeting. The notice and agenda may be combined in a single document.
- a. Posting for Regular Meetings:** For any regular meeting of the City Council, the notice and agenda shall be posted no later than seventy-two (72) hours prior to the time set for the meeting consistent with all Brown Act requirements.
 - b. Posting for Special Meetings:** For any special meetings of the City Council, the notice and agenda shall be posted no later than twenty-four (24) hours prior to the time set for the meeting consistent with all Brown Act requirements.
- 3.2 Location of Posting:** The notice and agenda shall be posted on the City's website and in a place to which the public has unrestricted access during at least normal business hours and where the notice and agenda are not likely to be removed or obscured by other posted materials.
- 3.3 Availability of the Agenda to the Public:** The agenda for any regular or special meeting shall be made available to the public as soon as is practical after delivery to the members of the City Council.

SECTION 4 - AGENDA CONTENTS

- 4.1 Description of Matters:** All items of business to be discussed at a meeting of the City Council shall be briefly described on the agenda. The description of the item and the proposed action to be considered should be set forth as clearly as practical so that members of the public will know the nature of the action under review and consideration.
- 4.2 Placement of items on the agenda:** The Mayor, City Manager, or City Attorney may place items on the agenda. Members of the City Council may request items to be added to an upcoming City Council agenda by requesting an item during the "Future Council Initiated Agenda Items" Section of the agenda. When a Future Council Initiated Agenda Item is requested, the Council Member making the request will send the City Manager a brief

City Council Policy 97-01
Rules for the Conduct of City Council Meetings
Page 3 of 9

summary outlining the request and any relevant background. If the requested item is not included in the current Strategic Priorities Workplan, the team will bring forward the item at a future Council Meeting within 30-45 days of the request via a brief staff report, including the brief summary provided by the requesting Council Member. At that meeting, the City Council will review the request and determine if the majority of the City Council wants the items agendaized at a future meeting for discussion.

- 4.3 Limitation to Act on Only Items on the Agenda:** No action shall be taken by the City Council on any item not on the posted agenda, subject only to the exceptions listed below:
- a. Upon a majority determination that an "emergency situation" (as defined by State Law) exists; and
 - b. Upon a determination by a 4/5 vote of the City Council that there is a need to take immediate action and that the need to take the action came to the attention of City officials subsequent to posting of the agenda.
- 4.4 Change in Order of Business:** The Mayor or Presiding Officer may decide to take matters listed on the agenda out of the prescribed order unless a majority of members present object to this variation.
- 4.5 City Council Reports:** On an alternating basis, at each Regular City Council meeting, with a time limit of three minutes, a Council Member has the opportunity to share with the Council and community any pertinent updates or information in regard to their appointments to outside agencies, upcoming events, or relevant City business. These are non-action items.
- 4.6 City Manager Report:** These are updates on current City activities, reports on issues raised at previous Council meetings, or recognitions. These are non-action items.
- 4.7 City Attorney Report:** These are updates on current City activities, reports on issues raised at previous Council meetings, or reportable actions of the City Council in Closed Sessions and/or current litigation. These are non-action items.
- 4.8 Other Reports:** These are pertinent updates or information on upcoming activities or events relevant to City business with a time limit of one minute. These are non-action items.
- 4.9 Public Comment for items not on the agenda:** This refers to those matters not scheduled on the agenda where a member of the public wants to address a matter of importance to the City Council. Since the matter is not on the agenda, no action by Council can be taken. If a member of Council so desires, the matter can be placed on the agenda of a future Council meeting for review and consideration.
- 4.10 Consent Calendar:** These are items of a routine or generally uncontested nature. Any member of the Council or member of the public may request to have an item pulled from the consent calendar and acted on individually by the Council. Items pulled will be discussed after action is taken on the balance of the consent calendar. The Mayor shall decide if the items are heard before or after moving on to public hearing and other business items.
- 4.11 Public Hearings:** These are matters that are duly noticed and published in a newspaper of general circulation and where required by law, written notice is given to the affected

residents who have the opportunity to speak in favor or against a matter or ask questions about the matter.

4.12 Other Business: These are other matters of City business which are not appropriately placed on the consent calendar and do not require published notices and require Council action and direction.

4.13 Future Business: These are items that members of the City Council wish to discuss to potentially take action on or have placed on future agendas.

SECTION 5. ORDER OF BUSINESS

5.1 The order of business at meetings of the City Council shall be as follows:

- a. CALL TO ORDER
- b. ROLL CALL ATTENDANCE
- c. DECLARATION OF POSTING AGENDA
- d. WORKSHOP (if needed; 5:00-6:00 p.m., or as deemed appropriate)
- e. CLOSED SESSION (if needed; 6:00-7:00 p.m., or as deemed appropriate)
- f. SILENT INVOCATION
- g. PLEDGE OF ALLEGIANCE
- h. PRESENTATIONS
- i. PROCLAMATIONS
- j. RECOGNITIONS
- k. CITY COUNCIL REPORTS
- l. CITY MANAGER'S REPORT
- m. CITY ATTORNEY'S REPORT
- n. OTHER REPORTS
- o. PUBLIC COMMENT FOR ITEMS NOT ON THE AGENDA
- p. ADOPTION OF AGENDA
- q. CONSENT CALENDAR
- r. PUBLIC HEARINGS
- s. OTHER BUSINESS
- t. FUTURE COUNCIL INITIATED AGENDA ITEMS

u. CLOSED SESSION

v. ADJOURNMENT

SECTION 6. PUBLIC COMMENT

6.1 Public Comment: Persons present at meetings of the City Council may comment on individual items on the agenda at the time the items are scheduled to be heard. In addition, comments may be offered on items not on the agenda under that portion of the agenda. In accordance with State law, matters not scheduled on the agenda cannot be acted upon by the City Council, but items raised by the public during public comment may be referred to a future City Council agenda at the request of the Mayor or City Council.

6.2 Limitations: The public comment period may be 3 minutes for items on the agenda or items not listed on the agenda. Speakers are called in the order the speaker cards are submitted. Project applicants or appellants will be allowed more than the designated 3 minutes in accordance with City Council Policy 03-01. Consistent with this policy, the Mayor or Presiding Officer may recall an applicant or appellant to address questions after the public comment is heard. In addition, applicants will be given time at the end of the public hearing to address any questions or comments.

The Mayor or Presiding Officer may allow speakers who wish to speak under public comment for items not on the agenda to concede a portion of their time, specifically, one speaker may concede a portion of their time to one other speaker. For all other business items, the Mayor or Presiding Officer may allow speakers more time and/or allow speakers to concede a portion of their time to a designated speaker of a group, specifically up to two speakers may concede their time to one speaker, unless a majority of the City Council objects. Speakers that wish to designate a group speaker shall notify the City Clerk before discussion on the item begins. Additionally, any speaker that concedes their time must be present at that City Council meeting. Speaker who would like to share documents or presentations may do so by submitting said document to the City Clerk by noon on the day of the City Council Meeting. Speaker may not share videos or presentations with videos embedded within them.

6.3 Procedure: To address the City Council, each speaker is requested to fill out a Speaker Card and turn it in to the City Clerk before discussion on the agenda item begins. The speaker is requested to provide their name, contact information, and the subject(s) upon which the speaker wishes to address the City Council. Speakers who do not wish to provide their name should provide an alternative designation so that they can be called to speak by the City Clerk.

Public comment may be provided in writing for items on the agenda, as well as for items not on the agenda. Public comment in writing may be submitted via email to ccpubliccomment@morganhill.ca.gov or by mail to the City Clerk at 17575 Peak Avenue, Morgan Hill, CA 95037. Please email your comments to the City Clerk no later than 3:00 p.m. on Tuesday (the day before the City Council meeting) for your comments to be submitted to the members of the City Council with sufficient time to review the comments. You may continue to provide written comments up to noon on Wednesday (the day of the meeting although Council Members may not have sufficient time to review them. Public

comments submitted to the City Clerk after noon the day of the meeting will be provided to the City Council as time allows.

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

SECTION 7. PROCEDURES FOR THE CONDUCT OF MEETINGS

7.1 Role of the Mayor/Presiding Officer:

- a. The Presiding Officer of the City Council, who shall be the Mayor or in the Mayor's absence shall be the Mayor Pro Tempore, or in their absence any other designated member of the City Council, shall be responsible for maintaining the order and decorum of meetings. It shall be the duty and responsibility of the Presiding Officer to ensure that the rules of operation and decorum contained herein are observed. The Presiding Officer shall maintain control of communication between Council Members and between the Council, staff, and public.
- b. Communication with Council Members:
 1. Council Members should request the floor from the Presiding Officer before speaking.
 2. When one member of the Council has the floor and is speaking, other Council Members shall not interrupt or otherwise disturb the speaker.
 3. During both questions, when one Council Member has the floor, they are limited to 5 minutes. During discussion, the Mayor and Council Members as a whole are limited to 15 minutes. The time limit may be extended at the Mayor's discretion.
 4. With the concurrence of the Mayor, a Council Member holding the floor may address a question to another Council Member. The Council Member being questioned may or may not respond while the floor is still held by the Council Member asking the question. The reply shall be limited to the question asked.
- c. The Mayor or Presiding Officer may declare that an item within the meeting will be conducted in "workshop" format, which means that the procedures described in section 7.1B do not strictly apply. This is to allow for a more open discussion without strict formalities. The Mayor or Presiding Officer may end the workshop format for the item at his/her discretion.
- d. Communication with Members of the Public Addressing the Council
 1. The Mayor or Presiding Officer shall open the floor for public testimony as appropriate.
 2. After a witness or subject matter expert has addressed the City Council during public comment, Council members may only ask questions of witnesses or

City Council Policy 97-01
Rules for the Conduct of City Council Meetings
Page 7 of 9

subject matter experts. Such questions should be directed to the person through the Presiding Officer unless the Presiding Officer grants the Council Member permission to directly question the person.

3. Staff members, through the City Manager, shall be a resource to the City Council to answer questions arising during discussions between Council Members and between Council Members and members of the public. Communications in this regard shall be through the Presiding Officer.
4. Members of the public shall direct their questions and comments through the Presiding Officer.
- 7.2 Rules of Order: The City Council adopts no specific rules of order except those listed herein. The City Council shall refer to The Standard Code of Parliamentary Procedure by Alice Sturgis (McGraw Hill) as a guide for the conduct of meetings. The Sturgis guideline regarding not requiring seconds for governmental bodies' motions, resolutions or ordinances is not adopted as the rule in the City. The Mayor or Presiding Officer has the discretion to impose reasonable rules at any particular meeting based upon facts and circumstances found at any particular meeting. These latter rules will be followed unless objected to by a majority of the City Council members present.
- 7.3 Motions: The Mayor or any member of the City Council may bring a matter of business on the agenda before the Council by making a motion. Before the matter can be considered or debated it must be seconded. Once the motion has been properly made and seconded, the Presiding Officer shall open the matter for full debate offering the first opportunity to debate to the moving party and, thereafter, to any Council Member recognized by the Mayor or Presiding Officer. Debate shall be closed upon consent of a majority of the Council.
- 7.4 Reconsideration: Immediately after a vote on a matter, any member of the City Council may request to have his/her vote changed on a matter before the Council moves on to the next item. Such a request will be granted by the Mayor or Presiding Officer unless a majority of the Council objects.

A matter may be reconsidered by the City Council if a member on the prevailing side of the vote requests reconsideration. Such a motion may be made at a meeting where such action is taken or at a subsequent meeting of the Council, however, nothing in this policy precludes the majority of members of the City Council from requesting reconsideration of any item.

7.5 Debate:

- a. The discussions and deliberations at meetings of the City Council are to secure the informed judgement of Council members on proposals submitted for decision. This purpose is best served by the exchange of thought through discussion and debate.

Debate is regulated by these rules in order to assure every member a reasonable and equal opportunity to be heard.

- b. Obtaining the Floor for Debate:

City Council Policy 97-01
Rules for the Conduct of City Council Meetings
Page 8 of 9

As soon as a debatable motion has been stated to the Council by the Mayor or Presiding Officer, any member of the Council has a right to discuss it after obtaining the floor. The member obtains the floor by seeking recognition from the Mayor or Presiding Officer. A member who has been recognized is entitled to be heard so long as he/she observes the rules of debate.

c. Speaking More Than Once:

To encourage the full participation of all members of the Council, no member or members shall be permitted to monopolize the discussion of the question. If a Council member has already spoken and other members wish to speak, the latter members should be recognized in preference to the member who has already spoken. However, if no other members seek recognition, the Mayor or Presiding Officer may recognize the member who has already spoken.

d. Relevancy of Debate:

All discussion must be relevant to the motion before the City Council. A member is given the floor only for the purpose of discussing the pending question; discussion which departs is out of order. The Mayor or Presiding Officer should then direct the speaker to limit discussion to the question before the City Council.

A motion-its nature or consequences-may be attacked vigorously. But it is never permissible to attack the motives, character, or personality of a member either directly or by innuendo or implication. It is the duty of the Mayor or Presiding Officer instantly to stop any member who engages in personal attacks. It is the motion, not its proposer, that is the subject of debate. Meetings must discuss measures and ideas, not people.

Arguments, for or against a measure, should be stated as concisely as possible.

Debate must be fundamentally impersonal. All discussion is addressed to the Mayor or Presiding Officer and must never be directed to any individual.

e. Mayor's Duties During Debate:

The Mayor or Presiding Officer has the responsibility of controlling and expediting debate. A Council member who has been recognized to speak on a question has a right to the undivided attention of the Council.

It is the duty of the Mayor or Presiding Officer to keep the subject clearly before the members, to rule out irrelevant discussion, and to restate the question whenever necessary.

SECTION 8. DECORUM

- 8.1 Council Members: Members of the City Council value and recognize the importance of the trust invested to them by the public to accomplish the business of the City. Council Members shall accord the utmost courtesy to each other, to City employees, and to the public appearing before the City Council.

City Council Policy 97-01
Rules for the Conduct of City Council Meetings
Page 9 of 9

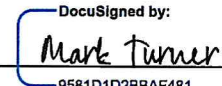
- 8.2** City Employees: Members of City staff shall observe the same rules of order and decorum applicable to the City Council. City staff shall act at all times in a business and professional manner towards Council Members and members of the public.
- 8.3** Public: Members of the public attending City Council meetings shall observe the same rules of order and decorum applicable to the City Council.
- 8.4** Noise in the Chamber: Noise emanating from the audience within the Council Chamber or lobby area, which disrupts City Council meetings, shall not be permitted.
- 8.5** Sergeant-at-Arms: The Chief of Police, or his/her designated representative shall be ex-officio Sergeant-at-Arms of the City Council.

SECTION 9. VIOLATIONS OF PROCEDURES

- 9.1** Nothing in these policies and procedures shall invalidate a properly noticed and acted upon action of the City Council in accordance with State Law.

This policy shall remain in effect until modified by the City Council.

APPROVED:

DocuSigned by:

9581D1D2BBAF481...
MARK TURNER, MAYOR

From: Yvonne Martinez Beltran <yvonne.martinezbeltran@morganhill.ca.gov>
Sent: Tuesday, October 24, 2023 11:17 AM
To: Christina Turner <Christina.Turner@morganhill.ca.gov>
Cc: Shane Palsgrove <Shane.Palsgrove@morganhill.ca.gov>; Donald Larkin <Donald.Larkin@morganhill.ca.gov>; Michelle Bigelow <Michelle.Bigelow@morganhill.ca.gov>
Subject: Requests for public comment & Council meeting attendees

Thank you!

I am separating out two items please for follow up and to understand a date when it will be addressed please.

1) Discussion on public comment- this should happen at our next meeting Nov 1 even if it is not fully developed and there are items to address before moving forward.

2) I am requesting to see all of the names of participants on zoom during the meetings and have them displayed so our meetings are transparent as to who is participating moving forward. We have invested heavily in upgrading our technical capabilities and need to stay on top of technology to maximize public engagement and transparency. I've asked about this since COVID started in 2020 and it's been nearly 3 years of refining these solutions.

Thank you for all you do!
In Community,

Yvonne Martínez Beltrán (pronouns: she/her/hers)
Councilwoman
City of Morgan Hill
17575 Peak Avenue, Morgan Hill, CA 95037

yvonne.martinezbeltran@morganhill.ca.gov
morganhill.ca.gov | facebook | twitter

From: [Michelle Bigelow](#)
To: [Kim Mancera](#)
Subject: FW: [EXTERNAL] Re: Vile wackos win? Please include as Public Comment for Nov 15, 2023 City Council Meeting , Agenda Item #16
Date: Monday, November 13, 2023 11:02:38 AM

Please supplement

Michelle Bigelow, MMC, CPMC
City Clerk/Public Information Officer
she | her | hers ([what's this?](#))

City of Morgan Hill
City Clerk's Office
17575 Peak Avenue, Morgan Hill, CA 95037

D: 408.310.4678 **O:** 408.779.7259
michelle.bigelow@morganhill.ca.gov
morganhill.ca.gov | [facebook](#) | [twitter](#)

From: Joe Baranowski <joe.b@mh-rgc.org>
Sent: Friday, November 10, 2023 6:17 PM
To: Michelle Bigelow <Michelle.Bigelow@morganhill.ca.gov>; CC Public Comment <CCPublicComment@morganhill.ca.gov>
Subject: [EXTERNAL] Re: Vile wackos win? Please include as Public Comment for Nov 15, 2023 City Council Meeting , Agenda Item #16

Hi Michelle,

I am forwarding my previously sent email (with some minor edits) as a Public Comment supplement for the Nov 15th City Council Meeting.

Thank you.

Joe

----- On Fri, 20 Oct 2023 14:30:48 -0700 **Joe Baranowski** <joe.b@mh-rgc.org> wrote --
-

Good afternoon everyone,

I was surprised to see the 'announcement' in today's 411 that remote Public Comment has been terminated.

To be perfectly clear, I completely and categorically reject ALL of the vile comments a few nutcases made at the last meeting. I am as committed to protecting the Public Interest in this matter as you are, as I have repeatedly demonstrated.

While I am more than willing to appear in-person, I have consistently recognized that providing remote access, including the ability to actively participate, may lead to an increased number of residents being engaged in the decision-making process - which is desperately needed and, as I understand it, a goal of the City.

IMO, and as I pleaded with the City to address, the issue of "visual anonymity" that remote access enables should have been dealt with when the first wacko (Dave Matthews) abused the convenience (or depending on one's view, the necessity during peak COVID) of remote access. I offered multiple ideas about this but, again IMO (and not equating it to the vile we heard last meeting), nobody really cared one-bit about *that* unacceptable behavior.

With millions of users, the commercial importance and competition among remote access platforms, and technology advances over the past several years, I do not accept that restricting public comment to those members who are willing to appear on screen while speaking, or other measures which could provide the same level of inherent real-identity authentication that in-person attendance forces, represents an insurmountable security or efficiency issue.

We saw firsthand that when someone wants anonymity for nefarious reasons they GO AWAY when exposed (Dave Matthews disappeared thanks to social media pressure). With today's commonly available technology, a face on camera is nearly equivalent to real-identity and I believe the wacko-cowards would most likely disappear a lot faster than Dave Matthews did.

Again, I'm more than willing to show up in person *but I am surprised this decision was made with no City Council vote or Public Input.*

IMO, it sends a clear message that wacko's win, something that I know none of you want. Throwing in the towel on remote participation now would also raise the question of how meetings would be conducted if in-person attendance were to once again become infeasible for health and safety reasons in the future. I believe there is expertise in our own community that can help find a solution that addresses unacceptable behaviors without just saying remote participation is not possible.

Regards,

Joe Baranowski

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From: [D. Muirhead](#)
To: [CC Public Comment](#)
Subject: [EXTERNAL] comment Morgan Hill City Council November 15 #16 future agenda items 1,2,5
Date: Monday, November 13, 2023 9:37:40 PM

Dear Morgan Hill City Council,

A comment for your meeting November 15 2023

Item #16. PROPOSED FUTURE COUNCIL INITIATED AGENDA ITEMS

1. provide more lead time for posting City Council agendas;
2. discuss Agricultural Mitigation Policy Mitigation ratio;
5. discuss options for providing public comment and transparency of remote meeting participants.

1. provide more lead time for posting City Council agendas

The Administration should stop using the Brown Act minimum posting of 3 days as a ceiling. Note that the staff report mis-states this as "creating a policy to post agendas with a designated amount of lead time *outside* of the Brown Act requirement". Ideally there would be advance notice of proposed agenda items (City Manager) plus enough time for the actual meeting agenda to get a Public Records Request processed. This is not possible with the current packet dump on the Friday before the meeting. And note just how many times the following Monday is a holiday so no access to staff for clarifications nor forwarding received comments to Council Members and Staff for consideration.

The Water District posts the first full packet 10 days in advance and the final version 3 days in advance with notations for items which have been modified.

The County and VTA use agenda notifications to announce the addition of supplements as they become available. Note the the City Clerk did this for Council meetings for a few months several years ago.

At the risk of aggravating certain people, I request that the Council act as bosses rather than cheerleaders and direct the Administration to give Council Members and the Public a less-constrained amount of time to read, research, reflect, and respond to agenda items.

2. discuss Agricultural Mitigation Policy Mitigation ratio;

While our urban forest will be an important component of mitigating our warming climate, I am strongly opposed to diminishing our limited agricultural mitigation abilities by diverting them to serve City trees.

The preferred model for supporting agricultural lands in South County is best modeled after the Habitat Agency approach, substituting "agriculture" in place of "conservation et al.": The mandate for land acquisition is intended to create a Reserve System characterized by large contiguous land holdings that are more resilient for habitat and species

conservation. To meet this intent, the Habitat Agency focuses effort on purchasing properties that are adjacent to existing open space lands and wildlife corridors, and on collaborating with agency and non-profit partners to enroll new lands.

5. discuss options for providing public comment and transparency of remote meeting participants.

The only details on the change outlawing remote comments (made by the Administration and not the City Council) appeared in the San Jose Mercury News on October 20. The 411 only said "City decided".

I don't accept that vile comments create a "hostile work environment" that automatically trumps the public's right to participate in the discussion.

The City has bragged about the increased participation due to remote access, but now claims public comment can only be allowed in person or in writing.

Regardless of the outcome, this decision rightly belongs to our elected officials and not the Administration.

Thank you for your consideration, Doug Muirhead, Morgan Hill

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From: [Christina Turner](#)
To: [Hilary Holeman](#)
Cc: [Michelle Bigelow](#); [Kim Mancera](#)
Subject: FW: [EXTERNAL] Zoom City Council Meetings
Date: Tuesday, November 7, 2023 4:44:24 AM

-----Original Message-----

From: Robert Benich <rjbenich@yahoo.com>
Sent: Friday, October 27, 2023 8:04 AM
To: Mark Turner <mark.turner@morganhill.ca.gov>; Gino Borgioli <Gino.Borgioli@morganhill.ca.gov>; Marilyn Librers <marilyn.librers@morganhill.ca.gov>; Rene Spring <Rene.Spring@morganhill.ca.gov>; Yvonne Martinez Beltran <yvonne.martinezbeltran@morganhill.ca.gov>; Marty Cheek <martin.cheek@gmail.com>
Cc: Christina Turner <Christina.Turner@morganhill.ca.gov>
Subject: [EXTERNAL] Zoom City Council Meetings

To Honorable Morgan Hill City Council:

I wish to have my input noted that ZOOM access for public meetings should only be to observe and listen to the proceedings. This should be no different than watching the meetings on Public Access TV. ZOOM participants must not be allowed to make comments. Public comments should only be made in person at the meetings.

Robert Benich

Sent from my iPhone

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From: [Mike Tangney](#)
To: [CityCouncil](#); [CityCouncil](#)
Subject: [EXTERNAL] Public comment access for seniors and disabled.
Date: Wednesday, October 25, 2023 10:33:10 AM

To Whom it may concern,

It is unfortunate that to my understanding, the city has decided to eliminate remote public comment at meetings. It is so frustrating when a few ill mannered individuals disrupt established processes.

There are several options available such as time delay and pre-authentication that I hope you will explore.

Attending and following meetings in person is not possible for many due to disabilities. Even relatively common problems like hearing loss and poor vision make participation in live meetings difficult. At the last meeting I attended, I found the volume of the sound system too low and the text size of the closed captions too small to easily follow.

I hope you can adjust the ban on remote comment to allow seniors and those with disabilities to continue access to remote comment. San Francisco had done this. As I'm sure you are aware, a few individuals and law firms have made a career out of suing businesses over the Americans with Disabilities Act. I don't expect it will take long for someone to test these new restrictions.

“Seniors and people with disabilities can still use the phone-in comment option under the changes approved Tuesday.”

ap23073839703039.jpg



San Francisco, Union City officials to restrict or ban remote public comments at meetings after racist remarks

[cbsnews.com](#)

Thanks,
Mike Tangney

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personally identifiable information should not be transmitted to this user. For question, please contact the Morgan Hill IT Department by opening a new helpdesk request online or call 408-909-0055.

CITY COUNCIL STAFF REPORT

MEETING DATE: December 6, 2023

PREPARED BY:

Kim Mancera, Deputy City Clerk

APPROVED BY: City Manager

SELECT AND APPOINT CITY COUNCIL MAYOR PRO TEMPORE

RECOMMENDATION(S)

1. Open floor to nomination(s) for Mayor Pro Tempore; and
2. Select a Council Member to serve as Mayor Pro Tempore per City Council Policy 99-01.

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Enhancing Public Safety

Protecting the Environment and Preserving Open Space and Agricultural Land

Maintaining and Enhancing Infrastructure

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

Advancing Regional Initiatives

2022-2023 Strategic Priorities

Fiscal Sustainability

Community Engagement and Messaging

Economic Development

Affordable Housing and Homelessness

Transportation

Guiding Documents

Bikeways, Trails, and Recreation Master Plan

Communications, Outreach, and Engagement Plan

Economic Blueprint

Fire Services Standards of Coverage

Morgan Hill 2035 General Plan

Public Safety Master Plan

Storm Drain Master Plan

Vision Zero

Water System Master Plan
Wastewater System Master Plan

REPORT NARRATIVE:

City Council Policy CP-99-01 sets forth the criteria for the selection of a Mayor Pro Tempore annually for a one-year term. The adopted policy is intended to provide every Council Member with the opportunity to serve as Mayor Pro Tempore. Nomination for the Mayor Pro Tempore seat is generally based on: (1) the length of time that an individual has served on the City Council and (2) whether or not the nominee has previously had the opportunity to serve as Mayor Pro Tempore. However, these factors are not binding, and every member is eligible to serve as Mayor Pro Tempore. The Mayor or any member of the City Council may nominate a member to serve as Mayor Pro Tempore. A copy of the Council Policy CP-99-01 is attached, and the recent Mayor Pro Tempore history is as follows:

CITY COUNCIL MAYOR PRO TEMPORE RECENT HISTORY

	FROM:	To:
Council Member Constantine	January 17, 2018	December 19, 2018
Council Member Spring	December 19, 2018	December 4, 2019
Council Member Martínez Beltrán	December 4, 2019	December 16, 2020
Council Member McKay	December 16, 2020	November 17, 2021
Council Member Borgioli	November 17, 2021	January 11, 2023
Council Member Spring	January 11, 2023	December 6, 2023

COMMUNITY ENGAGEMENT:

Inform

This report serves to inform the community of the process for selection of the Mayor Pro Tempore.

ALTERNATIVE ACTIONS:

Not Applicable.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The Council selects a Council Member to serve as the Mayor Pro Tempore annually.

FISCAL AND RESOURCE IMPACT:

There are no fiscal impacts. Selection of Mayor Pro Tempore is an activity of the City Council's annual workplan.

CEQA (California Environmental Quality Act):

This action is not a project. Selection of a Mayor Pro Tempore is an administrative governmental activity that will not result in direct or indirect physical changes in the environment.

CITY OF MORGAN HILL

CITY COUNCIL POLICIES AND PROCEDURES

CP 99-01

SUBJECT: SELECTION OF MAYOR PRO TEMPORE

EFFECTIVE DATE: December 17, 1999

REVISED DATE(S): December 19, 2016, February 5, 2020

ORIGINATING DEPARTMENT: CITY MANAGER

It is the policy of the City Council of the City of Morgan Hill to annually nominate and select a member to serve as Mayor Pro Tempore for a one year term. The Mayor or any member of the City Council may nominate a member, who shall be selected by majority vote.

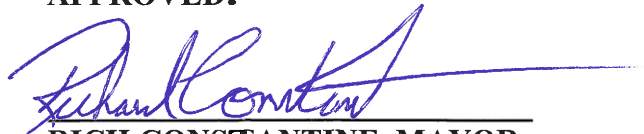
In order to provide every member with an opportunity to serve as Mayor Pro Tempore, it is the policy of the City Council that nominations be made on the basis of the length of time that a nominee has served on the City Council, and whether or not the nominee has previously had the opportunity to serve. However, these factors are not binding, and every member is eligible to serve as Mayor Pro Tempore. If more than one individual is nominated, the first person to receive a majority of the votes shall be selected to serve.

Selection of Mayor Pro Tempore will take place at the first regular meeting of the City Council held after the general municipal election and after the new members have been sworn in and have taken their seats; or at the first regular meeting in December in each year that a general municipal election is not held.

The Mayor Pro Tempore shall serve at the pleasure of the City Council and may be removed from the appointed position by a majority vote of the Council. The City Council shall fill all vacancies for Mayor Pro Tempore in accordance with the selection procedure set forth herein.

This policy shall remain in effect until modified by the City Council.

APPROVED:


RICH CONSTANTINE, MAYOR

CITY COUNCIL STAFF REPORT

MEETING DATE: December 6, 2023

PREPARED BY:

Christina Turner, City Manager

APPROVED BY: City Manager

PROVIDE DIRECTION TO STAFF ON PROPOSED FUTURE COUNCIL INITIATED AGENDA ITEMS

RECOMMENDATION(S)

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

1. Consider providing more lead time for posting City Council agendas;
2. Consider a discussion on the Agricultural Mitigation Policy 18.152.050 - Mitigation ratio;
3. Consider a discussion on potential funding mechanisms for public art;
4. Consider revisiting City Council Policy 21-02, City Council Funding Requests;
5. Consider a discussion on special event security requirements;
6. Consider revisiting the Economic Development Blueprint; and
7. Consider a discussion on imposing a Commercial Vacancy Tax.

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Protecting the Environment and Preserving Open Space and Agricultural Land

Supporting our Youth, Seniors, and Entire Community

Preserving and Cultivating Public Trust

Preserving our Community History

Enhancing Diversity and Inclusiveness

2022-2023 Strategic Priorities

Community Outreach, Engagement, and Messaging

Economic Development

Guiding Documents

Economic Blueprint

REPORT NARRATIVE:

Section 4.2 of City Council Policy 97-01 (Attachment 1) allows members of the City Council to request items be added to an upcoming City Council agenda by requesting an item during the "Future Council Initiated Agenda Items" section of the agenda. A City

Council report will then be placed on an upcoming agenda for Council discussion and consideration.

Below are brief descriptions of several items proposed for Council consideration.

1. Consider providing more lead time for posting City Council agendas (requested by Council Member Martinez Beltran, attachment 2)

Per the Ralph M. Brown Act, Government Code 54954.2, the legislative body of the local agency shall post the City Council agenda at least 72 hours (Sunday 6:00 p.m.) before a regular Wednesday meeting at 6:00 p.m. Current practice for the City of Morgan Hill has been to post City Council agendas the Friday before the Council meeting.

A Council Member has requested City Council meeting agendas be posted with more lead time to allow more time to prepare and inform the Community.

Staff is seeking direction from the City Council on whether they would like to agendize this item for a formal discussion on creating a policy to post agendas with a designated amount of lead time outside of the Brown Act requirement.

The estimated staff time to prepare a full City Council Staff Report on this topic is approximately 4 hours.

2. Consider revisiting Agricultural Mitigation Policy 18.152.050 - Mitigation ratio (requested by Council Member Martinez Beltran, attachment 3)

The City's Agricultural Lands Preservation Program supports preserving open space/agriculture permanently. The program sets forth mitigation to address the conversion of agricultural lands within the city limits and identifies policies and procedures for preserving viable agricultural lands and creating a greenbelt along the southern edge of the City's sphere of influence boundary. The Mitigation Ratio states, "a minimum of one acre of agricultural land (1:1 mitigation ratio) shall be preserved for each acre of agricultural land changed to a non-agricultural use." In 2020, the State re-evaluated the farmland-type designations, which further reduced prime farmland in the City and the City's sphere of influence.

A City Council discussion on the Agricultural Lands Preservation Program - Mitigation Ratio was requested to reconsider directing mitigation funds to a local urban forestry plan as part of the City's Climate Action Plan and Agricultural Plan.

Staff is seeking direction from the City Council on whether they would like to agendize this item for a formal discussion on the mitigation ratio.

The estimated staff time to prepare a full City Council Staff Report on this topic is approximately 20 hours.

3. Consider a discussion on funding mechanisms for Public Art Funding (requested by Mayor Turner, attachment 4)

The City of Morgan Hill established art goals in the Morgan Hill 2035 General Plan and Downtown Specific Plan to enhance the visibility of art and elevate creative culture. The City has an extensive art program guided by the Library Culture and Arts Commission. However, this program is entirely opportunistic and has no dedicated funding source that contributes to the City's Art Fund. Therefore, there is no discretionary funding to support the installation and maintenance of art in public spaces or private development.

Mayor Turner requested the City Council discuss options for public art funding sources. The staff is seeking direction from the City Council on whether they would like to agendize this item.

The estimated staff time to prepare a full City Council Staff Report on this topic is approximately 10 hours.

4. Consider revisiting City Council Policy 21-02, City Council Funding Requests (requested by Mayor Turner, attachment 4, and Council Member Borgioli, attachment 5)

In 2021, the Council adopted City Council Funding Requests Policy 21-02 (attachment 6) to establish a process for community organizations to request funding to support fee waivers, event sponsorship, and other funding requests from the City Council. The policy is intended to allow the City Council to fully evaluate all funding requests simultaneously, along with budget appropriation.

On October 4, 2023, a funding request was brought to the City Council and the discussion identified the need to revisit CP-21-02 and consider revising policy timelines and terms. City Council Member Borgioli and Mayor Turner formally requested the policy be revisited.

Staff is seeking direction from the City Council on whether they would like to agendize this item and consider revisions.

The estimated staff time to prepare a full City Council Staff Report on this topic is approximately 2 hours.

5. Consider a discussion on special event security requirements (requested by Council Member Martinez Beltran, attachment 7)

In recent years, large special events and community gatherings have been under heightened scrutiny due to the dual challenges posed by the ongoing COVID-19 pandemic and an increase in gun and mass violence incidents. As we return to normalcy, the City of Morgan Hill has cautiously assessed the safety measures and protocols governing festivals and gatherings to safeguard the Community.

A City Council discussion on festival safety, fencing, requirements, etc. was requested by Council Member Martinez Beltran so that the City Council and the public better understand what is required and the process to obtain approval for festivals and events in Morgan Hill. Staff prepared a "Special Event Permit Process – Security Requirements and Information" memo (attachment 8) for the City Council and Community on November 17, 2023; subsequently, the City Council request was resubmitted.

Staff is seeking direction from the City Council on whether they would like to agendize this item for a formal discussion on special event safety protocols.

The estimated staff time to prepare a full City Council Staff Report on this topic is approximately 10 hours.

6. Consider revisiting the Economic Development Blueprint (requested by Council Member Martinez Beltran, attachment 9)

In 2017, the City adopted the Economic Blueprint to further the Community's quality of life by attracting investment, development, and jobs to ensure continued economic prosperity. The Economic Blueprint is founded on guiding principles from the 2035 General Plan. It incorporates feedback from over 400 residents, businesses, and Community leaders engaged and invested in the future of Morgan Hill. The Economic Blueprint identifies four key strategies for Morgan Hill's future growth and fiscal sustainability. Those four industries are:

Innovation and Advanced Manufacturing: grow existing companies, attract new industries, and grow professional jobs.

- Retail: grow retail offerings and strengthen commercial nodes.
- Tourism: grow leisure, agriculture, wine country & recreational tourism.
- Healthcare: grow and foster the medical service and diagnostics industry by attracting services and facilities.

The Economic Blueprint has been a productive tool to direct strategies, policies, and actions to support economic development and attract investment. While some additional strategies, policies, and actions can be applied to the four targeted industries, the Economic Blueprint remains relevant as it relates to the existing market opportunities.

Council Member Martinez Beltran requested revisiting the Economic Development Blueprint to focus on tourism.

Staff is seeking direction from the City Council on whether they would like to agendize this item for a formal discussion on revisiting the Economic Development Blueprint.

The estimated staff time to prepare a full City Council Staff Report on this topic is approximately 10 hours.

7. Consider a discussion on imposing a Commercial Vacancy Tax (requested by Council Member Borgioli, attachment 10)

A commercial vacancy tax is a policy tool employed by municipalities to address issues related to empty or underutilized commercial properties. Commercial vacancy taxes are levied on property owners who leave their commercial spaces vacant for an extended period. The primary goal is to encourage property owners to either occupy or lease their properties, thus stimulating economic activity and preventing the negative externalities associated with vacant buildings, such as blight and reduced property values. By incentivizing property owners to utilize their commercial properties, local governments aim to foster a vibrant business environment, although this tool can be considered business-unfriendly.

Council Member Borgioli requested a discussion on options to impose such a tax. Staff is seeking direction from the City Council on whether they would like to agendize this item for a formal discussion.

The estimated staff time to prepare a full City Council Staff Report on this topic is approximately 5 hours. Additionally, the estimated staff time to prepare the ballot measure is approximately 15 hours, and the cost for the ballot measure is about \$50,000 if placed on the ballot of a regular election in which there are also council seats on the ballot.

COMMUNITY ENGAGEMENT:

This report seeks direction from the City Council on whether or not to further agendize these topics for Council consideration.

ALTERNATIVE ACTIONS:

Not Applicable

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

At several City Council meetings, Council Members directed staff to bring back these topics for Council consideration.

FISCAL AND RESOURCE IMPACT:

There is no fiscal impact associated with seeking direction from the Council on these items.

CEQA (California Environmental Quality Act):

Not a Project.

Organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment.

CITY OF MORGAN HILL

CITY COUNCIL POLICIES AND PROCEDURES

CP-97-01

SUBJECT: RULES FOR THE CONDUCT OF CITY COUNCIL MEETINGS, PLACEMENT OF ITEMS ON THE AGENDA, AND MATTERS TO BE RECONSIDERED

EFFECTIVE DATE: May 7, 1997

REVISED DATE: March 15, 2023

ORIGINATING DEPARTMENT: CITY MANAGER

SECTION 1 - SCOPE

- 1.1** These rules shall establish the procedures for the conduct of all meetings of the City Council of the City of Morgan Hill. The purpose of these rules is to provide procedures consistent with the Ralph M. Brown Act, establish procedures which will be convenient for the public, be fair to all members of the City Council, and contribute to the orderly conduct of City business.

SECTION 2 - MEETINGS

- 2.1** Open to Public: All meetings of the City Council, whether regular or special, shall be open to the public, unless a closed session is scheduled as authorized by law.
- 2.2** Regular Meetings: The City Council shall conduct its regular meetings at the time and place established by ordinance, if specified in the ordinance or resolution.
- 2.3** Review Status of Agenda at 9:00 p.m.: The City Council may review the agenda at 9:00 p.m. to determine if it will be able to conclude its business by 10:00 p.m. If, at 10:00 p.m., the City Council has not concluded its business, before continuing the meeting it shall review and discuss the status of the remaining agenda items and determine by majority vote whether to continue any remaining items to a future regular or special meeting, adjourn the meeting to another date and time, or extend the meeting beyond 10:00 p.m. as needed. The meeting may be extended beyond 10:00 p.m. one time. Additional extensions of time will be at the Mayor's discretion.
- 2.4** Special Meetings/Workshops: A special meeting and/or workshop may be called at any time by the Mayor or Presiding Officer of the City Council or by three members of the City Council. Written notice of any such meeting must specify the purpose of the meeting. Notice of the meeting must be made in accordance with the law.
- 2.5** Closed Sessions: The City Council may hold closed sessions during a regular or special meeting, or at any time authorized by law, to consider or hear any matter which is authorized by law. At times, Closed Sessions may have to be held in an order different than presented due to the timeliness of the matter, to save the City money when an outside attorney has been retained or due to the need for extra time to discuss and deliberate an

important closed session item. Closed session items may be continued to the conclusion of the agenda.

- 2.6 Quorum:** Three (3) members of the City Council shall constitute a quorum and shall be sufficient to transact business. If less than three Council members appear at a regular meeting, the Mayor, Mayor Pro Tempore in the absence of the Mayor, any member of the City Council, or in the absence of all Council members, the City Clerk or Deputy City Clerk shall adjourn the meeting to a stated day and hour.
- 2.7 Adjourned Meetings:** The City Council may adjourn any regular, adjourned regular, special, or adjourned special meeting to a time and place specified in the order of adjournment and permitted by law.

SECTION 3 - POSTING NOTICE AND AGENDA

- 3.1 Posting of Notice and Agenda:** For every regular or special meeting, the City Clerk or other authorized person, shall post a notice of the meeting specifying the time and place at which the meeting will be held and an agenda containing a brief description of all items of business to be discussed at the meeting. The notice and agenda may be combined in a single document.
- a. Posting for Regular Meetings:** For any regular meeting of the City Council, the notice and agenda shall be posted no later than seventy-two (72) hours prior to the time set for the meeting consistent with all Brown Act requirements.
 - b. Posting for Special Meetings:** For any special meetings of the City Council, the notice and agenda shall be posted no later than twenty-four (24) hours prior to the time set for the meeting consistent with all Brown Act requirements.
- 3.2 Location of Posting:** The notice and agenda shall be posted on the City's website and in a place to which the public has unrestricted access during at least normal business hours and where the notice and agenda are not likely to be removed or obscured by other posted materials.
- 3.3 Availability of the Agenda to the Public:** The agenda for any regular or special meeting shall be made available to the public as soon as is practical after delivery to the members of the City Council.

SECTION 4 - AGENDA CONTENTS

- 4.1 Description of Matters:** All items of business to be discussed at a meeting of the City Council shall be briefly described on the agenda. The description of the item and the proposed action to be considered should be set forth as clearly as practical so that members of the public will know the nature of the action under review and consideration.
- 4.2 Placement of items on the agenda:** The Mayor, City Manager, or City Attorney may place items on the agenda. Members of the City Council may request items to be added to an upcoming City Council agenda by requesting an item during the "Future Council Initiated Agenda Items" Section of the agenda. When a Future Council Initiated Agenda Item is requested, the Council Member making the request will send the City Manager a brief

City Council Policy 97-01
Rules for the Conduct of City Council Meetings
Page 3 of 9

summary outlining the request and any relevant background. If the requested item is not included in the current Strategic Priorities Workplan, the team will bring forward the item at a future Council Meeting within 30-45 days of the request via a brief staff report, including the brief summary provided by the requesting Council Member. At that meeting, the City Council will review the request and determine if the majority of the City Council wants the items agendaized at a future meeting for discussion.

- 4.3 Limitation to Act on Only Items on the Agenda:** No action shall be taken by the City Council on any item not on the posted agenda, subject only to the exceptions listed below:
- a. Upon a majority determination that an "emergency situation" (as defined by State Law) exists; and
 - b. Upon a determination by a 4/5 vote of the City Council that there is a need to take immediate action and that the need to take the action came to the attention of City officials subsequent to posting of the agenda.
- 4.4 Change in Order of Business:** The Mayor or Presiding Officer may decide to take matters listed on the agenda out of the prescribed order unless a majority of members present object to this variation.
- 4.5 City Council Reports:** On an alternating basis, at each Regular City Council meeting, with a time limit of three minutes, a Council Member has the opportunity to share with the Council and community any pertinent updates or information in regard to their appointments to outside agencies, upcoming events, or relevant City business. These are non-action items.
- 4.6 City Manager Report:** These are updates on current City activities, reports on issues raised at previous Council meetings, or recognitions. These are non-action items.
- 4.7 City Attorney Report:** These are updates on current City activities, reports on issues raised at previous Council meetings, or reportable actions of the City Council in Closed Sessions and/or current litigation. These are non-action items.
- 4.8 Other Reports:** These are pertinent updates or information on upcoming activities or events relevant to City business with a time limit of one minute. These are non-action items.
- 4.9 Public Comment for items not on the agenda:** This refers to those matters not scheduled on the agenda where a member of the public wants to address a matter of importance to the City Council. Since the matter is not on the agenda, no action by Council can be taken. If a member of Council so desires, the matter can be placed on the agenda of a future Council meeting for review and consideration.
- 4.10 Consent Calendar:** These are items of a routine or generally uncontested nature. Any member of the Council or member of the public may request to have an item pulled from the consent calendar and acted on individually by the Council. Items pulled will be discussed after action is taken on the balance of the consent calendar. The Mayor shall decide if the items are heard before or after moving on to public hearing and other business items.
- 4.11 Public Hearings:** These are matters that are duly noticed and published in a newspaper of general circulation and where required by law, written notice is given to the affected

City Council Policy 97-01
Rules for the Conduct of City Council Meetings
Page 4 of 9

residents who have the opportunity to speak in favor or against a matter or ask questions about the matter.

- 4.12 Other Business:** These are other matters of City business which are not appropriately placed on the consent calendar and do not require published notices and require Council action and direction.
- 4.13 Future Business:** These are items that members of the City Council wish to discuss to potentially take action on or have placed on future agendas.

SECTION 5. ORDER OF BUSINESS

5.1 The order of business at meetings of the City Council shall be as follows:

- a. CALL TO ORDER
- b. ROLL CALL ATTENDANCE
- c. DECLARATION OF POSTING AGENDA
- d. WORKSHOP (if needed; 5:00-6:00 p.m., or as deemed appropriate)
- e. CLOSED SESSION (if needed; 6:00-7:00 p.m., or as deemed appropriate)
- f. SILENT INVOCATION
- g. PLEDGE OF ALLEGIANCE
- h. PRESENTATIONS
- i. PROCLAMATIONS
- j. RECOGNITIONS
- k. CITY COUNCIL REPORTS
- l. CITY MANAGER'S REPORT
- m. CITY ATTORNEY'S REPORT
- n. OTHER REPORTS
- o. PUBLIC COMMENT FOR ITEMS NOT ON THE AGENDA
- p. ADOPTION OF AGENDA
- q. CONSENT CALENDAR
- r. PUBLIC HEARINGS
- s. OTHER BUSINESS
- t. FUTURE COUNCIL INITIATED AGENDA ITEMS

u. CLOSED SESSION

v. ADJOURNMENT

SECTION 6. PUBLIC COMMENT

- 6.1 Public Comment:** Persons present at meetings of the City Council may comment on individual items on the agenda at the time the items are scheduled to be heard. In addition, comments may be offered on items not on the agenda under that portion of the agenda. In accordance with State law, matters not scheduled on the agenda cannot be acted upon by the City Council, but items raised by the public during public comment may be referred to a future City Council agenda at the request of the Mayor or City Council.
- 6.2 Limitations:** The public comment period may be 3 minutes for items on the agenda or items not listed on the agenda. Speakers are called in the order the speaker cards are submitted. Project applicants or appellants will be allowed more than the designated 3 minutes in accordance with City Council Policy 03-01. Consistent with this policy, the Mayor or Presiding Officer may recall an applicant or appellant to address questions after the public comment is heard. In addition, applicants will be given time at the end of the public hearing to address any questions or comments.

The Mayor or Presiding Officer may allow speakers who wish to speak under public comment for items not on the agenda to concede a portion of their time, specifically, one speaker may concede a portion of their time to one other speaker. For all other business items, the Mayor or Presiding Officer may allow speakers more time and/or allow speakers to concede a portion of their time to a designated speaker of a group, specifically up to two speakers may concede their time to one speaker, unless a majority of the City Council objects. Speakers that wish to designate a group speaker shall notify the City Clerk before discussion on the item begins. Additionally, any speaker that concedes their time must be present at that City Council meeting. Speaker who would like to share documents or presentations may do so by submitting said document to the City Clerk by noon on the day of the City Council Meeting. Speaker may not share videos or presentations with videos embedded within them.

- 6.3 Procedure:** To address the City Council, each speaker is requested to fill out a Speaker Card and turn it in to the City Clerk before discussion on the agenda item begins. The speaker is requested to provide their name, contact information, and the subject(s) upon which the speaker wishes to address the City Council. Speakers who do not wish to provide their name should provide an alternative designation so that they can be called to speak by the City Clerk.

Public comment may be provided in writing for items on the agenda, as well as for items not on the agenda. Public comment in writing may be submitted via email to ccpubliccomment@morganhill.ca.gov or by mail to the City Clerk at 17575 Peak Avenue, Morgan Hill, CA 95037. Please email your comments to the City Clerk no later than 3:00 p.m. on Tuesday (the day before the City Council meeting) for your comments to be submitted to the members of the City Council with sufficient time to review the comments. You may continue to provide written comments up to noon on Wednesday (the day of the meeting although Council Members may not have sufficient time to review them. Public

comments submitted to the City Clerk after noon the day of the meeting will be provided to the City Council as time allows.

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

SECTION 7. PROCEDURES FOR THE CONDUCT OF MEETINGS

7.1 Role of the Mayor/Presiding Officer:

- a. The Presiding Officer of the City Council, who shall be the Mayor or in the Mayor's absence shall be the Mayor Pro Tempore, or in their absence any other designated member of the City Council, shall be responsible for maintaining the order and decorum of meetings. It shall be the duty and responsibility of the Presiding Officer to ensure that the rules of operation and decorum contained herein are observed. The Presiding Officer shall maintain control of communication between Council Members and between the Council, staff, and public.
- b. Communication with Council Members:
 1. Council Members should request the floor from the Presiding Officer before speaking.
 2. When one member of the Council has the floor and is speaking, other Council Members shall not interrupt or otherwise disturb the speaker.
 3. During both questions, when one Council Member has the floor, they are limited to 5 minutes. During discussion, the Mayor and Council Members as a whole are limited to 15 minutes. The time limit may be extended at the Mayor's discretion.
 4. With the concurrence of the Mayor, a Council Member holding the floor may address a question to another Council Member. The Council Member being questioned may or may not respond while the floor is still held by the Council Member asking the question. The reply shall be limited to the question asked.
- c. The Mayor or Presiding Officer may declare that an item within the meeting will be conducted in "workshop" format, which means that the procedures described in section 7.1B do not strictly apply. This is to allow for a more open discussion without strict formalities. The Mayor or Presiding Officer may end the workshop format for the item at his/her discretion.
- d. Communication with Members of the Public Addressing the Council
 1. The Mayor or Presiding Officer shall open the floor for public testimony as appropriate.
 2. After a witness or subject matter expert has addressed the City Council during public comment, Council members may only ask questions of witnesses or

City Council Policy 97-01
Rules for the Conduct of City Council Meetings
Page 7 of 9

subject matter experts. Such questions should be directed to the person through the Presiding Officer unless the Presiding Officer grants the Council Member permission to directly question the person.

3. Staff members, through the City Manager, shall be a resource to the City Council to answer questions arising during discussions between Council Members and between Council Members and members of the public. Communications in this regard shall be through the Presiding Officer.
 4. Members of the public shall direct their questions and comments through the Presiding Officer.
- 7.2 Rules of Order: The City Council adopts no specific rules of order except those listed herein. The City Council shall refer to The Standard Code of Parliamentary Procedure by Alice Sturgis (McGraw Hill) as a guide for the conduct of meetings. The Sturgis guideline regarding not requiring seconds for governmental bodies' motions, resolutions or ordinances is not adopted as the rule in the City. The Mayor or Presiding Officer has the discretion to impose reasonable rules at any particular meeting based upon facts and circumstances found at any particular meeting. These latter rules will be followed unless objected to by a majority of the City Council members present.
- 7.3 Motions: The Mayor or any member of the City Council may bring a matter of business on the agenda before the Council by making a motion. Before the matter can be considered or debated it must be seconded. Once the motion has been properly made and seconded, the Presiding Officer shall open the matter for full debate offering the first opportunity to debate to the moving party and, thereafter, to any Council Member recognized by the Mayor or Presiding Officer. Debate shall be closed upon consent of a majority of the Council.
- 7.4 Reconsideration: Immediately after a vote on a matter, any member of the City Council may request to have his/her vote changed on a matter before the Council moves on to the next item. Such a request will be granted by the Mayor or Presiding Officer unless a majority of the Council objects.

A matter may be reconsidered by the City Council if a member on the prevailing side of the vote requests reconsideration. Such a motion may be made at a meeting where such action is taken or at a subsequent meeting of the Council, however, nothing in this policy precludes the majority of members of the City Council from requesting reconsideration of any item.

7.5 Debate:

- a. The discussions and deliberations at meetings of the City Council are to secure the informed judgement of Council members on proposals submitted for decision. This purpose is best served by the exchange of thought through discussion and debate.

Debate is regulated by these rules in order to assure every member a reasonable and equal opportunity to be heard.

- b. Obtaining the Floor for Debate:

City Council Policy 97-01
Rules for the Conduct of City Council Meetings
Page 8 of 9

As soon as a debatable motion has been stated to the Council by the Mayor or Presiding Officer, any member of the Council has a right to discuss it after obtaining the floor. The member obtains the floor by seeking recognition from the Mayor or Presiding Officer. A member who has been recognized is entitled to be heard so long as he/she observes the rules of debate.

c. Speaking More Than Once:

To encourage the full participation of all members of the Council, no member or members shall be permitted to monopolize the discussion of the question. If a Council member has already spoken and other members wish to speak, the latter members should be recognized in preference to the member who has already spoken. However, if no other members seek recognition, the Mayor or Presiding Officer may recognize the member who has already spoken.

d. Relevancy of Debate:

All discussion must be relevant to the motion before the City Council. A member is given the floor only for the purpose of discussing the pending question; discussion which departs is out of order. The Mayor or Presiding Officer should then direct the speaker to limit discussion to the question before the City Council.

A motion-its nature or consequences-may be attacked vigorously. But it is never permissible to attack the motives, character, or personality of a member either directly or by innuendo or implication. It is the duty of the Mayor or Presiding Officer instantly to stop any member who engages in personal attacks. It is the motion, not its proposer, that is the subject of debate. Meetings must discuss measures and ideas, not people.

Arguments, for or against a measure, should be stated as concisely as possible.

Debate must be fundamentally impersonal. All discussion is addressed to the Mayor or Presiding Officer and must never be directed to any individual.

e. Mayor's Duties During Debate:

The Mayor or Presiding Officer has the responsibility of controlling and expediting debate. A Council member who has been recognized to speak on a question has a right to the undivided attention of the Council.

It is the duty of the Mayor or Presiding Officer to keep the subject clearly before the members, to rule out irrelevant discussion, and to restate the question whenever necessary.

SECTION 8. DECORUM

- 8.1 Council Members: Members of the City Council value and recognize the importance of the trust invested to them by the public to accomplish the business of the City. Council Members shall accord the utmost courtesy to each other, to City employees, and to the public appearing before the City Council.

City Council Policy 97-01
Rules for the Conduct of City Council Meetings
Page 9 of 9

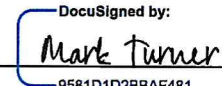
- 8.2** City Employees: Members of City staff shall observe the same rules of order and decorum applicable to the City Council. City staff shall act at all times in a business and professional manner towards Council Members and members of the public.
- 8.3** Public: Members of the public attending City Council meetings shall observe the same rules of order and decorum applicable to the City Council.
- 8.4** Noise in the Chamber: Noise emanating from the audience within the Council Chamber or lobby area, which disrupts City Council meetings, shall not be permitted.
- 8.5** Sergeant-at-Arms: The Chief of Police, or his/her designated representative shall be ex-officio Sergeant-at-Arms of the City Council.

SECTION 9. VIOLATIONS OF PROCEDURES

- 9.1** Nothing in these policies and procedures shall invalidate a properly noticed and acted upon action of the City Council in accordance with State Law.

This policy shall remain in effect until modified by the City Council.

APPROVED:

DocuSigned by:

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MARK TURNER, MAYOR

From: [Yvonne Martinez Beltran](#)
To: [Christina Turner](#)
Cc: [Michelle Bigelow](#); [Edith Ramirez](#); [Donald Larkin](#)
Subject: Written Request Agendas be posted with more time and not before weekend
Date: Wednesday, September 27, 2023 2:38:33 PM
Importance: High

6/7/2023 Martinez Beltran longer time for agendas

Over the past 5 years, there have been numerous requests from the public regarding our agendas at meetings, workshops and public comment and new Council Members requesting the Council Meeting Agendas be posted with more time before Council Meetings and not before the weekend. These requests have included suggesting not posting before the weekend. We often know that items are coming on a certain date, have deadlines to meet for items or have to inform applicants to be in attendance. Specifically, we had a request recently at a public comment again and therefore, it warrants the Council discussing the topic.

In Community,

Yvonne Martínez Beltrán
Councilwoman
City of Morgan Hill

From: [Yvonne Martinez Beltran](#)
To: [Christina Turner](#)
Cc: [Jennifer Carman](#); [Donald Larkin](#); [Edith Ramirez](#)
Subject: Written Request for Future Agenda item to revisit Ag Mitigation policy 18.152.050 - Mitigation ratio.
Date: Wednesday, September 27, 2023 2:38:25 PM
Importance: High

Recently, a draft EIR found a project to have significant impacts converting acres of prime farmland. Our agricultural mitigation policy calls for a minimum of one acre of agricultural land (1:1 mitigation ratio) shall be preserved for each acre of agricultural land changed to a non-agricultural use but does not specify where the mitigation shall occur, within Morgan Hill or otherwise or what type of mitigation it should be.

Morgan Hill has lost orchards and tree canopy and is poised to lose more due to continuing development, and learning of a recent grant to all Santa Clara jurisdictions to implement an urban forestry plan, as well as other grants that may be able to work in tandem to restore some of those trees lost. I would like to reconsider directing mitigation to a local urban forestry plan as part of our climate action plan and our agricultural plan. This could be a City or downtown orchard paying tribute to our agricultural past while also serving to further our city beautification and uniqueness for local residents and visitors to enjoy, while restoring some of the tree canopy Morgan Hill has lost.

Therefore, I am requesting we have a Council discussion revisiting our agricultural mitigation policy 18.152.050 - Mitigation ratio.

In Community,

Yvonne Martínez Beltrán
Councilwoman
City of Morgan Hill

From: [Hilary Holeman](#)
To: [Hilary Holeman](#)
Subject: FW: Future Agenda Items
Date: Friday, November 3, 2023 11:38:13 AM

From: Mark Turner <mark.turner@morganhill.ca.gov>
Sent: Thursday, October 5, 2023 10:45 AM
To: Christina Turner <Christina.Turner@morganhill.ca.gov>
Subject: Future Agenda Items

Hi Christina,

Here are the paragraphs for the two items brought up last night under Future Agenda Items. I don't have my notes with me and I don't recall the policy number for the non-profit item.

Public Art Funding

Public art is an important part of a community's character. There are many public art projects we could commission, however, there is no funding to initiate them. An ongoing funding stream for public art is necessary if a community plans to be serious about art. The benefits are numerous. Implementing a contractor fee based revenue stream dedicated to public art would provide the funding necessary for ongoing art projects to be realized.

Review Policy CP 21-02

In order to avoid subjective conversations around the funding of non-profit events that fail to meet certain criteria in the policy, the council should review and edit the policy as needed so that deadlines and other criteria are clearly defined, providing city staff the ability to determine if a request rises to the level of council review and approval.

Thanks so much,
Mark

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From: Gino Borgioli <Gino.Borgioli@morganhill.ca.gov>
Sent: Wednesday, October 11, 2023 2:32 PM
To: Christina Turner <Christina.Turner@morganhill.ca.gov>
Subject: Funding policy

Christina

Below are several screen shots of the Funding Policy, I've highlighted the areas of concern and emphasis especially of Policy guidelines related to the March deadline date spelled out throughout the document, this is very clear and not ambiguous.

Number 5 spells out that staff 'shall' not accept applications beyond the March timeframe. I feel it is a tremendous waste of time on 'staff' time to entertain any applications beyond the March deadline, period.

In number 2 below it again states applications are due annually, again very clear.....

In the Policy Number 1 below, it states that the organization 'must' be a non profit, I do not believe that an organization that goes out and finds a non profit and tries to go under their non profit status is a sincere organization for our community.

IF staff e entertains any non profit, their non profit documentation should be provided with the application.

In the case of the recent requests, if the soccer non profit agreed to bring the 'non' non profit into their organization, then staff should ask for the non profits partner agreement in addition to placing the 'non' non profit under their status. I believe that the insurance company would have a problem with doing such a partner agreement. In addition, is this legal in the eyes of the IRS? Question, did staff ask for the partner agreement and insurance document stating acceptance of this group?

In the policy number 1 below, it clearly states the issue of non profits, if the organization is not a nonprofit, no further action should be entertained.

In. Item 'C' below, I would question why the expenses are so far away from the revenue, unless theirs overwhelming reasons, this is not a value add both for the organization nor the city as this poses some jeopardy as to accepting other organizations of the same nature.

The last several document below after C just highlights the non profit question and the legitimacy to IRS standards.

Finally, the section that states a CC member can bring forward an item after the March timeframe should be completely removed from this policy. Causing enormous extra work for staff and the council is not conducive to our organization, using a CC members influence in this manner I believe is bordering ethical concerns. So item 6 B and C should be eliminated.

5. Late Requests

- a. Requests received after the deadline shall not be accepted by City staff.

6. Council Member Initiated Event and Fee Waiver Requests

- a. A member of the City Council may request a fee waiver or funding be provided for an event by applying with the above application process by the March deadline.
- b. All Council Member initiated requests occurring after the March deadline must be provided to the City Manager 90 days in advance of the event to allow sufficient time to bring to City Council for approval.
- c. The City Staff shall prepare a report for the City Council for approval of any Council Member initiated requests.

This policy shall remain in effect until modified by the City Council.

APPROVED:

DocuSigned by:


02FAF5B057884E7**RICH CONSTANTINE, MAYOR**

2. Application Availability and Deadline
 - a. Applications for the next Fiscal Year (July-June) will be available on the City's website annually in February.
 - b. Completed applications will be due annually in March.
3. Review and Approval Process
 - a. Applications will be reviewed by the City staff.
 - b. Funding applications and details will be included annually in the Budget Development or Mid-Cycle Budget Review process.
 - c. The City Manager will make recommendations on funding to the City Council based on established Council priorities and funding constraints.
 - d. The City Council shall award and include final funding within the Budget.
4. Reporting Requirements

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- a. Within thirty days following the conclusion of the funded activity, the organization must submit a report to the City reporting out pertinent information related to the activity. For ongoing activities, an annual report must be submitted by July 30 for the prior fiscal year.
 - b. The report shall include a record of the use of City funds and statistics and information that provides details on the activity's impact to the community.
5. Late Requests
 - a. Requests received after the deadline shall not be accepted by City staff.
6. Council Member Initiated Event and Fee Waiver Requests

Purpose

The purpose of this policy is to establish a process for community organizations to request funding to support fee waivers, event sponsorship, and other funding requests from the City Council. The policy is intended to allow the City Council to fully evaluate all funding requests at one time along with budget appropriation.

Policy

1. Applicant Criteria

- a. The organization requesting funding must be a nonprofit.
- b. The program, event, or activity provides a direct benefit to the Morgan Hill community.
- c. Programs in alignment with the City Council's Goals and Priorities shall be given priority. City Council priorities are established by the City Council in January of each year.
- d. Each organization must submit an inclusivity statement describing how the organization and/or the proposed activity is inclusive of the entire community.
- e. Existing programs and events may be given priority.

2. Application Availability and Deadline

- a. Applications for the next Fiscal Year (July-June) will be available on the City's website annually in February.
- b. Completed applications will be due annually in March.

3. Review and Approval Process

- a. Applications will be reviewed by the City staff.
- b. Funding applications and details will be included annually in the Budget Development or Mid-Cycle Budget Review process.
- c. The City Manager will make recommendations on funding to the City Council based on established Council priorities and funding constraints.
- d. The City Council shall award and include final funding within the Budget.

3. Is your organization a nonprofit? Yes ☒ No ☐

B. Event Information

1. Name of the Event: 3rd Annual Morgan Hill Dia De Los Muertos Alter Lighting Celebration & Movie
2. Date of the Event: 10/28/23 - 11/2/23
3. Location of the Event: Morgan Hill Community & Cultural Center, Corner, Hiram Room & Amphitheater

Important: If you plan to host your event at a city park, facility, or other public space, this space must be reserved. This application process does not reserve the space or location of the event or activity.

4. Anticipated Event Attendance (total): 350
5. Anticipated Event Attendance (single day): 350

C. Budget Information

1. Estimated Event Expenses: 5100
2. Estimated Event Revenue: 300
(Do not include amount of Council funding requested)
3. Amount of Council Funding Requested: 3100
4. How will funding be used if awarded? Please include specific examples.

Funding will be used for event location, sound equipment, entertainment (DJ & Lighting), Decorations, flowers, movie license, banners, etc

Important: Funding awards for community events are reimbursement based. Organization must provide receipts for funding use with the report for reimbursement from the City of Morgan Hill. Requests for funding disbursement prior to the event will be considered on a case-by-case basis by the City. Formal requests for consideration must be submitted as part of this application. Please use the space below.

proposed activity is inclusive of the entire community.
e. Existing programs and events may be given priority.

Applications will be reviewed by City staff. Funding applications and details will be included annually in the City's Budget Development or Mid-Cycle Budget Review process. The City Council shall award and include final funding within the budget. Requests received after the deadline will not be accepted by City staff. **To be considered for funding in FY 2023-2024 please complete and return this form by 5:00 pm on Friday, March 17, 2023, to:**

Nichole Martin
Community Services Supervisor
17575 Peak Avenue
Morgan Hill, CA 95037
nichole.martin@morganhill.ca.gov

A. Organizer Information

1. Organization Name: Sentinels Soccer Club as Fiscal Sponsor for Nueva Esperanza
2. Organization Address: [REDACTED] Dr., Morgan Hill, CA 95037
3. Contact Person Name: Delia Gomez
4. Telephone Number: [REDACTED]
5. Email Address: [REDACTED]
6. Organization's Inclusivity Statement:

We believe families and community are stronger, safer, and more economically sound when we provide opportunities to learn about each others backgrounds, to socially connect, to share and to celebrate our cultures and traditions in order to be more inclusive. Nueva Esperanza is committed to providing opportunities to appreciate and enhance diversity and inclusion and promote equity.

Nueva Esperanza is a community organization formed by different groups merging together to bring cultural and social events, awareness and opportunities to the Latinx and greater community. We are community members that are proud to be part of Morgan Hill, interested in civic involvement and contributing to our community.

MORGAN HILL CITY COUNCIL COMMUNITY FUNDING APPLICATION

Annually, the City Council considers funding requests from local non-profit organizations that host community wide events, host community supporting events at City facilities, and provide services to the community.

To be considered for this annual funding the following criteria must be met:

- a. The organization requesting funding must be a nonprofit.
- b. The program, event, or activity provides a direct benefit to the Morgan Hill community.
- c. Programs in alignment with the City Council's Goals and Priorities shall be given priority. City Council priorities are established by the City Council in January of each year.
- d. Each organization must submit an inclusivity statement describing how the organization and/or the proposed activity is inclusive of the entire community.
- e. Existing programs and events may be given priority.

Applications will be reviewed by City staff. Funding applications and details will be included annually in the City's Budget Development or Mid-Cycle Budget Review process. The City Council shall award and include final funding within the budget. Requests received after the deadline will not be accepted by City staff. To be considered for funding in FY 2023-2024 please complete and return this form by 5:00 pm on Friday, March 17, 2023, to:

Nichole Martin
Community Services Supervisor
17575 Peak Avenue
Morgan Hill, CA 95037
nichole.martin@morganhill.ca.gov

A. Organizer Information

1. Organization Name: Sentinels Soccer Club as Fiscal Sponsor for Nueva Esperanza
2. Organization Address: [REDACTED] Dr., Morgan Hill, CA 95037
3. Contact Person Name: Delia Gomez
[REDACTED]

E. Recognition of Sponsorship

The City of Morgan Hill shall recognize the City as a sponsor in all related communications and onsite materials (as appropriate for the level of funding awarded). A copy of the City of Morgan Hill logo will be provided upon request. Yes

F. Other Required Documents

The Applicant must submit with this application proof of its current standing as a nonprofit organization. Applications that do not provide the required documentation at the time of submission will be considered incomplete and may not be selected to receive funding. Yes

Is your organization a nonprofit organization currently recognized by the IRS? Yes ☒ No ☐

Page 3 of 4

G. Reporting Requirements and Acknowledgement

The Applicant agrees to provide a report to City staff within 30 days following the conclusion of the funded activity. The Applicant must submit a report to the City including pertinent information related to the activity. For ongoing activities, an annual report must be submitted by July 30 for the prior Fiscal Year. The report must include a record of the use of City funds and statistics and information that provides details on the activity's impact to the community. This report must also include a narrative summary of the activity as well as attendance numbers, and how awarded funding was used. Yes

CITY OF MORGAN HILL

CITY COUNCIL POLICIES AND PROCEDURES

CP-21-02

SUBJECT: CITY COUNCIL FUNDING REQUESTS

EFFECTIVE DATE: NOVEMBER 3, 2021

REVISED DATE: NA

ORIGINATING DEPARTMENT: COMMUNITY SERVICES DEPARTMENT

Purpose

The purpose of this policy is to establish a process for community organizations to request funding to support fee waivers, event sponsorship, and other funding requests from the City Council. The policy is intended to allow the City Council to fully evaluate all funding requests at one time along with budget appropriation.

Policy

1. Applicant Criteria
 - a. The organization requesting funding must be a nonprofit.
 - b. The program, event, or activity provides a direct benefit to the Morgan Hill community.
 - c. Programs in alignment with the City Council's Goals and Priorities shall be given priority. City Council priorities are established by the City Council in January of each year.
 - d. Each organization must submit an inclusivity statement describing how the organization and/or the proposed activity is inclusive of the entire community.
 - e. Existing programs and events may be given priority.
2. Application Availability and Deadline
 - a. Applications for the next Fiscal Year (July-June) will be available on the City's website annually in February.
 - b. Completed applications will be due annually in March.
3. Review and Approval Process
 - a. Applications will be reviewed by the City staff.
 - b. Funding applications and details will be included annually in the Budget Development or Mid-Cycle Budget Review process.
 - c. The City Manager will make recommendations on funding to the City Council based on established Council priorities and funding constraints.
 - d. The City Council shall award and include final funding within the Budget.
4. Reporting Requirements

- a. Within thirty days following the conclusion of the funded activity, the organization must submit a report to the City reporting out pertinent information related to the activity. For ongoing activities, an annual report must be submitted by July 30 for the prior fiscal year.
 - b. The report shall include a record of the use of City funds and statistics and information that provides details on the activity's impact to the community.
5. Late Requests
 - a. Requests received after the deadline shall not be accepted by City staff.
6. Council Member Initiated Event and Fee Waiver Requests
 - a. A member of the City Council may request a fee waiver or funding be provided for an event by applying with the above application process by the March deadline.
 - b. All Council Member initiated requests occurring after the March deadline must be provided to the City Manager 90 days in advance of the event to allow sufficient time to bring to City Council for approval.
 - c. The City Staff shall prepare a report for the City Council for approval of any Council Member initiated requests.

This policy shall remain in effect until modified by the City Council.

APPROVED:

DocuSigned by:

02EAE5B057884E7

RICH CONSTANTINE, MAYOR

From: [Yvonne Martinez Beltran](#)
To: [Christina Turner](#)
Cc: [Shane Palsgrove](#); [Donald Larkin](#); [Edith Ramirez](#)
Subject: Written Request for Future Agenda Item: Festival Safety, Fencing, etc
Date: Wednesday, September 27, 2023 2:38:30 PM
Importance: High

5/3/2023 Martinez Beltran requested discussion on festival safety and fencing

In July 2019, a mass shooting happened at the Gilroy Garlic Festival which continues to impact our community. We've continued to see gun violence occurring throughout the nation, including the 2022 Uvalde, Texas elementary shooting. Then in March of 2020, just before the spring and summer seasons, we experienced a complete shelter in place shut down, halting any and all community gathering, events and festivals nationwide for public health and safety concerns due to Covid-19.

Now that the public health situation allows us to convene again in the community, many of those community events have been trying to return. However, with public safety concerns for gun violence or threats we have experienced many festivals and events cancelled due to new security requirements, costs or accommodations.

Therefore, I request we have a discussion on festival safety, fencing, requirements, etc so that the City, Council and Public may come to a clear understanding of what is allowed, required, and what the process is to gain approval for festivals and events in Morgan Hill. In Community,

Yvonne Martínez Beltrán
Councilwoman
City of Morgan Hill



Memorandum

Date: November 17, 2023

To: City Council

From: Christina Turner, City Manager

Subject: Special Event Permit Process – Security Requirements and Information

Special events occur throughout the year in Morgan Hill. Events occurring on public property within the City with attendance of more than 50 people, alcohol served or sold, amplified music, and or a jump house or other entertainment attraction, require a special event permit. All permits are reviewed by the City Departments that are impacted. The Police and Fire Departments provide the review and impose requirements related to security and fencing.

The special event permit process begins with the submission of a completed application and threat assessment form. These documents are available at the following link:

- <https://www.morganhill.ca.gov/DocumentCenter/View/474/Special-Event-Application>

These documents ask questions about the planned event including the event date, location, contact, anticipated attendance, road closures, security and EMS, City services requested, and more to aid in the permitting review process. In particular, the threat assessment form collects information from event organizers that is used specifically by public safety to plan for the events and impose requirements for events.

Along with the application, supportive documentation is required such as insurance, event maps, traffic control plans, and copies of notifications.

Applications are required to be submitted 4 to 6 months in advance. Events with 50-2,500 anticipated attendees must submit their application packet 4 months in advance. For events with an anticipated attendance of over 2,500, applications are due 6 months in advance.

Once the completed application is submitted, the application, threat assessment, maps/traffic control plans, and other submitted documentation is sent to various departments within the City for review. Review is done by the Fire Department, Morgan Hill Police Department, Engineering Division, Maintenance Division, and, depending upon location, the Recreation Division. Each department provides requirements based on the information included in the event permit application and supportive documentation.

The Morgan Hill Police and Fire Departments specifically provide comments and requirements related to the safety and security of the event. It is important to note that no two events are the same. Every event is different and with the differences, there are different threats and risks, which result in specific requirements being issued for each event. The Police and Fire Departments utilize best practices to develop the requirements and plan for the events. It is also important to note that no two event organizers plan in the same manner. Some event organizers are strong planners that develop strong safety and security measures on their own, while others are inexperienced and struggle to develop appropriate plans. Ultimately, the security and or fencing requirements depend upon numerous event attributes, which does not allow for a standard one size fits all security and safety plan for all events.

These requirements established by Public Safety and other Departments are turned in to the Community Services Supervisor that works on the administration of the permitting process. These requirements are then communicated to the event organizer and included in the final event permit documentation. Should an applicant disagree with event requirements, meetings with Departments are scheduled and those issues are discussed. It is our goal to assist event organizers in planning safe and successful events that create a minimal impact on the community and residents surrounding the events.

From: [Hilary Holeman](#)
To: [Hilary Holeman](#)
Subject: FW: 11/15 Agenda and requested items
Date: Friday, November 17, 2023 4:42:20 PM

From: Yvonne Martinez Beltran <yvonne.martinezbeltran@morganhill.ca.gov>
Sent: Thursday, November 9, 2023 11:18 PM
To: Christina Turner <Christina.Turner@morganhill.ca.gov>
Subject: 11/15 Agenda and requested items

Hello,

I also asked in September to have a conversation to develop policy on festivals and most importantly update the Economic Blueprint and Economic development strategy. When will we see these given spring festivals need to plan now and economic development decisions impacted by the blueprint will be coming? I would hope since it was requested sometime ago as well as again at our mid year goal setting to review the Economic Blueprint that this will happen before any decisions are made.

I was surprised to find the auto dealer overlay (a revised attempt to convert instead of 100% to 80% of the site's zoning to auto dealership) was presented to the Planning Commission after the Council did not vote in favor of the initial plan and before reviewing the Economic Blueprint. I also understand the planning commission had considerable concerns and it only passed so that it could be redone. I think updating our Economic Blue Print would help clarify the strategy we are deploying as well as the focus of City efforts and resources, as well as the time of everyone else involved.

I value your leadership, work and time and this information would be very helpful as well as if I could anticipate these conversations much sooner than two weeks out to ensure I'm able to research the topics.

Thank you.

In Community,

Yvonne Martínez Beltrán (pronouns: she/her/hers)
Councilwoman
City of Morgan Hill
17575 Peak Avenue, Morgan Hill, CA 95037

yvonne.martinezbeltran@morganhill.ca.gov
morganhill.ca.gov | [facebook](#) | [twitter](#)

From: [Christina Turner](#)
To: [Hilary Holeman](#); [Edith Ramirez](#); [Donald Larkin](#); [Jennifer Carman](#)
Subject: FW: Future Agenda Item Request 11/15
Date: Monday, November 20, 2023 12:00:48 PM

From: Gino Borgioli <Gino.Borgioli@morganhill.ca.gov>
Sent: Friday, November 17, 2023 8:03 PM
To: Christina Turner <Christina.Turner@morganhill.ca.gov>
Subject: Re: Future Agenda Item Request 11/15

Thank you Christina, I was not considering residential at all because it is not a subject on concern. What is a subject of concern and discussion is the empty location on the corner of Monterey and Main of the old El Toro . I get consistent questions and emails on this location asking why is it vacant on a long basis. Sometimes businesses have turnovers but owners usually replace businesses with other occupants in a relatively short period of time.

Given that, I reached out to surrounding communities especially to the north and many cities have specific ordinances supporting the downtown area involving limitations of businesses to un-occupancy of a storefront in a business district to a maximum of 6 months without being fined because of an ordinance.

In our case relative to el toro, it is truly a sore point to the entrance of MH down town this there should be an ordinance indicating a occupancy within a 6 month time period following in-occupancy. Every city has different ways to issue fines so I leave the issue of fines to the experts.

The bottom line is empty store fronts in the downtown areas are detrimental to the overall impact of attracting families and people to the downtown areas.

A proposal based on the above go issue for for non occupancy is an approach to benefit businesses and residents in the downtown areas.

A discussion on this subject would be most beneficial.

Regards,

Gino Borgioli
408-981-2977
Gino.borgioli@morganhill.ca.gov

From: [D. Muirhead](#)
To: [CC Public Comment](#)
Subject: [EXTERNAL] comment Morgan Hill City Council November 15 #16 future agenda items 1,2,5
Date: Monday, November 13, 2023 9:37:40 PM

Dear Morgan Hill City Council,

A comment for your meeting November 15 2023

Item #16. PROPOSED FUTURE COUNCIL INITIATED AGENDA ITEMS

1. provide more lead time for posting City Council agendas;
2. discuss Agricultural Mitigation Policy Mitigation ratio;
5. discuss options for providing public comment and transparency of remote meeting participants.

1. provide more lead time for posting City Council agendas

The Administration should stop using the Brown Act minimum posting of 3 days as a ceiling. Note that the staff report mis-states this as "creating a policy to post agendas with a designated amount of lead time *outside* of the Brown Act requirement". Ideally there would be advance notice of proposed agenda items (City Manager) plus enough time for the actual meeting agenda to get a Public Records Request processed. This is not possible with the current packet dump on the Friday before the meeting. And note just how many times the following Monday is a holiday so no access to staff for clarifications nor forwarding received comments to Council Members and Staff for consideration.

The Water District posts the first full packet 10 days in advance and the final version 3 days in advance with notations for items which have been modified.

The County and VTA use agenda notifications to announce the addition of supplements as they become available. Note the the City Clerk did this for Council meetings for a few months several years ago.

At the risk of aggravating certain people, I request that the Council act as bosses rather than cheerleaders and direct the Administration to give Council Members and the Public a less-constrained amount of time to read, research, reflect, and respond to agenda items.

2. discuss Agricultural Mitigation Policy Mitigation ratio;

While our urban forest will be an important component of mitigating our warming climate, I am strongly opposed to diminishing our limited agricultural mitigation abilities by diverting them to serve City trees.

The preferred model for supporting agricultural lands in South County is best modeled after the Habitat Agency approach, substituting "agriculture" in place of "conservation et al.": The mandate for land acquisition is intended to create a Reserve System characterized by large contiguous land holdings that are more resilient for habitat and species

conservation. To meet this intent, the Habitat Agency focuses effort on purchasing properties that are adjacent to existing open space lands and wildlife corridors, and on collaborating with agency and non-profit partners to enroll new lands.

5. discuss options for providing public comment and transparency of remote meeting participants.

The only details on the change outlawing remote comments (made by the Administration and not the City Council) appeared in the San Jose Mercury News on October 20. The 411 only said "City decided".

I don't accept that vile comments create a "hostile work environment" that automatically trumps the public's right to participate in the discussion.

The City has bragged about the increased participation due to remote access, but now claims public comment can only be allowed in person or in writing.

Regardless of the outcome, this decision rightly belongs to our elected officials and not the Administration.

Thank you for your consideration, Doug Muirhead, Morgan Hill

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From: Christina Turner

To: Michelle Bigelow

Subject: Wednesday, November 15, 2023 City Council Meeting Questions

Supplement for Item 16 - PROVIDE DIRECTION TO STAFF ON PROPOSED FUTURE COUNCIL INITIATED AGENDA ITEMS

Date: Monday, November 13, 2023

Staff Report: A Council Member has requested City Council meeting agendas be posted with more lead time in order to allow more time to prepare and inform the community.

Question: Currently we are exceeding the requirement of the Brown Act by more than 24hrs. What issues can arise relative to changes in the agenda items whereby the staff has to alter or change the agenda item after early release of the agenda item?

Response: If changes to the agenda or staff reports were required after the agenda is published, staff would supplement the staff report changes or amend the agenda as needed.

Staff Report: Attachment 2: City Council Policy 97-01 – Rules for the Conduct of City Council Meetings, Placement of Items on the Agenda, and Matters to be Reconsidered.

Section 8. Decorum

8.1 Council Members: Members of the City Council value and recognize the importance of the trust invested to them by the public to accomplish the business of the City. Council Members shall accord the utmost courtesy to each other, to City employees, and to the public appearing before the City Council.

Question: This should be part of the ethics of an elected official relative to conduct. Where is the ethics policy located?

Response: The ethics policy is [City Council Policy CP 05-01](#) which is separate from City Council Policy 97-01.

Staff Report: Attachment 3: Request Agendas be posted with more time and not before weekend

Over the past 5 years, there have been numerous requests from the public regarding our agendas at meetings, workshops and public comment and new Council Members requesting the Council Meeting Agendas be posted with more time before Council Meetings and not before the weekend.

Question: Precisely how many requests of this nature have requested more time and by whom...in addition, the city is not only complying with the Brown Act but is far exceeding the requirement by more than 24hrs. So, what is the real issue, is it the one or two people wishing this or 50% or more?

Response: Specifics on this statement would have to come from the Council Member requesting this item.

City staff is aware of one community member requesting the agenda be published sooner on several occasions.

Staff Report: Attachment 4: Request for Future Agenda item to revisit Ag Mitigation policy 18.152.050 – Mitigation ratio.

This could be a City or downtown orchard paying tribute to our agricultural past while also serving to further our city beautification and uniqueness for local residents and visitors to enjoy, while restoring some of the tree canopy Morgan Hill has lost.

Question: Precisely what tree canopy's have been lost?

Response: Specifics on this statement would have to come from the Council Member requesting this item.

City staff's response is that in most cases any ag land conversion would not result in much tree canopy lost. Orchards aren't tree canopy for an urban area. Staff can research how many development permits removed ag land and removed trees, should the City Council decide for this item to return to City Council for a formal discussion.

CITY COUNCIL STAFF REPORT

MEETING DATE: December 6, 2023

PREPARED BY:

Dat Nguyen, Finance Director

APPROVED BY: City Manager

INTRODUCE ORDINANCE AMENDING SECTIONS 2.04.020 SALARY OF COUNCIL MEMBERS AND 2.04.030 SALARY OF THE MAYOR OF THE CHAPTER 2.04 CITY COUNCIL OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL

RECOMMENDATION(S)

1. Open/close public hearing;
2. Waive first and second reading of the Ordinance; and
3. Introduce Ordinance by title.

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Fostering a Positive Organizational Culture

Preserving and Cultivating Public Trust

2022-2023 Strategic Priorities

Fiscal Sustainability

Community Outreach, Engagement, and Messaging

REPORT NARRATIVE:

On June 29, 2023, Governor Gavin Newsom signed Senate Bill 329 (SB 329) into law, which amends Section 36516 of the Government Code, allowing for the first city council member pay cap increases in nearly four decades. SB 329 increases the maximum amounts of salary that can be approved by city ordinance, based on the population of the city. For cities with populations over 35,000 up to and including 50,000, the salary limit for councilmembers is \$1,275 per month. The salary limit may be increased from the 2024 cap in an amount not exceeding the greater of either 5% for each calendar year from the operative date of the last adjustment of the salary or an amount equal to inflation since January 1, 2024, based on the California Consumer Price Index (not to exceed 10% per calendar year).

SB 329 does not set a maximum salary for the mayor or treasurer. Staff is proposing that they receive a salary increase at the same percentage as the City Council or

\$3,397 per month for the mayor and \$815 per month for the treasurer, respectively.

While SB 329 goes into effect on January 1, 2024, it is important to note that pursuant to Government Code section 36516.5, any council salary increase may take effect only when at least one member of the council commences a new term.

COMMUNITY ENGAGEMENT:

Inform

A 10-day public hearing notice for the December 6, 2023 City Council meeting was published on Friday, November 24, 2023 in the edition of the Morgan Hill Times.

ALTERNATIVE ACTIONS:

The Council could choose not to adjust the Councilmembers, Mayor, and or City Treasurer's salary or adjust a different amount.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On June 21, 2006, the City Council adopted Ordinance 1780 New Series, setting the salary of Council Members at \$313/month and the salary of the Mayor at \$834/month.

FISCAL AND RESOURCE IMPACT:

The fiscal impact of the proposed salary adjustment is approximately \$85,000/year to the General Fund.

CEQA (California Environmental Quality Act):

Not a Project

Organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment.

ORDINANCE NO. xxxx, NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING SECTIONS 2.04.020 ("SALARY OF COUNCIL MEMBERS") AND 2.04.030 ("SALARY OF THE MAYOR") OF TITLE 2 ("ADMINISTRATION AND PERSONNEL), CHAPTER 4 ("CITY COUNCIL), OF THE MORGAN HILL MUNICIPAL CODE TO ADJUST THE SALARIES OF COUNCIL MEMBERS AND THE MAYOR

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

Section 1. Section 2.04.020 of Chapter 4 of Title 2 of the Municipal Code is amended to read as follows:

"2.04.020--Salary of council members.

Pursuant to the provisions of Section 36516 of the Government Code, each of the members of the city council shall receive a monthly salary ~~of three hundred dollars thirteen dollars payable one thousand-two hundred seventy-five dollars (\$1,275)~~ at the same intervals as other city employees are paid. ~~This amount was calculated by first taking the existing monthly city council member salary of three hundred dollars and increasing this amount by the two and one half percent "change in the consumer price index for urban wage earners and clerical workers" for the San Francisco-Oakland San Jose, California local area for the year ended December 2004, and then by increasing that product by the one and seven tenths percent "change in the consumer price index for urban wage earners and clerical workers" for the San Francisco-Oakland San Jose, California local area for the year ended December 2005.~~

Pursuant to Section 36516.5 of the Government Code, this section shall take effect whenever one or more members of the city council begins a new term of office, after the adoption of the ordinance codified in this section.

Section 2. Section 2.04.030 of Chapter 2 of Title I of the Municipal Code is amended to read as follows:

2.04.030--Salary of the mayor.

Pursuant to Section 36516.1 of the Government Code, which permits a mayor elected pursuant to Sections 34900 to 34904, inclusive, of the Government Code to be provided with compensation in addition to that which he or she receives as a council member, the mayor of the city shall receive ~~an additional monthly salary of two thousand-one hundred twenty-two dollars (\$2,122) monthly salary of five hundred twenty-one dollars payable at the same intervals as other city employees are paid. This amount was calculated by taking the existing monthly incremental mayoral salary of five hundred dollars and increasing this amount by the two and one half percent "change in the consumer price index for urban wage earners and clerical workers" for the year ended December 2004, and then by increasing that product by the one and seven tenths percent "change in the consumer price index for urban wage earners and clerical workers" for the year ended December 2005. This salary is to be paid in addition to the amount specified in Section~~

~~2.04.020 (Salary of council members).~~

Pursuant to Section 36516.5 of the Government Code, this section shall take effect whenever one or more members of the city council begins a new term of office, after the adoption of the ordinance codified in this section.

Section 2. Severability. Should any provision of this ordinance be deemed unconstitutional or unenforceable by a court of competent jurisdiction, such provision shall be severed from the ordinance, and such severance shall not affect the remainder of the ordinance.

Section 3. Effective Date; Posting. This ordinance shall become effective on the 31st day after adoption. The City Clerk is hereby directed to publish this Ordinance or a summary thereof pursuant to Government Code Section 36933.

THE FOREGOING ORDINANCE WAS INTRODUCED AT A MEETING OF THE CITY COUNCIL HELD ON THE _____ DAY OF _____, 20____, AND WAS FINALLY ADOPTED AT A MEETING OF THE CITY COUNCIL HELD ON THE ____ DAY OF _____, 2023 AND SAID ORDINANCE WAS DULY PASSES 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 _____ day of _____ 2023.

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

DATE: _____

MICHELLE BIGELOW, City Clerk