



Regular Meeting Agenda
City Council

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

Wednesday, March 6, 2024 6:00 PM

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

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

MEETING PARTICIPATION AND PUBLIC COMMENT

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

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

Public comment may only be provided in the following ways:

- In-person at the City Council Meeting;
- In writing
 - 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. Please be advised that communications directed to the City Council are public records and are subject to disclosure pursuant to the California Public Records Act and Brown Act unless exempt from disclosure under the applicable law. Communications will NOT be edited for redactions and will be printed/posted as submitted.

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.

CALL TO ORDER

ROLL CALL ATTENDANCE

DECLARATION OF POSTING AGENDA

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

PRESENTATIONS

YAC Presentation

League of California Cities, California Business Roundtable (CBRT) measure

RECOGNITIONS

Recognizing the 2023 STEM winner

PROCLAMATIONS

Proclaiming March 31, 2024 as Cesar Chavez Day

Proclaiming the month of March 2024 as Women's History Month

Proclaiming the month of March 2024 as Youth Arts Month

CITY COUNCIL REPORTS

Council Member Martinez Beltran

CITY MANAGER'S REPORT

CITY ATTORNEY'S REPORT

OTHER REPORTS

PUBLIC COMMENT

This opportunity for public comment is for items that are not on the agenda. If you would like to make comments on an item that is on the agenda, please wait until we get to that item to offer your comments. Members of the public are entitled to address the City Council concerning any item within the Morgan Hill City Council's subject matter jurisdiction. Public comments are limited to no more than three minutes. Except for certain specific exceptions, the City Council is prohibited from discussing or taking action on any item not appearing on the posted agenda. Public comment is intended for comments. Questions posed during public comment are not generally answered. If you have questions, please send them to the City Clerk at ccpubliccomment@morganhill.ca.gov to receive a response. (See additional noticing at the end of this agenda)

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. **APPROVE THE FEBRUARY 2, 2024 AND FEBRUARY 3, 2024 ANNUAL GOAL SETTING WORKSHOP MINUTES AND THE FEBRUARY 21, 2024 CITY COUNCIL MEETING MINUTES**

Recommendation:

Approve minutes.

2. **AUTHORIZE THE CITY MANAGER TO EXECUTE A CHANGE ORDER TO EDWARD R. BACON COMPANY IN THE AMOUNT OF \$156,661 INCLUDING 10% CONTINGENCY FOR THE PURCHASE AND INSTALLATION OF REPLACEMENT GENERATORS AT THE CITY FIRE STATIONS**

Recommendation:

Authorize the City Manager to execute a change order to Edward R. Bacon, in the amount of \$156,661, for the purchase and installation of two generators at the Morgan Hill Fire Stations.

3. **RECEIVE MONTHLY BUDGET UPDATE AND JANUARY 2024 FINANCIAL AND INVESTMENT REPORTS**

Recommendation:

Accept and file report.

4. **RESCIND AWARD OF COMMUNITY PARK DG PATHWAYS PROJECT AND AWARD TO NEXT LOWEST BIDDER**

Recommendation:

1. Rescind Award of Decomposed Granite (DG) Pathways Project to Angkor Engineering, Inc. in the amount of \$51,825 and contingency funds not to exceed \$25,913; and
2. Award DG Pathways Project to Always Paving, Inc. in the amount of \$56,100 and contingency funds not to exceed \$28,050; and
3. Authorize the City Manager to execute and administer that certain construction contract with Always Paving, Inc.

PUBLIC HEARINGS

5. **INTRODUCE ORDINANCE (ZA2023-0001) AMENDING VARIOUS CODE PROVISIONS WITHIN TITLE 18 (ZONING) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL IMPLEMENTING THE CITY OF MORGAN HILL 2023-2031 HOUSING ELEMENT; UPDATES TO ELECTRIC VEHICLE CHARGING PROVISIONS TO PROVIDE CONSISTENCY WITH CHAPTER 15.62 (ELECTRIC VEHICLE CHARGING INFRASTRUCTURE); UPDATES TO PARKING PROVISIONS TO COMPLY WITH ASSEMBLY BILL 894; AND**

IMPLEMENTING MINOR AMENDMENTS DUE TO CLERICAL ERRORS AND INCONSISTENCIES

Recommendation:

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

OTHER BUSINESS

6. **ADOPT AN AMENDED RESOLUTION FOR AN EXCEPTION TO THE 180-DAY WAITING PERIOD TO HIRE A RETIRED ANNUITANT, ANDREW CRABTREE, TO SERVE AS A TEMPORARY EXTRA HELP EMPLOYEE (GOVERNMENT CODE SECTIONS 7522.56 AND 21224) IN THE DEVELOPMENT SERVICES DEPARTMENT**

Recommendation:

Adopt an amended Resolution for an exception to the 180-day waiting period to appoint Andrew Crabtree, a retired annuitant, to serve as temporary extra help (Government Code Sections 7522.56 and 21224).

7. **ADOPT RESOLUTION OF INTENTION AND INTRODUCTION OF ORDINANCE TO AMEND THE CONTRACT BETWEEN THE BOARD OF ADMINISTRATION OF THE CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM (CALPERS) AND THE CITY OF MORGAN HILL TO IMPLEMENT MILITARY SERVICE CREDIT AS PUBLIC SERVICE IN ACCORDANCE WITH SECTION 21024 OF THE CALIFORNIA GOVERNMENT CODE**

Recommendation:

1. Adopt Resolution of Intention of the City Council of the City of Morgan Hill stating its intent to amend the contract between the California Public Employees' Retirement System (CalPERS) and the City of Morgan Hill in order to implement Military Service Credit as Public Service in accordance with California Government Code section 21024;
2. Waive the first and second reading of the ordinance; and
3. Introduce ordinance by title

8. **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 a resolution for sustainable peace to end the war and the loss of life in Israel and Palestine; and
2. Consider continuing the discussion on remote public comments.

FUTURE COUNCIL INITIATED AGENDA ITEMS

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

CLOSED SESSION

Conference with Legal Counsel – Existing Litigation (§ 54956.9)

Serna v. City of Morgan Hill (Santa Clara County Case No. 23CV409430)

OPPORTUNITY FOR PUBLIC COMMENT

ADJOURNMENT

NOTICE

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

PUBLIC COMMENT

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

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

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

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

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

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

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.

Strategic Priorities 2024-2025

- Fiscal Sustainability
- Affordable Housing and Homelessness
- Community Engagement
- Economic Development and Tourism
- Transportation
- Healthy Community

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

March 6, 2024



LEAGUE OF
**CALIFORNIA
CITIES**

Strengthening California Cities
through Advocacy and Education

Presentation to City of Morgan Hill

Seth Miller
Regional Public Affairs Manager,
Peninsula Division

Cal Cities Background

- Since 1898, Cal Cities has fought to protect and enhance local control.
- Over the past decade, Cal Cities has secured hundreds of significant victories for its members.
- Cal Cities harnesses the voice and collective power of its 476 member cities, representing thousands of city officials and the millions of California residents they serve.

Cal Cities is Membership Driven

- Cal Cities' policy positions are entirely driven by members – city officials.
- Cal Cities recognizes that listening and learning is essential to ensure representation of the diverse interests of our membership.
- Cal Cities remains steadfast to ensure state policy approaches to housing and other matters protect local control.
- We work together.

1. Safeguard local revenues and bolster local economic development.
2. Strengthen climate change resiliency and disaster preparedness.
3. Improve public safety in California communities.
4. Expand investments to prevent and reduce homelessness and increase the supply of affordable housing.

Cal Cities Legislative Activities



Cal Cities works to protect cities' interests in the Legislature, ballot box, and courts.

In 2024, there will be 3300 bills proposed by legislators.

Legislative Report

December 2023



November 2024 Election – 11 measures as of Feb 6. 2024

- “Taxpayer Protection Act”
- ACA 13: vote threshold
- ACA 1: 55% Local Infrastructure Measures
- Expands Rental Control
- Marriage Equality: Repeal of Prop 8
- Low-Rent Housing: Repeal of Local Approval Requirement
- Pandemic Funding (Higher Income Tax)
- Employment Lawsuits (PAGA) Reform
- \$18 Minimum Wage
- Referendum on Oil Drilling Limitations
- Fast Food Minimum Wage

Taxpayer Protection Act

- **Proponent:** California Business Roundtable (CBRT)
 - Comprised of major corporations including developers, oil, insurance, pharmaceutical companies and more.

Fiscal Impact: Cal Cities Analysis

- Over \$20 billion of local government revenues over 10 years at risk.
- \$2 billion each year from fees and charges adopted after January 1, 2022, at risk.
- Hundreds of millions of dollars of annual revenues from tax and bond measures approved by voters after January 1, 2022, cancelled.



Threats to Local Government

- Taxes and fees adopted after January 1, 2022, that do not comply with the new rules are void.
- More difficult for voters to approve funding for local services.
- All future taxes must contain a sunset.
 - Measures passed after January 1, 2022 without sunset will be repealed and brought to voters in 2025.
 - General tax measures will also require the phrase “for general government use” on the ballot.

Threats to Local Government

- All fee increases **need to be approved by two-thirds** of local legislative body.
- Fees and charges **may not exceed the “actual cost”** of providing service.
 - “Actual cost” defined as the “minimum amount necessary”
- Fees and charges for corporations to use or lease government property can no longer be market-based.

Upends State Tax and Fee Authority

- All state taxes require majority voter approval
- Requires two-thirds legislative approval of new state fees
- Changes legal standards for proving a state charge is a fee and not a tax

Threatens Local Control

- Rate schedule revisions and regular adjustments to city fees and charges **subject to higher passage thresholds and potential voter approval.**

Examples of Impacted Fees and Charges

- Property development application processing fees
- Plan review
- Gas and electricity service charges
- Parks and Recreation classes and lessons
- Child care services
- Jail booking fees
- Copies of police reports
- Emergency services fee
- Building permit fees
- Sales tax audits
- Abatement of weeds on private property
- Conducting inspections of rental housing

- Fire inspections
- Fines and penalties for administrative Code enforcement
- Charges for specific health care services
- Lease of city museum to non-profit organization
- Use of Council Chambers by private groups
- Use/lease of city-owned convention center
- Use/lease of city-owned park or other recreation area
- Charges imposed as a condition of property development

Immediate Impact to Morgan Hill

- Fees adopted by the Council after January 1, 2022 may need to be revisited:
 - Planning and Engineering Fees – January 19, 2022
 - CCW License and Business Renewal Fees – April 5, 2023

Groups Opposed to Measure

- League of California Cities
- Alliance for a Better California
- California Alliance for Jobs
- Rebuild SoCal Partnership
- California State Association of Counties
- California Special Districts Association
- California Contract Cities Association
- **And** 250+ individual cities, counties and districts



Groups Supporting the Measure

PAID POLITICAL ADVERTISEMENT

AN OPEN LETTER TO THE CA BUSINESS ROUNDTABLE



As the board members, leaders and funders of the organization, you are responsible for the so-called "Taxpayer Protection and Government Accountability Act," a ballot measure on the November 5, 2024 California ballot.

YOUR MEASURE will have a catastrophic impact on our state's public safety, democracy, and economic future.

YOUR MEASURE threatens the safety of our roads, freeways, and bridges by permanently eliminating billions of dollars in infrastructure funding.

YOUR MEASURE retroactively invalidates more than one hundred ballot measures passed by voters and takes away voters' rights to set priorities for their tax dollars.

YOUR MEASURE also overturns the funding in dozens of laws, including important revenues from the Plastic Pollution Prevention and Packaging Producer Responsibility Act.

YOUR MEASURE will exacerbate government deficits and return California to budget gridlock and unbalanced budgets, and restricts California's ability to rapidly respond and rebuild after a natural disaster, such as an earthquake, wildfire, or flood.

BOTTOM LINE: Your measure is dangerous, an overreach and irresponsible.

WE CALL ON YOU TO IMMEDIATELY REMOVE YOUR COMPANY'S SUPPORT FROM THIS BALLOT MEASURE. CALIFORNIA DESERVES NOTHING LESS.

Sincerely,

Gavin Newsom
Governor
State of California

Carolyn M. Coleman
Executive Director and CEO
League of California Cities

Tia Orr
Executive Director
SEIU California

Mike McGuire
President pro Tempore
California State Senate

Brian K. Rice
President
California Professional Firefighters

Dustin Corcoran
CEO
California Medical Association

Robert Rivas
Speaker
California State Assembly

David B. Goldberg
President
California Teachers Association

Jodi Hicks
President & CEO
Planned Parenthood Affiliates of California

www.taxpayerdeceptionact.com

*Paid for by Alliance for a Better California, sponsored by Working Families and Labor Organizations Committee's Top Funders
Northern California Regional Council of Carpenters
California Faculty Association
Service Employees International Union Local 1000*

Action Items

- City of Morgan Hill passed resolution in opposition
- Next up: Join the growing list of elected officials in opposition
- Educate constituents about measure
 - Advocate on personal, private, non-government time to associations and community groups



Upcoming Peninsula Division Events

- City Leaders Summit in Sacramento. April 17 – 19, 2024
- Division Event at Cisco in San Jose. May 22, 2024
- CitiPAC Event at TopGolf in San Jose. June 6, 2024
- Annual Conference in Long Beach, October 2024



THANK YOU

Seth Miller

Peninsula Division

smiller@calcities.org • (415) 595-8629



LEAGUE OF
**CALIFORNIA
CITIES**

Strengthening California Cities
through Advocacy and Education

 @calcities

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Annual Goal Setting Workshop

Minutes

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

Friday, February 2, 2024 9:00 AM
Saturday, February 3, 2024 9:00 AM

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

CALL TO ORDER

Mayor Turner called the City Council Goal Setting Workshop to order at 9:02 a.m.

ROLL CALL ATTENDANCE

City Clerk Michelle Bigelow called the roll.

PRESENT	Rene Spring, Gino Borgioli, Yvonne Martinez Beltran, Mark Turner
ABSENT	Marilyn Librers

DECLARATION OF POSTING AGENDA

City Clerk Michelle Bigelow declared the posting of the agenda.

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

PUBLIC COMMENT

Public comment opened at 9:03 a.m. There being no requests to speak, public comment closed.

GOAL SETTING WORKSHOP - FRIDAY, FEBRUARY 2, 2024 9:00 A.M.

CITY COUNCIL GOAL SETTING WORKSHOP

1. Review and discuss:
 - a. 2023 Accomplishments
 - b. Sustainable Morgan Hill
 - c. 2022-2023 Strategic Priorities Work Plan
 - d. Future Council Initiated Agenda Items
 - e. Remote Public Comments and Public Videos
 - f. Financial Update
 - g. Development Services Fund and Housing Laws
 - h. Youth Sports and Recreation Tourism
 - i. Economic Development

City Manager Christina Turner welcomed the Community to the City Council's Annual Goal Setting Workshop. She kicked the workshop off with an icebreaker activity and then showed a video of the City's accomplishments from 2023. The leadership team then shared a few of their department's accomplishments.

Public comment opened at 9:32 a.m. There being no requests to speak, public comment closed.

City Manager Christina Turner reviewed the City's Sustainable Morgan Hill Ongoing and Strategic Priorities, and 2022-2023 Strategic Priorities Work Plan and led the City Council in a discussion of them.

The Council reviewed and discussed the Future Council Initiated Agenda Items.

Public comment opened at 10:23 a.m. There being no requests to speak, public comment closed.

The meeting recessed at 10:24 a.m. and reconvened at 10:35 a.m.

The Council reviewed the vision statement and agreed that no changes were needed. They then reviewed and discussed the ongoing priorities. The discussion moved to the strategic priorities.

Public comment opened at 11:25 a.m. The following people were called to speak:
Nick Gaich
Doug Muirhead
There being no further requests to speak, public comment closed.

City Manager Christina Turner opened the conversation on Remote Public Comment and Public Video.

Public comment opened at 11:58 a.m. The following people were called to speak:
Sally Casas
Nick Gaich
There being no further requests to speak, public comment closed.

Council Member Yvonne Martinez Beltran asked for the remote public comment item to be added to a future meeting.

The meeting recessed to lunch at 12:11 p.m. and reconvened at 1:04 p.m.

Finance Director Dat Nguyen and City Manager Christina Turner provided a financial update.

Public comment opened at 2:05 p.m. The following people were called to speak:
Doug Muirhead
Joe Baranowski
There being no further requests to speak, public comment closed.

Development Services Director Jennifer Carman provided an update on the development services fund, development projects in Morgan Hill, and new housing laws.

Public comment opened at 2:36 p.m. The following person was called to speak:
Jim Sergi
There being no further requests to speak, public comment closed.

The meeting recessed at 2:39 p.m. and reconvened at 2:46 p.m.

Public comment opened at 3:03 p.m. The following person was called to speak:
Doug Muirhead
There being no further requests to speak, public comment closed.

Day 1 of the workshop adjourned at 3:03 p.m.

ADJOURNMENT TO SATURDAY, FEBRUARY 3, 2024 9:00 A.M.

GOAL SETTING WORKSHOP - SATURDAY, FEBRUARY 3, 2024 9:00 A.M.

CONTINUATION OF THE FEBRUARY 2, 2024, CITY COUNCIL GOAL SETTING WORKSHOP

The workshop reconvened at 9:00 a.m.

City Manager Christina Turner provided a recap of the 2024-2025 Sustainable Morgan Hill updates from day 1.

Public comment opened at 9:20 a.m. There being no requests to speak, public comment closed.

Public Services Director Chris Ghione provided a presentation on Youth Sports and Recreation Tourism.

Public comment opened at 10:06 a.m. The following people were called to speak:

Brian Sullivan

Nick Gaich

Krista Rupp

Joe Baranowski

Rocke Garcia

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

The meeting recessed at 10:27 a.m. and reconvened at 10:39 a.m.

Public comment opened at 10:40 a.m.

Joe Guerra was called to speak.

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

Economic Development Director Matt Mahood provided a presentation on the City's Economic Development Program.

Public comment opened at 11:34 a.m. The following people were called to speak:

Krista Rupp

Joe Baranowski

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

ADJOURNMENT

There being no further business, the meeting adjourned at 11:41 a.m.

Minutes Prepared by City Clerk Michelle Bigelow



City Council

Meeting Minutes

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

Wednesday, February 21, 2024 5:00 PM

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

SPECIAL/REGULAR MEETING

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

SPECIAL MEETING

5:00 p.m. Closed Session

CALL TO ORDER

Mayor Turner called the City Council meeting to order at 5:00 p.m.

ROLL CALL ATTENDANCE

City Clerk Michelle Bigelow called the roll.

PRESENT	Rene Spring, Gino Borgioli, Mark Turner, Marilyn Librers, Yvonne Martinez Beltran
ABSENT	None

Council Member Martinez Beltran arrived at 6:03 p.m.

DECLARATION OF POSTING AGENDA

City Clerk Michelle Bigelow declared the posting of the agenda.

CLOSED SESSION

City Attorney Donald Larkin announced the closed session item.

Conference with Legal Counsel – Anticipated Litigation

Significant exposure to litigation pursuant to § 54956.9(b): (1 Case)

OPPORTUNITY FOR PUBLIC COMMENT

Public comment opened at 5:01 p.m. There being no requests to speak, public comment closed.

ADJOURN TO CLOSED SESSION

The meeting adjourned to closed session at 5:01 p.m.

REGULAR MEETING

The regular meeting convened at 6:00 p.m.

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

PRESENTATIONS

YAC Presentation

Habitat Plan Amendment - Postponed to a future meeting

RECOGNITIONS

Recognizing the 2023 STEM winner - Postponed to a future meeting

PROCLAMATIONS

Proclaiming the month of February as Black History Month

Proclaiming February 7, 2024 as National Girls and Women in Sports Day

CITY COUNCIL REPORTS

Council Member Borgioli spoke about Llagas Creek through his neighborhood and how the work that has been done to aid in flood control is working well. Valley Water is looking to put a price increase in place, and the Board is looking at other solutions to address costs. Valley Water is also working diligently to aid in homing the unhoused that camp in the waterways. He provided an update on the Anderson Dam project and shared that it is on time. He spoke about the South County Youth Task Force and the work they are doing for our Community's at-risk youth.

CITY MANAGER'S REPORT

City Manager Christina Turner announced the Mayor's State of the City Address on Wednesday, March 13, 2024, at 6:30 p.m. at the Community Playhouse. She shared that the Hale Avenue extension is expected to open in March, weather permitting. She also shared that we have expanded some of our programs in adaptive recreation and that we are always looking for volunteers for the Magical Bridge Playground.

CITY ATTORNEY'S REPORT

City Attorney Don Larkin announced there was no reportable action from the closed session.

OTHER REPORTS

Council Member Martinez Beltran spoke about serving on the VTA Policy Advisory board, and she has been elected as Committee Chair for this year. She mentioned that she was also appointed by the Cities Association as an ABAG representative. She spent the last couple of days in Sacramento advocating for clean energy, energy reliability, and energy affordability.

PUBLIC COMMENT

Public comment opened at 6:18 p.m. The following people were called to speak:

Doug Muirhead
Noshaba Afzal
Deana H
Aamir Jamil
Musa Tariq
Dima Khoury
Sam Khoury
Naz Hussain
Ismail Khan
Ronda A
Issa
Aziz Baameur
Kathy Baameur
Karen Musa
Bishara Kakunda
Nuzi Alari
Bassam Jumaa
Naeem Afzal
Dina S
Eman Alhayyub
Kamila Kraba
Nadine
Omar
Donna

Zain Yahya
Hanan
Alie Saad
There being no further requests to speak, public comment closed.

Public Comment Supplement

ADOPTION OF AGENDA

MOTION:

Adopting the agenda as posted.

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

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

1. **ACCEPTANCE OF 2023 PAVEMENT REHABILITATION PROJECT IN THE AMOUNT OF \$4,009,627**

Recommendation:

1. Accept as complete the 2023 Pavement Rehabilitation Project;
2. Authorize the City Engineer to sign the Notice of Completion; and
3. Direct the City Clerk to file said Notice of Completion with the County Recorder's Office.

2. **ACCEPTANCE OF JACKSON OAKS WATER MAIN PROJECT IN THE AMOUNT OF \$642,338**

Recommendation:

1. Accept as complete the Jackson Oaks Water Main Project;
2. Authorize the City Engineer to sign the Notice of Completion; and
3. Direct the City Clerk to file said Notice of Completion with the County Recorder's Office.

3. **ACCEPT DONATION OF UP TO \$7,000 FOR TREES FOR IMPROVEMENTS AT COMMUNITY PARK FROM GOOGLE**

Recommendation:

Authorize the City Manager to accept a donation of trees valued up to \$7,000 for Community Park improvements.

4. **ADOPT RESOLUTION APPROVING A FUNDS TRANSFER AGREEMENT (FTA) WITH THE CALIFORNIA DEPARTMENT OF TRANSPORTION FOR GRADE SEPARATIONS AND DIRECT THE CITY MANAGER TO NEGOTIATE A CONSULTANT AGREEMENT WITH BIGGS CARDOSA ASSOCIATES, INC. FOR AN AMOUNT NOT TO EXCEED \$1 MILLION FOR THE COMPLETION OF DESIGN AND ENGINEERING WORK FOR GRADE SEPARATIONS FOR DUNNE AVENUE AND DOWNTOWN CALTRAIN STATION PEDESTRIAN CROSSING**

Recommendation:

1. Adopt resolution approving a Funds Transfer Agreement with California Department of Transportation to fund design and engineering work for grade separations for Dunne Avenue and for the Downtown Caltrain Station pedestrian crossing;
2. Designate the City Manager as the person authorized to execute Master Agreements, Program Supplemental Agreements, Fund Exchange Agreements and/or Fund Transfer Agreements, and any amendments thereto with the California Department of Transportation; and
3. Direct the City Manager to negotiate a consultant agreement with Biggs

Cardosa Associates, Inc. for an amount not to exceed \$1 million for the completion of design and engineering work for grade separations for Dunne Avenue and for the Downtown Caltrain Station pedestrian crossing.

5. **ADOPT RESOLUTION OF INTENT TO HOLD SPECIAL BALLOT PROCEEDING FOR SPARHAWK SUBAREA OF MORGAN HILL LANDSCAPE ASSESSMENT DISTRICT NUMBER 1**

Recommendation:

Adopt resolution declaring intent and authorizing special ballot proceeding required to increase the maximum assessment rate for the Sparhawk subarea of the City's Landscape Assessment District Number 1, effective Fiscal Year (FY) 2024-25.

6. **ADOPT UPDATES TO THE SUSTAINABLE MORGAN HILL DOCUMENT**

Recommendation:

Adopt updates to the Sustainable Morgan Hill document.

7. **APPROVE CONTRACT AMENDMENTS FOR CITY ON-CALL PLUMBING CONTRACTORS**

Recommendation:

1. Authorize the City Manager to execute a fourth amendment to the agreement with Burr Plumbing extending the term of the contract to June 30, 2025 and increasing the maximum compensation to \$307,625; and
2. Authorize the City Manager to execute a fourth amendment to the agreement with Century Commercial Service, Inc. extending the term of the contract to June 30, 2025.

8. **APPROVE PACIFIC GAS AND ELECTRIC COMPANY AGREEMENT TO PROVIDE ELECTRIC SERVICE TO THE BUTTERFIELD FIRE STATION PROJECT**

Recommendation:

1. Ratify approval of the Pacific Gas and Electric Company Agreement to provide electric service to the Butterfield Fire Station Project; and
2. Authorize the City Manager to administer and execute the Pacific Gas and Electric Company Agreement in the amount of \$161,921.

9. **APPROVE REVISIONS TO CITY COUNCIL POLICY CP 94-04, THE CITY'S INVESTMENT POLICY**

Recommendation:

Approve revisions to City Council Policy CP 94-04, the City's Investment Policy.

10. APPROVE THE JANUARY 17, 2024 CITY COUNCIL MEETING MINUTES

Recommendation:

Approve minutes.

11. AWARD THE POLICE DEPARTMENT EXPANSION PROJECT TO JAHN PLUMBING, INC. IN THE AMOUNT OF \$229,221 AND THE CONTINGENCY NOT TO EXCEED \$22,922

Recommendation:

1. Award the Police Department Expansion Project to Jahn Plumbing, Inc. in the amount of \$229,221; and authorize the expenditure of contingency funds not to exceed \$22,922; and
2. Authorize the City Manager to execute and administer that certain construction contract with Jahn Plumbing, Inc.

12. AWARD MADRONE CHANNEL TRAIL IMPROVEMENTS PHASE II PROJECT TO BEALS MARTIN AND ASSOCIATES, INC. IN THE AMOUNT OF \$497,327 AND A CONTINGENCY NOT TO EXCEED \$49,733, AND ADOPT RESOLUTION AMENDING THE FISCAL YEAR 2023-24 BUDGET TO RECOGNIZE \$335,000 AS GRANT REVENUE AND APPROPRIATE AN ADDITIONAL \$190,000 IN THE PARK IMPACT FUND (301) , FOR THE MADRONE CHANNEL TRAIL IMPROVEMENTS PHASE II PROJECT

Recommendation:

1. Adopt resolution amending the Fiscal Year 2023-24 Budget to recognize \$335,000 as grant revenue and appropriate an additional \$190,000 in the Park Impact Fund (301), for the Madrone Channel Trail Improvements Phase II Project;
2. Approve the Madrone Channel Trail Improvements Phase II Project Plans and Specifications;
3. Award contract to Beals Martin and Associates, Inc. for the Madrone Channel Trail Improvements Phase II Project in the amount of \$497,327;
4. Authorize expenditure of construction contingency funds not to exceed \$49,733; and
5. Authorize the City Manager to execute and administer the construction contract with Beals Martin and Associates, Inc.

13. RECEIVE ANNUAL REPORT ON 2023 CITY ENGINEER ACCEPTANCES OF

PUBLIC IMPROVEMENTS COMPLETED BY PRIVATE DEVELOPMENT PROJECTS

Recommendation:

Accept and file Annual Report on 2023 City Engineer acceptances of public improvements completed by private development projects.

PUBLIC HEARINGS

14. ADOPT RESOLUTION APPROVING COMMENCEMENT OF 2024 WEED ABATEMENT PROGRAM

Recommendation:

1. Open/Close public hearing; and
2. Adopt a resolution authorizing Santa Clara County to commence hazardous vegetation abatement activities.

The meeting recessed at 6:52 p.m. and reconvened at 6:59 p.m.

Public Services Director Chris Ghione provided the report.

The public hearing opened at 7:00 pm. There being no requests to speak, the public hearing closed.

MOTION:

Approving the recommended action.

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

OTHER BUSINESS

15. ADOPT RESOLUTIONS CALLING FOR A GENERAL MUNICIPAL ELECTION TO BE HELD ON TUESDAY, NOVEMBER 5, 2024; PLACING A MEASURE ON THE BALLOT TO ENACT A TWELVE CONSECUTIVE YEAR LIMIT ON COMBINED MAYORAL AND CITY COUNCIL SERVICE; PLACING A MEASURE ON THE BALLOT TO AMEND THE CURRENT TWO-YEAR

MAYORAL TERM TO A FOUR-YEAR TERM; AND PROVIDE DIRECTION REGARDING TERM LIMITS FOR CITY BOARDS AND COMMISSIONS.

Recommendation:

1. Adopt Resolution A calling for a General Municipal Election to be held on Tuesday, November 5, 2024, to elect a Mayor, one Council Member from District A, one Council Member from District C, and the City Treasurer;
2. Adopt Resolution B requesting the services of the Board of Supervisors of the County of Santa Clara and the Registrar of Voters Office - and the Consolidation of the Election;
3. Adopt Resolution C placing a measure on the ballot to enact a twelve consecutive year limit on combined Mayoral and City Council service;
4. Adopt Resolution D placing a measure on the ballot to amend the current two-year Mayoral Term to a four-year term; and
5. Provide direction regarding term limits for boards and commissions.

City Clerk Michelle Bigelow provided a report and presentation.

Public comment opened at 7:22 p.m. The following people were called to speak:

Brian Sullivan

Doug Muirhead

Joe Baranowski

Armando Benavides

Sally Casas

Kathy Chavez Napoli

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

SUBSTITUTE MOTION:

Approving staff recommended actions.

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

FUTURE COUNCIL INITIATED AGENDA ITEMS

Council Member Borgioli requested a discussion on disturbances in the Council Chamber. He also requested a policy for the Council not to take positions on foreign affairs.

Council Member Martinez Beltran requested a discussion on a resolution for sustainable peace to end the war and the loss of life in Israel and Palestine.

ADJOURNMENT

There being no further business, Mayor Turner adjourned the meeting at 8:15 p.m.

Minutes Prepared by:

Michelle Bigelow, City Clerk

CITY COUNCIL STAFF REPORT

MEETING DATE: March 6, 2024

PREPARED BY:

Chris Ghione, Public Services Director

APPROVED BY: City Manager

AUTHORIZE THE CITY MANAGER TO EXECUTE A CHANGE ORDER TO EDWARD R. BACON COMPANY IN THE AMOUNT OF \$156,661 INCLUDING 10% CONTINGENCY FOR THE PURCHASE AND INSTALLATION OF REPLACEMENT GENERATORS AT THE CITY FIRE STATIONS

RECOMMENDATION(S)

Authorize the City Manager to execute a change order to Edward R. Bacon, in the amount of \$156,661, for the purchase and installation of two generators at the Morgan Hill Fire Stations.

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Enhancing Public Safety

Maintaining and Enhancing Infrastructure

REPORT NARRATIVE:

On December 7, 2022 the City Council awarded a public works contract to Edward R. Bacon for \$315,000 for the installation of three generators at various utility locations in the City's water and wastewater system. Additionally, the City currently operates two fire stations which utilize backup generators to support the stations during power outages. Both existing backup generators are over 20 years old. It has recently been determined that both generators need very significant repairs and, due to their age, the parts for repair are not readily available.

The City currently has Edward R. Bacon under contract and is finalizing the installation of the utility generators (only one of the three generators is left to install). To expedite replacement of the Fire Station generators, City staff requested costs from Edward R. Bacon to install these generators. The replacement could be completed with a project change order of \$156,661. This cost includes replacement of the two generators, temporary rental generators, and adding a contingency to the project. The contingency for the project was inadvertently not included in the original contract. The pricing is highly competitive and in line with the pricing provided for the low proposal Edward R. Bacon provided for the utility generators. City staff are recommending moving forward and issuing the change order for Edward R. Bacon due to the ability to expedite the replacement and competitive pricing provided.

COMMUNITY ENGAGEMENT:

Not Applicable

Maintenance of fire stations to support public safety is an expected responsibility of the City.

ALTERNATIVE ACTIONS:

The City Council could alternatively not approve the change order and direct the staff to issue a public bid for the additional generators. This is not recommended as it would delay the installation for at least four months, require additional staff time, and not guarantee any lower pricing.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The City Council previously awarded a contract to Edward R. Bacon for the installation of utility system generators on December 7, 2022.

FISCAL AND RESOURCE IMPACT:

The funds for generator replacement at the Fire Station would be funded from the City's Facility Future Replacement Fund (741). The funds for the contingency would be split between Fund 741 and the Utility Capital Project Funds (653 and 643). There are available funds appropriated in all the noted funds.

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 existing lift and booster station facilities involving no expansion of existing use.



Contract Change Order

Contract Number: _____
Contract Effective Date: _____
Change Order Number: _____
Change Order Effective Date: _____

All defined terms used in this Change Order are subject to the definitions in the Contract General Conditions.

Project	
Project Title:	
Contractor/Firm:	

Summary of Change Order	
Reason for change(s):	
Description of change(s):	
Incorporates Change Order Request Number(s):	
Change in Contract Price, if any, based on payment method (check one): [See General Conditions Article 6]	☐ Unit Pricing ☐ Lump Sum ☐ Time and Materials \$ _____ Not to exceed \$ _____

Cost	Time
This Change Order will modify the Contract Price as follows (check one): ☐ No change to Contract Price ☐ Increase Contract Price by \$ _____ ☐ Decrease Contract Price by \$ _____ The Contract Price is now: \$ _____	This Change Order will modify the Contract Time as follows (check one): ☐ No change to Contract Time ☐ Increase Contract Time by ____ calendar days ☐ Decrease Contract Time by ____ calendar days The deadline for Final Completion is now: _____



Contract Number: _____
 Contract Effective Date: _____
 Change Order Number: _____
 Change Order Effective Date: _____

Change Order Reference Documents

[illegible]

CONTRACTOR CERTIFICATION: By signing below, Contractor agrees that:

- 1) Contractor will provide all labor, materials, equipment and services necessary to perform and timely complete the Work under this Change Order according to the Contract Documents and in an economic and efficient manner in the best interests of the City.
- 2) This Change Order constitutes full resolution, settlement, accord and satisfaction with respect to any and all pending or future Claims for modifications of Contract Price or extensions of Contract Time that were or may be asserted, or that could have been asserted, in connection with the Work covered by this Change Order.

FAILURE TO EXECUTE:

If Contractor fails to promptly execute this Change Order within 10 days after it has been submitted for Contractor's signature, the City may unilaterally issue this Change Order pursuant to Article 6 of the Contract General Conditions. Contractor may dispute the terms of a unilaterally-issued Change Order, in whole or in part, by submitting a Claim within 15 days after the Change Order has been submitted and according to the dispute resolution procedures set forth in Article 12 of the Contract General Conditions. Contractor's failure to submit a timely Claim under those procedures will be deemed unqualified acceptance of this Change Order as if it were duly executed by Contractor, and any and all Claims regarding this Change Order are deemed waived.

Submitted to Contractor for execution on _____ By: _____
Date *Name/Title*

Accepted by Contractor:		Approved by the City of Morgan Hill:	
By:		By:	
Name:		Name:	
Title:		Title:	
Date:		Date:	

Date of City Council approval (if required): _____, 20__

*Note: This Change Order requires City Council approval if the new Contract Price exceeds the total authorized funding for the Project (original contract award plus any approved contingency amount). *The City Manager must sign this Change Order if it increases the Contract Price by more than \$20,000 or if it reduces the Project contingency amount to less than 50% of the authorized amount.*

City Manager*

Date _____

CITY COUNCIL STAFF REPORT

MEETING DATE: March 6, 2024

PREPARED BY:

Dat Nguyen, Finance Director

APPROVED BY: City Manager

RECEIVE MONTHLY BUDGET UPDATE AND JANUARY 2024 FINANCIAL AND INVESTMENT REPORTS

RECOMMENDATION(S)

Accept and file report.

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Preserving and Cultivating Public Trust

2024-2025 Strategic Priorities

Fiscal Sustainability

Community Engagement

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 January 2024 financial and investment reports.

January 2024 Financial Report

The Revenue and Expense Summary through January 2024 is included on the first page of the monthly financial report. Overall, General Fund revenues total \$26.3 million or about 49% of the budget. This represents an increase of \$1.9 million or about 8% from the prior year to date, mainly from higher property tax and recreation services revenues. Expenditures, including encumbrances, amounted to \$34.8 million, of which approximately \$3.5 million is attributable to outstanding encumbrances, compared to prior year expenditures, including encumbrances, of \$34.6 million. This represents an increase of \$0.2 million, including encumbrances, compared to the prior year. Excluding the encumbrances, expenditures decreased by about \$0.2 million, mainly due to smaller transfer out amounts compared to the prior year, partially offset by the 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 February 3, 2024. For water revenue, Morgan Hill residents consumed about 1% less water through January compared to the prior three-year average. As such, no revenue stabilization water rate was implemented.

Staff continue to put together the Recommended Fiscal Years 2024-2026 Budget with the anticipated release date by May 1, 2024. Additionally, staff plan to host a booth at the Open Streets event on May 11 with budget information, and introduce the Recommended Budget to the City Council on May 15.

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 each month. City Council receives monthly financial and investment reports under the Consent Agenda, and quarterly financial and investment reports are 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
January 31, 2024 - 58% of Year Complete



CITY OF MORGAN HILL

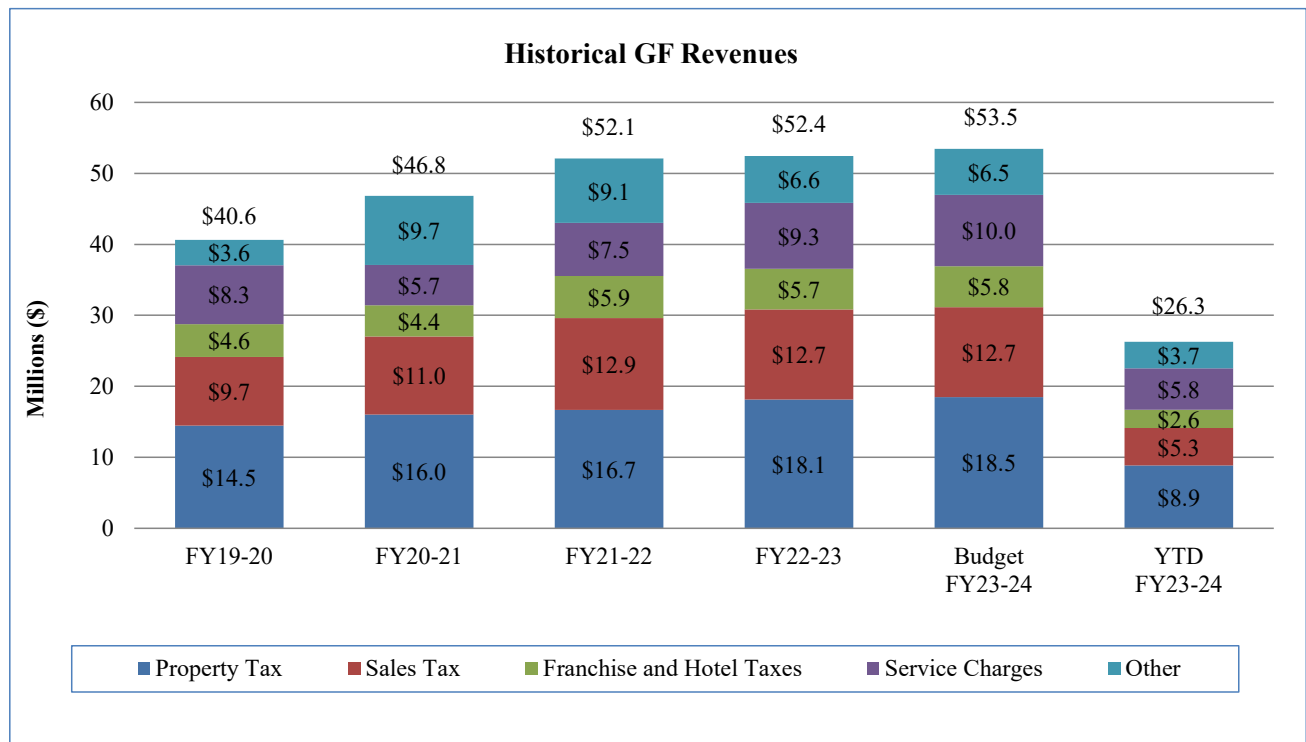
Prepared by:
FINANCE DEPARTMENT



CITY OF MORGAN HILL, CALIFORNIA
FINANCIAL STATEMENT ANALYSIS - FISCAL YEAR 2023-24
FOR THE MONTH ENDED JANUARY 2024 – 58% OF YEAR COMPLETE

- **General Fund** – Revenues through January totaled \$26.3 million, or about 49% of the budgeted. This represents an increase of \$1.9 million or about 8% from the prior year to date, mainly from higher property tax and recreation services revenues. With respect to the property tax revenue forecast, the County estimates the City will receive approximately \$19.0 million in property tax revenue for the current fiscal year, about \$0.5 million 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 \$12.6 million, a slight improvement from prior estimate but still below the current budget by about \$0.1 million, partially attributable to falling gas prices.

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 January 31, 2024.



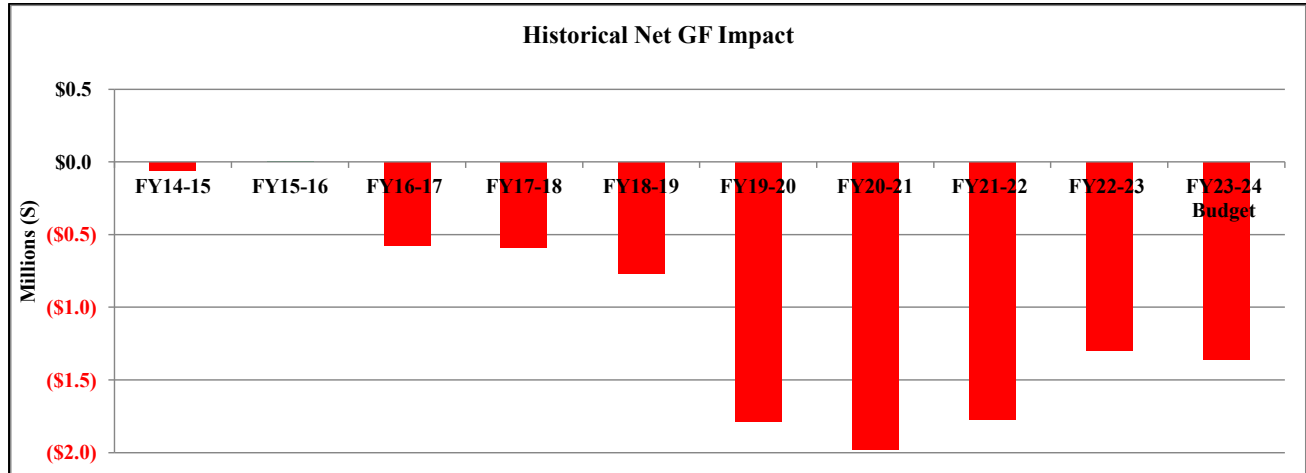
General Fund expenditures and encumbrances through January totaled \$34.8 million, of which approximately \$3.5 million is attributable to outstanding encumbrances, compared to prior year expenditures, including encumbrances, of \$34.6 million. This represents an increase of \$0.2 million, including encumbrances, compared to the prior year. Excluding the encumbrances, expenditures decreased by about \$0.2 million mainly due to smaller transfer out amounts compared to the prior year, partially offset by the 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 \$1.5 million as of January 31, 2024. Recreation Services revenues continue to recover from the pandemic and are on target with budget.



CITY OF MORGAN HILL, CALIFORNIA
FINANCIAL STATEMENT ANALYSIS - FISCAL YEAR 2023-24
FOR THE MONTH ENDED JANUARY 2024 – 58% 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 January totaled \$3.0 million compared to the prior year to date amount of approximately \$3.8 million. Expenditures, including encumbrances, totaled \$3.5 million.
- **Debt Service Funds** – Expenditures through January totaled \$0.6 million. 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 JANUARY 2024 – 58% OF YEAR COMPLETE

- **Wastewater Operations** – Revenues through January 31, 2024 totaled \$7.7 million. Expenditures and outstanding encumbrances totaled \$8.5 million or 55% 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 January 31, 2024.

(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	7.7
Expenditures	12.3	13.3	14.8	16.0	15.6	8.5
Operating Margin	(0.4)	-	0.1	(0.7)	-	(0.8)
Operating Margin without Encumbrances	(0.1)	-	0.1	(0.7)	-	(0.7)

- **Water Operations** – Water Operations includes Utility Billing, Water Conservation, and Water Operations. Revenues through January 31, 2024 totaled \$10.1 million. Water Operations expenditures, including outstanding encumbrances, totaled \$11.8 million. Morgan Hill residents consumed about 1% less water through January 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 January 31, 2024.

(amount in millions)	FY19-20	FY20-21	FY21-22	FY22-23	Budget FY23-24	YTD FY23-24
Revenues	15.3	16.5	16.0	18.1	19.8	10.1
Expenditures	16.4	16.5	15.2	18.0	20.3	11.8
Operating Margin	(1.1)	-	0.8	0.1	(0.5)	(1.7)
Operating Margin without Encumbrances	(0.1)	-	0.8	0.1	(0.5)	(1.0)

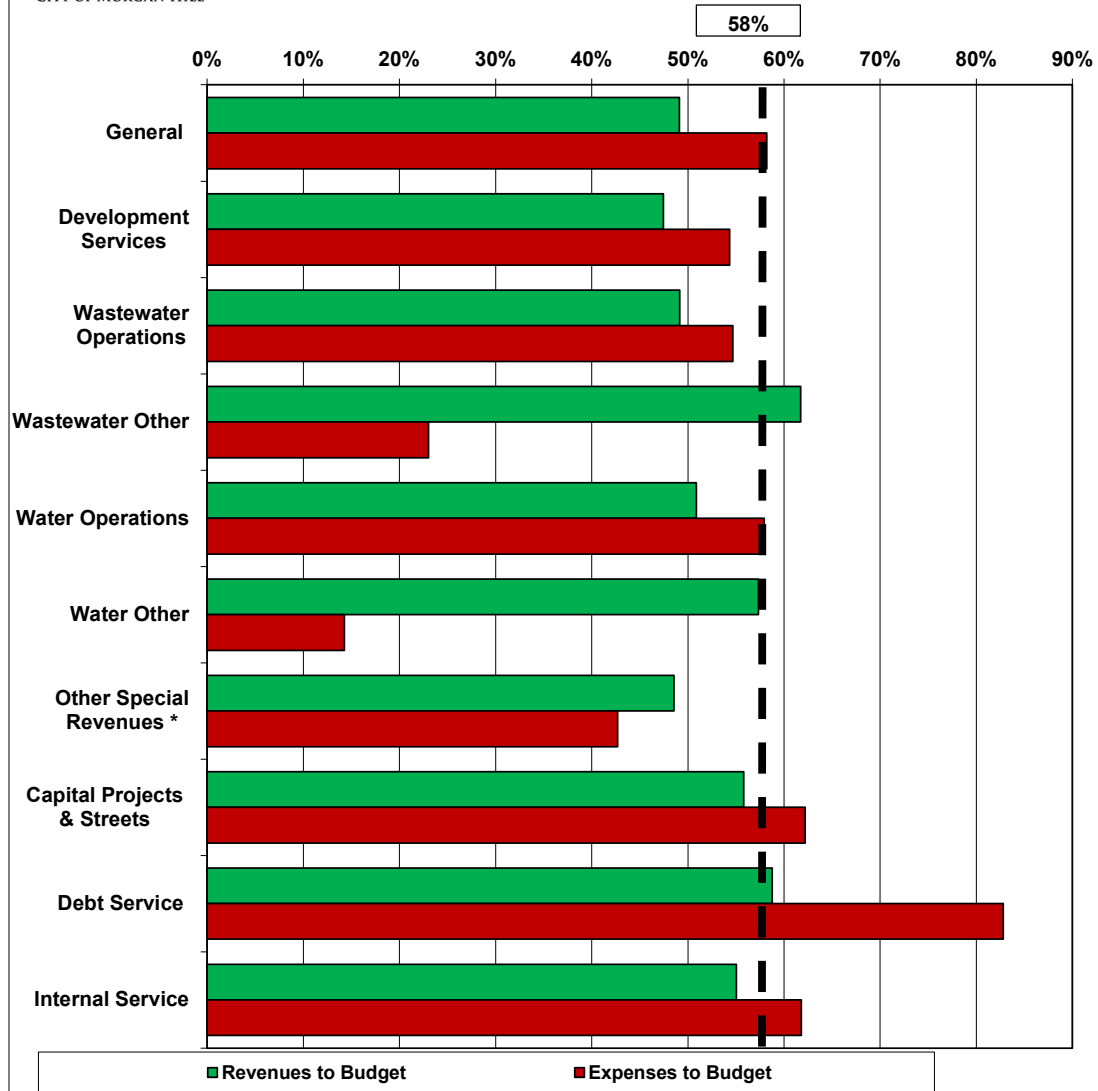
- **Investments** – Eight securities were called, and seven new securities were purchased. Total interest earnings received on investments were \$571,000 during the month.



Morgan Hill YTD Revenue & Expense Summary

January 31, 2024 - 58% of Year Complete

Percentage of Actual to Budget



FUND NAME	REVENUES		EXPENSES	
	ACTUAL	% OF BUDGET	ACTUAL PLUS ENCUMBRANCES	% OF BUDGET
General	\$ 26,257,959	49%	\$ 34,757,275	58%
Development Services	3,004,654	47%	3,469,452	54%
Wastewater Operations	7,651,552	49%	8,507,785	55%
Wastewater Other	6,067,042	62%	10,065,646	23%
Water Operations	10,069,795	51%	11,777,287	58%
Water Other	4,988,102	57%	2,637,527	14%
Other Special Revenues *	4,256,857	49%	4,666,195	43%
Capital Projects & Streets	7,792,473	56%	26,791,762	62%
Debt Service	398,869	59%	562,012	83%
Internal Service	7,025,398	55%	8,428,843	62%
TOTAL FOR ALL FUNDS	\$ 77,512,700	52%	\$ 111,663,784	49%

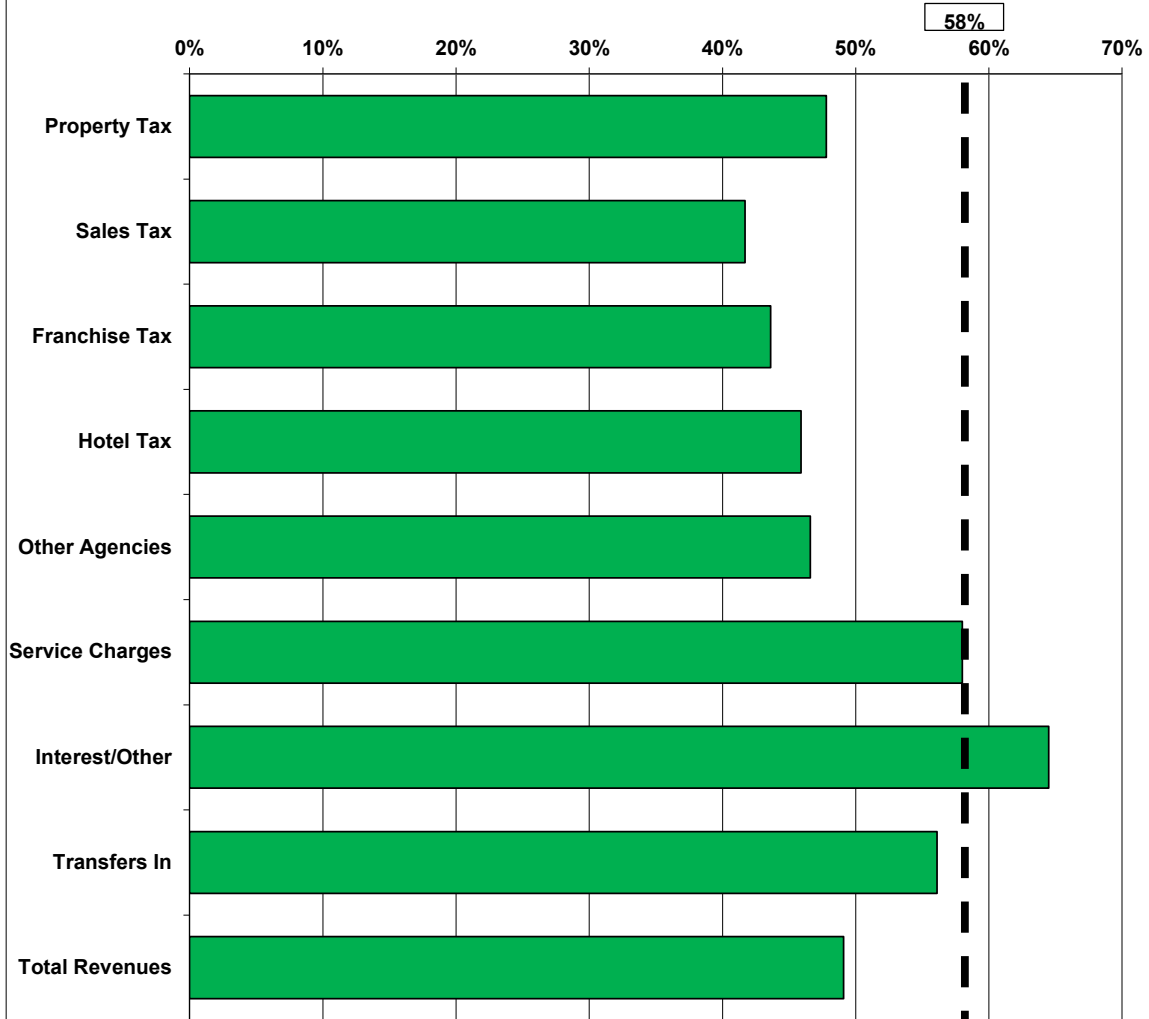
* Includes all Special Revenue Funds except Development Services Fund and Street Funds.



Morgan Hill YTD General Fund Revenues

January 31, 2024 - 58% of Year Complete

Percent of Actual to Budget



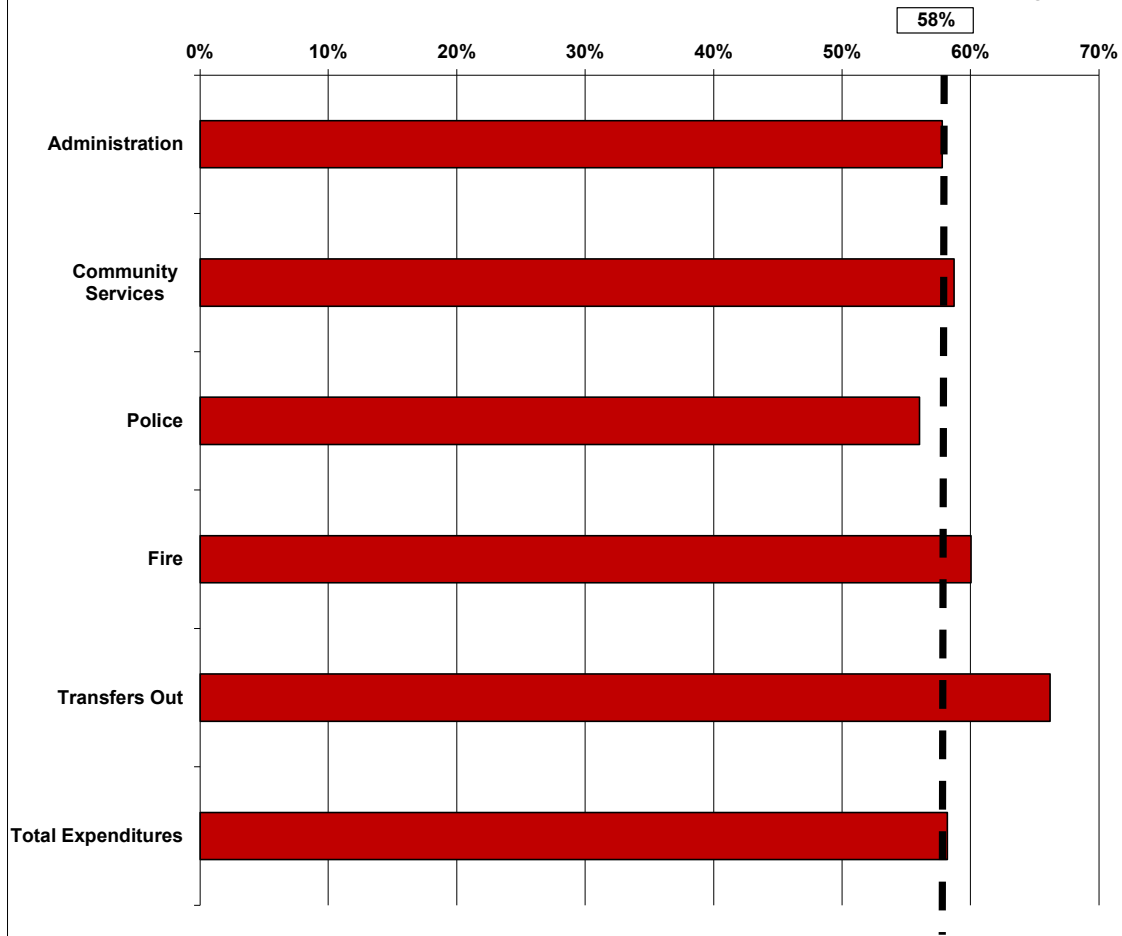
REVENUE CATEGORY	BUDGET	ACTUAL	% OF BUDGET	PRIOR YEAR TO DATE	% CHANGE FROM PRIOR YEAR
Property Tax	\$ 18,472,000	\$ 8,834,134	48%	\$ 8,019,244	10%
Sales Tax	12,673,967	5,290,102	42%	5,454,588	-3%
Franchise Tax	2,983,800	1,300,182	44%	980,611	33%
Hotel Tax	2,800,000	1,285,643	46%	1,309,950	-2%
Other Agencies	1,011,233	471,511	47%	491,574	-4%
Service Charges	10,036,079	5,818,995	58%	5,252,380	11%
Interest/Other	2,143,687	1,383,069	65%	1,143,398	21%
Transfers In	3,342,540	1,874,324	56%	1,754,401	7%
TOTAL REVENUES	\$ 53,463,306	\$ 26,257,959	49%	\$ 24,406,147	8%



Morgan Hill YTD General Fund Expenditures

January 31, 2024 - 58% 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	\$ 3,750,190	58%	\$ 3,878,037	-3%
Community Services	17,780,940	10,443,047	59%	9,489,692	10%
Police	23,056,204	12,916,039	56%	11,913,496	8%
Fire	9,139,905	5,487,469	60%	5,223,983	5%
Transfers Out	3,263,767	2,160,531	66%	4,110,934	-47%
TOTAL EXPENDITURES	\$ 59,729,978	\$ 34,757,275	58%	\$ 34,616,142	0%

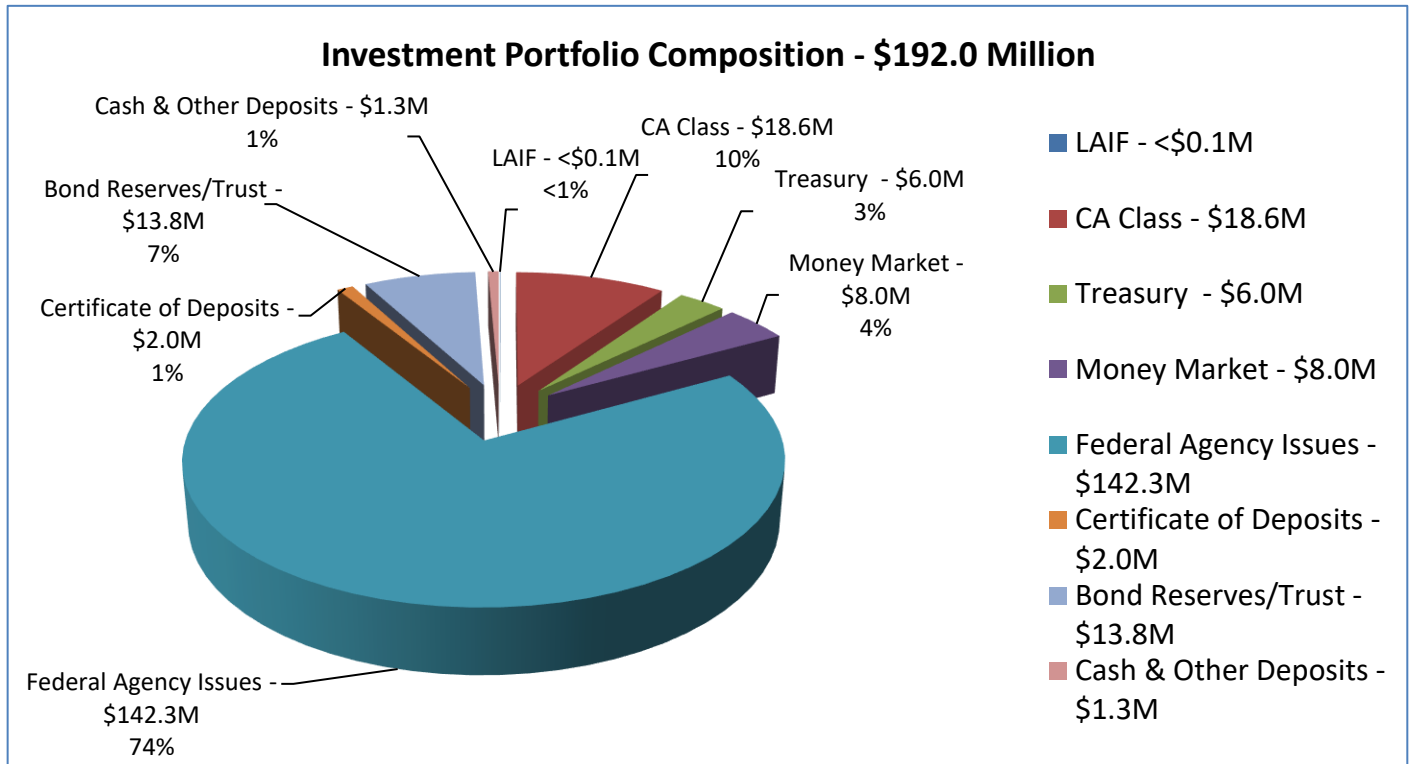


City of Morgan Hill
Recreation Report - Fiscal Year 2023-24
For the Month Ended January 31, 2024
58% of Year Complete

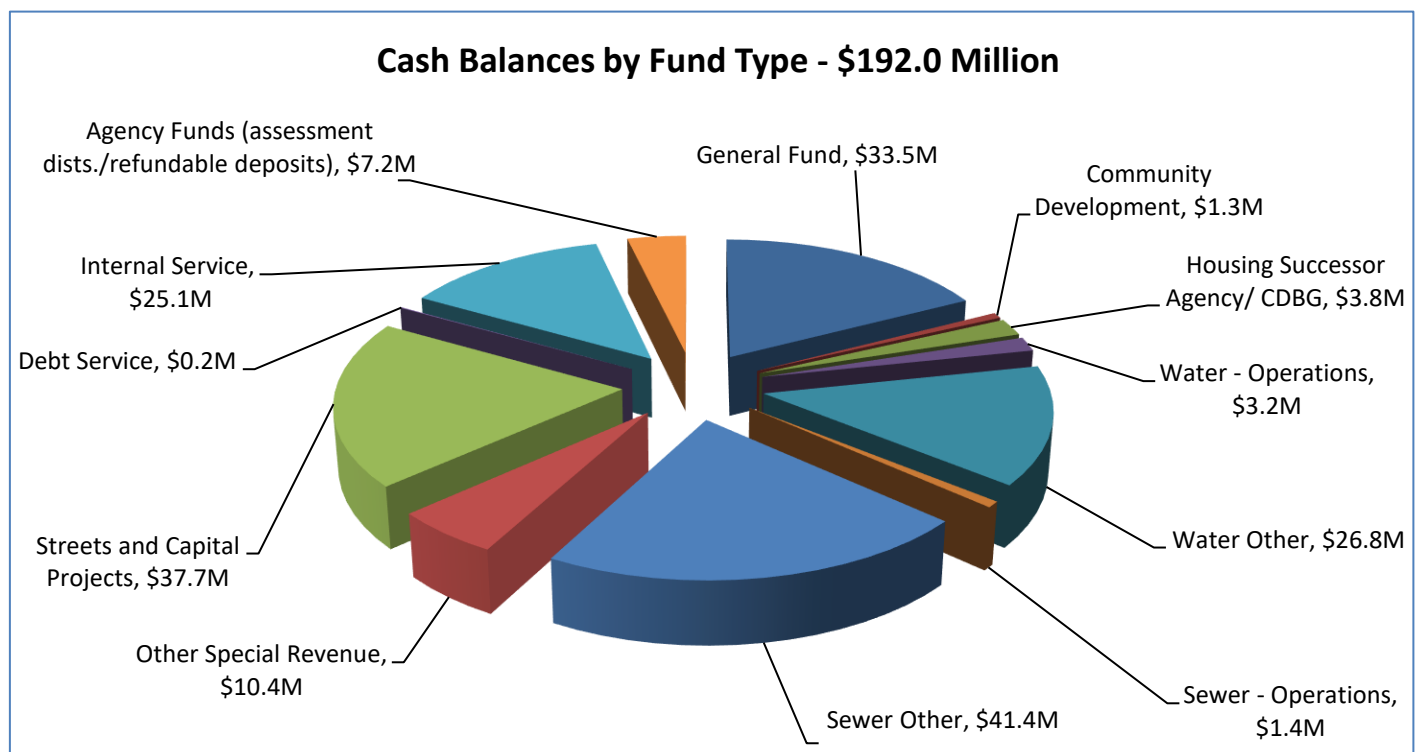
	<u>Budget</u>	<u>January 2024</u>	<u>YTD</u>	<u>% of Budget</u>
Revenues				
Membership Services & Rec Programs	\$ 5,656,265	\$ 435,465	\$ 3,383,492	
Facility Rentals	1,203,269	142,705	892,229	
Community Services	152,498	30,498	45,090	
Transfers in	75,000	6,250	43,750	
Total Revenues	<u>\$ 7,087,032</u>	<u>\$ 614,919</u>	<u>\$ 4,364,560</u>	62%
Less: Expenditures				
Membership & Program Services	\$ 7,268,962	\$ 528,657	\$ 4,006,544	
Facility Rentals	573,524	43,021	337,187	
Community Services	672,192	39,358	325,124	
Total Expenditures	<u>\$ 8,514,679</u>	<u>\$ 611,034</u>	<u>\$ 4,668,855</u>	55%
Net Impact without encumbrances	<u>\$ (1,427,647)</u>	<u>\$ 3,884</u>	<u>\$ (304,295)</u>	
Encumbrances	-	-	1,192,034	
Net Impact with encumbrances	<u>\$ (1,427,647)</u>	<u>\$ 3,884</u>	<u>\$(1,496,329)</u>	

City of Morgan Hill Monthly Investment Report - January 31, 2024

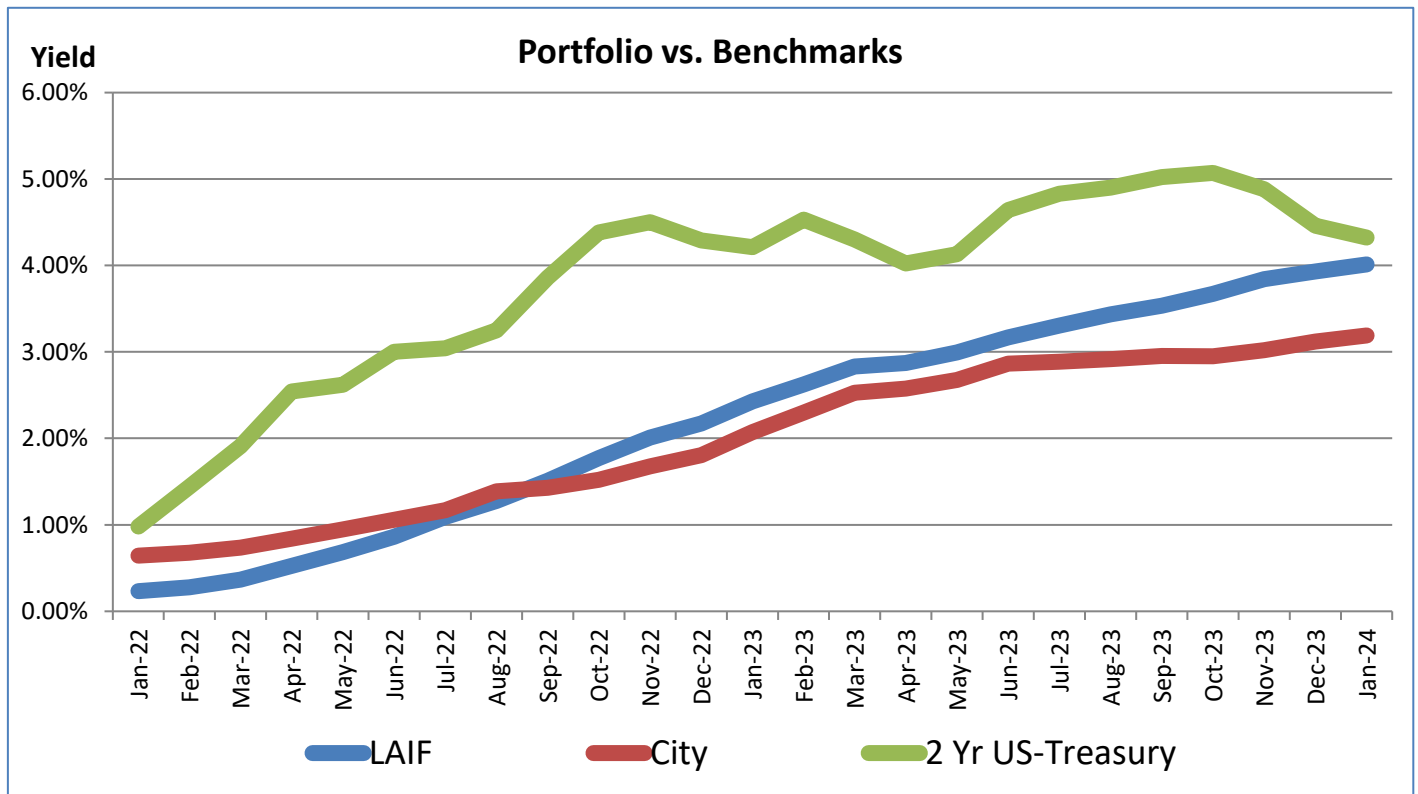
The following are the snapshots of City's investment portfolio as of January 31, 2024. The first chart shows the portfolio composition by investment type:



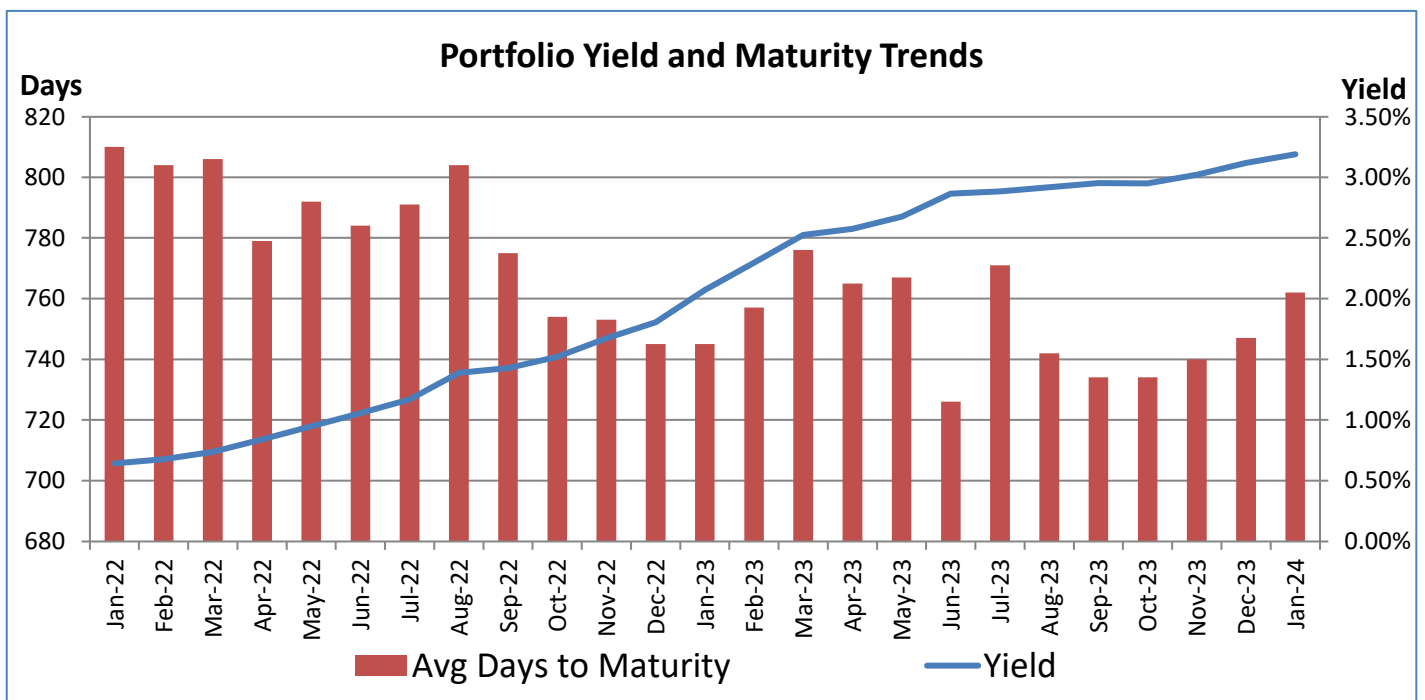
The chart below shows cash balances by fund type reconciled to City's financial system:



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 January 31, 2024

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			\$ 59,773	\$ 59,773	0.0%	\$ 59,387	4.01%		
California C L A S S			18,591,739	18,591,739	9.7%	18,591,739	5.50%		
US Bank - Portfolio of Securities									
Dreyfus Treasury Agency MM	261908107		3,956,235	3,956,235	2.1%	3,956,235	5.21%		
Treasury Note	91282CCZ2	10/8/2021	1,987,656	1,993,394	1.0%	1,842,580	1.00%	9/30/2026	9/30/2026
Treasury Note	9128286R6	3/28/2022	1,996,320	1,999,566	1.0%	1,985,000	2.34%	4/30/2024	4/30/2024
Treasury Note	912828U24	6/13/2022	1,904,688	1,939,899	1.0%	1,893,680	3.16%	11/15/2026	11/15/2026
FFCB Bond	3133ELVX9	4/8/2020	2,000,000	2,000,000	1.0%	1,983,300	0.88%	4/8/2024	4/8/2024
FFCB Bond	3133ELC28	5/27/2020	2,000,000	2,000,000	1.0%	1,898,600	0.73%	5/27/2024	5/27/2025
FHLMC Bond	3134GVYN2	6/3/2020	2,000,000	2,000,000	1.0%	1,933,120	0.60%	6/3/2024	12/3/2024
FHLMC Bond	3134GWZG4	10/20/2020	2,000,000	2,000,000	1.0%	1,870,980	0.60%	4/20/2024	10/20/2025
FHLMC Bond	3134GW3X2	10/27/2020	2,000,000	2,000,000	1.0%	1,867,720	0.63%	4/27/2024	10/27/2025
FFCB Bond	3133EMFR8	11/3/2020	2,000,000	2,000,000	1.0%	1,866,040	0.54%	5/3/2024	11/3/2025
FNMA Bond	3135GA4P3	11/18/2020	2,000,000	2,000,000	1.0%	1,866,440	0.65%	5/18/2024	11/18/2025
FHLMC Bond	3134GXJ9	11/24/2020	2,000,000	2,000,000	1.0%	1,864,940	0.64%	5/24/2024	11/24/2025
FFCB Bond	3133EMHF2	11/24/2020	1,000,000	1,000,000	0.5%	929,160	0.60%	5/24/2024	11/24/2025
FHLMC Bond	3134GXCS1	11/25/2020	3,000,000	3,000,000	1.6%	2,801,940	0.63%	5/25/2024	11/25/2025
FHLMC Bond	3134GXFA7	11/30/2020	2,000,000	2,000,000	1.0%	1,864,880	0.65%	5/26/2024	11/26/2025
FFCB Bond	3133EMLC4	12/22/2020	2,000,000	2,000,000	1.0%	1,852,760	0.47%	6/22/2024	12/22/2025
FHLB Bond	3130AKQ74	1/22/2021	2,000,000	2,000,000	1.0%	1,861,140	0.63%	7/22/2024	1/22/2026
FNMA Bond	3135G06R9	1/28/2021	2,000,000	2,000,000	1.0%	1,857,380	0.55%	7/28/2024	1/28/2026
FHLB Bond	3130AKRN8	1/28/2021	2,000,000	2,000,000	1.0%	1,860,440	0.65%	7/28/2024	1/28/2026
FHLB Bond	3130ALCV4	2/24/2021	2,000,000	2,000,000	1.0%	1,853,160	0.75%	2/24/2024	2/24/2026
FHLB Bond	3130ALDB7	2/25/2021	2,000,000	2,000,000	1.0%	1,855,760	0.66%	2/25/2024	2/25/2026
FHLB Bond	3130AKZ25	2/26/2021	2,000,000	2,000,000	1.0%	1,855,200	0.65%	2/26/2024	2/26/2026
FHLB Bond	3130ALGS7	3/10/2021	2,000,000	2,000,000	1.0%	1,860,040	0.85%	3/10/2024	3/10/2026
FHLB Bond	3130ALEP5	3/16/2021	2,000,000	2,000,000	1.0%	1,853,040	0.70%	3/16/2024	3/16/2026
FHLB Bond	3130ALDN1	3/16/2021	2,000,000	2,000,000	1.0%	1,857,040	0.80%	3/16/2024	3/16/2026
FHLB Bond	3130AMNH1	6/9/2021	2,000,000	2,000,000	1.0%	1,856,000	1.08%	6/9/2024	6/9/2026
FHLB Bond	3130AMYJ5	6/30/2021	2,000,000	2,000,000	1.0%	1,849,000	1.00%	6/30/2024	6/30/2026
FHLB Bond	3130AMYP1	7/15/2021	3,000,000	3,000,000	1.6%	2,778,240	1.13%	7/15/2024	7/15/2026
FHLB Bond	3130AMYS5	7/15/2021	2,000,000	2,000,000	1.0%	1,900,880	0.85%	7/15/2024	7/15/2025
FHLB Bond	3130ANJC5	8/26/2021	2,000,000	2,000,000	1.0%	1,830,460	0.80%	2/26/2024	8/26/2026
FHLB Bond	3130ANLW8	8/26/2021	3,000,000	3,000,000	1.6%	2,760,120	1.00%	2/26/2024	8/26/2026
FHLB Bond	3130ANLZ1	8/26/2021	2,000,000	2,000,000	1.0%	1,835,260	0.90%	2/26/2024	8/26/2026
FHLB Bond	3130A8XY4	9/13/2021	2,103,340	2,054,026	1.1%	1,890,180	0.82%	3/11/2024	9/11/2026
FFCB Bond	3133EM4X7	9/28/2021	1,982,960	1,991,021	1.0%	1,837,240	0.98%	3/10/2024	9/10/2026
FHLB Bond	3130APCH6	9/29/2021	3,000,000	3,000,000	1.6%	2,760,510	1.13%	3/29/2024	9/29/2026
FHLB Bond	3130ANZE3	9/30/2021	2,000,000	2,000,000	1.0%	1,841,140	0.88%	3/30/2024	9/30/2026
FHLB Bond	3130AP6N0	9/30/2021	3,000,000	3,000,000	1.6%	2,754,840	1.05%	3/30/2024	9/30/2026
FHLB Bond	3130AP6M2	9/30/2021	3,000,000	3,000,000	1.6%	2,752,590	1.02%	3/30/2024	9/30/2026
FHLB Bond	3130APCG8	10/19/2021	2,000,000	2,000,000	1.0%	1,831,140	1.00%	4/19/2024	10/19/2026
FHLB Bond	3130APNX9	11/18/2021	2,000,000	2,000,000	1.0%	1,841,180	1.30%	5/18/2024	11/18/2026
FHLB Bond	3130AQHU0	1/19/2022	2,000,000	2,000,000	1.0%	1,897,900	1.74%	7/19/2024	1/19/2027
FHLB Bond	3130AQKT9	1/25/2022	2,000,000	2,000,000	1.0%	1,922,960	1.51%	7/25/2024	7/25/2025
FHLB Bond	3130AR4F5	3/10/2022	2,000,000	2,000,000	1.0%	1,957,920	3.48%	3/10/2024	3/10/2027
FHLMC Bond	3134GXUZ5	6/15/2022	2,000,000	2,000,000	1.0%	1,968,060	3.28%	6/15/2024	12/15/2025
FHLB Bond	3130ASPE3	7/28/2022	2,000,000	2,000,000	1.0%	1,978,360	4.30%	7/28/2024	7/28/2027
FNMA Bond	3135GACZ2	11/25/2022	2,000,000	2,000,000	1.0%	1,996,480	5.40%	5/25/2024	11/25/2024
FHLMC Bond	3134GY4B5	11/28/2022	2,000,000	2,000,000	1.0%	1,994,640	5.00%	5/15/2024	8/26/2024
FHLB Bond	3130AUP32	1/27/2023	2,250,000	2,250,000	1.2%	2,242,440	5.98%	4/27/2024	1/27/2028
FHLMCMTN Bond	3134GYGB2	1/30/2023	2,000,000	2,000,000	1.0%	1,988,860	5.20%	4/26/2024	1/26/2028
FHLMCMTN Bond	3134GYG22	2/16/2023	3,000,000	3,000,000	1.6%	2,985,060	5.13%	2/16/2024	11/16/2026
FHLB Bond	3130AUTZ7	2/24/2023	2,000,000	2,000,000	1.0%	1,996,080	6.44%	2/24/2024	2/24/2028
FHLB Bond	3130AUZH0	3/6/2023	2,000,000	2,000,000	1.0%	1,998,420	6.33%	3/6/2024	3/6/2026
FHLB Bond	3130AVZ24	3/15/2023	2,000,000	2,000,000	1.0%	2,000,100	5.35%	3/15/2024	3/15/2024
FHLB Bond	3130AVK92	4/5/2023	3,000,000	3,000,000	1.6%	2,997,630	5.00%	4/5/2024	4/5/2024
FHLB Bond	3130AVL83	4/6/2023	2,000,000	2,000,000	1.0%	1,996,900	5.20%	4/7/2024	10/7/2024

Investment Type	CUSIP	Settlement Date	Cost Value	Book Value	% of Portfolio	Market Value	YTM at Cost	Next Call Date	Date of Maturity
FHLB Bond	3130AVQ96	4/17/2023	2,000,000	2,000,000	1.0%	1,998,420	5.15%	4/17/2024	4/17/2024
FHLB Bond	3130AVNT5	4/28/2023	1,000,000	1,000,000	0.5%	998,640	5.50%	2/25/2024	4/25/2025
FHLMCMTN Bond	3134GYQZ8	5/11/2023	3,000,000	3,000,000	1.6%	2,995,650	6.09%	2/11/2024	5/11/2026
FHLMCMTN Bond	3134GYSV5	5/25/2023	2,000,917	2,000,000	1.0%	1,998,560	5.50%	2/22/2024	06/18/2024
FHLB Bond	3130AWF62	6/13/2023	2,000,000	2,000,000	1.0%	1,997,360	5.50%	2/13/2024	12/13/2024
FHLB Bond	3130AXS82	11/30/2023	2,000,000	2,000,000	1.0%	1,998,320	6.10%	2/27/2024	11/27/2028
FHLB Bond	3130AXY36	12/18/2023	2,000,000	2,000,000	1.0%	2,003,080	5.88%	3/18/2024	12/18/2028
FHLMCMTN Bond	3134H1MK6	12/21/2023	2,000,000	2,000,000	1.0%	2,001,020	5.40%	6/21/2024	12/21/2026
FHLB Bond	3130AYAG1	12/28/2023	2,000,000	2,000,000	1.0%	2,000,600	5.50%	6/28/2024	12/28/2028
FHLB Bond	3130AYBT2	1/2/2024	2,000,000	2,000,000	1.0%	2,014,040	5.40%	7/2/2024	1/2/2029
FHLMCTN Bond	3134H1NA7	1/5/2024	2,000,000	2,000,000	1.0%	1,999,820	5.63%	4/5/2024	1/5/2029
FHLB Bond	3130AYGX8	1/11/2024	2,000,000	2,000,000	1.0%	2,000,480	5.63%	4/11/2024	1/11/2029
FHLB Bond	3130AYF35	1/12/2024	2,000,000	2,000,000	1.0%	2,000,000	5.60%	4/12/2024	1/12/2029
FHLMCTN Bond	3134H1PC1	1/12/2024	2,000,000	2,000,000	1.0%	1,998,720	6.02%	4/12/2024	1/12/2029
FHLMCTN Bond	3134H1QG1	1/26/2024	3,000,000	3,000,000	1.6%	2,996,700	4.66%	7/26/2024	1/26/2029
FHLMCTN Bond	3134H1QMB	1/26/2024	2,000,000	2,000,000	1.0%	2,000,020	5.70%	4/26/2024	1/26/2029
CD - Ally Bank	02007GM83	3/30/2023	250,000	250,000	0.1%	249,928	5.15%	3/28/2024	3/28/2024
CD - Zions Bancorp	98970LC43	3/31/2023	250,000	250,000	0.1%	250,775	5.40%	9/27/2024	9/27/2024
CD - Pacific Western Bank	69506YYD5	4/5/2023	250,000	250,000	0.1%	250,573	5.65%	4/5/2024	4/5/2028
CD - US Bank	90354KBR8	5/17/2023	250,000	250,000	0.1%	249,848	5.10%	5/16/2024	5/16/2024
CD - Morgan Stanley Bank	61690DGT9	11/8/2023	250,000	250,000	0.1%	261,030	5.05%	11/8/2028	11/8/2028
CD - Morgan Stanley Private Bank	61768EE82	11/8/2023	250,000	250,000	0.1%	261,030	5.05%	11/8/2028	11/8/2028
CD - American Express	02589AF98	11/8/2023	250,000	250,000	0.1%	260,493	5.00%	11/8/2028	11/8/2028
CD - State Bank India	8562834U7	11/24/2023	250,000	250,000	0.1%	264,018	5.00%	11/24/2028	11/24/2028
Sub Total/Average			\$ 154,182,115	\$ 154,184,141	80.3%	\$ 148,280,287	2.86%		
WFB Money Market			\$ 4,025,674	\$ 4,025,674	2.1%	\$ 4,025,674	5.21%		
Total City Managed/Average			\$ 176,859,301	\$ 176,861,327	82.4%	\$ 170,957,087	3.19%		
Bond Reserve Accounts - Held By Trustees			\$ 6,618,871	\$ 6,618,871	3.4%	\$ 6,618,871			
Cash/Deposits			\$ 1,308,440	\$ 1,308,440	0.7%	\$ 1,308,440			
PARS and CALPERS CERBT Trust			\$ 7,187,404	\$ 7,187,404	3.7%	\$ 8,188,265			
GRAND TOTAL/AVERAGE			\$ 191,974,016	\$ 191,976,042	100.0%	\$ 187,072,663			



CITY OF MORGAN HILL CASH AND INVESTMENT REPORT
FOR THE MONTH OF JANUARY 31, 2024
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	4.01%	\$ 59,773	0.0%	\$ 59,387
California CLASS	All Funds Pooled	5.50%	18,591,739	9.7%	18,591,739
US Bank - Portfolio of Securities	All Funds Pooled	2.86%	154,184,141	80.3%	148,280,287
WFB MMA	All Funds Pooled	5.21%	4,025,674	2.1%	4,025,674
	SUBTOTAL		\$ 176,861,327	92.1%	\$ 170,957,087
Bond Reserve Accounts - held by trustees					
Zions Bank - Civic Center/Library Facility					
Blackrock Liq Fund	Debt Service	4.98%	542	0.0%	542
Zions Bank - MH Police Facility Lease Revenue Bonds					
Blackrock Liq Fund	Debt Service	4.98%	689	0.0%	689
BNY - RDA Bonds					
Dreyfus Cash Mgmt 521	Agency Fund	4.94%	6,346,628	3.3%	6,346,628
Zions Bank - Madrone Bus Park Taxable/ Tax Exempt 2015					
Blackrock Liquidity Temp Fund-2015	Agency Fund	4.98%	271,013	0.1%	271,013
	SUBTOTAL		6,618,871	3.4%	6,618,871
Other Cash/Deposits					
General Checking	All Funds		1,262,590	0.7%	1,262,590
Workers' Comp Administrators	Workers' Comp		30,000	0.0%	30,000
Petty Cash & Emergency Cash	General Fund		15,850	0.0%	15,850
CALPERS CERBT - OPEB Trust			4,887,404	2.5%	5,547,167
PARS - PENSION Trust			2,300,000	1.2%	2,641,098
	SUBTOTAL		8,495,844	4.4%	9,496,705
Total Cash and Investments			\$ 191,976,042	100.0%	\$ 187,072,663

CASH ACTIVITY SUMMARY
FY 2023-24

Fund Type	07/01/2023 Balance	Change in Cash Balance	1/31/2024 Balance
General Fund	\$ 32,352,753	\$ 1,182,911	\$ 33,535,664
Community Development	1,831,559	(568,609)	1,262,950
Housing Successor Agency/ CDBG	4,202,736	(396,875)	3,805,861
Water - Operations	2,585,170	584,537	3,169,707
Water Other	23,673,105	3,125,000	26,798,105
Sewer - Operations	907,428	477,621	1,385,049
Sewer Other	44,135,046	(2,718,705)	41,416,341
Other Special Revenue	8,827,861	1,621,672	10,449,534
Streets and Capital Projects (except RDA)	40,486,238	(2,794,019)	37,692,219
Debt Service	342,534	(163,088)	179,446
Internal Service	25,139,787	(33,898)	25,105,889
Agency Funds (assessment dists./refundable deposits)	8,515,969	(1,340,692)	7,175,277
Total	\$ 193,000,187	\$ (1,024,145)	\$ 191,976,042

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.

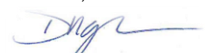
Prepared by:


Gina Nazareno, Senior Accountant

Approved by:


Caitlin Jachimowicz, Treasurer

Reviewed by:


Dat Nguyen, Finance Director



City of Morgan Hill
Year to Date Revenues - Fiscal Year 2023-24
For the Month Ended January 31, 2024
58% 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	\$ 7,698,342	49%	\$ 6,836,592	\$ 861,750	13%
Property Tax - RPTTF Residual Distribution	2,527,000	2,527,000	1,020,900	40%	987,196	33,703	3%
Property Tax - Supplemental Roll	200,000	200,000	114,892	57%	195,456	(80,564)	-41%
Sales Tax	12,218,967	12,218,967	5,106,960	42%	5,300,697	(193,737)	-4%
Public Safety Sales Tax	455,000	455,000	183,142	40%	153,891	29,251	19%
Transient Occupancy Taxes	2,800,000	2,800,000	1,285,643	46%	1,309,950	(24,308)	-2%
Franchise (Refuse ,Cable ,PG&E)	2,873,800	2,983,800	1,300,182	44%	980,611	319,571	33%
Property Transfer Tax	510,000	510,000	228,685	45%	198,276	30,409	15%
TOTAL TAXES	36,829,767	37,439,767	16,938,745	45%	15,962,669	976,076	6%
LICENSES/PERMITS							
Business License	170,000	170,000	163,517	96%	133,828	29,689	22%
Other Permits	53,975	53,975	26,067	48%	222,727	(196,660)	-88%
TOTAL LICENSES/PERMITS	223,975	223,975	189,584	85%	356,555	(166,971)	-47%
FINES AND PENALTIES							
Parking Enforcement	3,019	3,019	6,001	199%	3,061	2,941	96%
Bails & Fines	47,875	47,875	25,647	54%	21,663	3,984	18%
Administrative Citations	20,000	20,000	17,430	87%	7,028	10,402	148%
TOTAL FINES AND PENALTIES	70,894	70,894	49,079	69%	31,752	17,327	55%
OTHER AGENCIES							
Motor Vehicle in-Lieu	40,800	40,800	-	n/a	-	-	n/a
Other Revenue - Other Agencies	971,089	1,011,233	471,511	47%	491,574	(20,063)	-4%
TOTAL OTHER AGENCIES	1,011,889	1,052,033	471,511	45%	491,574	(20,063)	-4%
CHARGES CURRENT SERVICES							
Police False Alarm Charge	33,248	33,248	19,864	60%	18,973	890	5%
Business License Application Review	53,000	83,000	72,514	87%	27,019	45,495	168%
Membership Services & Rec Programs	5,656,265	5,656,265	3,383,492	60%	2,940,304	443,188	15%
Facility Rentals	1,203,269	1,203,269	892,229	74%	660,645	231,584	35%
Community Services	152,498	152,498	45,090	30%	38,823	6,266	16%
General Administration Overhead	1,822,869	1,822,869	1,026,424	56%	1,035,655	(9,231)	-1%
Other Charges Current Services	1,084,930	1,084,930	379,384	35%	530,961	(151,577)	-29%
TOTAL CURRENT SERVICES	10,006,079	10,036,079	5,818,995	58%	5,252,380	566,615	11%
OTHER REVENUE							
Use of money/property	583,850	683,850	765,766	112%	385,264	380,502	99%
Other Revenues	234,168	614,168	149,956	24%	171,551	(21,596)	-13%
TOTAL OTHER REVENUE	818,018	1,298,018	915,721	71%	556,815	358,906	64%
TRANSFERS IN							
One Time Transfer	180,000	180,000	105,000	58%	105,000	-	0%
Public Safety Facilities Fund	50,000	50,000	29,167	58%	29,167	-	0%
Supplemental Law Enforcement Fund	100,000	100,000	100,000	100%	100,000	-	n/a
Countywide Solid Waste	373,000	468,680	217,583	46%	207,083	10,500	5%
Streets	949,760	949,760	492,682	52%	405,424	87,258	22%
Park Maintenance	650,000	650,000	379,167	58%	379,169	(2)	0%
Sewer Operations	394,000	394,000	229,833	58%	218,750	11,083	5%
Water Operations	394,000	394,000	229,833	58%	218,750	11,083	5%
Open Space	81,100	81,100	47,308	58%	47,308	-	n/a
Park Development	75,000	75,000	43,750	58%	43,750	-	n/a
TOTAL TRANSFERS IN	3,246,860	3,342,540	1,874,324	56%	1,754,401	119,923	7%
TOTAL GENERAL FUND	52,207,482	53,463,306	26,257,959	49%	24,406,147	1,851,812	8%
SPECIAL REVENUE FUNDS							
202 STREET MAINTENANCE							
Gas Tax 2105 - 2107.5	954,952	954,952	423,014	44%	413,734	9,280	2%
Interest / Other Revenue/Other Charges	78	78	4,862	6233%	2,143	2,719	127%
202 STREET MAINTENANCE	955,030	955,030	427,876	45%	415,877	11,999	3%



City of Morgan Hill
Year to Date Revenues - Fiscal Year 2023-24
For the Month Ended January 31, 2024
58% 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	6,514	342%	2,111	4,403	209%
Police Grant/SLEF/JAG	100,000	100,000	119,492	119%	98,605	20,888	21%
205 SUPPLEMENTAL LAW ENFORCEMENT FUND	101,905	101,905	126,006	124%	100,716	25,290	25%
206 DEVELOPMENT SERVICES							
Building Fees	3,455,600	3,495,600	1,767,768	51%	2,248,518	(480,750)	-21%
Planning Fees	1,645,444	1,645,444	764,653	46%	454,254	310,399	68%
Engineering Fees	1,190,852	1,190,852	312,926	26%	856,331	(543,405)	-63%
Other Revenue/Current Charges	-	-	159,306	n/a	224,592	(65,286)	-29%
206 DEVELOPMENT SERVICES	6,291,896	6,331,896	3,004,654	47%	3,783,695	(779,041)	-21%
207 LONG RANGE PLANNING	1,013,392	1,013,392	495,022	49%	577,181	(82,158)	-14%
215 and 216 HCD BLOCK GRANT							
Interest Income/Other Revenue	325	325	1,127	347%	470	658	140%
215 and 216 HCD BLOCK GRANT	325	325	1,127	347%	470	658	140%
225 ASSET SEIZURE	1,298	1,298	1,727	133%	740	987	133%
229 LIGHTING AND LANDSCAPE	200,028	200,028	2,933	1%	110,675	(107,742)	-97%
230 COMMUNITY FACILITIES DISTRICT	37,914	37,914	2,470	7%	26,714	(24,244)	-91%
232 ENVIRONMENTAL PROGRAMS	590,223	590,223	333,852	57%	314,810	19,043	6%
234 MOBILE HOME PARK RENT STAB.	584	584	4,818	825%	6,105	(1,287)	-21%
236 HOUSING MITIGATION	4,456,924	4,456,924	2,035,146	46%	577,414	1,457,733	252%
240 EMPLOYEE ASSISTANCE	20,889	20,889	4,924	24%	4,751	172	4%
246 COUNTYWIDE SOLID WASTE	1,645,138	1,944,000	1,053,585	54%	803,802	249,784	31%
247 ENVIRONMENT REMEDIATION	1,358	1,358	2,373	175%	993	1,380	139%
255 HOUSING SUCCESSOR AGENCY	239,202	239,202	192,873	81%	260,628	(67,755)	-26%
TOTAL SPECIAL REVENUE FUNDS	15,556,107	15,894,969	7,689,386	48%	6,984,569	704,818	10%
CAPITAL PROJECTS FUNDS							
301 PARK DEVELOPMENT	1,673,505	1,673,505	302,866	18%	1,645,268	(1,342,402)	-82%
302 PARK MAINTENANCE	363,038	363,038	48,928	13%	507,669	(458,741)	-90%
303 LOCAL DRAINAGE	447,897	447,897	389,535	87%	924,926	(535,391)	-58%
304 LOCAL DRAINAGE/NON AB1600	30,901	30,901	22,908	74%	97,911	(75,004)	-77%
306 AGRICULTURE & OPEN SPACE PRESERVATION	4,036	4,036	112,027	2776%	51,218	60,808	119%
308 STREET CIP	4,486,656	4,486,656	1,421,169	32%	2,560,069	(1,138,899)	-44%
309 TRAFFIC IMPACT	1,276,925	1,276,925	473,917	37%	3,529,365	(3,055,448)	-87%
315 PUBLIC SAFETY FACILITIES IMPACT	801,703	801,703	297,584	37%	86,764	210,820	243%
346 PUBLIC FACILITIES NON-AB1600	822,102	822,102	185,816	23%	382,591	(196,775)	-51%
347 PUBLIC FACILITIES IMPACT	176,602	176,602	103,420	59%	25,144	78,276	311%
348 LIBRARY	657,457	657,457	350,940	53%	65,709	285,231	434%
350 UNDERGROUNDING	22,520	22,520	245,046	1088%	12,098	232,948	1926%
355 SCHOOL PEDESTRIAN/TRAFFIC SAFETY	492,717	492,717	31,316	6%	208,925	(177,609)	-85%
360 COMMUNITY/REC IMPACT FUND	1,142,697	1,142,697	603,960	53%	319,991	283,969	89%
375 QUIMBY FEE	610,860	610,860	2,775,166	454%	1,547,270	1,227,895	79%
TOTAL CAPITAL PROJECTS FUNDS	13,009,616	13,009,616	7,364,597	57%	11,964,918	(4,600,320)	-38%
DEBT SERVICE FUNDS							
420 CIVIC CENTER DEBT	290,850	290,850	172,531	59%	171,649	882	1%
441 POLICE FACILITY BOND	387,792	387,792	226,338	58%	226,114	225	0%
TOTAL DEBT SERVICE FUNDS	678,642	678,642	398,869	59%	397,762	1,107	0%



City of Morgan Hill
Year to Date Revenues - Fiscal Year 2023-24
For the Month Ended January 31, 2024
58% 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	7,445,944	49%	7,477,680	(31,736)	0%
Interest Income/Transfers	39,704	39,704	34,247	86%	20,402	13,844	68%
Other Revenue/Current Charges	329,403	329,403	171,361	52%	250,850	(79,489)	-32%
640 WASTEWATER OPERATION	15,569,107	15,569,107	7,651,552	49%	7,748,933	(97,381)	-1%
641 WASTEWATER EXPANSION							
Interest Income	40,173	40,173	371,128	924%	173,506	197,621	114%
Development Impact Fee	4,388,986	4,388,986	2,271,343	52%	505,602	1,765,741	349%
Transfer From-643 (Sewer Replacement)	-	-	-	n/a	3,748,942	(3,748,942)	-100%
641 WASTEWATER EXPANSION	4,429,159	4,429,159	2,642,471	60%	4,428,050	(1,785,579)	-40%
642 WASTEWATER RATE STABILIZATION	192,000	192,000	162,747	85%	49,692	113,055	228%
643 WASTEWATER CAPITAL PROJECT	5,204,512	5,204,512	3,261,825	63%	3,947,709	(685,884)	-17%
TOTAL SEWER FUNDS	25,394,778	25,394,778	13,718,593	54%	16,174,383	(2,455,790)	-15%
650 WATER OPERATION							
Water Sales	18,500,000	18,500,000	9,256,067	50%	8,667,639	588,428	7%
Meter Install & Service	50,000	50,000	75,752	152%	63,278	12,474	20%
Transfers-In / Interest Income	606,318	606,318	397,231	66%	351,530	45,701	13%
Other Revenue/Current Charges	630,464	630,464	340,745	54%	442,534	(101,788)	-23%
650 WATER OPERATION	19,786,782	19,786,782	10,069,795	51%	9,524,981	544,815	6%
651 WATER EXPANSION							
Interest Income/Other Revenue/Transfer	28,855	28,855	53,481	185%	21,058	32,423	154%
Development Impact Fee	1,720,216	1,720,216	577,582	34%	140,572	437,010	311%
651 WATER EXPANSION	1,749,071	1,749,071	631,063	36%	161,630	469,433	290%
652 WATER RATE STABILIZATION	-	-	56,700	n/a	23,629	33,071	140%
653 WATER CAPITAL PROJECT	6,948,348	6,948,348	4,300,338	62%	3,034,732	1,265,606	42%
TOTAL WATER FUNDS	28,484,201	28,484,201	15,057,897	53%	12,744,972	2,312,926	18%
TOTAL ENTERPRISE FUNDS	53,878,979	53,878,979	28,776,491	53%	28,919,355	(142,864)	0%
INTERNAL SERVICE FUNDS							
730 INFORMATION SYSTEMS	2,493,922	2,493,922	1,461,843	59%	1,307,526	154,317	12%
740 BUILDING MAINTENANCE	1,675,215	1,675,215	978,595	58%	965,867	12,728	1%
741 BUILDING REPLACEMENT	859,973	859,973	561,457	65%	500,919	60,538	12%
745 CIP ADMINISTRATION	2,059,092	2,059,092	902,935	44%	1,060,606	(157,671)	-15%
760 UNEMPLOYMENT INSURANCE	2,940	2,940	4,844	165%	2,173	2,671	123%
770 WORKERS COMPENSATION	997,442	997,442	555,048	56%	514,043	41,005	8%
790 EQUIPMENT REPLACEMENT	1,725,990	1,725,990	831,677	48%	1,622,284	(790,607)	-49%
791 EMPLOYEE BENEFITS	849,796	849,796	499,498	59%	473,120	26,378	6%
795 GENERAL LIABILITY INSURANCE	2,103,483	2,103,483	1,229,500	58%	1,158,543	70,956	6%
TOTAL INTERNAL SERVICE FUNDS	12,767,853	12,767,853	7,025,398	55%	7,605,082	(579,685)	-8%
TOTAL FOR ALL FUNDS	\$ 148,098,679	\$ 149,693,365	\$ 77,512,700	52%	\$ 80,277,833	\$ (2,765,133)	-3%



City of Morgan Hill
Year to Date Expenses - Fiscal Year 2023-24
For the Month Ended January 31, 2024
58% 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	\$ 33,858	\$ 435,652	\$ 213,251	\$ -	\$ 213,251	49%	\$ 251,675
	CITY ATTORNEY	66,053	1,081,241	499,917	140,257	640,173	59%	453,995
	CITY MANAGER	48,447	886,041	399,929	20,034	419,963	47%	356,068
	HUMAN RESOURCES	80,073	898,203	496,071	-	496,071	55%	473,575
	COUNCIL SVCS & RECORDS MGMT							
	Council Svcs & Records Mgmt	33,830	628,281	291,616	-	291,616	46%	315,410
	Elections	2,291	37,728	17,256	-	17,256	46%	208,160
	COUNCIL SVCS & RECORDS MGMT	36,121	666,009	308,872	-	308,872	46%	523,570
	FINANCE	135,154	2,522,016	1,104,379	567,482	1,671,860	66%	996,807
	TOTAL ADMINISTRATION	399,707	6,489,162	3,022,418	727,772	3,750,190	58%	3,055,690
II. COMMUNITY SERVICES								
	Membership Services & Rec. Programs	528,657	7,268,962	4,006,544	1,122,225	5,128,769	71%	3,513,431
	Recreation Facility Rentals	43,021	573,524	337,187	21,683	358,870	63%	285,940
	Innovative Transit	55,100	850,612	337,227	461,543	798,770	94%	250,687
	Community Services	39,358	672,192	325,124	48,126	373,250	56%	314,361
	Park Maintenance	72,572	1,567,049	599,924	66,729	666,654	43%	707,301
	Environmental Services	21,132	472,354	202,793	4,209	207,002	44%	140,459
	Countywide Solid Waste Program	30,655	907,406	229,975	-	229,975	25%	206,149
	Street Maintenance	206,721	3,025,578	1,323,894	143,582	1,467,476	49%	1,342,416
	Downtown Maintenance	19,518	345,237	152,099	18,647	170,746	49%	102,417
	Cable Television	7,742	74,940	52,535	-	52,535	70%	23,674
	COMMUNITY SERVICES	1,024,474	15,757,854	7,567,304	1,886,743	9,454,047	60%	6,886,835
	CODE COMPLIANCE	25,986	340,153	141,101	-	141,101	41%	104,270
	INFRASTRUCTURE PLANNING & CONGESTION MGMT	60,337	415,141	233,603	-	233,603	56%	180,282
	ECONOMIC DEVELOPMENT PROGRAMS	66,021	1,267,792	552,426	61,870	614,296	48%	462,062
	TOTAL COMMUNITY SERVICES	1,176,818	17,780,940	8,494,433	1,948,614	10,443,047	59%	7,633,449
III. PUBLIC SAFETY								
	POLICE							
	PD Administration	104,407	1,735,700	915,999	41,628	957,627	55%	887,282
	Field Operations	781,801	11,210,613	6,371,328	41,333	6,412,661	57%	5,769,161
	Support Services	218,885	3,586,324	1,598,299	599,540	2,197,838	61%	1,596,119
	Emergency Services/Haz Mat	17,522	222,865	127,427	10,436	137,863	62%	120,603
	Special Operations	227,093	4,098,765	2,080,101	-	2,080,101	51%	2,308,177
	Dispatch Services	136,964	2,201,937	1,129,949	-	1,129,949	51%	1,170,875
	POLICE	1,486,671	23,056,204	12,223,102	692,937	12,916,039	56%	11,852,216
	FIRE	681,192	9,139,905	5,365,338	122,131	5,487,469	60%	4,845,459
	TOTAL PUBLIC SAFETY	2,167,863	32,196,109	17,588,440	815,067	18,403,507	57%	16,697,675
IV. TRANSFERS								
	Other	108,647	3,263,767	2,160,531	-	2,160,531	66%	4,110,934
	TOTAL TRANSFERS	108,647	3,263,767	2,160,531	-	2,160,531	66%	4,110,934
	TOTAL GENERAL FUND	3,853,036	59,729,978	31,265,822	3,491,453	34,757,275	58%	31,497,748



City of Morgan Hill
Year to Date Expenses - Fiscal Year 2023-24
For the Month Ended January 31, 2024
58% 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	493,115	954,952	495,711	-	495,711	52%	408,364
205	PUBLIC SAFETY/SUPP.LAW	100,107	101,289	100,752	-	100,752	99%	100,730
206	DEVELOPMENT SERVICES FUND							
	Planning	114,879	1,847,544	941,043	229	941,272	51%	929,786
	Building	176,819	2,563,441	1,347,827	93,189	1,441,016	56%	1,259,649
	Engineering	98,061	1,974,680	983,380	103,785	1,087,164	55%	933,494
206	DEVELOPMENT SERVICES FUND	389,759	6,385,665	3,272,250	197,202	3,469,452	54%	3,122,929
207	LONG RANGE PLANNING	57,059	1,581,133	465,007	18,178	483,185	31%	523,456
215/216	CDBG	7	83	48	-	48	58%	47
225	ASSET SEIZURE	65	782	456	-	456	58%	443
229	LIGHTING AND LANDSCAPE	20,888	234,554	105,090	17,553	122,643	52%	103,187
230	COMMUNITY FACILITIES DISTRICT	3,015	41,249	21,224	-	21,224	51%	19,070
232	ENVIRONMENT PROGRAMS	26,793	561,335	248,639	2,135	250,774	45%	285,478
234	MOBILE HOME PARK	76	907	529	-	529	58%	514
236	HOUSING MITIGATION	75,292	1,541,126	569,893	191,194	761,087	49%	458,984
240	EMPLOYEE ASSISTANCE	79	20,946	2,552	-	2,552	12%	7,730
246	COUNTYWIDE SOLID WASTE PROGRAM	197,852	2,078,493	911,226	1,105,991	2,017,216	97%	869,207
255	HOUSING SUCCESSOR AGENCY	46,750	1,172,110	722,394	183,333	905,727	77%	693,563
TOTAL SPECIAL REVENUE FUNDS		1,410,859	14,674,624	6,915,772	1,715,585	8,631,357	59%	6,611,751
CAPITAL PROJECT FUNDS								
301	PARK DEVELOPMENT	51,334	2,285,298	458,730	91,224	549,954	24%	672,472
302	PARK MAINTENANCE	54,518	660,850	815,579	-	815,579	123%	390,797
303	LOCAL DRAINAGE	246,078	7,119,361	2,813,681	1,460,072	4,273,753	60%	756,791
304	LOCAL DRAIN. NON-AB1600	17,996	410,006	171,250	17,444	188,693	46%	45,810
306	AGRICULTURE & OPEN SPACE PRESERVATIK	8,133	247,600	56,933	-	56,933	23%	73,415
308	STREET CIP	368,841	5,499,004	4,305,256	596,132	4,901,388	89%	6,812,727
309	TRAFFIC IMPACT	63,745	5,827,301	589,107	3,458,914	4,048,020	69%	4,126,884
315	PUBLIC SAFETY FACILITIES IMPACT	440,822	10,717,603	1,614,727	8,170,331	9,785,058	91%	548,990
346	PUBLIC FAC.NON AB1600	5,155	1,321,382	56,743	263,711	320,455	24%	24,131
347	PUBLIC FACILITIES IMPACT	2,440	1,529,278	87,079	45,000	132,079	9%	17,006
348	LIBRARY IMPACT	18,529	222,349	129,704	-	129,704	58%	130,034
350	UNDERGROUNDING	98	1,194,738	685	-	685	0%	666
355	SCHOOL PEDESTRIAN & TRAFFIC SAFETY	2,501	916,562	22,871	3,428	26,299	3%	41,322
360	COMM/REC CENTER IMPACT	10,317	2,756,259	124,018	557,016	681,034	25%	690,587
375	QUIMBY FEE	938	1,403,605	17,872	368,544	386,416	28%	176,764
TOTAL CAPITAL PROJECTS FUNDS		1,291,445	42,111,196	11,264,235	15,031,816	26,296,051	62%	14,508,397
DEBT SERVICE FUNDS								
420	CIVIC CENTER DEBT	270	290,852	238,488	-	238,488	82%	236,106
441	POLICE FACILITY BOND DEBT	358	387,792	323,524	-	323,524	83%	317,903
TOTAL DEBT SERVICE FUNDS		628	678,644	562,012	-	562,012	83%	554,009



City of Morgan Hill
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For the Month Ended January 31, 2024
58% 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	1,625,548	15,560,361	8,457,509	50,277	8,507,785	55%	8,969,493
641	WASTEWATER CAPITAL EXPANSION	851,140	26,223,607	4,742,878	387,145	5,130,023	20%	2,440,496
642	WASTEWATER RATE STABILIZATION	156	1,872	1,092	-	1,092	58%	1,060
643	WASTEWATER CAPITAL PROJECTS	173,012	17,522,286	2,298,269	2,636,263	4,934,531	28%	6,405,685
TOTAL SEWER FUND(S)		2,649,856	59,308,126	15,499,747	3,073,684	18,573,431	31%	17,816,734
WATER								
	Water Operations	1,669,510	18,485,381	10,315,066	605,284	10,920,350	59%	8,342,484
	Utility Billing	68,972	1,192,638	557,757	85,232	642,989	54%	540,507
	Water Conservation	21,593	644,730	205,167	8,780	213,947	33%	141,666
650	WATER OPERATIONS	1,760,075	20,322,749	11,077,990	699,296	11,777,287	58%	9,024,657
651	WATER CAPITAL EXPANSION	67,514	2,479,364	475,594	62,239	537,833	22%	417,624
652	WATER RATE STABILIZATION	117	1,403	818	-	818	58%	794
653	WATER-CAPITAL PROJECTS	239,995	16,010,730	1,416,798	682,078	2,098,875	13%	305,433
TOTAL WATER FUND(S)		2,067,701	38,814,246	12,971,200	1,443,613	14,414,813	37%	9,748,509
TOTAL ENTERPRISE FUNDS		4,717,556	98,122,372	28,470,947	4,517,297	32,988,245	34%	27,565,243
INTERNAL SERVICE FUNDS								
730	INFORMATION SYSTEMS	356,738	2,683,931	1,589,002	64,260	1,653,262	62%	1,197,624
740	BUILDING MAINTENANCE	150,726	1,781,790	855,189	140,123	995,312	56%	756,147
741	BUILDING REPLACEMENT	-	1,501,100	39,456	12,035	51,491	3%	89,010
745	CIP ADMINISTRATION	154,112	2,061,046	1,024,848	1,015	1,025,864	50%	1,055,523
760	UNEMPLOYMENT	-	15,000	11,826	-	11,826	79%	10,642
770	WORKERS COMPENSATION	47,246	1,048,265	694,183	-	694,183	66%	656,847
790	EQUIPMENT REPLACEMENT	194,385	1,245,240	304,785	873,304	1,178,089	95%	374,085
791	EMPLOYEE BENEFITS FUND	93,830	750,000	426,961	-	426,961	57%	530,446
795	GEN. LIABILITY INSURANCE	23,057	2,551,193	2,391,855	-	2,391,855	94%	1,698,279
TOTAL INTERNAL SERVICE FUNDS		1,020,094	13,637,565	7,338,106	1,090,738	8,428,843	62%	6,368,601
REPORT TOTAL		\$ 12,293,617	\$ 228,954,379	\$ 85,816,894	\$ 25,846,890	\$ 111,663,784	49%	\$ 87,105,749



City of Morgan Hill
Fund Activity Summary - Fiscal Year 2023-24
For the Month Ended January 31, 2024
58% 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	\$ 26,257,959	49%	\$ 31,265,822	52%	\$ (5,007,863)	\$ 3,491,453	\$ 24,676,250
TOTAL GENERAL FUND		\$ 33,175,566	\$ 26,257,959	49%	\$ 31,265,822	52%	\$ (5,007,863)	\$ 3,491,453	\$ 24,676,250
202	STREET MAINTENANCE	68,927	\$ 427,876	45%	\$ 495,711	53%	\$ (67,835)	\$ -	\$ 1,092
205	PUBLIC SAFETY/SUPPL. LAW	319,867	126,006	124%	100,752	50%	25,254	-	345,121
206	DEVELOPMENT SERVICES	(426,677)	3,004,654	47%	3,272,250	51%	(267,596)	197,202	(891,475)
207	LONG RANGE PLANNING	1,276,770	495,022	49%	465,007	29%	30,015	18,178	1,288,607
215 / 216	CDBG	30,767	1,127	347%	48	58%	1,079	-	31,846
225	ASSET SEIZURE	102,496	1,727	133%	456	58%	1,271	-	103,767
229	LIGHTING AND LANDSCAPE	191,949	2,933	1%	105,090	45%	(102,157)	17,553	72,239
230	COMMUNITY FACILITIES DISTRICT	150,651	2,470	7%	21,224	51%	(18,754)	-	131,897
232	ENVIRONMENTAL PROGRAMS	328,270	333,852	57%	248,639	44%	85,214	2,135	411,349
234	MOBILE HOME PK RENT STAB.	76,297	4,818	825%	529	58%	4,289	-	80,586
235	SENIOR HOUSING	239,361	-	n/a	-	n/a	-	-	239,361
236	HOUSING MITIGATION	5,698,654	2,035,146	46%	569,893	37%	1,465,253	191,194	6,972,713
240	EMPLOYEE ASSISTANCE	61,893	4,924	24%	2,552	12%	2,372	-	64,265
246	COUNTYWIDE SOLID WASTE	239,294	1,053,585	175%	911,226	44%	142,359	1,105,991	(724,337)
247	ENVIRONMENT REMEDIATION	140,690	2,373	175%	-	n/a	2,373	-	143,063
255	HOUSING SUCCESSOR AGENCY	4,001,427	192,873	81%	722,394	62%	(529,521)	183,333	3,288,573
TOTAL SPECIAL REVENUE FUNDS		\$ 12,500,636	\$ 7,689,386	48%	\$ 6,915,772	47%	\$ 773,614	\$ 1,715,585	\$ 11,558,665
301	PARK DEV. IMPACT FUND	\$ 1,426,990	\$ 302,866	18%	\$ 458,730	20%	\$ (155,864)	\$ 91,224	\$ 1,179,902
302	PARK MAINTENANCE	2,489,205	48,928	13%	815,579	123%	(766,651)	-	1,722,554
303	LOCAL DRAINAGE	11,817,863	389,535	87%	2,813,681	40%	(2,424,146)	1,460,072	7,933,645
304	LOCAL DRAINAGE/NON-AB1600	1,343,736	22,908	74%	171,250	42%	(148,342)	17,444	1,177,950
306	AG. AND OPEN SPACE PRESERVATION	541,496	112,027	2776%	56,933	23%	55,094	-	596,590
308	STREET CIP	4,078,203	1,421,169	32%	4,305,256	78%	(2,884,086)	596,132	597,984
309	TRAFFIC IMPACT FUND	3,727,580	473,917	37%	589,107	10%	(115,190)	3,458,914	153,476
315	PUBLIC SAFETY FACILITIES IMPACT	3,050,728	297,584	37%	1,614,727	15%	(1,317,143)	8,170,331	(6,436,746)
346	PUBLIC FACILITIES NON-AB1600	2,943,797	185,816	23%	56,743	4%	129,073	263,711	2,809,158
347	PUBLIC FACILITIES IMPACT FUND	1,099,809	103,420	59%	87,079	6%	16,341	45,000	1,071,150
348	LIBRARY IMPACT FUND	1,408,238	350,940	53%	129,704	58%	221,236	-	1,629,474
350	UNDERGROUNDING	1,626,301	245,046	1088%	685	0%	244,360	-	1,870,661
355	SCHOOL PEDESTRIAN/TRAFFIC SFTY	92,077	31,316	6%	22,871	2%	8,444	3,428	97,093
360	COMM/REC CTR IMPACT FUND	992,228	603,960	53%	124,018	4%	479,942	557,016	915,154
375	QUIMBY FEE	1,621,885	2,775,166	454%	17,872	1%	2,757,294	368,544	4,010,635
TOTAL CAPITAL PROJECT FUNDS		\$ 38,260,136	\$ 7,364,597	57%	\$ 11,264,235	27%	\$ (3,899,638)	\$ 15,031,816	\$ 19,328,682
420	CIVIC CENTER DEBT	\$ 175,864	\$ 172,531	59%	\$ 238,488	82%	\$ (65,957)	\$ 76	\$ 109,830
441	POLICE FACILITY BOND DEBT	166,725	226,338	58%	323,524	83%	(97,185)	97	69,443
TOTAL DEBT SERVICE FUNDS		\$ 342,589	\$ 398,869	59%	\$ 562,012	83%	\$ (163,143)	\$ 173	\$ 179,273
640	WASTEWATER OPERATIONS	\$ 4,670,817	\$ 7,651,552	49%	\$ 8,457,509	54%	\$ (805,957)	50,277	3,814,583
641	WASTEWATER IMPACT FUND*	21,350,081	2,642,471	60%	4,742,878	18%	(2,100,407)	387,145	18,862,529
642	WASTEWATER RATE STABILIZATION	2,799,081	162,747	85%	1,092	58%	161,655	-	2,960,736
643	WASTEWATER CAPITAL PROJECTS	15,601,623	3,261,825	63%	2,298,269	13%	963,556	2,636,263	13,928,916
650	WATER OPERATIONS	4,444,824	10,069,795	51%	11,077,990	55%	(1,008,195)	699,296	2,737,333
651	WATER IMPACT FUND*	2,969,960	631,063	36%	475,594	19%	155,470	62,239	3,063,190
652	WATER RATE STABILIZATION	3,183,868	56,700	n/a	818	58%	55,882	-	3,239,750
653	WATER -CAPITAL PROJECT	15,548,298	4,300,338	62%	1,416,798	9%	2,883,541	682,078	17,749,761
TOTAL ENTERPRISE FUNDS		\$ 70,568,552	\$ 28,776,491	53%	\$ 28,470,947	29%	\$ 305,544	\$ 4,517,297	\$ 66,356,798
730	INFORMATION SERVICES	\$ 793,101	\$ 1,461,843	59%	\$ 1,589,002	59%	\$ (127,159)	\$ 64,260	\$ 601,682
740	BUILDING MAINTENANCE	7,256	978,595	58%	855,189	48%	123,405	140,123	(9,462)
741	BUILDING REPLACEMENT	4,309,501	561,457	65%	39,456	3%	522,002	12,035	4,819,467
745	CIP ENGINEERING	9,209	902,935	44%	1,024,848	50%	(121,913)	1,015	(113,719)
760	UNEMPLOYMENT	303,137	4,844	165%	11,826	79%	(6,982)	-	296,155
770	WORKERS COMPENSATION	2,152,498	555,048	56%	694,183	66%	(139,135)	30,000	1,983,363
790	EQUIPMENT REPLACEMENT	7,665,968	831,677	48%	304,785	24%	526,891	873,304	7,319,555
791	EMPLOYEE BENEFITS FUNDS	(124,893)	499,498	59%	426,961	57%	72,537	-	(52,356)
795	GEN. LIABILITY INSURANCE	932,477	1,229,500	58%	2,391,855	94%	(1,162,356)	-	(229,879)
TOTAL INTERNAL SERVICE FUNDS		\$ 16,048,254	\$ 7,025,398	55%	\$ 7,338,106	54%	\$ (312,708)	\$ 1,120,738	\$ 14,614,808

 CITY OF MORGAN HILL City of Morgan Hill Fund Activity Summary - Fiscal Year 2023-24 For the Month Ended January 31, 2024 58% 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	\$ 26,257,959	49%	\$ 31,265,822	52%	\$ (5,007,863)	\$ 3,491,453	\$ 24,676,250
SPECIAL REVENUE GROUP	12,500,636	7,689,386	48%	6,915,772	47%	773,614	1,715,585	11,558,665
DEBT SERVICE GROUP	342,589	398,869	59%	562,012	83%	(163,143)	173	179,273
CAPITAL PROJECTS GROUP	38,260,136	7,364,597	57%	11,264,235	27%	(3,899,638)	15,031,816	19,328,682
ENTERPRISE GROUP	70,568,552	28,776,491	53%	28,470,947	29%	305,544	4,517,297	66,356,798
INTERNAL SERVICE GROUP	16,048,254	7,025,398	55%	7,338,106	54%	(312,708)	1,120,738	14,614,808
TOTAL ALL GROUPS	\$ 170,895,733	\$ 77,512,700	52%	\$ 85,816,894	37%	\$ (8,304,194)	\$ 25,877,062	\$ 136,714,476

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: March 6, 2024

PREPARED BY:

Cynthia Iwanaga, Management Analyst

APPROVED BY: City Manager

RESCIND AWARD OF COMMUNITY PARK DG PATHWAYS PROJECT AND AWARD TO NEXT LOWEST BIDDER

RECOMMENDATION(S)

1. Rescind Award of Decomposed Granite (DG) Pathways Project to Angkor Engineering, Inc. in the amount of \$51,825 and contingency funds not to exceed \$25,913; and
2. Award DG Pathways Project to Always Paving, Inc. in the amount of \$56,100 and contingency funds not to exceed \$28,050; and
3. Authorize the City Manager to execute and administer that certain construction contract with Always Paving, Inc.

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

2024-2025 Strategic Priorities

Fiscal Sustainability

Guiding Documents

Bikeways, Trails, and Recreation Master Plan

REPORT NARRATIVE:

The purpose of this item is to provide the City Council with an opportunity to consider rescinding the award of the contract to Angkor Engineering, Inc. in the amount of \$51,825 to complete the installation of the two new decomposed granite (DG) pathways within Community Park, and to then award the contract to the next lowest responsive responsible bidder, Always Paving, Inc. in the amount of \$56,100.

On January 17, 2024, the City Council awarded a contract for the Community Park DG Pathways project to Angkor Engineering, Inc. in the amount of \$51,825. After the award

was made, Angkor Engineering, Inc. did not provide the signed contract, insurance certificates, or the required payment and performance bonds within the 10-day window for submitting the documents. The City granted the contractor an initial extension to provide the required documents through January 30, 2024. On February 6, 2024, Angkor Engineering, Inc. informed the City that they were unable to provide the necessary performance and payment bonds with their surety and requested an extension of time to obtain bonds from another surety.

On February 6, 2024, staff provided Angkor Engineering with an additional extension to February 21, 2024. At that time, staff also confirmed that if Angkor Engineering, Inc. was unable to fulfill its contractual obligation to provide the signed contract, bonds, and insurance as guaranteed by their bid security in the form of a cashier's check for \$5,200, the City would enforce the provision for Bid Security and deposit the check into a City account. Furthermore, Angkor Engineering, Inc. was informed that it would be removed as the lowest responsive responsible bidder and the City would award this project to the next lowest responsive and responsible bidder.

Angkor Engineering did not submit the required contract, bonds, and insurance by February 21, 2024. On February 22, 2024, staff notified Angkor Engineering, Inc. that it was being removed as the lowest responsive responsible bidder. Staff then contacted the next lowest bidder, Always Paving, Inc. to confirm that they can enter into a contract with the required documentation to complete the Community Park DG Pathways project. The scope of the project will remain the same and includes all labor and material necessary to install 4,146 new SF (or 691 linear feet) of DG pathways in Community Park to complete the circular DG pathway that currently exists on the interior borders of Community Park.

Staff recommends that the original award to Angkor Engineering, Inc. be rescinded. It is also recommended that the Council award the Community Park DG Pathways project to the next lowest bidder, Always Paving, Inc. in the amount of \$56,100, and authorize the City Manager to execute and administer the agreement. In addition to authorizing the contract amount of \$56,100, staff is also recommending a 50% contingency amount of \$28,050, which is available for additional trail restoration due to a Per Capita Grant provided by the State of California Parks and Recreation Department. The total authorization with the contingency would be \$84,150.

COMMUNITY ENGAGEMENT:

Inform

The DG Pathways project will be scheduled for spring 2024. Before the installation begins, information on the closure will be shared with Community members via social media posts and email communications to residents.

ALTERNATIVE ACTIONS:

The City Council could decide not to approve this project, and direct staff to pursue an alternative approach to creating new pathways in Community Park. Postponing this work is not recommended as the new DG pathways will provide a safer path for

residents to walk through and around Community Park.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The City Council previously awarded the Community Park DG Pathways project to Angkor Engineering, Inc. at its January 17, 2024 meeting.

FISCAL AND RESOURCE IMPACT:

If approved, the total funding authorization for the new contract with Always Paving, Inc. will be \$84,150, which includes the contract amount of \$56,100, and a 50% contingency of \$28,050. The large contingency will support completing additional portions of the Community Park DG trail as Per Capita Grant funds are available for the potential additional work. This entire project is eligible for State grant fund reimbursement.

The original total funding authorization for the Angkor Engineering, Inc. contract was \$77,738. The difference between the original and revised authorization amounts is \$6,412. A portion of this can be covered by the \$5,200 cashier's check that Angkor Engineering, Inc. submitted as bid security.

CEQA (California Environmental Quality Act):

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.

CONTRACT

This public works contract ("Contract") is entered into by and between the City of Morgan Hill ("City") and Always Paving, Inc., a California Corporation ("Contractor") for work on the Community Park DG Pathways 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 Contract;
 - 2.6 Payment and Performance Bonds;
 - 2.7 General Conditions;
 - 2.8 Special Conditions;
 - 2.9 Project Drawings and Specifications;
 - 2.10 Change Orders, if any;
 - 2.11 Notice of Award;
 - 2.12 Notice to Proceed;
 - 2.13 And the following: No other documents
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 Fifty-Six Thousand One Hundred Dollars (\$56,100.00) (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: keri.russell@morganhill.ca.gov

Contractor:

Name: Always Paving, Inc.
Address: 5221 Sussex Place
City/State/Zip: Newark, CA 94560
Phone: (510) 894-1921
Attn: Marco Contreras, Harold Hutson
Email: 2alwayspaving@gmail.com
Copy to: harold@alwayspavinginc.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:
ALWAYS PAVING, INC.**

Signature

Name/Title [print]

Date: 2-26-24

*Corporate entities must provide a
second signature:*

Signature

Name/Title [print]

Date: 02-26-24

1036777
Contractor's License Number(s)

03/31/2024
Expiration Date(s)

Seal:

10000944976
Contractor's DIR Registration Number(s)

06/30/2024
Expiration Date

END OF CONTRACT

PAYMENT BOND

The City of Morgan Hill ("City") and Always Paving, Inc. ("Contractor") have entered into a contract, dated _____, 20____ ("Contract") for work on the Community Park DG Pathways Project ("Project"). The Contract is incorporated by reference into this Payment Bond ("Bond").

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

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

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

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

SURETY:

s/ _____

Name: _____

Title: _____

CONTRACTOR:

s/ _____

Name: _____

Title: _____

(Attach Acknowledgment with Notary
Seal and Power of Attorney)

APPROVED AS TO FORM:

By: _____
Donald A. Larkin, City Attorney

Date: _____

END OF PAYMENT BOND

PERFORMANCE BOND

The City of Morgan Hill ("City") and Always Paving, Inc. ("Contractor") have entered into a contract, dated _____, 20____ ("Contract") for work on the Community Park DG Pathways Project ("Project"). The Contract is incorporated by reference into this Performance Bond ("Bond").

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

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

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

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

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

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

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

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

[Signatures are on the following page.]

SURETY:

s/ _____

Name: _____

Title: _____

(Attach Acknowledgment with Notary
Seal and Power of Attorney)

CONTRACTOR:

s/ _____

Name: _____

Title: _____

APPROVED AS TO FORM:

By: _____
Donald A. Larkin, City Attorney

Date: _____

END OF PERFORMANCE BOND

WARRANTY BOND

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

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

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

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

SURETY:

s/ _____

Name: _____

Title: _____

(Attach Acknowledgment with Notary
Seal and Power of Attorney)

CONTRACTOR:

s/ _____

Name: _____

Title: _____

APPROVED AS TO FORM:

By: _____
Donald A. Larkin, City Attorney

Date: _____

END OF WARRANTY BOND

GENERAL CONDITIONS

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Article 1 Definitions

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

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

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

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

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

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

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

Contract means the signed agreement between City and Contractor.

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

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

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

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

Day means a calendar day unless otherwise specified.

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

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

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

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

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

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

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

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

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

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

Project means the public works project referenced in the Contract.

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

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

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

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

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

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

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

Technical Specifications means Specifications.

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

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

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

Article 2 Roles and Responsibilities

2.1 Design Professional.

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

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

2.2 Contractor.

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

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

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

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

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

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

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

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

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

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

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

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

2.3 Subcontractors.

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

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

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

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

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

2.4 Coordination of Work.

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

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

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

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

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

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

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

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

(E) **Effect of Review and Approval.** Review and approval of a submittal by City will not relieve Contractor from complying with the requirements of the Contract Documents. Contractor is responsible for any errors in any submittal, and review or approval of a submittal by City is not an assumption of risk or liability by City.

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

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

Article 3 Contract Documents

3.1 Interpretation of Contract Documents.

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

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

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

(D) **Technical or Trade Terms.** Any terms that have well-known technical or trade meanings will be interpreted in accordance with those meanings, unless otherwise specifically defined in the Contract Documents.

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

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

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

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

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

(B) **Conflicts or Inconsistencies.** If there is a conflict or inconsistency between any provision in the Standard Specifications and a provision of these Contract Documents, as determined by City, the provision in the Contract Documents will govern.

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

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

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

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

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

Article 4

Bonds, Indemnity, and Insurance

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

4.2 Indemnity. To the fullest extent permitted by law, Contractor must indemnify, defend, and hold harmless City, its agents and consultants, and Design Professional (individually, an "Indemnatee," and collectively the "Indemnitees") from and against any and all liability, loss, damage, claims, expenses (including, without limitation, attorney fees, expert witness fees,

paralegal fees, and fees and costs of litigation or arbitration) (collectively, "Liability") of every nature arising out of or in connection with the acts or omissions of Contractor, its employees, Subcontractors, representatives, or agents, in bidding or performing the Work or its failure to comply with any of its obligations under the Contract, except such Liability caused by the active negligence, sole negligence, or willful misconduct of an Indemnatee. This indemnity requirement applies to any Liability arising from alleged defects in the content or manner of submission of Contractor's bid for the Contract. Contractor's failure or refusal to timely accept a tender of defense pursuant to this provision will be deemed a material breach of this Contract. City will timely notify Contractor upon receipt of any third-party claim relating to the Contract, as required by Public Contract Code Section 9201.

- 4.3 Insurance.** No later than ten (10) days following issuance of the notice of award, Contractor is required to procure and provide proof of the insurance coverage required by this section in the form of certificates and endorsements. The required insurance must cover the activities of Contractor and its Subcontractors relating to or arising from the performance of the Work, and must remain in full force and effect at all times during the period covered by the Contract until the date of recordation of the notice of completion. **The coverages may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by excess or "umbrella" policies, provided each such policy complies with the requirements set forth herein.** If Contractor fails to provide any of the required coverage in full compliance with the requirements of the Contract Documents, City may, at its sole discretion, purchase such coverage at Contractor's expense and deduct the cost from payments due to Contractor, or terminate the Contract for default. **Contractor further understands that City reserves the right to modify the insurance requirements set forth herein, with thirty (30) days' notice provided to Contractor, at any time as deemed necessary to protect the interests of City.**

(A) **Deductibles and Self-Insured Retentions.** Any deductibles or self-insured retentions must be declared to and approved by City. If the City's Risk Manager determines that the deductibles and/or self-insured retentions are unacceptably high, at City's option, Contractor must either reduce or eliminate the deductibles and/or self-insured retentions as they apply to City and all required Additional Insured; or must provide a financial guarantee, to City's satisfaction, guaranteeing payment of losses and related investigation, claim administration, and legal expenses.

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

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

- (4) **Automobile Liability:** Contractor shall maintain Automobile Liability covering all owned, non-owned and hired automobiles (if Contractor does not own automobiles, then Contractor shall maintain Hired/Non-owned Automobile Liability) against claims and liabilities for personal injury, death, or property damage providing protection in the minimum amount of: (i) One Million Dollars (\$1,000,000.00) combined single limit, or (ii) the maximum amount of such insurance available to Contractor under Contractor's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.
- (5) **Pollution (Environmental) Liability:** If the performance of Contractor's work or service under this Contract involves hazardous materials, contaminated soil disposal, and/or a risk of accidental release of fuel oil, chemicals or other toxic gases or hazardous materials, Contractor shall procure and maintain Pollution Liability covering Contractor's liability for bodily injury, property damage and environmental damage resulting from pollution and related cleanup costs arising out of the work or services to be performed under this Agreement. Coverage shall be provided for both work performed on site, as well as during the transport of hazardous materials. Such coverage shall be in the minimum amount of: (i) One Million Dollars (\$1,000,000.00) for any one accident or occurrence, or (ii) the maximum amount of such insurance available to Contractor under Contractor's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.
- (6) **Professional Liability:**
- a. If the performance of Contractor's work or service under this Contract involves professional and/or technical services (examples include, but are not limited to, architects, engineers, land surveyors, legal services, and appraisers), Contractor shall procure and maintain either a claims made or occurrence Errors and Omission liability insurance in the minimum amount of: (i) One Million Dollars (\$1,000,000.00) each claim, or (ii) the maximum amount of such insurance available to Contractor under Contractor's combined insurance policies (including any excess or "umbrella" policies), whichever is greater. Further, if Contractor maintains a claims-made policy, Contractor shall provide written evidence of such insurance to City for at least five (5) years after the completion of work performed under this Contract.

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

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

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

(D) **Subcontractors.** Contractor must ensure that each Subcontractor is required to maintain the same insurance coverage required under this Section 4.3, with respect to its performance of Work on the Project, including those requirements related to the additional insureds and waiver of subrogation.

(E) **Qualification of Insurers.** All insurance required pursuant to this Contract 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 "VIII" or better.

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

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

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

Article 5 Contract Time

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

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

(B) **Rate of Progress.** Contractor and its Subcontractors must, at all times, provide workers, materials, and equipment sufficient to maintain the rate of progress necessary to ensure full completion of the Work within the Contract Time. If City determines that Contractor is failing to prosecute the Work at a sufficient rate of progress, City may, in its sole discretion, direct Contractor to provide additional workers, materials, or equipment, or to work additional hours or days without additional cost to City, in order to achieve a rate of progress satisfactory to City. If Contractor fails to comply with City's directive in this regard, City may, at Contractor's expense, separately contract for additional workers, materials, or equipment or use City's own forces to achieve the necessary rate of progress. Alternatively, City may terminate the Contract based on Contractor's default.

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

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

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

(C) **Recovery Schedule.** If City determines that the Work is more than one (1) week behind schedule, within seven (7) days following written notice of such determination, Contractor must submit a recovery schedule,

showing how Contractor intends to perform and complete the Work within the Contract Time, based on actual progress to date.

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

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

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

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

5.3 Delay and Extensions of Contract Time.

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

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

- (1) weather conditions which are normal for the location of the Project, as determined by reliable records, including monthly rainfall averages, for the preceding ten (10) years;
- (2) Contractor's failure to order equipment and materials sufficiently in advance of the time needed for timely completion of the Work;
- (3) Contractor's failure to provide adequate notification to utility companies for connections or services necessary for the timely performance and completion of the Work;
- (4) foreseeable conditions Contractor could have ascertained from reasonably diligent inspection of the Worksite or review of the Contract Documents; or
- (5) Contractor's financial inability to perform the Work, including insufficient funds to pay its Subcontractors or suppliers.

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

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

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

(3) *Supporting Documentation.* The request must also include any and all supporting documentation necessary to evidence the delay and its actual impacts, including schedule and cost impacts, including a time impact analysis using critical path methodology, and demonstrating unavoidable delay to Final Completion. The time impact analysis must be submitted in a form or format acceptable to City.

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

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

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

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

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

request for an extension of time or delay costs is to comply with the Dispute Resolution provisions set forth in Article 12, below.

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

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

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

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

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

Article 6 Contract Modification

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

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

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

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

(D) **Dispute Resolution.** Contractor's sole recourse for an unresolved dispute related to changes in the Work is to comply with the dispute resolution provisions set forth in Article 12, below.

6.2 Contractor Change Order Requests. Contractor must submit a request or proposal for a change in the Work or a change in the Contract Price or Contract Time as a written Change Order request or proposal.

(A) **Time for Submission.** Any request for a change in the Contract Price must be submitted in writing to Project Manager within ten (10) calendar days of the date that Contractor first encounters the circumstances, information or conditions giving rise to the Change Order request, even if the total amount of the requested change in the Contract Price or impact on the Contract Time is not yet known at that time.

(B) **Required Contents.** Any Change Order request or proposal submitted by Contractor must include a complete breakdown of actual or estimated costs and credits, and must itemize labor, materials, equipment, taxes, insurance, and subcontract amounts. Any estimated cost must be updated in writing as soon as the actual amount is known.

(C) **Required Documentation.** All claimed costs must be fully documented, and any related request for an extension of time or delay-

related costs must be included at that time and in compliance with the requirements of Article 5 of the General Conditions.

(D) **Required Form.** Contractor must use City's form(s) for submitting all Change Order requests or proposals, unless otherwise specified by City.

(E) **Certification.** All Change Order requests must be signed by Contractor and must include the following certification:

"The undersigned Contractor certifies under penalty of perjury that its statements and representations in this Change Order request are true and correct. Contractor warrants that this Change Order request is comprehensive and complete, and agrees that any costs, expenses, or time extension request not included herein is deemed waived. Contractor understands that submission of claims which have no basis in fact or which Contractor knows to be false may violate the False Claims Act, as set forth in Government Code Sections 12650 et seq."

6.3 Adjustments to Contract Price. The amount of any increase or decrease to the Contract Price will be determined based on one (1) of the following methods in the order provided:

(A) **Unit Pricing.** Amounts previously provided by Contractor in the form of unit prices, either in a bid schedule or schedule of values, will apply if unit pricing has previously been provided in Contractor's accepted bid schedule or schedule of values for the affected Work;

(B) **Lump Sum.** A mutually agreed upon lump sum;

(C) **Time and Materials.** On a time and materials basis, which may include a not-to-exceed limit, calculated as the total of the following sums:

- (1) All direct labor costs plus fifteen percent (15%) for overhead and profit;
- (2) All direct material costs, including sales tax, plus fifteen percent (15%) for overhead and profit;
- (3) All direct plant and equipment rental costs, plus fifteen percent (15%) for overhead and profit;
- (4) All direct subcontract costs plus ten percent (10%) for overhead and profit; and

- (5) Increased bond or insurance premium costs computed at one- and one-half percent (1½%) of total of the previous four (4) sums.

6.4 Unilateral Change Order. If City disagrees with the amount of compensation or extension of time that Contractor has requested, City may elect to issue a unilateral Change Order, directing performance of the Work, and authorizing a change in the Contract Price or Contract Time in the amount City believes is merited. Contractor's sole recourse to dispute the terms of a unilateral Change Order is to submit a timely Claim pursuant to Article 12, below.

6.5 Non-Compliance Deemed Waiver. Contractor waives its entitlement to any increase in the Contract Price or Contract Time if Contractor fails to full comply with the provisions of this Article. Contractor will not be paid for unauthorized extra work.

Article 7

General Construction Provisions

7.1 Permits and Taxes.

(A) **General.** Contractor must obtain and pay for any and all permits, fees, or licenses required to perform the Work, unless otherwise indicated in the Contract Documents. Contractor must cooperate with and provide notifications to government agencies with jurisdiction over the Project, as may be required. Contractor must provide City with copies of all notices, permits, licenses, and renewals required for the Work.

(B) **Federal Excise Tax.** Contractor must pay for all taxes on labor, material and equipment, except Federal Excise Tax to the extent that City is exempt from Federal Excise Tax.

7.2 Temporary Facilities. Contractor must provide, at Contractor's sole expense, any and all temporary facilities, including onsite office, sanitary facilities, storage, scaffolds, barricades, walkways, and any other temporary structure required to safely perform the Work along with any utility services incidental thereto.

(A) **Standards.** Such structures must be safe and adequate for the intended use, and installed and maintained in accordance with all applicable federal, state, and local laws, codes, and regulations.

(B) **Removal and Repair.** Contractor must promptly remove all such temporary facilities when they are no longer needed or upon completion of the Work, whichever comes first. Contractor must promptly repair any

damage to City's property caused by the installation, use, or removal of the temporary facilities, and must promptly restore the property to its original or intended condition.

(C) **Additional Requirements.** Additional provisions pertaining to temporary facilities may be included in the Specifications or Special Conditions.

7.3 Signs. No signs may be displayed on or about City's property, except signage which is required by law or by the Contract Documents, without City's prior written approval as to content, size, design, and location.

7.4 Protection of Work and Property.

(A) **General.** Contractor is responsible at all times for protecting the Work and materials and equipment to be incorporated into the Work from damage until the Notice of Completion has been recorded. Except as specifically authorized by City, Contractor must confine its operations to the area of the Project site indicated in the Drawings. Contractor is liable for any damage caused to City's real or personal property, the real or personal property of adjacent property owners, or the work or personal property of other contractors working for City.

(B) **Unforeseen Conditions.** If Contractor encounters facilities, utilities, or other unknown conditions not shown on or reasonably inferable from the Drawings or apparent from inspection of the Project site, Contractor must promptly notify Project Manager, and must avoid taking any action which could cause damage to the facilities or utilities pending further direction from Project Manager. If Project Manager's subsequent direction to Contractor affects Contractor's cost or time to perform the Work, Contractor may submit a Change Order request as set forth in Article 6, above.

(C) **Support; Adjacent Properties.** Contractor must provide, install, and maintain all shoring, bracing, underpinning, etc., necessary to provide support to City's property and adjacent properties and improvements thereon. Contractor must provide notifications to adjacent property owners as may be required by law.

7.5 Noninterference. Contractor must take reasonable measures to avoid interfering with City's use of its property at or adjacent to the Project site, including use of roadways, entrances, parking areas, walkways, and structures.

7.6 Materials and Equipment.

(A) **General.** Unless otherwise specified, all materials and equipment required for the Work must be new and of the best grade for the intended purpose, and furnished in sufficient quantities to ensure the proper and expeditious performance of the Work. Unless otherwise specified, all materials and equipment required for the Work are deemed to include all components required for complete installation and intended operation, and must be installed in accordance with the manufacturer's recommendation. Contractor is responsible for all shipping, handling, and storage costs associated with the materials and equipment required for the Work, and is responsible for protecting the Work and all of the required materials, supplies, tools and equipment at Contractor's sole cost until City accepts the Project.

(B) **City-Provided.** If the Work includes installation of materials or equipment to be provided by City, Contractor is solely responsible for the proper examination, handling, storage, and installation of such items in accordance with the Contract Documents. Contractor must promptly notify City of any defects discovered in City-provided materials or equipment. Contractor is solely responsible for any loss of or damage to such items which occurs while the items are in Contractor's custody and control, the cost of which may be offset from the Contract Price and deducted from any payment(s) due to Contractor.

(C) **Intellectual Property Rights.** Contractor must, at its sole expense, obtain any authorization required for use of patented or copyright protected materials, equipment, devices or processes that are incorporated into the Work. Contractor's indemnity obligation in Article 4, applies to any claimed violation of intellectual property rights in violation of this provision.

7.7 Substitutions.

(A) **"Or Equal."** Any specification designating a material, product, thing, or service by specific brand or trade name, followed by the words "or equal," is intended only to indicate quality and type of item or service desired, and Contractor may request use of any equal material, product, thing, or service.

(B) **Request for Substitution.** A request for substitution must be submitted to Project Manager for approval within the applicable time period provided in the Contract Documents. If no time period is specified, the substitution request may be submitted any time within thirty-five (35) days after the date of award of the Contract, or sufficiently in advance of the time needed to avoid delay of the Work, whichever is earlier.

(C) **Substantiation.** All data substantiating the proposed substitute as an “equal” item or service must be submitted with the written request for substitution. Contractor’s failure to timely provide necessary substantiation is ground for rejection of the proposed substitution, without further review.

(D) **Burden of Proving Equality.** Contractor has the burden of proving the equality of the proposed substitution. City has sole discretion to determine whether a proposed substitution is “equal,” and City’s determination is final.

(E) **Approval or Rejection.** If the proposed substitution is approved, Contractor is solely responsible for any additional costs associated with the substituted item(s). If the proposed substitution is rejected, Contractor must, without delay, install the item specified.

(F) **Contractor’s Obligations.** City’s review of a proposed substitution will not relieve Contractor from any of its obligations under the Contract Documents. In the event Contractor makes an unauthorized substitution, Contractor will be solely responsible for all resulting cost impacts, including the cost of removal and replacement and the impact to other design elements.

7.8 Testing and Inspection.

(A) **General.** All materials, equipment, and workmanship used in the Work are subject to inspection by Inspector at all times and locations during construction and/or fabrication. All manufacturers’ application or installation instructions must be provided to the Inspector at least ten (10) days prior to the first such application or installation. Contractor must, at all times, make the Work available for inspection.

(B) **Scheduling and Notification.** Contractor must schedule all tests required by the Contract Documents in time to avoid any delay to the progress of the Work. Contractor must provide timely notice to all necessary parties as specified in the Contract Documents.

(C) **Responsibility for Costs.** City will bear the initial cost of testing to be performed by independent testing consultants retained by City, subject to the following exceptions:

- (1) Contractor will be responsible for the costs of any subsequent tests which are required to substantiate compliance with the Contract Documents, and any associated remediation costs.

(2) Contractor will be responsible for inspection costs, at City's established rates, for inspection time lost because the Work is not ready or Contractor fails to appear for a scheduled inspection.

(3) In addition, if any portion of the Work which is subject to testing is covered or concealed by Contractor prior to testing, Contractor will bear the cost of making that portion of the Work available for the testing required by the Contract Documents, and any associated repair or remediation costs.

(D) **Contractor's Obligations.** Any Work that fails to comply with the requirements of the Contract Documents must be promptly repaired, replaced, or corrected by Contractor, at Contractor's sole expense, even if that Work was previously inspected or included in a progress payment. Contractor is solely responsible for any delay occasioned by remediation of noncompliant Work. Inspection of the Work does not in any way relieve Contractor of its obligations to perform the Work as specified.

(E) **Distant Locations.** If required off-site testing or inspection must be conducted at a location more than 100 miles from the Project site, Contractor is solely responsible for the additional travel costs required for testing and/or inspection at such locations.

(F) **Final Inspection.** The provisions of this Section 7.8 apply to final inspection under Article 11, Completion and Warranty Provisions.

7.9 Project Site Conditions and Maintenance. Contractor must at all times, on a 24-hour basis and at its sole cost, maintain the Project site and staging and storage areas in clean, neat, and sanitary condition and in compliance with all Laws pertaining to safety, air quality, and dust control. Adequate toilets must be provided, and properly maintained and serviced for all workers on the Project site, located in a suitably secluded area, subject to City's prior approval. Contractor must also, on a daily basis and at its sole cost, remove and properly dispose of the debris and waste materials from the Project site.

(A) **Air Emissions Control.** Contractor must not discharge smoke or other air contaminants into the atmosphere in violation of any Laws. Contractor must comply with all Laws, including the California Air Resources Board's In-Use Off-Road Diesel-Fueled Fleets Regulation (13 CCR § 2449 et seq.).

(B) **Dust and Debris.** Contractor must minimize and confine dust and debris resulting from the Work. Contractor must abate dust nuisance by cleaning, sweeping, and immediately sprinkling with water excavated areas of dirt or other materials prone to cause dust, and within one hour

after the Engineer notifies Contractor that an airborne nuisance exists. The Engineer may direct that Contractor provide an approved water-spraying truck for this purpose. If water is used for dust control, Contractor will only use the minimum necessary. Contractor must take all necessary steps to keep wastewater out of streets, gutters, or storm drains. See Section 7.19, Environmental Control. If City determines that the dust control is not adequate, City may have the work done by others and deduct the cost from the Contract Price. Contractor will immediately remove any excess excavated material from the Project site and any dirt deposited on public streets.

(C) **Clean up.** Before discontinuing Work in an area, Contractor must clean the area and remove all rubbish debris and waste along with the construction equipment, tools, machinery, waste, and surplus materials. Contractor must, at all times, minimize and confine dust and debris resulting from construction activities.

(1) Except as otherwise specified, all excess Project materials, and the materials removed from existing improvements on the Project site with no salvage value or intended reuse by City, will be Contractor's property.

(2) Hauling trucks and other vehicles leaving the Project site must be cleaned of exterior mud or dirt before traveling on City streets. Materials and loose debris must be delivered and loaded to prevent dropping materials or debris. Contractor must immediately remove spillage from hauling on any publicly traveled way. Streets affected by Work on the Project must be kept clean by street sweeping.

(D) **Disposal.** Contractor must dispose of all Project debris and waste materials in a safe and legal manner. Contractor may not burn or bury waste materials on the Project site. Contractor will not allow any dirt, refuse, excavated material, surplus concrete or mortar, or any associated washings, to be disposed of onto streets, into manholes or into the storm drain system.

(E) **Completion.** At the completion of the Work, Contractor must remove from the Project site all of its equipment, tools, surplus materials, waste materials and debris., presenting a clean and neat appearance. Before demobilizing from the Project site, Contractor must ensure that all surfaces are cleaned, sealed, waxed, or finished as applicable, and that all marks, stains, paint splatters, and the like have been properly removed from the completed Work and the surrounding areas. Contractor must ensure that all parts of the construction are properly joined with the previously existing and adjacent improvements and conditions. Contractor must provide all cutting, fitting, and patching needed to accomplish that

requirement. Contractor must also repair or replace all existing improvements that are damaged or removed during the Work, both on and off the Project site, including curbs, sidewalks, driveways, fences, signs, landscaping, utilities, street surfaces and structures. Repairs and replacements must be at least equal to the previously existing improvements, and the condition, finish and dimensions must match the previously existing improvements. Contractor must restore to original condition all property or items that are not designated for alteration under the Contract Documents and leave each Worksite clean and ready for occupancy or use by City.

- (F) **Non-Compliance.** If Contractor fails to comply with its maintenance and cleanup obligations within two business days following written notification from any City or its representative clean up order, City may, acting in its sole discretion, elect to suspend the Work until the condition(s) is corrected with no increase in the Contract Time or Contract Price, or undertake appropriate cleanup measures without further notice and deduct the cost from any amounts due or to become due to Contractor.

7.10 Instructions and Manuals. Contractor must provide three (3) copies each of all instructions and manuals required by the Contract Documents, unless otherwise specified. These must be complete as to drawings, details, parts lists, performance data, and other information that may be required for City to easily maintain and service the materials and equipment installed for this Project.

(A) **Submittal Requirements.** All manufacturers' application or installation instructions must be provided to the Inspector at least ten (10) days prior to the first such application. The instructions and manuals, along with any required guarantees, must be delivered to City for review.

(B) **Instruction of Personnel.** Contractor or its Subcontractors must instruct City's personnel in the operation and maintenance of any complex equipment as a condition precedent to Final Completion, if required in the Contract Documents.

7.11 As-built Drawings. Contractor and its Subcontractors must maintain on the Worksite a separate complete set of the Drawings which will be used solely for the purpose of recording changes made in any portion of the Work in order to create accurate record drawings at the end of the Project.

(A) **Duty to Update.** The as-built drawings must be updated as changes occur, on a daily basis if necessary. Progress payments may be

delayed, in whole or in part, until the as-built drawings are brought up to date to the satisfaction of City. Actual locations to scale must be identified on the as-built drawings for all runs of mechanical and electrical work, including all site utilities, etc., installed underground, in walls, floors, or otherwise concealed. Deviations from the original Drawings must be shown in detail. The location of all main runs, whether piping, conduit, ductwork, drain lines, etc., must be shown by dimension and elevation.

(B) **Final Completion.** Contractor must verify that all changes in the Work are depicted in the as-built drawings and must deliver the complete set of as-built drawings to City for review and approval as a condition precedent to Final Completion.

7.12 Existing Utilities. As required by Government Code Section 4215, if, during the performance of the Work, Contractor discovers utility facilities not identified by City in the Contract Documents, Contractor must immediately provide written notice to City and the utility. City assumes responsibility for the timely removal, relocation, or protection of existing main or trunkline utility facilities located on the Project site, if those utilities are not identified in the Contract Documents. Contractor will be compensated in accordance with the provisions of the Contract Documents for the costs of locating, repairing damage not due to Contractor's failure to exercise reasonable care, and removing or relocating such utility facilities not indicated in the Drawings or Specifications with reasonable accuracy, and for equipment on the Project necessarily idled during such work. Contractor will not be assessed liquidated damages for delay in completion of the Work, to the extent such delay was caused by City's failure to provide for removal or relocation of the utility facilities.

7.13 Notice of Excavation. Government Code Section 4216.2, requires that except in an emergency, Contractor must contact the appropriate regional notification center, or Underground Services Alert at 800-642-2444 (for Northern California), at least two (2) working days, but not more than fourteen (14) calendar days before starting any excavation if the excavation will be conducted in an area that is known, or reasonably should be known, to contain subsurface installations, and if practical, Contractor must delineate with white paint or other suitable markings the area to be excavated.

7.14 Trenching and Excavations.

(A) **Duty to Notify.** Contractor must promptly, and before the following conditions are disturbed, provide written notice to City if Contractor finds any of the following conditions:

(1) Material that Contractor believes may be a hazardous waste, as defined in Section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with the provisions of existing law;

(2) Subsurface or latent physical conditions at the Worksite differing from those indicated by information about the Worksite made available to bidders prior to the deadline for submitting bids; or

(3) Unknown physical conditions at the Worksite of any unusual nature, materially different from those ordinarily encountered and generally recognized as inherent in work of the character required by the Contract Documents.

(B) **City Investigation.** City will promptly investigate the conditions and if City finds that the conditions do materially differ or do involve hazardous waste, and cause a decrease or increase in Contractor's cost of, or the time required for, performance of any part of the Work, City will issue a Change Order.

(C) **Disputes.** In the event that a dispute arises between City and Contractor regarding any of the conditions specified in subsection (A) above, Contractor will not be excused from any scheduled completion date provided for in the Contract Documents, but must proceed with all Work to be performed under the Contract. Contractor will retain any and all rights provided either by the Contract or by law which pertain to the resolution of disputes between Contractor and City.

7.15 Trenching of Five Feet or More. As required by Labor Code Section 6705, if the Contract Price exceeds Twenty Five Thousand Dollars (\$25,000.00) and the Work includes the excavation of any trench or trenches of five (5) feet or more in depth, a detailed plan must be submitted to City or its civil or structural engineer, for acceptance in advance of the excavation. The detailed plan must show the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during the excavation. If the plan varies from the shoring system standards, it must be prepared by a registered civil or structural engineer. Use of a shoring, sloping, or protective system less effective than that required by the Construction Safety Orders is prohibited.

7.16 New Utility Connections. City will pay connection charges and meter costs for new permanent utilities required by the Contract Documents, if any. Contractor must notify City sufficiently in advance of the time needed

to request service from each utility provider so that connections and services are initiated in accordance with the Project schedule.

7.17 Lines and Grades. Contractor is required to use any benchmark provided by the Engineer. Unless otherwise specified in the Contract Documents, Contractor must provide all lines and grades required to execute the Work.

7.18 Historic or Archeological Items.

(A) **Contractor's Obligations.** Contractor must ensure that all persons performing Work at the Project site are required to immediately notify Project Manager, upon discovery of any potential historic or archeological items, including historic or prehistoric ruins, burial grounds, archaeological or vertebrate paleontological site, including fossilized footprints or other archeological, paleontological or historical feature on the Project site (collectively, "Historic or Archeological Items").

(B) **Discovery; Cessation of Work.** Upon discovery of any potential Historic or Archeological Items, Work must be stopped within an eighty-five (85) foot radius of the find and may not resume until authorized in writing by City. If required by City, Contractor must assist in protecting or recovering the Historic or Archeological Items, any such assistance to be compensated as extra work on a time and materials basis under Article 6, Contract Modification. Any suspension of Work required due to discovery of Historic or Archeological Items will be treated as a suspension for convenience under Article 13.

7.19 Environmental Control. Contractor must not pollute any drainage course or its tributary inlets with fuels, oils, bitumens, acids, insecticides, herbicides or other harmful materials. Contractor and its Subcontractors must at all times in the performance of the Work comply with all applicable federal, state, and local laws and regulations concerning pollution of waterways.

(A) **Stormwater Permit.** Contractor must comply with all applicable conditions of the State Water Resources Control Board National Pollutant Discharge Elimination System General Permit for Waste Discharge Requirements for Discharges of Stormwater Runoff Associated with Construction Activity ("Stormwater Permit").

(B) **Contractor's Obligations.** If required for the Work, a copy of the Stormwater Permit is on file in City's principal administrative offices, and Contractor must comply with the same without adjustment of the Contract Price or the Contract Time. Contractor must timely and completely submit required reports and monitoring information required by the conditions of the Stormwater Permit, Contractor must comply with all other applicable

state, municipal or regional laws, ordinances, rules or regulations governing discharge of stormwater, including applicable municipal stormwater management programs.

Article 8 Payment

8.1 Schedule of Values. Prior to submitting its first application for payment, Contractor must prepare and submit to Project Manager a schedule of values apportioned to the various divisions and phases of the Work. Each line item contained in the schedule of values must be assigned a value such that the total of all items equals the Contract Price. The items must be sufficiently detailed to enable accurate evaluation of the percentage of completion claimed in each application for payment, and the assigned value consistent with any itemized or unit pricing submitted with Contractor's bid.

8.2 Progress Payments. Following the last day of each month, or as otherwise required by the Special Conditions or Specifications, Contractor will submit to Project Manager a monthly application for payment for Work performed during the preceding month based on the estimated value of the Work performed during that preceding month.

(A) ***Application for Payment.*** Each application for payment must be itemized to include labor, materials, and equipment incorporated into the Work, and materials and equipment delivered to the Worksite, as well as authorized and approved Change Orders. Each pay application must be supported by Contractor's schedule of values and any other substantiating data required by the Contract Documents.

Each application for payment shall be accompanied by completed "Contract Balance Form," a copy of which is provided at the end of Article 8.

(B) ***Payment of Undisputed Amounts.*** City will pay the undisputed amount due, as certified by the Design Professional, within thirty (30) days after Contractor has submitted a complete and accurate payment application, subject to Public Contract Code Section 20104.50. City will deduct a percentage from each progress payment as retention, as set forth in Section 8.5, below, and may deduct additional amounts as set forth in Section 8.3, below.

8.3 Adjustment of Payment Application. City may adjust or reject a payment application, including application for Final Payment, in whole or in part, based upon any of the circumstances listed below. Contractor will be notified in writing of the basis for the adjustment, and will be promptly

paid once the basis for that adjustment has been remedied and no longer exists.

(A) Contractor's unexcused failure to perform the Work as required by the Contract Documents, including correction or completion of punch list items;

(B) Loss or damage caused by Contractor or its Subcontractor(s) arising out of or relating to performance of the Work;

(C) Contractor's failure to pay its Subcontractors and suppliers when payment is due;

(D) Failure to timely correct rejected, nonconforming, or defective Work;

(E) Unexcused delay in performance of the Work;

(F) Any unreleased stop notice, retained as one hundred twenty five percent (125%) of the amount claimed;

(G) Failure to submit any required schedule or schedule update in the manner and within the time specified in the Contract Documents:

(H) Failure to maintain or submit as-built documents in the manner and within the time specified in the Contract Documents;

(I) Work performed without approved Shop Drawings, when approved Shop Drawings are required before proceeding with the Work;

(J) Contractor's payroll records are delinquent or inadequate; and

(K) Any other costs or charges that may be offset against payments due, as provided in the Contract Documents, including liquidated damages.

8.4 Acceptance of Work. Neither City's payment of progress payments nor its partial or full use or occupancy of the Project constitutes acceptance of any part of the Work.

8.5 Retention. City will retain five percent (5%) of the amount due on each progress payment, or the percentage stated in the Notice Inviting Informal Bids, whichever is greater, as retention to ensure full and satisfactory performance of the Work.

(A) **Substitution of Securities.** As provided by Public Contract Code Section 22300, Contractor may request in writing that it be allowed, at its sole expense, to substitute securities for the retention withheld by City. Any escrow agreement entered into pursuant to this provision must fully comply with Public Contract Code Section 22300, and will be subject to approval as to form by City's legal counsel.

(B) **Release of Undisputed Retention.** All undisputed retention, less any amounts that may be assessed as liquidated damages, retained for stop notices, or otherwise withheld under Section 8.3 or 8.6 will be released as Final Payment to Contractor no sooner than thirty five (35) days following recordation of the notice of completion, and no later than sixty (60) days following acceptance of the Project by City's governing body or authorized designee, or, if the Project has not been accepted, no later than sixty (60) days after the Project is otherwise considered complete under Public Contract Code Section 7107(c).

8.6 Setoff. City is entitled to set off any amounts due from Contractor against any payments due to Contractor. City's entitlement to setoff includes progress payments as well as Final Payment and release of retention.

8.7 Payment to Subcontractors and Suppliers. Each month, Contractor must promptly pay each Subcontractor and supplier the value of the portion of labor, materials, and equipment incorporated into the Work or delivered to the Worksite by the Subcontractor or supplier during the preceding month. Such payments must be made in accordance with the requirements of the law, and those of the Contract Documents and applicable subcontract or supplier contract.

(A) **Withholding for Stop Notice.** City will withhold one hundred twenty five percent (125%) of the amount claimed by an unreleased stop notice, a portion of which may be retained by City for the costs incurred in handling the stop notice claim, including attorneys' fees and costs, as authorized by law.

(B) **Joint Checks.** City reserves the right to issue joint checks made payable to Contractor and its Subcontractors or suppliers. As a condition to release of payment by a joint check, the joint check payees may be required to execute a joint check agreement in a form provided or approved by City. The joint check payees will be jointly and severally responsible for the allocation and disbursement of funds paid by joint check. Payment by joint check will not be construed to create a contractual relationship between City and a Subcontractor or supplier of any tier beyond the scope of the joint check agreement.

- 8.8 Final Payment.** Final Completion, acceptance of the Work by City, and recordation of the Notice of Completion, and any release required by the Contract Documents are conditions precedent to Final Payment and release of undisputed retention, as set forth above. Contractor's application for Final Payment must comply with the requirements for submitting an application for a progress payment as stated in Section 8.2, above. Corrections to previous progress payments, including adjustments to estimated quantities for unit priced items, may be included in the Final Payment. The date of Final Payment is deemed to be effective on the date that City acts to release retention as final payment to Contractor, or otherwise provides written notice to Contractor of Final Payment. If the amount due from Contractor to City exceeds the amount of Final Payment, City retains the right to recover the balance from Contractor or its sureties.
- 8.9 Release of Claims.** City may, at any time, require that payment of the undisputed portion of any progress payment or Final Payment be contingent upon Contractor furnishing City with a written release of all claims against City arising from or related to the portion of Work covered by those undisputed amounts. Any disputed amounts may be specifically excluded from the release.
- 8.10 Warranty of Title.** Contractor warrants that title to all work, materials, or equipment incorporated into the Work and included in a request for payment will pass over to City free of any claims, liens, or encumbrances upon payment to Contractor.

CONTRACT BALANCE FORM

Project Name: _____

Note: A detailed invoice MUST be attached to this Contract Balance Form.

CONTRACTOR NAME: _____	DATE: _____
MAILING ADDRESS: _____	TELEPHONE NO.: _____
_____	FAX NO.: _____
_____	PROJECT NO.: _____
	INVOICE NO.: _____

- | | | |
|--|-------------|----------------|
| 1. ORIGINAL CONTRACT AMOUNT: | \$ _____ | |
| 2. APPROVED CHANGE ORDERS TOTAL: | \$ _____ | |
| 3. REVISED CONTRACT AMOUNT: | | (1+2) \$ _____ |
| 4. PREVIOUS BALANCE PAID: | \$ _____ | |
| 5. REMAINING BALANCE: | | (3-4) \$ _____ |
| 6. CURRENT PROGRESS PAYMENT DUE:
(before retention) | \$ _____ | |
| 7. 5% RETENTION FROM WORK DONE: | (-)\$ _____ | |
| 8. CURRENT BALANCE DUE: | | (6-7) \$ _____ |
| 9. REMAINING BALANCE OF REVISED
CONTRACT AMOUNT:
(including retention) | | (5-8) \$ _____ |

Article 9

Labor Provisions

9.1 Discrimination Prohibited. Discrimination against any prospective or present employee engaged in the Work on grounds of race, color, ancestry, national origin, ethnicity, religion, sex, sexual orientation, age, disability, or marital status is strictly prohibited. Contractor and its Subcontractors are required to comply with all applicable Federal and California laws including the California Fair Employment and Housing Act (Government Code Sections 12900 et seq.), Government Code Section 11135, and Labor Code Sections 1735, 1777.5, 1777.6, and 3077.5.

9.2 Labor Code Requirements.

(A) ***Eight Hour Day.*** Under Labor Code Section 1810, eight (8) hours of labor constitute a legal day's work under this Contract.

(B) ***Penalty.*** Under Labor Code Section 1813, Contractor will forfeit to City as a penalty, the sum of Twenty Five Dollars (\$25.00) for each day during which a worker employed by Contractor or any Subcontractor is required or permitted to work more than eight (8) hours in any one (1) calendar day or more than forty (40) hours per calendar week, except if such workers are paid overtime under Labor Code Section 1815.

(C) ***Apprentices.*** Contractor is responsible for compliance with the requirements governing employment and payment of apprentices, as set forth in Labor Code Section 1777.5, which is fully incorporated by reference.

(D) ***Notices.*** Under Labor Code Section 1771.4, Contractor is required to post all job site notices prescribed by law or regulation.

9.3 Prevailing Wages. Each worker performing Work under this Contract that is covered under Labor Code Section 1720, including cleanup at the Project site, must be paid at a rate not less than the prevailing wage as defined in Sections 1720.3, 1771, and 1774 of the Labor Code. The prevailing wage rates are available online at <http://www.dir.ca.gov/dlsr>. Contractor must post a copy of the applicable prevailing rates at the Worksite.

(A) ***Penalties.*** Under Labor Code Section 1775, Contractor and any Subcontractor will forfeit to City as a penalty up to Two Hundred Dollars (\$200.00) for each calendar day, or portion a day, for each worker paid less than the applicable prevailing wage rate. Contractor must also pay each worker the difference between the applicable prevailing wage rate and the amount actually paid to that worker.

(B) **Federal Requirements.** If this Project is subject to Federal prevailing wage requirements in addition to California prevailing wage requirements, Contractor and its Subcontractors are required to pay the higher of the current applicable prevailing wage rates under federal law, available online at <http://www.access.gpo.gov/davisbacon/ca.html>.

9.4 Payroll Records. Contractor must comply with the provisions of Labor Code Sections 1771.4, 1776, and 1812 and all implementing regulations, which are fully incorporated by this reference, including requirements for electronic submission of payroll records.

(A) **Contractor and Subcontractor Obligations.** Contractor and each Subcontractor must keep accurate payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed in connection with the Work. Each payroll record must contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:

(1) The information contained in the payroll record is true and correct.

(2) Contractor or Subcontractor has complied with the requirements of Labor Code Sections 1771, 1811, and 1815 for any Work performed by its employees on the Project.

(B) **Certified Record.** A certified copy of an employee's payroll record must be made available for inspection or furnished to the employee or his or her authorized representative on request, to City, or to the Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards of the Department of Industrial Relations, and as further provided by the Labor Code.

(C) **Enforcement.** Upon notice of noncompliance with Labor Code Section 1776, Contractor or Subcontractor has ten (10) days in which to comply with requirements of this section. If Contractor or Subcontractor fails to do so within the ten (10) day period, Contractor or Subcontractor will forfeit a penalty of One Hundred Dollars (\$100.00) per day, or portion a day, for each worker for whom compliance is required, until strict compliance is achieved. Upon request by the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement, these penalties will be withheld from progress payments then due.

9.5 Labor Compliance. Under Labor Code section 1771.4, the Contract for this Project is subject to compliance monitoring and enforcement by the California Department of Industrial Relations.

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

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

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

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

City’s Right to Withhold Payment: Where Contractor or any subcontractor it employs to perform work under this Agreement has been found in violation of any

applicable wage and hour law by a final judgment, decision or order of a court or government agency, the City reserves the right to withhold payment to Contractor until such judgment, decision or order has been satisfied in full.

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

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

Article 10 Safety Provisions

10.1 Safety Precautions and Programs. Contractor and its Subcontractors are fully responsible for safety precautions and programs, and for the safety of persons and property in the performance of the Work. Contractor and its Subcontractors must comply with all applicable safety laws, rules and regulations and seek to avoid injury, loss, or damage to persons or property by taking reasonable steps to protect its employees and other persons at the Worksite, materials and equipment stored on or off site, and property at or adjacent to the Worksite.

(A) **Reporting Requirements.** Contractor must immediately provide a written report to City of all recordable accidents and injuries occurring at the Worksite. If Contractor is required to file an accident report with a government agency, Contractor will provide a copy of the report to City.

(B) **Legal Compliance.** Contractor's safety program must comply with the applicable legal and regulatory requirements. Contractor must provide City with copies of all notices required by law or regulation.

(C) **Contractor's Obligations.** Any damage or loss caused by Contractor arising from the Work which is not insured under property insurance must be promptly remedied by Contractor.

(D) **Remedies.** If City determines, in its sole discretion, that any part of the Work or Worksite is unsafe, City may, without assuming responsibility for Contractor's safety program, require Contractor or its Subcontractor to cease performance of the Work or to take corrective measures to City's satisfaction. If Contractor fails to promptly take the required corrective

measures, City may perform them and deduct the cost from the Contract Price. Contractor agrees it is not entitled to submit a Claim for damages, for an increase in Contract Price, or for a change in Contract Time based on Contractor's compliance with City's request for corrective measures pursuant to this provision.

10.2 Hazardous Materials. Unless otherwise specified, this Contract does not include the removal, handling, or disturbance of any asbestos or other Hazardous Materials. If Contractor encounters materials on the Worksite that Contractor reasonably believes to be asbestos or other Hazardous Materials, and the asbestos or other Hazardous Materials have not been rendered harmless, Contractor may continue Work in unaffected areas reasonably believed to be safe, but must immediately cease work on the area affected and report the condition to City. No asbestos, asbestos-containing products or other Hazardous Materials may be used in performance of the Work.

10.3 Material Safety. Contractor must maintain Material Safety Data Sheets ("MSDS") at the Worksite, as required by law, for materials or substances used or consumed in the performance of the Work. The MSDS will be accessible and available to Contractor's employees, Subcontractors, and City.

(A) **Contractor Obligations.** Contractor is solely responsible for the proper delivery, handling, use, storage, removal, and disposal of all materials brought to the Worksite and/or used in the performance of the Work.

(B) **Labeling.** Contractor must ensure proper labeling on any material brought onto the Worksite so that any persons working with or in the vicinity of the material may be informed as to the identity of the material, any potential hazards, and requirements for proper handling, protections, and disposal.

Article 11 Completion and Warranty Provisions

11.1 Final Completion.

(A) **Final Inspection.** When the Work required by this Contract is fully performed, Contractor must provide written notification to Project Manager requesting final inspection. Based on this inspection, the Design Professional will prepare a punch list of items that are incomplete, incorrectly installed, or not operating as required by the Contract Documents. The omission of any such item from this punch list will not

relieve Contractor from fulfilling all requirements of the Contract Documents.

(B) **Punch List.** City will promptly deliver the punch list to Contractor and will specify the time by which all of the punch list items must be completed or corrected. The punch list may include City's estimated cost to complete each punch list item if Contractor fails to do so within the specified time.

(C) **Requirements for Final Completion.** Final Completion will be achieved upon completion or correction of all punch list items, as verified by inspection, and upon satisfaction of all other Contract requirements, including any commissioning required under the Contract Documents, and submission of all final submittals, including a warranty bond as required under Section 4.4, instructions and manuals as required under Section 7.10, and as-built drawings as required under Section 7.11, all to City's satisfaction. Once Final Completion is achieved, and the Project has been formally accepted by City, City will file a notice of completion with the County Recorder.

(D) **Final Payment.** Final Payment and release of retention, less any sums withheld pursuant to the provisions of the Contract Documents, will not be made sooner than thirty-five (35) days after recordation of the notice of completion. If Contractor fails to complete all of the punch list items within the specified time, City may elect to accept the Project and record the notice of completion, and withhold up to one hundred fifty percent (150%) of City's estimated cost to complete the remaining items from Final Payment.

11.2 Warranty.

(A) **General.** Contractor warrants that all materials and equipment will be new unless otherwise specified, of good quality, in conformance with the Contract Documents, and free from defective workmanship and materials. Contractor further warrants that the Work will be free from material defects not intrinsic in the design or materials required in the Contract Documents. At City's request, Contractor must furnish satisfactory evidence of the quality and type of materials and equipment furnished. Contractor's warranty does not extend to damage caused by normal wear and tear, or improper use or maintenance.

(B) **Warranty Period.** Contractor's warranty must guarantee its Work for a period of one (1) year from the date of recordation of the notice of completion (the "Warranty Period"), except when a longer guarantee is provided by a supplier or manufacturer or is required by the Specifications or Special Conditions. Contractor must obtain from its Subcontractors,

suppliers and manufacturers any special or extended warranties required by the Contract Documents.

(C) **Warranty Documents.** As a condition precedent to acceptance, Contractor must supply City with all warranty and guarantee documents relevant to equipment and materials incorporated into the Work and guaranteed by their suppliers or manufacturers.

(D) **Subcontractors.** The warranty obligations in the Contract Documents apply to Work performed by Contractor and its Subcontractors, and Contractor expressly agrees to act as co-guarantor of such Work.

(E) **Contractor's Obligations.** Upon written notice from City to Contractor of any defect in the Work discovered during the Warranty Period, Contractor or its responsible Subcontractor must promptly correct the defective Work at its own cost. Contractor's obligation to correct defects discovered during the Warranty Period will continue past the expiration of the Warranty Period as to any defects in Work for which Contractor was notified prior to expiration of the Warranty Period.

(F) **City's Remedies.** If Contractor and/or its responsible Subcontractor fails to correct defective Work within ten (10) days following notice by City, or sooner, if required by the circumstances, Contractor expressly agrees that City may correct the defects to conform with Contract Documents at Contractor's sole expense, and Contractor agrees to reimburse City for its costs within thirty (30) days following City's submission of a demand for payment pursuant to this provision. If City is required to initiate legal action to compel Contractor's compliance with this provision, and City is the prevailing party in such action, Contractor is solely responsible for all of City's attorney's fees and legal costs expended to enforce Contractor's warranty obligations herein in addition to any and all costs incurred by City to correct the defective Work.

11.3 Use Prior to Final Completion. City reserves the right to occupy or make use of the Project, or any portions of the Project, prior to Final Completion if City has determined that the Project or portion of it is in a condition suitable for the proposed occupation or use, and that it is in its best interest to occupy or make use of the Project, or any portions of it, prior to Final Completion. City will notify Contractor in writing of its intent to occupy or make use of the Project or any portions of the Project, pursuant to this provision.

(A) **Non-Waiver.** Occupation or use prior to Final Completion will not operate as acceptance of the Work or any portion of it, nor will it operate as a waiver of any of City's rights or Contractor's duties pursuant to these

Contract Documents, and will not affect nor bear on the determination of the time of substantial completion with respect to any statute of repose pertaining to the time for filing an action for construction defect.

(B) **City's Responsibility.** City will be responsible for the cost of maintenance and repairs due to normal wear and tear with respect to those portions of the Project that are being occupied or used before final completion. The Contract Price or the Contract Time may be adjusted pursuant to the applicable provisions of these Contract Documents if, and only to the extent that, any occupation or use under this Section actually adds to Contractor's cost or time to perform the Work.

11.4 Substantial Completion. For purposes of determining "substantial completion" with respect to any statute of repose pertaining to the time for filing an action for construction defect, "substantial completion" is deemed to mean the last date that Contractor or any Subcontractor performs Work on the Project prior to recordation of the Notice of Completion, except for warranty work performed under this Article.

Article 12 Dispute Resolution

12.1 Claims. This Article applies to and provides the exclusive procedures for any Claim arising from or related to the Contract or performance of the Work.

(A) **Definition.** "Claim" means a separate demand by Contractor, submitted in writing, for change in the Contract Time or Contract Price that has previously been submitted to City in accordance with the requirements of the Contract Documents, and which has been rejected by City, in whole or in part.

(B) **Limitations.** A Claim may only include the portion of a previously rejected demand that remains in dispute between Contractor and City. With the exception of any dispute regarding the amount of money actually paid to Contractor as Final Payment, Contractor is not entitled to submit a Claim demanding a change in the Contract Time or the Contract Price, which has not previously been submitted to City in full compliance with Article 5 and Article 6, and subsequently rejected in whole or in part by City.

(C) **Scope of Article.** This Article is intended to provide the exclusive procedures for submission and resolution of Claims of any amount, and applies in addition to the provisions of Public Contract Code Section 9204 and Sections 20104, et seq.

(D) **No Work Delay.** Notwithstanding the submission of a Claim or any other dispute between the parties related to the Project or the Contract Documents, Contractor must perform the Work and may not delay or cease Work pending resolution of the Claim or other dispute, but must continue to diligently prosecute the performance and timely completion of the Work, including the Work pertaining to the Claim or other dispute.

12.2 Claims Submission. The following requirements apply to any Claim subject to this Article:

(A) **Substantiation.** The Claim must be submitted to City in writing, clearly identified as a “Claim” submitted pursuant to this Article 12, and must include all of the documents necessary to substantiate the Claim including the Change Order request that was rejected in whole or in part, and a copy of City’s written rejection that is in dispute. The Claim must clearly identify and describe the dispute, including relevant references to applicable portions of the Contract Documents, and a chronology of the relevant events. Any Claim for additional payment must include a complete, itemized breakdown of all labor, materials, taxes, insurance, and subcontract, or other costs. Substantiating documentation such as payroll records, receipts, invoices, or the like, must be submitted in support of each claimed cost. Any Claim for an extension of time or delay costs must be substantiated with schedule analysis and narrative depicting and explaining claimed time impacts.

(B) **Claim Format.** A Claim must be submitted in the following format:

(1) General introduction, specifically identifying the submission as a “Claim” submitted under this Article 12.

(2) Relevant background information, including identification of the specific demand at issue, and the date of City's rejection of that demand.

(3) Detailed explanation of the issue(s) in dispute. For multiple issues, separately number and identify each issue and include the following for each separate issue:

(a) The background of the issue, including references to relevant provisions of the Contract Documents;

(b) A succinct statement of the matter in dispute, including Contractor’s position and the basis for that position;

(c) A chronology of relevant events;

(d) The identification and attachment of all supporting documents (see subsection (A), above, on Substantiation); and

(e) Use of a separate page for each issue.

(4) Summary of issues and damages.

(5) The following certification, executed by Contractor's authorized representative:

"The undersigned Contractor certifies under penalty of perjury that its statements and representations in this Claim are true and correct. Contractor warrants that this Claim is comprehensive and complete as to the matters in dispute, and agrees that any costs, expenses, or delay claim not included herein are deemed waived. Contractor understands that submission of a Claim which has no basis in fact or which Contractor knows to be false may violate the False Claims Act (Government Code Section 12650 et seq.)."

(C) ***Submission Deadlines.***

(1) A Claim must be submitted within fifteen (15) days following the date that City notified Contractor in writing that a request for a change in the Contract Time or Contract Price, duly submitted in compliance with Article 5 and Article 6, has been rejected in whole or in part.

(2) With the exception of any dispute regarding the amount of Final Payment, any Claim must be filed on or before the date of Final Payment, or will be deemed waived.

(3) A Claim disputing the amount of Final Payment must be submitted within fifteen (15) days of the effective date of Final Payment, under Section 8.8, above.

(4) Strict compliance with these Claim submission deadlines is necessary to ensure that any dispute may be mitigated as soon as possible, and to facilitate cost-efficient administration of the Project. Any Claim that is not submitted within the specified deadlines will be deemed waived by Contractor.

12.3 City's Response. City will respond within forty-five (45) days of receipt of the Claim with a written statement identifying which portion(s) of the Claim are disputed, unless the forty-five (45) day period is extended by mutual agreement of City and Contractor. However, the City may first request, in

writing, within thirty (30) days of receipt of the Claim, any additional documentation supporting the Claim or relating to defenses to the Claim that City may have against Contractor. If Contractor fails to submit the additional documentation to City within fifteen (15) days of receipt of City's request, the Claim will be deemed waived.

(A) **Additional Information.** If additional information is thereafter required, it may be requested and provided upon mutual agreement of City and Contractor.

(B) **City's Response.** City's written response to the Claim, as further documented, will be submitted to Contractor within fifteen (15) days after receipt of the further documentation or within a period of time no greater than that taken by Contractor in producing the additional information, whichever is greater.

(C) **Non-Waiver.** Any failure by City to respond within the times specified above may not be construed as acceptance of the Claim in whole or in part, or as a waiver of any provision of these Contract Documents.

12.4 Meet and Confer. If Contractor disputes City's written response, or City fails to respond within the specified time, Contractor must notify City in writing, either within fifteen (15) days of receipt of City's response, or within fifteen (15) days of City's failure to respond within the specified time, respectively, and demand an informal conference to meet and confer for settlement of the issues in dispute. If Contractor fails to notify City in writing of the dispute, and demand an informal conference to meet and confer, within the specified time, Contractor's Claim will be deemed waived.

(A) **Schedule Meet and Confer.** Upon receipt of the demand to meet and confer, City will schedule the meet and confer conference to be held within thirty (30) days, or later if needed to ensure the mutual availability of all of the individuals that each party requires to represent its interests at the meet and confer conference.

(B) **Location for Meet and Confer.** The meet and confer conference will be scheduled at a location at or near City's principal office.

(C) **Written Statement After Meet and Confer.** Within ten (10) working days after the meet and confer has concluded, City will issue a written statement identifying which portion(s) of the Claim remain in dispute, if any.

(D) **Submission to Mediation.** If the Claim or any portion remains in dispute following the meet and confer conference, within ten working days after the City issues the written statement identifying any portion(s) of the Claim remaining in dispute, the disputed portion(s) will be submitted for mediation as set forth below.

12.5 Mediation and Government Code Claims.

(A) **Mediation.** Mediation under this Article will be scheduled within sixty (60) days following conclusion of the meet and confer process, with a mediator that the parties mutually agreed upon. The mediation itself may take place more than sixty (60) days following conclusion of the meet and confer process to ensure the mutual availability of the selected mediator and all of the individuals that each party requires to represent its interests. The parties must share the costs of mediation equally, except costs incurred by each party for representation by legal counsel or any other consultant.

(B) **Government Code Claims.**

(1) Timely presentment of a Government Code Claim is a condition precedent to filing any legal action based on or arising from the Contract.

(2) The time for filing a Government Code Claim will be tolled from the time Contractor submits its written Claim pursuant to Section 12.2, above, until the time that Claim is denied as a result of the meet and confer process, including any period of time used by the meet and confer process. If the parties agree to mediation, the time for filing a Government Code Claim will be tolled until conclusion of the mediation if the Claim is not fully resolved by mutual agreement of the parties during the mediation or any continuation of the mediation.

12.6 Tort Claims. This Article does not apply to tort claims and nothing in this Article is intended nor will be construed to change the time periods for filing tort-based Government Code Claims.

12.7 Arbitration. It is expressly agreed, under California Code of Civil Procedure Section 1296, that in any arbitration to resolve a dispute relating to this Contract, the arbitrator's award must be supported by law and substantial evidence.

12.8 Damages. Contractor bears the burden of proving entitlement to and the amount of any claimed damages. Contractor is not entitled to damages calculated on a total cost basis, but must prove actual damages.

Contractor is not entitled to recovery of any alleged home office overhead. The Eichleay Formula or similar formula may not be used for any recovery under the Contract. Contractor is not entitled to consequential damages, including home office overhead or any form of overhead not directly incurred at the Worksite; lost profits; loss of productivity; lost opportunity to work on other projects; diminished bonding capacity; increased cost of financing for the Project; extended capital costs; non-availability of labor, material or equipment due to delays; or any other indirect loss arising from the Contract.

- 12.9 Other Disputes.** The procedures in this Article 12 will apply to any and all disputes or legal actions, in addition to Claims, arising from or related to this Contract, unless and only to the extent that compliance with a procedural requirement is expressly and specifically waived by City. Nothing in this Article is intended to delay suspension or termination under Article 13.

Article 13 Suspension and Termination

- 13.1 Suspension for Cause.** In addition to all other remedies available to City, if Contractor fails to perform or correct work in accordance with the Contract Documents, City may immediately order the Work, or any portion of it, suspended until the cause for the suspension has been eliminated to City's satisfaction.
- (A) ***Failure to Comply.*** Contractor will not be entitled to an increase in Contract Time or Contract Price for a suspension occasioned by Contractor's failure to comply with the Contract Documents.
- (B) ***No Duty to Suspend.*** City's right to suspend the Work will not give rise to a duty to suspend the Work, and City's failure to suspend the Work will not constitute a defense to Contractor's failure to comply with the requirements of the Contract Documents.
- 13.2 Suspension for Convenience.** City reserves the right to suspend, delay, or interrupt the performance of the Work in whole or in part, for a period of time determined to be appropriate for City's convenience, and not due to any act or omission by Contractor or its Subcontractors. Upon notice by City pursuant to this provision, Contractor must immediately suspend, delay, or interrupt the Work as directed by City. The Contract Price and the Contract Time will be equitably adjusted by Change Order to reflect the cost and delay impact occasioned by such suspension for convenience.

13.3 Termination for Default. Contractor may be deemed in default for a material breach of or inability to perform the Contract, including Contractor's refusal or failure to supply sufficient skilled workers, proper materials, or equipment to perform the Work within the Contract Time; refusal or failure to make prompt payment to its employees, Subcontractors, or suppliers or to correct rejected work; disregard of laws, regulations, ordinances, rules, or orders of any public agency with jurisdiction over the Project; or if Contractor lacks financial capacity to complete the Work within the Contract Time; or is otherwise responsible for a material breach of the Contract requirements.

(A) **Notice.** Upon City's determination that Contractor is in default, City may provide Contractor and its surety written notice of default and intent to terminate the Contract.

(B) **Termination.** Within seven (7) calendar days after notice of intent to terminate for default has been given, unless the default is cured or arrangements to cure the default have been made and memorialized in writing, to City's satisfaction, City may terminate the Contract by written notice to Contractor with a copy to Contractor's surety.

(C) **Waiver.** Time being of the essence in the performance of the Work, if Contractor's surety fails to arrange for completion of the Work in accordance with the Performance Bond, within seven (7) calendar days from the date of the notice of termination, Contractor's surety will be deemed to have waived its right to complete the Work under the Contract, and City may immediately make arrangements for the completion of the Work through use of its own forces, by hiring a replacement contractor, or by any other means that City determines advisable under the circumstances. Contractor and its surety will be jointly and severally liable for any additional cost incurred by City to complete the Work following termination. In addition, City will have the right to use any materials, supplies, and equipment belonging to Contractor and located at the Worksite for the purposes of completing the remaining Work.

(D) **Wrongful Termination.** If a court of competent jurisdiction or an arbitrator later determines that the termination for default was wrongful, the termination will be deemed to be a termination for convenience, and Contractor's damages will be strictly limited to the compensation provided for termination for convenience, in Section 13.4, below. Contractor waives any claim for any other damages for wrongful termination including consequential damages, lost opportunity costs or lost profits.

13.4 Termination for Convenience. City reserves the right to terminate all or part of the Contract for convenience upon written notice to Contractor. Upon receipt of such notice, Contractor must immediately stop the Work,

comply with City's instructions to protect the completed Work and materials, and use its best efforts to minimize further costs. In the event of termination for convenience, the parties agree that the following will constitute full and fair compensation to Contractor, and that Contractor will not be entitled to any additional compensation:

(A) **Completed Work.** The value of its Work satisfactorily performed to date, including Project overhead and profit based on Contractor's schedule of values;

(B) **Demobilization.** Actual and substantiated demobilization costs; and

(C) **Markup.** Five percent (5%) of the total value of the Work performed as of the date of notice of termination or five percent (5%) of the value of the Work yet to be completed, whichever is less.

13.5 Provisions Remaining in Effect. Upon termination pursuant to this Article, the provisions of the Contract Documents remain in effect as to any claim, indemnity obligation, warranties, guarantees, submittals of as-built drawings, instructions, or manuals, or other such rights and obligations arising prior to the termination date.

Article 14 Miscellaneous Provisions

14.1 Assignment of Unfair Business Practice Claims. Under Public Contract Code Section 7103.5, Contractor and its Subcontractors agree to assign to City all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Section 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the Contract or subcontract. This assignment will be effective at the time City tenders Final Payment to Contractor, without further acknowledgement by the parties.

14.2 Provisions Deemed Inserted. Every provision of law required to be inserted in the Contract Documents is deemed to be inserted, and the Contract Documents will be construed and enforced as though such provision has been included. If it is discovered that through mistake or otherwise that any required provision was not inserted, or not correctly inserted, the Contract Documents will be amended accordingly.

14.3 Waiver. No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of the Contract Documents will be effective unless it is in writing and signed by the party waiving the breach, failure, right, or remedy. No waiver of any breach, failure, right, or remedy will be deemed a waiver of any other breach, failure, right, or remedy, whether or not similar, nor will any waiver constitute a continuing waiver unless specified in writing by the waiving party.

14.4 Titles, Headings, and Groupings. The titles and headings used and the groupings of provisions in the Contract Documents are for convenience only and may not be used in the construction or interpretation of the Contract Documents or relied upon for any other purpose.

14.5 Statutory and Regulatory References. With respect to any amendments to any statutes or regulations referenced in these Contract Documents, the reference is deemed to be the version in effect on the date that bids were due.

END OF GENERAL CONDITIONS

SPECIAL CONDITIONS

1. Emergency Contact. Prior to commencement of the Work on the Project, Contractor must provide contact information to the City's Project Manager for the person designated by Contractor to respond to any emergency that arises on the Worksite during the course of the Project. That person will be responsible for responding on the Worksite within thirty (30) minutes following notification of an emergency by City's Police or Fire Department, regardless of the time of day.

2. Weather Delays. This provision is intended to supplement the requirements of General Conditions Section 5.2 on Schedule Requirements and Section 5.3 on Delays and Extensions of Contract Time.

(A) Weather Delay Day. A Weather Delay Day is a Working Day during which Contractor and its forces, including Subcontractors, are unable to perform more than forty percent (40%) of the critical path Work scheduled for that day due to adverse weather conditions which impair the ability to safely or effectively perform the scheduled critical path Work that day. Adverse weather conditions may include rain, saturated soil, and Worksite clean-up required due to adverse weather. Determination of what constitutes critical path Work scheduled for that day will be based on the most current, City-approved schedule.

(B) Normal Weather Delay Days. Based on historic records for the Project location, Contractor's schedule should assume the following number of normal Weather Delay Days for each month:

Month	# Normal Weather Delay Days
January	11
February	10
March	10
April	06
May	03
June	01
July	01
August	01
September	01
October	01
November	04
December	08

(C) Extension of Time. Contractor will be entitled to a non-compensable extension of the Contract Time for each Weather Delay Day in excess of the normal Weather Delay Days within a given month, as set forth in Section (B)

above, subject to the following limitations:

- (1) Contractor must fully comply with the applicable procedures in Article 5 and 6 of the General Conditions regarding requests to modify the Contract Time.
- (2) Normal Weather Delay Days which do not occur during a given month do not carry over to another month.
- (3) Contractor will not be entitled to an extension of time for a Weather Delay Day to the extent Contractor is responsible for concurrent delay on that day.

END OF SPECIAL CONDITIONS

CITY COUNCIL STAFF REPORT

MEETING DATE: March 6, 2024

PREPARED BY:

Adam Paszkowski, Principal Planner

APPROVED BY: City Manager

INTRODUCE ORDINANCE (ZA2023-0001) AMENDING VARIOUS CODE PROVISIONS WITHIN TITLE 18 (ZONING) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL IMPLEMENTING THE CITY OF MORGAN HILL 2023-2031 HOUSING ELEMENT; UPDATES TO ELECTRIC VEHICLE CHARGING PROVISIONS TO PROVIDE CONSISTENCY WITH CHAPTER 15.62 (ELECTRIC VEHICLE CHARGING INFRASTRUCTURE); UPDATES TO PARKING PROVISIONS TO COMPLY WITH ASSEMBLY BILL 894; AND IMPLEMENTING MINOR AMENDMENTS DUE TO CLERICAL ERRORS AND INCONSISTENCIES

RECOMMENDATION(S)

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

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Enhancing Diversity and Inclusiveness

Advancing Regional Initiatives

2024-2025 Strategic Priorities

Affordable Housing and Homelessness

Guiding Documents

Morgan Hill 2035 General Plan

REPORT NARRATIVE:

As part of the adoption of the 6th cycle (2023-2031) Housing Element, certain implementation programs/actions were outlined within Chapter 5: Implementation of the Housing Element - in which the City committed to implementing in calendar years 2023 and 2024. Of those actions, several of them pertained to amending the Zoning Code to be consistent with State Law and other provisions. The proposed Zoning Code

Amendments implement the following Actions from the Housing Element:

Action HE-1.K Parking for Smaller Bedroom Units

Amend the Zoning Code by 2024 to modify parking standards for studio and one-bedroom units for multi-family dwellings to require one covered parking space per unit plus one parking space for every four units for guest parking (a total of one to 1.25 parking spaces per unit).

Action HE-2.F Agricultural Labor Accommodations

Amend the Zoning Code by 2024 to facilitate by-right Agricultural Labor Accommodations within the OS (Open Space) zoning district consistent with Section 17021.6 of the California Health and Safety Code.

Action HE-5.A Low Barrier Navigation Centers

Amend the Zoning Code by 2024 to facilitate by-right processing procedures for Low Barrier Navigation Centers consistent with Assembly Bill 101.

Action HE-5.G By-right Transitional and Supportive Housing

Amend the Zoning Code by 2024 to facilitate by-right transitional and supportive housing and residential care facilities where residential uses are permitted. In addition, amend zoning and processes to comply with Assembly Bill 2162 which requires that supportive housing be considered a use by-right in zones that allow multifamily and adhere to timing provisions.

Action HE-5.I Emergency Shelters Parking

Amend the Zoning Code by 2024 to clarify and modify parking standards for emergency shelters consistent with Government Code Section 65583(a)(4)(B)(ii).

Action HE-5.J Emergency Shelters

Amend the Zoning Code within one year of the adoption of the Housing Element to allow emergency shelters as a permitted use by-right within one or more zoning designations that are either zoned for residential use or allow residential development; amend the definition of emergency shelters to include other interim interventions, including, but not limited to, a navigation center, bridge housing, and respite or recuperative care; and identify sites where emergency shelters are allowed to accommodate a minimum of 60 unsheltered individuals consistent with the standards listed in AB 2339 and Government Code Section 65583(a)(4).

Action HE-6.C Residential Accommodation Ordinance

Amend Section 18.118.070 (Criteria for Decision) of Chapter 18.118 (Reasonable Accommodations) of the Zoning Code by 2024 to remove the “potential impacts on surrounding uses” as a factor of approval or denial for a reasonable accommodation request.

Action HE-6.E Residential Care Facilities

Amend the Zoning Code by 2024 to permit Group Housing and Residential Care Facilities as a permitted use by-right in all residential zoning districts, consistent with State law and HCD's December 2022 “Group Home Technical Advisory”.

In addition, staff found an inconsistency between Chapters regarding requirements for electric vehicle charging stations, and therefore, proposes to update Section 18.72.040 (General Requirements) of Chapter 18.72 (Parking and Loading) of the Municipal Code; to amend Section 18.72.050 (On-Site Parking Alternatives) to comply with Assembly Bill 894 in regard to shared parking requirements; and the need to update other varying Sections within Title 18 (Zoning) due to miscellaneous corrections and clerical errors.

The purpose of the proposed Ordinance is to implement and correct these issues. Staff regularly brings forward minor amendments as necessary to enhance, correct and/or refine the Code.

The Planning Commission held a public hearing regarding the proposed draft Ordinance on February 13, 2024, and recommended the following amendments to the Municipal Code:

- A. Table 18.16-1 (Permitted Land Uses — Residential Detached Zoning Districts) within Section 18.16.020 (Land Use Regulations) of Chapter 18.16 (Residential Detached Zoning Districts), Table 18.18-1 (Permitted Land Uses — Residential Attached Zoning Districts) within Section 18.18.020 (Land Use Regulations) of Chapter 18.18 (Residential Attached Zoning Districts), and Table 18.22-1 (Permitted Land Uses — MU-N and MU-F Zoning Districts) within Section 18.22.020 (Land Use Regulations) of Chapter 18.22 (Mixed Use Zoning Districts) are proposed to be amended to allow “Group Housing” as a permitted use pursuant to the California Department of Housing and Community Development (HCD) Group Home Technical Advisory; allow “Residential Care Facilities” as a conditional use in the residential detached zoning districts; and permit Supportive Housing and Transitional Housing by-right.
- B. Table 18.22-1 (Permitted Land Uses — MU-N and MU-F Zoning Districts) is also proposed to be amended to add “Low Barrier Navigation Centers” as a permitted use by-right in areas zoned for mixed-use and nonresidential zones permitting multifamily uses as required by AB 101/Government Code Section 65660; and to allow “Emergency Shelters” as a permitted use by-right within the MU-F zoning district instead of a conditional use.
- C. Table 18.28-1 (Permitted Land Uses in the Open Space and Public Facilities Zoning Districts) within Section 18.28.020 (Land Use Regulations) of Chapter 18.28 (Open Space, Public, And Recreation Zoning Districts) is proposed to be amended to allow “Agricultural Labor Accommodations” as a permitted use as required by the Health and Safety Code Section 17021.6.
- D. Table 18.44-2 (Minimum Accessory Structure Setbacks) within Section 18.44.030 (Accessory Structures in Residential Zoning Districts) of Chapter 18.44 (Accessory Structures and Uses) and Table 18.56-2 (Allowed Projections Into Required Setbacks) within Section 18.56.030 (Setback Exceptions) of Chapter 18.56 (Height, Setback And Lot Coverage Exceptions) are proposed to be amended to establish consistency for setbacks/projections between attached decks, upper story porches, and balconies. In addition, Section 18.128.020 (Definitions) of Chapter 18.128 (General Terms) is proposed to be amended to expand and clarify the definitions for balcony, deck, and porch; wherein a deck is an unroofed/uncovered platform, and a porch is a roofed/covered platform.
- E. Table 18.72-2 (Required On-Site Parking, Other Zoning Districts) within Section 18.72.030 (Required Parking Spaces) of Chapter 18.72 (Parking and Loading) and Subsection C of Section 18.92.050 (Emergency Shelters) of Chapter 18.92 (Supplemental Standards) are proposed to be amended by revising the parking requirements for Emergency Shelters such that the requirements are consistent in both sections and that the parking requirements for Emergency Shelters are

consistent with other uses that require one parking space per 250 square feet of office area. In addition, amendments are proposed within Table 18.72-2 to establish required on-site parking standards for Shared Living Residences, Supportive Housing, Transitional Housing, Low Barrier Navigation Centers, and Outdoor Vehicle Storage.

- F. In addition, Table 18.72-2 (Required On-Site Parking, Other Zoning Districts) and Table 18.72-3 (Required Guest Parking Spaces) within Section 18.72.030 (Required Parking Spaces) of Chapter 18.72 (Parking and Loading) are proposed to be amended by revising the required amount of parking for studio and one-bedroom units for multifamily dwellings to one covered parking space; and amend the guest parking requirements for multifamily dwellings from one per three units to one per four units, consistent with single-family dwellings.
- G. Section 18.72.040 (General Requirements) of Chapter 18.72 (Parking and Loading) is proposed to be amended to correct a clerical error by referencing Section 18.72.050.D (Off-Site Parking) which allows on-site parking alternatives; this section is also proposed to be amended to remove requirements for electric vehicle charging stations from the Zoning Code and instead refer to Chapter 15.62 (Electric Vehicle Charging Infrastructure) for electric vehicle charging requirements. On December 7, 2022, the City Council adopted an ordinance requiring installation of electric vehicle (EV) charging infrastructure as part of all new development projects and retrofit projects in the City. Section 18.72.040 (General Requirements) is proposed to be amended to correct the inconsistency between the two Chapters of the Code.
- H. Subsection D of Section 18.72.050 (On-Site Parking Alternatives) of Chapter 18.72 (Parking and Loading) is proposed to be amended to correct a minor clerical error to properly reference 'off-site' parking instead of 'on-site' parking.
- I. Subsection F of Section 18.72.050 (On-Site Parking Alternatives) of Chapter 18.72 (Parking and Loading) is proposed to be amended to be consistent with Assembly Bill 894 regarding Shared Parking and shared parking agreements to allow entities with underutilized parking to share their underutilized parking with the public, local agencies, or other entities. The bill requires a local agency to approve the shared parking agreement if it includes, among other things, a parking analysis using peer-reviewed methodologies developed by a professional planning association.
- J. Subsections B and C of Section 18.84.050 (Site and Design Standards) of Chapter 18.84 (Accessory Dwelling Units) are proposed to be amended to clarify that a single-family dwelling lot may have one detached accessory dwelling unit, one attached accessory dwelling unit, and one junior accessory dwelling unit; that a multifamily dwelling lot may have two detached accessory dwellings; and that a detached accessory dwelling unit may be combined with a junior accessory dwelling unit in certain circumstances, consistent with AB 881, Government Code Section 65852.2(e)(1)(D).
- K. Section 18.118.070 (Criteria for Decision) of Chapter 18.118 (Reasonable Accommodations) is proposed to be amended to remove the "potential impacts on surrounding uses" as a factor for approval, or denial, of a reasonable accommodation request.
- L. Section 18.124.020 (Residential Land Uses) of Chapter 18.124 (Land Use

Definitions) is proposed to be amended to revise the definition of “Group Housing” using the definition provided in HCD’s Group Housing Technical Advisory. In addition, Section 18.124.020 also proposes to amend the definitions for “Residential Care Facilities” and “Residential Care Facilities, Small” to be a state licensed facility as defined in the California Health and Safety Code and to remove wording referencing the Residential Development Control System (RDSCS). New land use definitions are also provided for “Supportive Housing” and “Transitional Housing” as they are defined in the California Health and Safety Code, as well as “Shared Living Residences”.

- M. Section 18.124.030 (Public and Quasi-public Uses) of Chapter 18.124 (Land Use Definitions) is proposed to be amended to revise the definition of “Emergency Shelters” consistent with AB 2339 and Government Code Section 65583(a)(4). A definition is also provided for “Low Barrier Navigation Centers” using the definition provided in Government Code Section 65660.
- N. Section 18.124.040 (Commercial Uses) of Chapter 18.124 (Land Use Definitions) is proposed to be amended to include a definition for “Vehicle Storage, Outdoor” to clarify what is considered an outdoor vehicle storage use and due to a definition not previously provided. Discussions during the November 10, 2020, Planning Commission and the December 16, 2020, City Council meetings were utilized in the development of the proposed Outdoor Vehicle Storage land use definition.

Complete details of the proposed amendments are provided in the draft Ordinance (Attachment 1) and in the [Planning Commission staff report](#). If the proposed Ordinance is approved, the Code Amendment becomes effective 30 days following the adoption of the Ordinance by the City Council.

Pursuant to Section 18.114.060 (Findings for Approval), the City Council may approve a zoning code amendment if all of the following findings are made:

1. The proposed amendment is consistent with the General Plan and any applicable specific plan as provided by Government Code Section 65860.
2. The proposed amendment will not be detrimental to the public interest, health, safety, convenience, or welfare of the City.
3. The proposed amendment is internally consistent with other applicable provisions of the zoning code.

The proposed amendments are consistent with the above findings as they implement the City of Morgan Hill 2023-2031 Housing Element, provide updates to electric vehicle charging provisions consistent with Chapter 15.62 (Electric Vehicle Charging Infrastructure) in the Municipal Code, provide updates to parking provisions to comply with Assembly Bill 894, and correct clerical errors and inconsistencies in the Municipal Code.

PLANNING COMMISSION ACTION:

The Planning Commission reviewed the proposed amendments on February 13, 2024. Following discussion, the Planning Commission unanimously approved [Resolution No. 24-02](#) recommending the City Council approve the proposed Amendments as presented by staff.

COMMUNITY ENGAGEMENT:

Inform

A 10-day public hearing notice was published in the Friday, February 23, 2024, edition of the Morgan Hill Times pursuant to Government Code Sections 65090-65096. Notice was also provided on the website and social media. On February 13, 2024, 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, February 2, 2024, edition of the Morgan Hill Times.

ALTERNATIVE ACTIONS:

If the City Council does not take action on the proposed ordinance amendments, the Municipal Code will remain as-is, and certain programs/actions within the Housing Element will not be implemented, the City will not be consistent with Assembly Bill 894, and the clerical errors and inconsistencies within the Code will remain. In addition, if the City fails to implement a program/action by the date specified in the Housing Element, a court can find the City inconsistent with Government Code Section 65583(c) and order the City to carry out the program. The Council may also make modifications to the proposed amendments, or not approve certain sections that the Council deems appropriate.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

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.

On December 7, 2022, the City Council adopted Ordinance No. 2340 N.S., adding Chapter 15.62 (Electric Vehicle Charging Infrastructure) to Title 15 – Buildings and Construction of the City of Morgan Hill Municipal Code. The update included provisions for electric vehicle infrastructure for parking that serves newly constructed and existing buildings.

On January 25, 2023, the City Council adopted Resolution No. 23-004, adopting the City of Morgan Hill 2023-2031 Housing Element. The Housing Element outlines implementation programs/actions that the City is committed to implementing over the eight-year planning period.

On February 13, 2024, the Planning Commission considered and recommended, unanimously, the City Council approve the proposed draft Ordinance (Attachment 1).

FISCAL AND RESOURCE IMPACT:

Staff regularly brings forward bundles of minor amendments as necessary to enhance, correct, and/or refine the Code; and therefore, the cost is borne, and work is accommodated, within the respective division's annual workplan and budget.

CEQA (California Environmental Quality Act):

This Ordinance is exempt from environmental review pursuant to Section 15061(b)(3) of the California Environmental Quality Act (CEQA) Guidelines. The proposed text amendments are covered by the common-sense exemption that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. The proposed amendments implement the City of Morgan Hill 2023-2031 Housing Element, provide updates to electric vehicle charging provisions consistent with Chapter 15.62 (Electric Vehicle Charging Infrastructure) in the Municipal Code, provide updates to parking provisions to comply with Assembly Bill 894, and implement minor amendments due to clerical errors and inconsistencies.

ORDINANCE NO. , NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING VARIOUS CODE PROVISIONS WITHIN TITLE 18 (ZONING) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL IMPLEMENTING THE CITY OF MORGAN HILL 2023-2031 HOUSING ELEMENT; UPDATES TO ELECTRIC VEHICLE CHARGING PROVISIONS TO PROVIDE CONSISTENCY WITH CHAPTER 15.62 (ELECTRIC VEHICLE CHARGING INFRASTRUCTURE); UPDATES TO PARKING PROVISIONS TO COMPLY WITH ASSEMBLY BILL 894; AND IMPLEMENTING MINOR AMENDMENTS DUE TO CLERICAL ERRORS AND INCONSISTENCIES

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

Section 1. Table 18.16-1 (Permitted Land Uses — Residential Detached Zoning Districts) within Section 18.16.020 (Land Use Regulations) of Chapter 18.16 (Residential Detached Zoning Districts) of Title 18 (Zoning) is hereby amended to read as follows:

Table 18.16-1: Permitted Land Uses — Residential Detached Zoning Districts

Key P Permitted Use A Administrative Use Permit required C Conditional Use Permit required — Use not allowed	Zoning District				Additional Regulations
	RE	RDL	RDM	RDH	
Residential Uses					
Accessory Dwelling Units	P	P	P	P	Chapter 18.84
Duets	—	—	P [1,2]	P [2]	

Group Housing	P	P	P	P	
Residential Care Facilities	C	C	C	C	
Residential Care Facilities, Small	P	P	P	P	
Single-Family Detached Dwellings	P	P	P	P	
Supportive Housing	P	P	P	P	
Transitional Housing	P	P	P	P	
Public and Quasi-Public Uses					
Community Assembly	C	C	C	C	
Cultural Institutions	C	C	C	C	
Day Care Centers	C	C	C	C	
Home Day Care, Large and Small	P	P	P	P	
Parks and Recreational Facilities [5]	C	C	C	C	
Public Safety Facilities	C	C	C	C	
Schools, Public and Private	C	C	C	C	
Transportation, Communication, and Utility Uses					
Wireless Communications Facilities	See Chapter 18.96				
Agriculture and Natural Resource Uses					
Crop Cultivation	P	—	—	—	

	[3,4]				
Other Uses					
Accessory Uses	See Chapter 18.44				
Home Occupations	See Section 18.92.060				
Temporary Uses	See Section 18.92.150				
Urban Agriculture					
Home Gardens	P	P	P	P	
Community Gardens	A	A	A	A	
Urban Farms	C	C	C	C	

Notes:

[1] Permitted on corner lots only.

[2] Limited to no more than twenty-five percent of total dwelling units within a single project or subdivision, excluding two-lot subdivisions.

[3] Mushroom farms are prohibited.

[4] On-site sale of products is prohibited.

[5] Park and recreational facilities accessory to a residential use (e.g., a clubhouse serving a residential subdivision) are permitted by right.

Section 2. Table 18.18-1 (Permitted Land Uses — Residential Attached Zoning Districts) within Section 18.18.020 (Land Use Regulations) of Chapter 18.18 (Residential Attached Zoning Districts) of Title 18 (Zoning) is hereby amended to read as follows:

Table 18.18-1: Permitted Land Uses — Residential Attached Zoning Districts

Key P Permitted Use A Administrative Use Permit required C Conditional Use Permit required — Use not allowed	Zoning District			Additional Regulations
	RAL	RAM	RAH	
Residential Uses				

Accessory Dwelling Units	P	P	P	Chapter 18.84
Duets and Duplexes	P	P	P	
Group Housing	P	P	P	
Multifamily Dwellings	P	P	P	
Nursing Homes and Long-Term Care	C	C	C	
Residential Care Facilities	C	C	C	
Residential Care Facilities, Small	P	P	P	
Shared Living Residences	C	C	C	
Single-Family Attached Dwellings	P	P	P	
Single-Family Detached Dwellings	P [2, 3]	P [3]	P [3]	
Supportive Housing	P [1]	P [1]	P [1]	
Transitional Housing	P	P	P	
Public and Quasi-Public Uses				
Community Assembly	C	C	C	
Cultural Institutions	C	C	C	
Day Care Centers	C	C	C	
Home Day Care, Large and Small	P	P	P	
Parks and Recreational Facilities [4]	C	C	C	
Public Safety Facilities	C	C	C	

Schools, Public and Private	C	C	C	
Transportation, Communication, and Utility Uses				
Wireless Communication Facilities	See Chapter 18.96			
Other Uses				
Accessory Uses and Structures	See Chapter 18.44			
Home Occupations	See Section 18.92.060			
Temporary Uses and Structures	See Section 18.92.150			
Urban Agriculture				
Home Gardens	P	P	P	
Community Gardens	A	A	A	
Urban Farms	C	C	C	

Notes:

[1] Supportive Housing consistent with Government Code Sections 65650-65656 shall adhere to entitlement application timing provisions.

[2] Up to twenty-five percent of homes within a development project may be small-lot single family homes with a maximum lot area of three thousand five hundred square feet.

[3] Permitted only on a lot of record existing prior to July 7, 2018.

[4] Park and recreational facilities accessory to a residential use (e.g., a clubhouse serving a residential subdivision) are permitted by right.

Section 3. Table 18.22-1 (Permitted Land Uses — MU-N and MU-F Zoning Districts) within Section 18.22.020 (Land Use Regulations) of Chapter 18.22 (Mixed Use Zoning Districts) of Title 18 (Zoning) is hereby amended to read as follows:

Table 18.22-1: Permitted Land Uses — MU-N and MU-F Zoning Districts

Key	Zoning District	Additional Regulations
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P Permitted Use A Administrative Use Permit required C Conditional Use Permit required — Use not allowed			
	MU-N	MU-F	
Residential Uses			Section 18.22.030
Accessory Dwelling Units	P	P	Chapter 18.84
Duets and Duplexes	P	C	
Group Housing	P	P	
Live/Work Unit	A	A	
Mixed Use Residential	P	P	
Multifamily Dwellings	P	C	
Nursing Homes and Long-Term Care	C	C	
Residential Care Facilities	C	C	
Residential Care Facilities, Small	P	P	
Senior Housing, Independent Living	P	C	
Shared Living Residences	C	C	
Single-Family Attached Dwellings	P	C	
Single-Family Detached Dwellings	P [1]	C	
Supportive Housing	P [4]	P [4]	
Transitional Housing	P	P	

Public and Quasi-Public Uses			
College and Trade Schools	P	P	
Community Assembly	C	C	
Cultural Institutions	A	A	
Day Care Centers	C	C	
Emergency Shelters	—	P	Section 18.92.050
Government Offices	A	A	
Home Day Care, Large and Small	P	P	
Hospitals	C	C	
Instructional Services	P	P	
Low Barrier Navigation Centers	P	P	
Medical Offices and Clinics	P	P	
Parks and Recreational Facilities	P	P	
Public Safety Facilities	C	C	
Schools, Public and Private	C	C	
Social Services	—	C	
Commercial Uses			
Animal-Related Users			
Veterinarian Clinics and Hospitals	C	C	
Banks and Financial Institutions	P	P	
Business Support Services	P	P	
Cinemas and Theaters	A	A	
Commercial Recreation, Indoor			

≤ 15,000 sq. ft.	P	P	
> 15,000 sq. ft.	C	C	
Drive-Through Facilities	C	C	18.92.040
Eating and Drinking Uses			
Bars and Nightclubs	C	C	
Restaurant, Fast Food	P	P	
Restaurants, Sit Down	P	P	
Tasting Rooms	P	P	
Farmers Markets	A	A	
Lodging Facilities			
Bed and Breakfast	A	A	
Hotels and Motels	C	C	
Personal Services	P	P	
Professional Offices	P	P	
Retail			
Convenience Market	A	A	18.92.030
General Retail	P	P	
Vehicle-Related Uses			
Fuel and Service Stations	—	C	
Vehicle Rentals	—	C	
Vehicle Washing	—	C	
Industrial Uses			
Food and Beverage Production			

< 5,000 sq. ft. [3]	P	P	
5,000 sq. ft. to 10,000 sq. ft. [3]	C	C	
Transportation, Communication, and Utility Uses			
Parking Lots or Structures [2]	C	C	
Recycling Facilities			
Reverse Vending Machines	—	C	
Transportation Terminals	—	—	
Wireless Communications Facilities	See Chapter 18.96		
Other Uses			
Accessory Uses	See Chapter 18.44		
Home Occupations	See Section 18.92.060		
Temporary Uses	See Section 18.92.150		

Notes:

[1] Permitted only on a lot of record existing prior to July 7, 2018.

[2] When proposed as a primary use.

[3] On-site wholesale or retail sales required.

[4] Supportive Housing consistent with Government Code Sections 65650-65656 shall adhere to entitlement application timing provisions.

Section 4. Table 18.28-1 (Permitted Land Uses in the Open Space and Public Facilities Zoning Districts) within Section 18.28.020 (Land Use Regulations) of Chapter 18.28 (Open Space, Public, And Recreation Zoning Districts) of Title 18 (Zoning) is hereby amended to read as follows:

Table 18.28-1: Permitted Land Uses in the Open Space and Public Facilities Zoning Districts

Key P Permitted Use	Zoning District	Additional Regulations
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A Administrative Use Permit required C Conditional Use Permit required — Use not allowed			
	OS	PF	
Residential Uses			
Accessory Dwelling Units	P	—	Chapter 18.84
Agricultural Labor Accommodations	P	—	
Single-Family Detached Dwellings	P	—	
Public and Quasi-Public Uses		—	
Cemeteries	C	C	
Colleges and Trade Schools	—	C	
Community Assembly	—	C	
Cultural Institutions	—	P [1]	
Day Care Centers	—	C	
Emergency Shelters	—	P	
Government Offices	—	P	
Home Day Care, Small	P	—	
Hospitals	—	P	
Instructional Services	—	P [1]	
Parks and Recreational Facilities	P	P [1]	
Public Safety Facilities	C	P	
Schools, Public	—	P	

Schools, Private	—	C	
Commercial Uses			
Animal-Related Commercial Uses			
Animal Boarding	C	—	
Equestrian Centers	C	—	
Farmer's Markets	C	C	
Plant Nurseries	C [2]	—	
Transportation, Communication, and Utility Uses		—	
Parking Structures and Facilities	—	P [1]	
Utilities, Major	—	C	
Wireless Communications Facilities	See Chapter 18.96		
Agriculture and Natural Resource Uses			
Crop Cultivation	P	—	
Animal Raising and Production, Intensive	C	—	
Animal Raising and Production, Limited	P	—	
Wildlife Refuges	P	—	
Other Uses			
Accessory Uses	See Chapter 18.44		
Home Occupations	See Section 18.92.060		
Temporary Uses	See Section 18.92.150		

Notes:

[1] A Conditional Use Permit is required if not owned or operated by a governmental agency.

[2] Sales are limited to horticultural products grown on site.

Section 5. Table 18.44-2 (Minimum Accessory Structure Setbacks) within Section 18.44.030 (Accessory Structures in Residential Zoning Districts) of Chapter 18.44 (Accessory Structures and Uses) of Title 18 (Zoning) is hereby amended to read as follows:

Table 18.44-2: Minimum Accessory Structure Setbacks

Accessory Structure	Minimum Setbacks from Property Lines	
	Front	Side and Rear
Roofed structures such as detached garages and sheds and other structures such as trellises		
Height 8 ft. or less	Same as minimum primary structure setback	3 ft.
Height greater than 8 ft. to 12 ft.		5 ft.
Height greater than 12 ft.		Same as minimum primary structure setback
Mechanical equipment and mechanical equipment enclosures	Same as minimum primary structure setback	50 percent of minimum primary structure setback
Decks, detached [2]		
Height 18 in. or less	5 ft.	1 ft.
Height 6 ft. or less	Same as minimum primary structure setback	5 ft.
Height greater than 6 ft.	Same as minimum primary structure setback	12.5 ft. or same as minimum primary structure setback, whichever is less
In ground pools, spas and hot tubs	Same as minimum primary structure	4 ft.

	setback	
Above ground pools, spas, hot tubs and related equipment, accessories, and improvements	Same as minimum primary structure setback	5 ft.
Ponds less than 18 in. in depth	10 ft.	1 ft.
Fireplaces, barbeque structures, statuary and fountains [1]		
Height 8 ft. or less	3 ft.	3 ft.
Height greater than 8 ft. to 12 ft.	5 ft.	5 ft.

Notes:

[1] All openings for freestanding fireplaces and built-in barbeques shall meet all Uniform Building Code and Uniform Fire Code requirements.

[2] Height measured from ground to walking surface.

Section 6. Table 18.56-2 (Allowed Projections Into Required Setbacks) within Section 18.56.030 (Setback Exceptions) of Chapter 18.56 (Height, Setback And Lot Coverage Exceptions) of Title 18 (Zoning) is hereby amended to read as follows:

Table 18.56-2: Allowed Projections Into Required Setbacks

Projecting Features	Maximum Projection into Required Setback	Minimum Distances from Property Lines
Cornices, awnings, eaves, and other similar roof projections	3 ft.	1.5 ft.
Canopies and similar features within any non-residential zoning district	Two-thirds of required setback	5 ft.
Ground floor porches	7 ft.	5 ft.
Upper story porches, attached decks, and balconies	5 ft.	5 ft.
Uncovered stairs, ramps, stoops, or landings that service	5 ft.	5 ft.

upper stories		
Bay windows and chimneys	3 ft. [1]	1.5 ft.

Notes:

[1] Features may not occupy, in the aggregate, more than one-third of the length of the building wall on which they are located.

Section 7. Table 18.72-2 (Required On-Site Parking, Other Zoning Districts) within Section 18.72.030 (Required Parking Spaces) of Chapter 18.72 (Parking and Loading) of Title 18 (Zoning) is hereby amended to read as follows:

Table 18.72-2: Required On-Site Parking, Other Zoning Districts

Land Use	Number of Required Parking Spaces
Residential Uses	
Agricultural Labor Accommodations	1 per 2 beds
Caretaker Quarters	1 per unit
Duplexes and Duets	2 covered per unit
Group Housing	1 per bedroom
Live/Work Unit	2 per unit
Mixed Use Residential	As required for each individual use, except that parking serving residential uses may be uncovered
Multifamily Dwellings	
Studio or One-Bedroom	1 covered per unit
Two Bedroom	1 covered and 1 uncovered per unit
Three Bedroom	1 covered and 1.5 uncovered per units
Nursing Homes and Long Term Care	1 per two beds
Recreational Vehicle (RV) Park	1 per 250 sq. ft. of office floor area
Residential Care Facilities, Large and Small	0.6 per bedroom

Accessory Dwelling Units	See Chapter 18.84 (Accessory Dwelling Units)
Senior Housing, Multifamily Dwellings	1 covered per unit
Senior Housing, Single-Family Dwellings	50% of units with 2 covered spaces, 50% with 1 covered space
Shared Living Residences	1 per bedroom
Single-Family Dwellings, Attached and Detached	2 covered per unit
Supportive Housing	1 per bedroom [1]
Transitional Housing	1 per bedroom
Public and Quasi-Public Uses	
Cemeteries	1 per 4 seats in a chapel or other assembly area
Colleges and Trade Schools	1 per 40 sq. ft. of classroom area
Community Assembly	1 per 5 fixed seats, or 1 per 35 sq. ft. of assembly space, whichever is more, plus 1 per 250 sq. ft. of office area
Cultural Institutions	1 per 4 fixed seats, or 1 per 60 sq. ft. of assembly area for uses without fixed seats
Day Care Centers	1 per 300 sq. ft. used for daycare
Emergency Shelters	1 per 8 beds plus 1 per 250 sq. ft. of office
Government Offices	1 per 250 sq. ft.
Home Day Care, Large	1 per 400 sq. ft. of floor area used for daycare and 1 per employee in addition to what is required for the residential use.
Home Day Care, Small	None in addition to what is required for the residential use.
Hospitals	1 per each two beds

Instructional Services	1 per 2 employees plus 1 per 4 students at maximum enrollment
Low Barrier Navigation Centers	1 per 8 beds plus 1 per 250 sq. ft. of office
Medical Offices and Clinics	1 per 200 sq. ft., or 5 per doctor/dentist, whichever is greater
Parks and Recreational Facilities	As determined by a parking demand study
Public Safety Facilities	1 per 1,000 sq. ft. and 2 additional parking spaces for station vehicles
Schools, Public and Private	Elementary and middle schools: 1 per classroom, plus 1 per 250 sq. ft. of office area. High schools: 7 per classroom.
Social Services	1 per 200 sq. ft.
Commercial Uses	
Adult Businesses	1 per 250 sq. ft.
Animal-Related Commercial Uses	
Animal Boarding	1 per employee plus an area for loading and unloading animals on site.
Veterinarian Clinics and Hospitals	1 per 500 sq. ft.
Banks and Financial Institutions	1 per 250 sq. ft.
Business Support Services	1 per 250 sq. ft.
Cinemas and Theaters	1 per 3.5 seats or one per 32 square feet of seating area, whichever is greater
Commercial Parking	1 per employee
Commercial Recreation, Indoor	Establishments with seating: 1 for each 4 fixed seats, or 1 for every 30 sq. ft. of seating area where temporary or moveable seats are provided. Athletic clubs: 1 per 150 sq. ft. of floor area.

	Bowling alleys: 2 per lane. Game courts (e.g., tennis): 2 per court. Swimming pools: 1 per 200 sq. ft. of pool area plus 1 per 500 sq. ft. of area related to the pool. Other commercial entertainment and recreation uses: as determined by the Director.
Commercial Recreation, Outdoor	As determined by a parking demand study
Drive-Through Facilities	As required by use served.
Eating and Drinking Uses	
Bars and Nightclubs	1 per 100 sq. ft.
Restaurants, Fast Food	1 per 100 sq. ft. for establishments with more than 12 seats. 1 per 250 sq. ft. for establishments with 12 seats or less
Restaurants, Sit Down	1 per 100 sq. ft.
Tasting Rooms	1 per 100 sq. ft. of tasting area
Equestrian Centers	As determined by a parking demand study
Funeral Parlors and Mortuaries	1 per 4 permanently located seats or 1 per 45 sq. ft. of assembly space
Lodging Facilities	
Bed and Breakfast Lodging	1 per guest room plus 1 for each 10 rooms
Hotels and Motels	1 per guest room plus 1 for each 10 rooms
Mini-Storage	2 spaces or 1 per 250 storage units, whichever is greater, plus 1 additional covered and 1 additional uncovered for an on-site manager residence
Personal Services	1 per 250 sq. ft.
Plant Nurseries	1 per 1,000 sq. ft. of site area for the first 10,000 sq. ft., then 1 per each additional 5,000 sq. ft., plus 1 per each 250 sq. ft. of floor area.

	Min. 7 spaces plus 1 space per vehicle to be parked on the site overnight
Professional Offices	1 per 250 sq. ft.
Retail	
Convenience Markets	1 per 250 sq. ft.
Farmers Market	As determined by a parking demand study
General Retail	1 per 250 sq. ft.
Home Improvement Centers	1 per 250 sq. ft.
Large Commodity Retail	1 per 350 sq. ft.
Open-Air Sales	1 per 1,000 sq. ft. of site area
Vehicle-Related Uses	
Fuel and Service Stations	1 per 200 sq. ft.
Towing and Impound	1 per 250 sq. ft. of office space in addition to space for storage of towing vehicles
Vehicle Rentals	1 per 250 sq. ft. of office space in addition to space for storage of rental vehicles
Vehicle Repair and Maintenance, Major and Minor	1 per 200 sq. ft.
Vehicle Sales and Leasing	5 per for the first 10,000 sq. ft. of lot area and 1 for each additional 3,000 sq. ft.
Vehicle Storage, Outdoor	1.5 for each employee on the largest shift. Minimum of 2.
Vehicle Washing	5 per for the first 10,000 sq. ft. of lot area and 1 for each additional 3,000 sq. ft.
Wholesaling	1 per 1,000 sq. ft. of floor area plus 1 per 300 sq. ft. of office area

Industrial Uses	
Construction and Material Yards	1 per 2,500 sq. ft.
Food and Beverage Production	1 per 500 sq. ft.
Warehousing and Distribution	1 per 1,000 sq. ft. plus 1 per 300 sq. ft. of office area
Manufacturing, Light and General	1 per 500 sq. ft.
Research and Development	1 per 350 sq. ft.
Salvage and Wrecking	1 per 500 sq. ft.
Warehousing and Distribution, Large	1 per 1,000 sq. ft. plus 1 per 300 sq. ft. of office area
Warehousing and Distribution, Small	As determined parking demand study, but no less than 1 per 1,000 sq. ft. of gross floor area
Warehousing and Distribution, Outdoor Storage	1 per 1,000 sq. ft. plus 1 per 300 sq. ft. of office area
Transportation, Communication, and Utility Uses	
Freight/Truck Terminals and Warehouses	1 per 1,000 sq. ft. plus 1 per 300 sq. ft. of office area
Parking Lot and Structures	1 per 300 sq. of office area
Recycling Facilities	
Reverse Vending Machine	1 per machine
Recycling Collection Facility	1 per 1,000 sq. ft.
Recycling Processing Facility	1 per 1,000 sq. ft.
Transportation Terminals	As determined by parking demand study
Utilities, Major	1 for each employee on the largest shift plus 1 for each vehicle used in connection with the

	use. Minimum of 2.
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Notes:

[1] Minimum required on-site parking shall not apply if the development is located within one-half mile of a public transit stop.

Section 8. Table 18.72-3 (Required Guest Parking Spaces) within Section 18.72.030 (Required Parking Spaces) of Chapter 18.72 (Parking and Loading) of Title 18 (Zoning) is hereby amended to read as follows:

Table 18.72-3: Required Guest Parking Spaces

Land Use	Number of Guest Spaces
Single-Family Dwellings	1 per 4 units
Multifamily Dwellings	1 per 4 units
Multifamily Dwellings for Senior Citizens	1 per 5 units

Section 9. Section 18.72.040 (General Requirements) of Chapter 18.72 (Parking and Loading) of Title 18 (Zoning) is hereby amended to read as follows:

A. Availability and Use of Spaces.

1. Required parking spaces for multifamily and non-residential uses shall be permanently available and maintained to provide parking for the use they are intended to serve.
2. Owners, lessees, tenants, or persons having control of the operation of a use for which parking spaces are required shall not prevent or restrict authorized persons from using these spaces.
3. Required parking spaces shall be used exclusively for the temporary parking of vehicles and shall not be used for the sale, lease, display, repair, advertising, or storage of vehicles, trailers, boats, campers, mobile homes, merchandise, or equipment, or for any other use not authorized by the zoning code.

B. Location of Parking.

1. Residential Uses. Required minimum on-site parking to serve all residential uses shall be located on the same parcel or site as the use which it serves except as allowed by Section 18.72.050.D (Off-Site Parking).
2. Non-Residential Uses. Required minimum on-site parking to serve all non-residential residential uses shall be located on the same parcel or site as the use which it serves except as allowed by Section 18.72.050.D (Off-Site Parking).
3. Parking on Landscape Violation. No person shall park or store any automobile or other vehicle, including but not limited to motorcycles, campers, boats, trailers, or

other similar vehicles, in any front yard in any residential district. Parking shall be permitted for automobiles only in and upon an improved paved driveway in said front yard area if each vehicle is currently licensed and operative. Parking for camper, boat, trailer, and other similar vehicles shall comply with Section 18.72.040.F.

- C. Electric Vehicle Charging. Refer to Chapter 15.62 (Electric Vehicle Charging Infrastructure) for electric vehicle charging requirements.
- D. Garage and Carport Setbacks. Garages and carports in the detached residential zoning districts shall comply with setback requirements in Section 18.16.030 (Garage and Carport Setbacks).
- E. Parking for Persons with Disabilities.
 - 1. Parking spaces for persons with disabilities shall be provided in compliance with California Code of Regulations Title 24.
 - 2. Parking spaces required for the disabled shall count toward compliance with the number of parking spaces required by Table 18.72-1 and Table 18.72-2.
- F. Camper, Boat, and Trailer Parking. Camper, boat, and trailer parking spaces shall be located and screened so as not to be visible from the public street.

Section 10. Subsection D of Section 18.72.050 (On-Site Parking Alternatives) of Chapter 18.72 (Parking and Loading) of Title 18 (Zoning) is hereby amended to read as follows:

- D. Off-Site Parking.
 - 1. For multifamily housing and non-residential uses, the planning commission may allow off-site parking if the commission finds that practical difficulties prevent the parking from being located on the same lot it is intended to serve.
 - 2. Off-site parking shall be located within a reasonable distance of the use it is intended to serve, as determined by the planning commission.
 - 3. A covenant record, approved by the city attorney, shall be filed with the county recorder. The covenant record shall require the owner of the property where the on-site parking is located to continue to maintain the parking space so long as the building, structure, or improvement is maintained in Morgan Hill. This covenant shall stipulate that the title and right to use the parcels shall not be subject to multiple covenant or contract for use without prior written consent of the city.

Section 11. Subsection F of Section 18.72.050 (On-Site Parking Alternatives) of Chapter 18.72 (Parking and Loading) of Title 18 (Zoning) is hereby amended to read as follows:

- F. Shared Parking. When an entity is not using the required on-site parking to meet parking requirements, the City shall allow the entity with underutilized parking to share their underutilized parking spaces with the public, local agencies, or other entities, if those entities submit a shared parking agreement to the City and information identifying the benefits of the proposed shared parking agreement. Within this subsection, underutilized parking shall mean parking where 20 percent or more of a development's parking spaces are not occupied during the period that the parking is proposed to be shared by another user, group, development, or the public.

1. In cases where an entity is entering into a shared parking agreement and proposes to use the shared parking spaces to meet the required on-site parking, all of the following shall apply:
 - a. The City shall approve a shared parking agreement if it:
 - i. Includes a parking analysis using peer-reviewed methodologies developed by a professional planning association, such as the methodology established by the Urban Land Institute, National Parking Association, and the International Council of Shopping Centers, sufficient to determine how many parking spaces can be reasonably shared between uses to fulfill parking requirements.
 - ii. Secures long-term provision of parking spaces or affords the opportunity for periodic review and approval by the City.
 - b. The City shall allow parking spaces identified in a shared parking agreement to count toward meeting any automobile parking requirement for a new or existing development or use, including, but not limited to, shared parking in underutilized spaces and in parking lots and garages that will be constructed as part of the development or developments under any of the following conditions:
 - i. The entities that will share the parking are located on the same, or contiguous, parcels.
 - ii. The sites of the entities that will share parking are separated by no more than 2,000 feet of travel by the shortest walking route.
 - iii. The sites of the entities that will share the parking are separated by more than 2,000 feet of travel by the shortest walking route, but there is a plan for shuttles or other accommodations to move between the parking and site, including a demonstrated commitment to sustain such transportation accommodations.
 - c. The shared parking agreement shall be recorded against the parcels that are part of the agreement.
2. If entities submit a shared parking agreement without the parking analysis described above, the Development Services Director shall decide whether to approve or deny the shared parking agreement, and determine the number of parking spaces that can be reasonably shared between uses to fulfill parking requirements.
3. For shared parking agreements for developments of 10 residential units or more, or 18,000 square feet or more, before making the determination, the Development Services Director shall:
 - a. Notify all property owners within 300 feet of the shared parking spaces of the proposed agreement, including that the property owner has 14 days to request a

public meeting before the City decides whether to approve or deny the shared parking agreement.

- b. If the Development Services Director receives a request to hold a public meeting within 14 days of notifying property owners, the Development Services Director shall hold a public meeting on the shared parking agreement to approve or deny the shared parking agreement and determine the number of parking spaces that can be reasonably shared between uses to fulfill parking requirements.
4. The Development Services Director shall not require the curing of any preexisting deficit of the number of parking spaces as a condition for approval of the shared parking agreement.
5. The Development Services Director shall not withhold approval of a shared parking agreement between entities solely on the basis that it will temporarily reduce or eliminate the availability of parking spaces for the original proposed uses.
6. For a development project in which a designated historical resource on a federal, state, or local register of historic places is being converted or adapted, the Development Services Director shall allow the project applicant to meet minimum parking requirements through the use of off-site shared parking.
7. This section shall not reduce, eliminate, or preclude the enforcement of any requirement imposed on a residential or nonresidential development to provide parking spaces that are accessible to persons with disabilities that would have otherwise applied to the development.
8. This section shall not reduce the percentage of parking spaces that are designated for electric vehicles that would otherwise have applied.
9. The City, private landowner, or lessor shall examine the feasibility of shared parking agreements to replace new parking construction or limit the number of new parking spaces that will be constructed, in either of the following circumstances:
 - a. When state funds are being used on a proposed new development and the funding availability is announced after June 30, 2024.
 - b. When public funds are being used to develop a parking structure or surface parking and the public funding has not been awarded as of June 30, 2024.

Section 12. Subsection B of Section 18.84.050 (Site and Design Standards) of Chapter 18.84 (Accessory Dwelling Units) of Title 18 (Zoning) is hereby amended to read as follows:

B. Number of Accessory Units.

1. Single-Family Dwelling. No more than one detached accessory dwelling unit, no more than one attached accessory dwelling unit, and no more than one junior accessory dwelling unit is permitted on a single lot with an existing or proposed single-family dwelling.
2. Proposed Multifamily Dwellings. Proposed multifamily dwelling structures may have no more than two detached accessory dwelling units on a lot.
3. Existing Multifamily Dwellings. Existing multifamily dwelling structures may have no more than two detached accessory dwelling units on a lot. In addition, existing multifamily dwelling structures may also have no more than one accessory dwelling unit or up to twenty-five percent of the existing multifamily dwelling units, whichever is larger, within portions of an existing multifamily dwelling structure that are not used as livable space, including, but not limited to, storage rooms, boiler rooms, passageways, attics, basements, or garages, if each unit complies with state building standards for dwellings.

Section 13. Subsection C of Section 18.84.050 (Site and Design Standards) of Chapter 18.84 (Accessory Dwelling Units) of Title 18 (Zoning) is hereby amended to read as follows:

C. Relationship to Primary Dwelling.

1. An accessory dwelling unit may be within, attached to, or detached from the primary dwelling. Attachment to the primary dwelling shall be by sharing a common interior wall or common roof. No passageway (as defined in Government Code Section 65852.2) is required in conjunction with the construction of an accessory dwelling unit.
2. An accessory dwelling unit shall have its own kitchen, bathroom facilities, and entrance separate from the primary dwelling.
3. The city shall allow junior accessory dwelling units as defined in Government Code Section 65852.22 to be constructed within the walls of the proposed or existing single-family residence with a separate entrance from the main entrance to the primary dwelling, an efficiency kitchen (consisting of a cooking facility with appliances, a food preparation counter and storage cabinets) and shared or independent bathroom facilities
4. The accessory unit shall be clearly subordinate to the primary dwelling by size, appearance, and location on the parcel and shall comply with all applicable building and safety codes.
5. A detached accessory dwelling unit that does not exceed four-foot side and rear yard setbacks for a proposed or existing single-family dwelling may be combined with a junior accessory dwelling unit.

Section 14. Subsection C of Section 18.92.050 (Emergency Shelters) of Chapter 18.92

(Supplemental Standards) of Title 18 (Zoning) is hereby amended to read as follows:

C. Minimum Performance Standards.

1. The number of beds shall be limited to thirty.
2. The size of outdoor waiting areas shall be sufficient to accommodate the expected number of clients without infringing upon the public right-of-way.
3. On-site management shall be provided during the hours that the emergency shelter is in operation.
4. An emergency shelter shall be located at least three hundred feet from other emergency shelters.
5. The length of stay at any emergency shelter shall not exceed ninety days, unless the management plan provides for longer residency by those enrolled and regularly participating in a training or rehabilitation program.
6. Exterior lighting of the property shall be designed to provide a minimum maintained horizontal illumination of at least one foot candle of light on parking surfaces and walkways that serve the facility.
7. Security shall be provided during the hours that the emergency shelter is in operation.

Section 15. Subsection 11 of Subsection F of Section 18.108.040 (Design Permit) of Chapter 18.108 (Specific Permit Requirements) of Title 18 (Zoning) is hereby amended to read as follows:

11. Murals with or without signage that comply with Chapter 18.88 (Signs) and any applicable specific plan or area plan.

Section 16. Section 18.118.070 (Criteria for Decision) of Chapter 18.118 (Reasonable Accommodations) of Title 18 (Zoning) is hereby amended to read as follows:

The community development director or the reviewing authority, as applicable, shall make a written determination and either approve, approve with modifications, or deny a request for reasonable accommodation based on consideration of all of the following factors:

- A. Whether the housing which is the subject of the request will be used by an individual with disabilities protected under fair housing law.
- B. Whether the request for reasonable accommodation is necessary to make housing available to an individual with disabilities protected under fair housing law.
- C. Whether the requested reasonable accommodation would impose an undue financial or administrative burden on the City.
- D. Whether the requested reasonable accommodation would require a fundamental alteration in the nature of a City program or law, including but not limited to land use and zoning.
- E. Physical attributes of the property and structures.
- F. Availability of other reasonable accommodations that may provide an equivalent level of

benefit.

Section 17. Section 18.124.020 (Residential Land Uses) of Chapter 18.124 (Land Use Definitions) of Title 18 (Zoning) is hereby amended to read as follows:

- A. Accessory Dwelling Units. A self-contained living unit, either attached to or detached from, and in addition to, the primary residential unit on the parcel, that includes permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family dwelling or multifamily dwelling is situated. This includes an efficiency unit as defined in Section 17958.1 of the Health and Safety Code and a manufactured home, as defined in Section 18007 of the Health and Safety Code. Further includes a junior accessory dwelling unit which is a unit that is no more than five hundred square feet in size and contained entirely within a single-family residence and includes separate or shared sanitation facilities with the existing structure.
- B. Agricultural Labor Accommodations. Housing for transient labor, such as labor cabins or camps, where incidental to a permitted agricultural use.
- C. Caretaker Quarters. A residence that is accessory to a nonresidential primary use of the site, where needed for security, or twenty-four-hour care or supervision.
- D. Duets. A residential structure that contains two independent dwelling units, each with its own entrance that are separated by a property line along a shared building wall with each unit located on a separate lot.
- E. Duplexes. A single residential structure on one lot that contains two independent dwelling units, each with its own entrance.
- F. Group Housing.
 - 1. Housing shared by unrelated persons with disabilities that provide peer and other supportive services for their residents' disability related needs but not services that require licenses under state law and in which residents share cooking, dining, and living areas.
 - 2. Includes group homes that may provide some supportive services for their residents but not services that require licenses under state law (see "Residential Care Facilities").
- G. Live/Work Units. A building or space within a building that is used jointly for commercial and residential purposes.
- H. Mixed Use Residential. A development project with both residential and commercial/office uses which are either 1) located together in a single building; or 2) in separate buildings on a single site of one or more contiguous properties.
- I. Multifamily Dwellings. A building that contains three or more dwelling units, with each unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking, and sanitation. Includes multifamily senior housing limited to occupancy by persons fifty-five years of age or older

for residents who are independent and do not require assistance with everyday living ("independent living").

- J. Nursing Homes and Long-Term Care. Establishments that provide twenty-four-hour medical, convalescent or chronic care to individuals who, by reason of advanced age, chronic illness or infirmity, are unable to care for themselves, and is licensed as a skilled nursing facility by the state of California. Excludes "residential care facilities" and "senior housing."
- K. Residential Care Facilities.
 - 1. A state licensed facility as a Residential Care Facility for the Elderly or a residential care facility as defined in the California Health and Safety Code.
 - 2. Includes group homes that provide services that require licenses under state law serving more than six residents.
- L. Residential Care Facilities, Small. A state licensed facility as a Residential Care Facility for the Elderly or a residential care facility as defined in the California Health and Safety Code, or "Group Housing", serving six or fewer residents.
- M. Shared Living Residences. Shared living quarters without separate kitchen or bathroom facilities for each room or unit, offered for rent for permanent or semi-transient residents on a weekly or longer basis. Includes rooming and boarding houses, single-room occupancy housing, dormitories, and other types of organizational housing, and extended stay hotels intended for long-term occupancy (thirty days or more). Excludes "hotels and motels", "group housing", and "residential care facilities."
- N. Single-Family Dwellings. A residential structure designed for occupancy by one household. A single-family dwelling provides complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking, and sanitation. Includes all construction types, including prefabricated and manufactured homes.
- O. Single-Family Attached Dwellings. Three or more single-family dwelling units connected by common walls along the side property lines, sometimes called a townhouse or row house. Excludes "duplexes" and "duets."
- P. Single-Family Detached Dwellings. A detached building that contains one single-family dwelling.
- Q. Supportive Housing. A residential structure with no limit on length of stay, that is occupied by the target population, and that is linked to an onsite or offsite service that assists the supportive housing resident in retaining the housing, improving his or her health status, and maximizing his or her ability to live and, when possible, work in the community. Target population shall mean persons with low incomes who have one or more disabilities, including mental illness, HIV or AIDS, substance abuse, or other chronic health condition, or individuals eligible for services provided pursuant to the Lanterman Developmental Disabilities Services Act (Division 4.5 (commencing with Section 4500) of the Welfare and Institutions Code) and may include, among other populations, adults, emancipated minors,

families with children, elderly persons, young adults aging out of the foster care system, individuals exiting from institutional settings, veterans, and homeless people.

- R. Transitional Housing. A residential structure configured as a rental housing development, but operated under program requirements that require the termination of assistance and recirculating of the assisted unit to another eligible program recipient at a predetermined future point in time that shall be no less than six months from the beginning of the assistance.

Section 18. Section 18.124.030 (Public and Quasi-public Uses) of Chapter 18.124 (Land Use Definitions) of Title 18 (Zoning) is hereby amended to read as follows:

- A. Cemeteries. Establishments primarily engaged in operating sites or structures reserved for the interment of human or animal remains, including crematories, mausoleums, burial places, columbariums, and memorial gardens.
- B. Colleges and Trade Schools. Institutions of higher education providing curricula of a general, religious or professional nature, typically granting recognized degrees. Includes junior colleges, business and computer schools, management training, vocational education, and technical and trade schools.
- C. Community Assembly. Facilities that provide space for public or private meetings or gatherings. Includes places of worship, community centers, meeting space for clubs and other membership organizations, social halls, union halls, banquet centers, and other similar facilities.
- D. Cultural Institutions. Public or nonprofit institutions that engages in cultural, scientific, and/or educational enrichment. Includes libraries, museums, performing art centers, aquariums, environmental education centers, non-profit art centers and galleries, botanical gardens, and other similar uses.
- E. Day Care Centers. Facilities that provide non-medical care and supervision of minors or adults for periods of less than twenty-four hours. Includes nursery schools, day nurseries, child care centers, infant day care centers, cooperative day care centers, adult day programs, and similar uses.
- F. Emergency Shelters. Housing with minimal supportive services for homeless persons that is limited to occupancy of six months or less by a homeless person. No individual or household may be denied emergency shelter because of an inability to pay. Includes other interim interventions, including, but not limited to, a navigation center, bridge housing, and respite or recuperative care.
- G. Government Offices. Places of employment occupied by governmental agencies and their employees. Includes offices for administrative, clerical, and public contact functions but excludes corporation yards, equipment service centers, and similar facilities that primarily provide maintenance and repair services and storage facilities for vehicles and equipment.
- H. Home Day Care. Facilities providing daytime supervision and care for children where the provider permanently resides.

1. Home Day Care, Large. A home day care facility supervising nine to fourteen children.
 2. Home Day Care, Small. A home day care facility supervising eight children or less.
- I. Hospitals. Facilities providing medical, psychiatric, or surgical services for sick or injured persons primarily on an in-patient basis, and including ancillary facilities for outpatient and emergency treatment, diagnostic services, training, research, administration, and services to patients, employees, or visitors.
- J. Instructional Services. Establishments that offer specialized programs in personal growth and development. Includes music studios, drama schools, dance academies, art schools, tutoring schools, and instruction in other cultural and academic pursuits.
- K. Low Barrier Navigation Centers. A housing-first, low-barrier, service-enriched shelter focused on moving people into permanent housing that provides temporary living facilities while case managers connect individuals experiencing homelessness to income, public benefits, health services, shelter, and housing. "Low barrier" means best practices to reduce barriers to entry, and may include, but is not limited to, the following:
1. The presence of partners if it is not a population-specific site, such as for survivors of domestic violence or sexual assault, women, or youth.
 2. Pets.
 3. The storage of possessions.
 4. Privacy, such as partitions around beds in a dormitory setting or in larger rooms containing more than two beds, or private rooms.
- L. Medical Offices and Clinics. Facilities where medical, mental, dental, or other personal health services are provided on an outpatient basis using specialized equipment. Includes offices for physicians, dentists, and optometrists, diagnostic centers, blood banks and plasma centers, and emergency medical clinics offered exclusively on an out-patient basis. May include educational aspects such as medical instruction and/or training as well as house a laboratory, radiology/imaging, pharmacy, rehabilitation and other similar services as accessory uses. Excludes "hospitals."
- M. Parks and Recreational Facilities. Non-commercial facilities that provide open space and/or recreational opportunities to the public. Includes parks, community gardens, community centers, passive and active open space, wildlife preserves, playing fields, tennis courts, swimming pools, gymnasiums, and other similar facilities.
- N. Public Safety Facilities. Facilities operated by a governmental agency for the purpose of protecting public safety. Includes fire stations and other fire-fighting facilities, police stations, public ambulance dispatch facilities, and other similar uses.
- O. Schools. Educational institutions providing instruction to minors as required by the California Education Code. Includes elementary, junior high, and high schools.
1. School, Public. A school operated or under control of the Morgan Hill Unified School District or Santa Clara County Board of Education. Includes public charter schools.

2. School, Private. A school operated or under control of an entity other than the Morgan Hill Unified School District or Santa Clara County Board of Education.
- P. Social Services. Establishments providing assistance and aid to those persons requiring counseling and/or treatment for psychological problems, addictions, learning disabilities, and physical disabilities or to those persons in need of jobs, food, or clothing. Excludes residential care on an overnight, short-term, or long-term basis.

Section 19. Subsection Q of Section 18.124.040 (Commercial Uses) of Chapter 18.124 (Land Use Definitions) of Title 18 (Zoning) is hereby amended to read as follows:

Q. Vehicle-Related Uses.

1. Fuel and Service Stations. A retail business establishment supplying fuels and oil and minor accessories for automobiles. Includes establishments supplying gasoline, hydrogen, and electric vehicle charging as a primary land use. Includes incidental food and beverage sales, car wash facilities, minor automotive repair and service, and towing service with up to two trucks. Excludes body and fender work, painting, and other major automotive repairs.
2. Towing and Impound. Establishments primarily engaged in towing light or heavy motor vehicles, both local and long distance. May provide incidental services, such as vehicle storage and emergency road repair services.
3. Vehicle Rentals. The rental of automobiles and other similar light vehicles.
4. Vehicle Repair and Maintenance, Major. An establishment providing not provided for under "vehicle repair and maintenance, minor," including, but not limited to, general repair, rebuilding or reconditioning of: major vehicle components, such as engines, transmissions and differentials; non-passenger vehicles, motor homes or trailers and trucks exceeding one and one-half ton capacity; or body, frame or fender components, including collisions service, upholstery or painting.
5. Vehicle Repair and Maintenance, Minor. An establishment providing general service and maintenance of passenger cars and trucks not exceeding one and one-half ton capacity. Service may include the repair or replacement of worn or defective parts and gaskets external to the basic engine block, such as intake and exhaust manifolds, carburetors and water pumps; engine replacement; the repair or replacement of worn or defective brake parts, clutch parts, mufflers, exhaust system parts, wheel bearings, shock absorbers, tires, batteries, spark plugs and other accessible minor parts; and maintenance work such as the changing or supplementing of vehicle fluids and the adjustment of mechanical components while on the vehicle.
6. Vehicle Sales and Leasing. The retail sales or rental of new or used vehicles. Includes the sale of vehicle parts and vehicle repair, provided that these activities are incidental to the sale of vehicles.
7. Vehicle Storage, Outdoor. Storage of operative or inoperative vehicles for long term storage in open lots. Includes, but is not limited to, storage of parking tow-aways, impound yards, and storage lots for automobiles, trucks, buses, recreation

vehicles, and boats; including satellite storage of vehicles related to Vehicle Sales and Leasing. Does not include the storage of customer's goods and possessions (see Mini-Storage) or retail sales (see Vehicle Sales and Leasing).

8. Vehicle Washing. The washing, waxing, or cleaning of automobiles or similar light vehicles, including self-serve washing facilities.

Section 20. Subsection 1 of Subsection B of Section 18.128.020 (Definitions) of Chapter 18.128 (General Terms) of Title 18 (Zoning) is hereby amended to read as follows:

1. Balcony. An unroofed platform, without stairs, that projects from the wall of a building that is surrounded by a railing or balustrade and does not require separate understructure for support, with access from an upper-floor window or door.

Section 21. Subsection 1 of Subsection D of Section 18.128.020 (Definitions) of Chapter 18.128 (General Terms) of Title 18 (Zoning) is hereby amended to read as follows:

1. Deck. An unroofed platform, either freestanding or attached to a building accessible by a door, with or without stairs, that is supported by piers, pillars, or posts.

Section 22. Subsection 4 of Subsection P of Section 18.128.020 (Definitions) of Chapter 18.128 (General Terms) of Title 18 (Zoning) is hereby amended to read as follows:

4. Porch. A covered but unenclosed projecting platform providing access to a door, with or without stairs, which extends from the main wall of a building that may or may not use columns or other ground supports for structural purposes. A porch that is screened-in, without a heating or cooling system, is considered unenclosed.

Section 23. **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 24. **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 _____ DAY OF _____, 20__, AND WAS FINALLY ADOPTED AT A MEETING OF THE CITY COUNCIL HELD ON THE _____ DAY OF _____, 20__, 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:

MARK TURNER, Mayor

ATTEST:

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. _____, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the ____ day of _____, 2024.

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

DATE: _____

MICHELLE BIGELOW, City Clerk



ZA2023-0001

Miscellaneous Code Amendments



Miscellaneous Code Amendments



Project:

Zoning Amendment Amending

- Various sections of Title 18 (Zoning)
 - **Implements 2023-2031 Housing Element**
 - **Updates to Electric Charging Provisions to provide consistency with Chapter 15.62 (Electric Vehicle Charging Infrastructure)**
 - **Updates to shared parking provisions (Section 18.72.050.F (On-Site Parking Alternatives)) to comply with Assembly Bill 894**
 - **Implements minor amendments due to clerical errors and inconsistencies**

Request:

Adopt Ordinance approving the amendments as recommended by Planning Commission on February 13, 2024

Miscellaneous Code Amendments (Permitted Land Uses)



Table 18.16-1 (Permitted Land Uses – Residential Detached Zoning Districts)

Key P Permitted Use A Administrative Use Permit required C Conditional Use Permit required — Use not allowed	Zoning District			
	RE	RDL	RDM	RDH
<u>Group Housing</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>
<u>Residential Care Facilities</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>
<u>Supportive Housing</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>
<u>Transitional Housing</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>

Implements:

- Action HE-5.G By-right Transitional and Supportive Housing
- Action HE-6.E Residential Care Facilities

Miscellaneous Code Amendments (Permitted Land Uses)



Table 18.18-1 (Permitted Land Uses – Residential Attached Zoning Districts)

Key P Permitted Use A Administrative Use Permit required C Conditional Use Permit required — Use not allowed	Zoning District		
	RAL	RAM	RAH
Group Housing	C [1]P	C P	C P
<u>Shared Living Residences</u>	<u>C</u>	<u>C</u>	<u>C</u>
<u>Supportive Housing</u>	<u>P</u> [1]	<u>P</u> [1]	<u>P</u> [1]
<u>Transitional Housing</u>	<u>P</u>	<u>P</u>	<u>P</u>

Notes:

[1] ~~Limited to no more than eight residents.~~ Supportive Housing consistent with Government Code Sections 65650-65656 shall adhere to entitlement application timing provisions.

Implements:

- *Action HE-5.G By-right Transitional and Supportive Housing*
- *Action HE-6.E Residential Care Facilities*

Miscellaneous Code Amendments (Permitted Land Uses)



Table 18.22-1 (Permitted Land Uses – MU-N and MU-F
Zoning Districts)

	Zoning District	
	MU-N	MU-F
Group Housing	C <u>P</u>	C <u>P</u>
<u>Shared Living Residences</u>	<u>C</u>	<u>C</u>
<u>Supportive Housing</u>	<u>P</u> [4]	<u>P</u> [4]
<u>Transitional Housing</u>	<u>P</u>	<u>P</u>
Emergency Shelters	—	C <u>P</u>
<u>Low Barrier Navigation Centers</u>	<u>P</u>	<u>P</u>

Notes:

[4] Supportive Housing consistent with Government Code Sections 65650-65656 shall adhere to entitlement application timing provisions.

Implements:

- *Action HE-5.G By-right Transitional and Supportive Housing*
- *Action HE-6.E Residential Care Facilities*
- *Action HE-5.A Low Barrier Navigation Centers*
- *Action HE-5.J Emergency Shelters*

Miscellaneous Code Amendments (Residential Land Use Definitions)



Chapter 18.124 (Land Use Definitions)

Group Housing.

1. Housing shared by unrelated persons with disabilities that provide peer and other supportive services for their residents' disability related needs but not services that require licenses under state law and in which residents share cooking, dining, and living areas.
2. Includes group homes that may provide some supportive services for their residents but not services that require licenses under state law (see "Residential Care Facilities").

Residential Care Facilities.

1. A state licensed facility as a Residential Care Facility for the Elderly or a residential care facility as defined in the California Health and Safety Code.
2. Includes group homes that provide services that require licenses under state law serving more than six residents.

Residential Care Facilities, Small. A state licensed facility as a Residential Care Facility for the Elderly or a residential care facility as defined in the California Health and Safety Code, or "Group Housing", serving six or fewer residents.

Miscellaneous Code Amendments (Residential Land Use Definitions)



Chapter 18.124 (Land Use Definitions)

Supportive Housing. A residential structure with no limit on length of stay, that is occupied by the target population, and that is linked to an onsite or offsite service that assists the supportive housing resident in retaining the housing, improving his or her health status, and maximizing his or her ability to live and, when possible, work in the community. Target population shall mean persons with low incomes who have one or more disabilities, including mental illness, HIV or AIDS, substance abuse, or other chronic health condition, or individuals eligible for services provided pursuant to the Lanterman Developmental Disabilities Services Act (Division 4.5 (commencing with Section 4500) of the Welfare and Institutions Code) and may include, among other populations, adults, emancipated minors, families with children, elderly persons, young adults aging out of the foster care system, individuals exiting from institutional settings, veterans, and homeless people.

Transitional Housing. A residential structure configured as a rental housing development, but operated under program requirements that require the termination of assistance and recirculating of the assisted unit to another eligible program recipient at a predetermined future point in time that shall be no less than six months from the beginning of the assistance.

Miscellaneous Code Amendments (Residential & Public Land Use Definitions)



Chapter 18.124 (Land Use Definitions)

Shared Living Residences. Shared living quarters without separate kitchen or bathroom facilities for each room or unit, offered for rent for permanent or semi-transient residents on a weekly or longer basis. Includes rooming and boarding houses, single-room occupancy housing, dormitories, and other types of organizational housing, and extended stay hotels intended for long-term occupancy (thirty days or more). Excludes "hotels and motels", "group housing", and "residential care facilities."

Emergency Shelters. Housing with minimal supportive services for homeless persons that is limited to occupancy of six months or less by a homeless person. No individual or household may be denied emergency shelter because of an inability to pay. Includes other interim interventions, including, but not limited to, a navigation center, bridge housing, and respite or recuperative care.

Miscellaneous Code Amendments (Public/Quasi-Public Land Use Definitions)



Chapter 18.124 (Land Use Definitions)

Low Barrier Navigation Centers. A housing-first, low-barrier, service-enriched shelter focused on moving people into permanent housing that provides temporary living facilities while case managers connect individuals experiencing homelessness to income, public benefits, health services, shelter, and housing. “Low barrier” means best practices to reduce barriers to entry, and may include, but is not limited to, the following:

1. The presence of partners if it is not a population-specific site, such as for survivors of domestic violence or sexual assault, women, or youth.
2. Pets.
3. The storage of possessions.
4. Privacy, such as partitions around beds in a dormitory setting or in larger rooms containing more than two beds, or private rooms.

Miscellaneous Code Amendments

(Permitted Land Uses)



Table 18.28-1 (Permitted Land Uses in the Open Space and Public Facilities Zoning Districts)

Key	Zoning District	
P Permitted Use		
A Administrative Use Permit required		
C Conditional Use Permit required		
— Use not allowed		
Agricultural Labor Accommodations	OS	PF
	C P	—

Implements:

- *Action HE-2.F Agricultural Labor Accommodations*

Miscellaneous Code Amendments (Balconies, Decks, & Porches)



Table 18.44-2 (Minimum Accessory Structure Setbacks)

Accessory Structure	Minimum Setbacks from Property Lines	
	Front	Side and Rear
Mechanical equipment and mechanical equipment enclosures	<u>Same as minimum primary structure setback</u>	50 percent of minimum primary structure setback
Decks, attached and detached, roofed or unroofed [2]		
Height 18 in. or less (unroofed only)	5 ft.	1 ft.
Height 6 ft. or less	<u>Same as minimum primary structure setback</u> 15 ft.	5 ft.
Height greater than 6 ft.	20 ft. or same as minimum primary structure setback, whichever is less <u>Same</u>	12.5 ft. or same as minimum primary structure setback, whichever is less

Notes:

[2] Height measured from ground to walking surface.

Miscellaneous Code Amendments

(Balconies, Decks, & Porches)



Table 18.56-2 (Allowed Projections into Required Setbacks)

Projecting Features	Maximum Projection into Required Setback	Minimum Distances from Property Lines
Upper story porches, <u>attached decks, and balconies</u>	5 ft.	5 ft.

Balcony. An unroofed platform, without stairs, that projects from the wall of a building that is surrounded by a railing or balustrade and does not require separate understructure for support, with access from an upper-floor window or door.

Deck. An unroofed platform, either freestanding or attached to a building accessible by a door, with or without stairs, that is supported by piers, pillars, or posts.

Porch. A covered but unenclosed projecting platform providing access to a door, with or without stairs, which extends from the main wall of a building that may or may not use columns or other ground supports for structural purposes. A porch that is screened-in, without a heating or cooling system, is considered unenclosed.

Miscellaneous Code Amendments (Parking Requirements)



Table 18.72-2 (Required On-Site Parking, Other Zoning Districts)

Land Use	Number of Required Parking Spaces
Studio or One-Bedroom	1 covered and 0.5 uncovered per unit
<u>Shared Living Residences</u>	<u>1 per bedroom</u>
<u>Supportive Housing</u>	<u>1 per bedroom [1]</u>
<u>Transitional Housing</u>	<u>1 per bedroom</u>
Emergency Shelters	1 per 8 beds plus 1 per 300 <u>250</u> sq. ft. of office or other non-residential floor area
<u>Low Barrier Navigation Centers</u>	<u>1 per 8 beds plus 1 per 250 sq. ft. of office</u>
<u>Vehicle Storage, Outdoor</u>	<u>1.5 for each employee on the largest shift.</u> <u>Minimum of 2.</u>

Notes:

[1] Minimum required on-site parking shall not apply if the development is located within one-half mile of a public transit stop.

Implements:

- *Action HE-1.K Parking for Smaller Bedroom Units*
- *Action HE-5.I Emergency Shelters Parking*

Miscellaneous Code Amendments (Parking Requirements)



Table 18.72-3 (Required Guest Parking Spaces)

Land Use	Number of Guest Spaces
Single-Family Dwellings	1 per 4 units
Multifamily Dwellings	1 per 3 <u>4</u> units
Multifamily Dwellings for Senior Citizens	1 per 5 units

Implements:

- *Action HE-1.K Parking for Smaller Bedroom Units*

Miscellaneous Code Amendments

(Parking Requirements)



Section 18.72.040 (General Requirements) of Chapter 18.72 (Parking and Loading)

- Clarify clerical error requiring minimum on-site parking to serve residential uses 'except as allowed by Section 18.72.050.D (Off-Site Parking)'
- Remove requirements to Electric Vehicle Charging Stations and instead refer to Chapter 15.62 (Electric Vehicle Charging Infrastructure)

Section 18.72.050.D (Off-Site Parking)

- Clarify clerical error to properly reference 'off-site' instead of 'on-site'

Section 18.72.050.F (Shared Parking)

- Amend subsection to be consistent with AB 894 to allow entities with underutilized parking to share their parking with the public, local agencies, or other entities.

Miscellaneous Code Amendments

(Accessory Dwelling Units)



Section 18.84.050.B (Number of Accessory Units) of Chapter 18.84 (Accessory Dwelling Units)

- Clarify Single-Family Dwellings are allowed 1 detached ADU, 1 attached ADU and 1 Junior ADU (3 total)
- Clarify Proposed Multifamily Dwellings are allowed 2 detached ADUs
- Clarify Existing Multifamily Dwellings are allowed 2 detached ADUs and an additional 1 or up to 25% of the existing multifamily dwelling units (whichever is larger) within an existing multifamily structure

Section 18.84.050.C (Number of Accessory Units)

- Clarify a detached ADU that does not exceed 4-ft side and rear setbacks may be combined with a Junior ADU on a single-family dwelling lot

Miscellaneous Code Amendments



Section 18.118.070 (Criteria for Decision) of Chapter 18.118 (Reasonable Accommodations)

- Remove the “potential impacts on surrounding uses” as a factor for approval, or denial, of a reasonable accommodation request

Implements:

- *Action HE-6.C Residential Accommodation Ordinance*

Chapter 18.124 (Land Use Definitions)

- **Vehicle Storage, Outdoor.** Storage of operative or inoperative vehicles for long term storage in open lots. Includes, but is not limited to, storage of parking tow-aways, impound yards, and storage lots for automobiles, trucks, buses, recreation vehicles, and boats; including satellite storage of vehicles related to Vehicle Sales and Leasing. Does not include the storage of customer’s goods and possessions (see Mini-Storage) or retail sales (see Vehicle Sales and Leasing).

Miscellaneous Code Amendments



Recommendation

1. Open/close public hearing
2. Waive reading of the Ordinance Amendment
3. Introduce the Ordinance Amendment

Findings

1. The proposed amendment is consistent with the General Plan and any applicable specific plan as provided by GC Section 65860
2. The proposed amendment will not be detrimental to the public interest, health, safety, convenience, or welfare of the City
3. The proposed amendment is internally consistent with other provisions of the zoning code

Questions?



CITY COUNCIL STAFF REPORT

MEETING DATE: March 6, 2024

PREPARED BY:

Michael Horta, Human Resources Director

APPROVED BY: City Manager

ADOPT AN AMENDED RESOLUTION FOR AN EXCEPTION TO THE 180-DAY WAITING PERIOD TO HIRE A RETIRED ANNUITANT, ANDREW CRABTREE, TO SERVE AS A TEMPORARY EXTRA HELP EMPLOYEE (GOVERNMENT CODE SECTIONS 7522.56 AND 21224) IN THE DEVELOPMENT SERVICES DEPARTMENT

RECOMMENDATION(S)

Adopt an amended Resolution for an exception to the 180-day waiting period to appoint Andrew Crabtree, a retired annuitant, to serve as temporary extra help (Government Code Sections 7522.56 and 21224).

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Fostering a Positive Organizational Culture

2024-2025 Strategic Priorities

Fiscal Sustainability

Community Engagement

REPORT NARRATIVE:

Upon further review, CalPERS is requiring a revision of the previously approved resolution for Andrew Crabtree. The following has been updated to be in compliance:

1. The assignment must be assigned as extra help to a specific position. This assignment will be extra help for the Development Services Director.
2. The salary range must match the salary range of the specific position. The salary range is \$91.64 to \$120.68.
3. The assignment may not receive any additional benefits. The PARS contribution has been removed.

Generally, the Public Employment Retirement Law (PERL) requires that retired annuitants serve a 180-day wait period before working in a retired annuitant position. However, the PERL also provides for exceptions to this waiting period if certain criteria are met and the governing body of the public agency adopts a non-consent calendar

resolution at a public meeting approving the appointment as a critically needed position before the 180 days have passed. The adoption of the resolution allows the employer to hire a retired annuitant to perform work of a limited duration, such as specialized work and limited-term complex projects.

There are two types of post-retirement appointments possible under Government Code Section 7522.56:

1. Extra help retired annuitants hired to perform work of limited duration such as special projects (Government Code Section 21224); and
2. Appointment to a vacant position on an interim basis while a permanent replacement is being recruited (an active recruitment must be in place for this type of appointment, and the appointment must end when the replacement is hired, Government Code Section 21221(h)).

Andrew Crabtree recently retired from the City of Santa Clara where he was the Community Development Director from August 2016 until December 30, 2023. As Director, he successfully led a department of approximately 75 employees with a \$34 million operating budget, achieving multiple City objectives, including the adoption of the City's first comprehensive zoning code update, an affordable housing ordinance, four specific/neighborhood plans, and an update of the climate action plan. He oversaw a restructuring of the City's Housing Division, the implementation of a new permit tracking system, the development of budget tracking tools and the first update of the Building Division fee schedule since 1990, enabling the Building program to develop a robust fund reserve. He reduced his department's dependence upon the City of Santa Clara General Fund while expanding service delivery and improving service cycle times and customer satisfaction. Andrew has familiarity with the City of Morgan Hill, having previously served as the Community Development Director for Morgan Hill from September 2013 until July 2016, leading the adoption of the City's General Plan and Residential Development Control System (RDACS) updates.

Staff recommends hiring Mr. Crabtree, on a temporary, part-time, extra help basis to work on special projects to support the Development Services Director. His scope of work will include the review and preparation of recommendations related to the Department's budget, developing recommendations for capacity building and improvements to the operations and work flow to support the growing needs of the administration of new housing laws with limited staffing resources. Mr. Crabtree will report to the Assistant City Manager for Development Services and also help with special projects as needed. The term of Mr. Crabtree's employment is anticipated to be approximately four to six months, averaging 20 hours per week, starting January 22, 2024. This employment arrangement would fall under the State Government Code type 1 appointment (Government Code Section 21224).

COMMUNITY ENGAGEMENT:

This staff report serves to inform the Community.

ALTERNATIVE ACTIONS:

Direct staff to return with other options.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

Resolution 2024-001 was adopted at the City Council meeting on January 17, 2024.

FISCAL AND RESOURCE IMPACT:

The Public Employees' Pension Reform Act (PEPRA) sets forth limitations for compensating retired annuitants. All retirees must be paid hourly, at no less than the minimum, nor more than the maximum, paid to employees doing similar work. Based on the CalPERS formula for setting retired annuitant pay rates, the individual will be paid at the hourly rate for the as-needed position as follows:

Retired Annuitant	Hourly Rate of Pay	Fiscal Years	Not to Exceed Amount
Andrew Crabtree	\$115.00	2023-2024 (22 weeks) and 2024-2025 (2 weeks)	\$55,200

Sufficient appropriations are available in the Development Services Department to fund this position.

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. 24-XXX

**AN AMENDED RESOLUTION OF THE CITY COUNCIL OF
THE CITY OF MORGAN HILL FOR EXCEPTION TO THE
180-DAY WAITING PERIOD TO HIRE A RETIRED
ANNUITANT AS A TEMPORARY EXTRA HELP
EMPLOYEE (GOVERNMENT CODE SECTIONS 7522.56
AND 21224) IN THE DEVELOPMENT SERVICES
DEPARTMENT**

WHEREAS, in compliance with Government Code section 7522.56 the City of Morgan Hill must provide CalPERS this certification resolution when hiring a retiree before 180 days has passed since his or her retirement date; and

WHEREAS, Andrew Crabtree (CalPERS ID XXXXXXXXXXXX) retired from the City of Santa Clara in the position of Community Development Director, effective December 30, 2023; and

WHEREAS, section 7522.56 requires that post-retirement employment commence no earlier than 180 days after the retirement date, which is June 27, 2024, without this certification resolution; and

WHEREAS, section 7522.56 provides that this exception to the 180 day wait period shall not apply if the retiree accepts any retirement-related incentive; and

WHEREAS, the City of Morgan Hill, City of Santa Clara, and Andrew Crabtree certify that Andrew Crabtree has not received a Golden Handshake or any other retirement-related incentive; and

WHEREAS, the City of Morgan Hill hereby appoints Andrew Crabtree as an extra help retired annuitant to perform the critically needed duties of the Development Services Director for the City of Morgan Hill under Government Code section 21224, effective January 22, 2024; and

WHEREAS, the entire employment agreement, contract or appointment document between the City of Morgan Hill and Andrew Crabtree has been reviewed by this body and is attached herein; and

WHEREAS, no matters, issues, terms or conditions related to this employment and appointment have been or will be placed on a consent calendar; and

WHEREAS, the employment shall be limited to 960 hours per fiscal year; and

WHEREAS, the compensation paid to retirees cannot be less than the minimum nor exceed the maximum monthly base salary paid to other employees performing comparable duties; and

WHEREAS, effective January 18, 2024, the maximum hourly salary rate for the Temporary Employee position is \$120.68, and the minimum hourly equivalent is \$91.64; and

WHEREAS, the hourly rate paid to Andrew Crabtree will be \$115.00; and

WHEREAS, Andrew Crabtree has not and will not receive any other benefit, incentive, compensation in lieu of benefit or other form of compensation in addition to this hourly pay rate.

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

SECTION 1: The City of Morgan Hill hereby certifies the appointment of Andrew Crabtree and that this appointment is necessary to perform the critically needed duties of Development Services Director for the City of Morgan Hill. Andrew Crabtree's scope of work will be to review and prepare recommendations related to the Development Services Department's budget, developing recommendations for capacity building and improvements to the operations and workflow to support the growing needs of the administration of new housing laws and support with special assignments as needed. Andrew will also assist the Development Services Director on special projects as needed.

PASSED AND ADOPTED by the City Council of Morgan Hill at a Regular Meeting held on the 6th day of March 2024 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.24-XXX adopted by the City Council at the meeting held on the 6th day of March 2024.

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

DATE: _____

MICHELLE BIGELOW, City Clerk

Date



March 6, 2024

Revised Letter

Andrew Crabtree
[REDACTED]
[REDACTED]

Dear Andrew:

The City of Morgan Hill is excited to offer you a Retired Annuitant temporary position to perform extra help duties of the Development Services Director effective, Monday, January 22, 2024, subject to City Council approval. Your rate of pay will be \$115.00 per hour. Your duties will include supporting the implementation of systems and administrative improvements of the Development Services Department while supporting key project deliverables.

The project is anticipated to last until June 30, 2024. It should be noted that as a temporary, at-will employee, your employment may end at any time without notice.

As a CalPERS retired annuitant with specialized skills and knowledge as described in Section 21224 of the California Government Code, you shall adhere to the following terms and conditions of employment:

- The duration of the assignment is not to exceed one year.
- You will be limited to working a total of 960 hours per fiscal year.
- You must track your hours and not exceed 960 hours per fiscal year.
- You will not exceed 40 hours in a week without prior authorization from your supervisor.
- Consistent with current Government Code provisions, you may not receive benefits, incentives, compensation in lieu of benefits, or other forms of compensation in addition to the hourly pay rate.

Please indicate your acceptance of this offer by signing this letter and returning it to Human Resources. You can scan and email acceptance form to Michael.Horta@morganhill.ca.gov.

Sincerely,

Michael Horta

Human Resources Director

I, Andrew Crabtree, accept the terms outlined in this revised offer of employment letter dated March 6, 2024.

Signature

Date

cc: Personnel File

CITY COUNCIL STAFF REPORT

MEETING DATE: March 6, 2024

PREPARED BY:

Michael Horta, Human Resources Director

APPROVED BY: City Manager

ADOPT RESOLUTION OF INTENTION AND INTRODUCTION OF ORDINANCE TO AMEND THE CONTRACT BETWEEN THE BOARD OF ADMINISTRATION OF THE CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM (CALPERS) AND THE CITY OF MORGAN HILL TO IMPLEMENT MILITARY SERVICE CREDIT AS PUBLIC SERVICE IN ACCORDANCE WITH SECTION 21024 OF THE CALIFORNIA GOVERNMENT CODE

RECOMMENDATION(S)

1. Adopt Resolution of Intention of the City Council of the City of Morgan Hill stating its intent to amend the contract between the California Public Employees' Retirement System (CalPERS) and the City of Morgan Hill in order to implement Military Service Credit as Public Service in accordance with California Government Code section 21024;
2. Waive the 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

2024-2025 Strategic Priorities

Fiscal Sustainability

REPORT NARRATIVE:

During the negotiations process in 2023 with the Labor Unions, it was agreed upon that the City would amend the CalPERS contract to allow military service credit to count towards service credit for the members in the miscellaneous retirement group. This benefit is currently available for members in the safety retirement group.

Section 21024 Military Service Credit as Public Service

A member may elect to purchase up to four years of service credit for any active military or merchant marine service prior to employment. The benefit applies only to active members while in employment with an employer providing this benefit in its contract.

The process is for the City Council to adopt a Resolution of Intention and introduce the ordinance amending its contract with the California Public Employees Retirement System (CalPERS). The final ordinance will return to the Council for approval and adoption on April 24, 2024. This date cannot be earlier than twenty (20) days after adoption of the Resolution of Intention and the effective date of the ordinance will be 30 days following the date of adoption. The effective date of the CalPERS amendment to the contract will be the pay period beginning May 26, 2024. The amended provision is included in the attached exhibit to the ordinance in Item A.12.e., "Section 21024 (Military Service Credit as Public Service) for local miscellaneous members and local police members only."

COMMUNITY ENGAGEMENT:

Inform

ALTERNATIVE ACTIONS:

Not Applicable

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On May 18, 2022, the Council adopted ordinance 2334, new series, authorizing an amendment to the contract between the City of Morgan Hill and the Board of Administration of the California Public Employees' Retirement System in order to implement the pension cost share provision in accordance with California Government Code section 20516 .

FISCAL AND RESOURCE IMPACT:

No immediate cost to the City but potential costs will emerge in future valuations and will be incorporated in the City budget as appropriate.

CEQA (California Environmental Quality Act):

Not a Project

**RESOLUTION OF INTENTION
TO APPROVE AN AMENDMENT TO CONTRACT
BETWEEN THE
BOARD OF ADMINISTRATION
CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM
AND THE
CITY COUNCIL
CITY OF MORGAN HILL**

WHEREAS, the Public Employees' Retirement Law permits the participation of public agencies and their employees in the Public Employees' Retirement System by the execution of a contract, and sets forth the procedure by which said public agencies may elect to subject themselves and their employees to amendments to said Law; and

WHEREAS, one of the steps in the procedures to amend this contract is the adoption by the governing body of the public agency of a resolution giving notice of its intention to approve an amendment to said contract, which resolution shall contain a summary of the change proposed in said contract; and

WHEREAS, the following is a statement of the proposed change:

To provide Section 21024 (Military Service Credit as Public Service) for local miscellaneous members.

NOW, THEREFORE, BE IT RESOLVED that the governing body of the above agency does hereby give notice of intention to approve an amendment to the contract between said public agency and the Board of Administration of the Public Employees' Retirement System, a copy of said amendment being attached hereto, as an "Exhibit" and by this reference made a part hereof.

By: _____
Presiding Officer

Title

Date adopted and approved

(Amendment)
CON-302

ORDINANCE NO. XX, NEW SERIES

**AN ORDINANCE OF THE CITY OF MORGAN HILL
AUTHORIZING AN AMENDMENT TO THE CONTRACT
BETWEEN THE CITY OF MORGAN HILL AND THE
BOARD OF ADMINISTRATION OF THE CALIFORNIA
PUBLIC EMPLOYEES' RETIREMENT SYSTEM**

**THE CITY COUNCIL OF THE CITY OF MORGAN HILL, CALIFORNIA
DOES ORDAIN AS FOLLOWS:**

SECTION 1: That an amendment to the contract between the City of Morgan Hill and the Board of Administration, California Public Employees' Retirement System is hereby authorized, a copy of said amendment being attached hereto, marked Exhibit, and by such reference made a part hereof as though herein set out in full.

SECTION 2: The City Manager or their designee is authorized, empowered, and directed to execute said amendment for and on behalf of the City of Morgan Hill.

SECTION 3: This ordinance shall take effect thirty (30) days after the date of its passage and adoption. The City Clerk is hereby directed to publish in full or summary this ordinance pursuant to §36933 of the Government Code in a newspaper of general circulation in the City of Morgan Hill.

The foregoing ordinance was introduced and the title thereof read at a regular meeting of the City Council of the City of Morgan Hill held on the day of 2024, and was finally adopted at a regular meeting of said Council on the day of 2024, and said ordinance was duly passed and adopted in accordance with the law.

PASSED AND ADOPTED by the City Council of Morgan Hill at the regular meeting held on the ____th day of _____, 2024 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. ____, New Series, adopted by the City Council of the City of Morgan Hill, California the meeting held on this ____ day of ____, 2024 and has been published pursuant to Government Code.

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

DATE: _____

MICHELLE BIGELOW, City Clerk



EXHIBIT

California
Public Employees' Retirement System

AMENDMENT TO CONTRACT

Between the
Board of Administration
California Public Employees' Retirement System
and the
City Council
City of Morgan Hill

The Board of Administration, California Public Employees' Retirement System, hereinafter referred to as Board, and the governing body of the above public agency, hereinafter referred to as Public Agency, having entered into a contract effective March 1, 1964, and witnessed January 8, 1964, and as amended effective June 1, 1972, May 1, 1976, January 1, 1977, December 17, 1981, August 1, 1982, August 16, 1983, July 1, 1988, January 7, 1990, April 29, 1990, August 17, 1991, June 21, 1997, April 17, 1999, February 20, 2000, July 1, 2002, June 18, 2006, April 19, 2020, and June 26, 2022, which provides for participation of Public Agency in said System, Board and Public Agency hereby agree as follows:

- A. Paragraphs 1 through 17 are hereby stricken from said contract as executed effective June 26, 2022, and hereby replaced by the following paragraphs numbered 1 through 17 inclusive:
1. All words and terms used herein which are defined in the Public Employees' Retirement Law shall have the meaning as defined therein unless otherwise specifically provided. "Normal retirement age" shall mean age shall mean age 55 for classic local miscellaneous members, age 62 for new local miscellaneous members, age 50 for classic local safety members, and age 57 for new local safety members.

2. Public Agency shall participate in the Public Employees' Retirement System from and after March 1, 1964, making its employees as hereinafter provided, members of said System subject to all provisions of the Public Employees' Retirement Law except such as apply only on election of a contracting agency and are not provided for herein and to all amendments to said Law hereafter enacted except those, which by express provisions thereof, apply only on the election of a contracting agency.
3. Public Agency agrees to indemnify, defend and hold harmless the California Public Employees' Retirement System (CalPERS) and its trustees, agents and employees, the CalPERS Board of Administration, and the California Public Employees' Retirement Fund from any claims, demands, actions, losses, liabilities, damages, judgments, expenses and costs, including but not limited to interest, penalties and attorney fees that may arise as a result of any of the following:
 - (a) Public Agency's election to provide retirement benefits, provisions or formulas under this Contract that are different than the retirement benefits, provisions or formulas provided under the Public Agency's prior non-CalPERS retirement program.
 - (b) Any dispute, disagreement, claim, or proceeding (including without limitation arbitration, administrative hearing, or litigation) between Public Agency and its employees (or their representatives) which relates to Public Agency's election to amend this Contract to provide retirement benefits, provisions or formulas that are different than such employees' existing retirement benefits, provisions or formulas.
 - (c) Public Agency's agreement with a third party other than CalPERS to provide retirement benefits, provisions, or formulas that are different than the retirement benefits, provisions or formulas provided under this Contract and provided for under the California Public Employees' Retirement Law.
4. Employees of Public Agency in the following classes shall become members of said Retirement System except such in each such class as are excluded by law or this agreement:
 - a. Local Fire Fighters (herein referred to as local safety members);
 - b. Local Police Officers (herein referred to as local safety members);
 - c. Employees other than local safety members (herein referred to as local miscellaneous members).

5. In addition to the classes of employees excluded from membership by said Retirement Law, the following classes of employees shall not become members of said Retirement System:

NO ADDITIONAL EXCLUSIONS

6. The percentage of final compensation to be provided for each year of credited prior and current service for classic local miscellaneous members in employment before and not on or after June 18, 2006, shall be determined in accordance with Section 21354 of said Retirement Law, subject to the reduction provided therein for service prior to September 30, 1975, termination of Social Security, for members whose service has been included in Federal Social Security (2% at age 55 Full and Modified).
7. The percentage of final compensation to be provided for each year of credited prior and current service for classic local miscellaneous members in employment on or after June 18, 2006, shall be determined in accordance with Section 21354.4 of said Retirement Law, subject to the reduction provided therein for service prior to September 30, 1975, termination of Social Security, for members whose service has been included in Federal Social Security (2.5% at age 55 Full and Modified).
8. The percentage of final compensation to be provided for each year of credited prior and current service as a new local miscellaneous member shall be determined in accordance with Section 7522.20 of said Retirement Law (2% at age 62 Full).
9. The percentage of final compensation to be provided for each year of credited prior and current service as a classic local fire member shall be determined in accordance with Section 21362 of said Retirement Law (2% at age 50 Full).
10. The percentage of final compensation to be provided for each year of credited prior and current service as a classic local police member shall be determined in accordance with Section 21362.2 of said Retirement Law (3% at age 50 Full).
11. The percentage of final compensation to be provided for each year of credited prior and current service as a new local safety member shall be determined in accordance with Section 7522.25(d) of said Retirement Law (2.7% at age 57 Full).
12. Public Agency elected and elects to be subject to the following optional provisions:
 - a. Section 21574 (Fourth Level of 1959 Survivor Benefits).

- b. Section 20903 (Two Years Additional Service Credit) for local miscellaneous members only.
- c. Section 20042 (One-Year Final Compensation) for classic members only.
- d. Section 20965 (Credit for Unused Sick Leave).
- e. Section 21024 (Military Service Credit as Public Service) for local miscellaneous members and local police members only.
- f. Section 20516 (Employees Sharing Additional Cost):

From and after April 19, 2020, 3.604% for local miscellaneous members in the Morgan Hill Police Officers' Association, Community Service Officers' Association and American Federation of State, County, and Municipal Employees; 6.120% for classic local safety members in the Morgan Hill Police Officers' Association; and 1.329% for new local safety members in the Morgan Hill Police Officers' Association.

From and after April 19, 2020, and until June 26, 2022, 3.604% for local miscellaneous members in the Unrepresented Management group.

From and after June 26, 2022, 6.12% for local miscellaneous members in the Unrepresented Management group.

The portion of the employer's contribution that the member agrees to contribute from his or her compensation, over and above the member's normal contribution ("Cost Sharing Percentage"), shall not exceed the Employer Normal Cost Rate, as that rate is defined in the CalPERS Actuarial Valuation for the relevant fiscal year. If the Cost Sharing Percentage will exceed the relevant Employer Normal Cost Rate, the Cost Sharing Percentage shall automatically be reduced to an amount equal to, and not to exceed, the Employer Normal Cost Rate for the relevant fiscal year.

- 13. Public Agency, in accordance with Government Code Section 20790, ceased to be an "employer" for purposes of Section 20834 effective on August 16, 1983. Accumulated contributions of Public Agency shall be fixed and determined as provided in Government Code Section 20834, and accumulated contributions thereafter shall be held by the Board as provided in Government Code Section 20834.
- 14. Public Agency shall contribute to said Retirement System the contributions determined by actuarial valuations of prior and future service liability with respect to local miscellaneous members and local safety members of said Retirement System.

15. Public Agency shall also contribute to said Retirement System as follows:
- a. A reasonable amount, as fixed by the Board, payable in one installment within 60 days of date of contract to cover the costs of administering said System as it affects the employees of Public Agency, not including the costs of special valuations or of the periodic investigation and valuations required by law.
 - b. A reasonable amount, as fixed by the Board, payable in one installment as the occasions arise, to cover the costs of special valuations on account of employees of Public Agency, and costs of the periodic investigation and valuations required by law.
16. Contributions required of Public Agency and its employees shall be subject to adjustment by Board on account of amendments to the Public Employees' Retirement Law, and on account of the experience under the Retirement System as determined by the periodic investigation and valuation required by said Retirement Law.
17. Contributions required of Public Agency and its employees shall be paid by Public Agency to the Retirement System within fifteen days after the end of the period to which said contributions refer or as may be prescribed by Board regulation. If more or less than the correct amount of contributions is paid for any period, proper adjustment shall be made in connection with subsequent remittances. Adjustments on account of errors in contributions required of any employee may be made by direct payments between the employee and the Board.

B. This amendment shall be effective on the _____ day of _____, _____.

BOARD OF ADMINISTRATION
PUBLIC EMPLOYEES' RETIREMENT SYSTEM

CITY COUNCIL
CITY OF MORGAN HILL

BY _____
MELODY BENAVIDES, CHIEF
PENSION CONTRACTS AND PREFUNDING
PROGRAMS DIVISION
PUBLIC EMPLOYEES' RETIREMENT SYSTEM

BY _____
PRESIDING OFFICER

Witness Date

Attest: _____

Clerk

CITY COUNCIL STAFF REPORT

MEETING DATE: March 6, 2024

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 agendaized at a future meeting for discussion:

1. Consider a resolution for sustainable peace to end the war and the loss of life in Israel and Palestine; and
2. Consider continuing the discussion on remote public comments.

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Supporting our Youth, Seniors, and Entire Community

Preserving and Cultivating Public Trust

Enhancing Diversity and Inclusiveness

2024-2025 Strategic Priorities

Community Engagement

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 recent items proposed for Council consideration.

1. Consider a discussion on a resolution for sustainable peace to end the war and the loss of life in Israel and Palestine (requested by Council Member Martinez Beltran, attachment 2)

Council Member Martinez Beltran has requested the City Council consider discussing a resolution, proclamation, issued statement, or an open letter declaring sustainable

peace.

Staff seeks 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 4 hours.

2. Consider continuing the discussion on remote public comments (requested by Council Member Martinez Beltran)

At the October 4, 2023 City Council meeting, hateful and hostile comments were made by people participating by 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 must take reasonable steps to prevent exposure to verbal conduct based on protected classifications (including race, religion, gender, and/or sexual orientation) that are 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, challenging maintaining a respectful and constructive environment.

On December 6, 2023, the City Council directed staff to explore options to allow for public comment on Zoom requiring registration/authentication. Staff prepared a Memorandum (attachment 3) for discussion at the February 2, 2024, City Council Goal Setting Workshop, and the topic ended in an impasse with a 2-2 split (Council Member Libreros was absent), hence the request to revisit the topic (attachment 4).

Staff seeks direction from the City Council on whether they would like to re-agendize this item for further discussion.

The estimated staff time to prepare a full City Council Staff Report on this topic is approximately 2 hours.

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 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

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summary outlining the request and any relevant background. If the requested item is not included in the current Strategic Priorities Workplan, the team will bring forward the item at a future Council Meeting within 30-45 days of the request via a brief staff report, including the brief summary provided by the requesting Council Member. At that meeting, the City Council will review the request and determine if the majority of the City Council wants the items agendaized at a future meeting for discussion.

- 4.3 Limitation to Act on Only Items on the Agenda:** No action shall be taken by the City Council on any item not on the posted agenda, subject only to the exceptions listed below:
- a. Upon a majority determination that an "emergency situation" (as defined by State Law) exists; and
 - b. Upon a determination by a 4/5 vote of the City Council that there is a need to take immediate action and that the need to take the action came to the attention of City officials subsequent to posting of the agenda.
- 4.4 Change in Order of Business:** The Mayor or Presiding Officer may decide to take matters listed on the agenda out of the prescribed order unless a majority of members present object to this variation.
- 4.5 City Council Reports:** On an alternating basis, at each Regular City Council meeting, with a time limit of three minutes, a Council Member has the opportunity to share with the Council and community any pertinent updates or information in regard to their appointments to outside agencies, upcoming events, or relevant City business. These are non-action items.
- 4.6 City Manager Report:** These are updates on current City activities, reports on issues raised at previous Council meetings, or recognitions. These are non-action items.
- 4.7 City Attorney Report:** These are updates on current City activities, reports on issues raised at previous Council meetings, or reportable actions of the City Council in Closed Sessions and/or current litigation. These are non-action items.
- 4.8 Other Reports:** These are pertinent updates or information on upcoming activities or events relevant to City business with a time limit of one minute. These are non-action items.
- 4.9 Public Comment for items not on the agenda:** This refers to those matters not scheduled on the agenda where a member of the public wants to address a matter of importance to the City Council. Since the matter is not on the agenda, no action by Council can be taken. If a member of Council so desires, the matter can be placed on the agenda of a future Council meeting for review and consideration.
- 4.10 Consent Calendar:** These are items of a routine or generally uncontested nature. Any member of the Council or member of the public may request to have an item pulled from the consent calendar and acted on individually by the Council. Items pulled will be discussed after action is taken on the balance of the consent calendar. The Mayor shall decide if the items are heard before or after moving on to public hearing and other business items.
- 4.11 Public Hearings:** These are matters that are duly noticed and published in a newspaper of general circulation and where required by law, written notice is given to the affected

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residents who have the opportunity to speak in favor or against a matter or ask questions about the matter.

- 4.12 Other Business:** These are other matters of City business which are not appropriately placed on the consent calendar and do not require published notices and require Council action and direction.
- 4.13 Future Business:** These are items that members of the City Council wish to discuss to potentially take action on or have placed on future agendas.

SECTION 5. ORDER OF BUSINESS

5.1 The order of business at meetings of the City Council shall be as follows:

- a. CALL TO ORDER
- b. ROLL CALL ATTENDANCE
- c. DECLARATION OF POSTING AGENDA
- d. WORKSHOP (if needed; 5:00-6:00 p.m., or as deemed appropriate)
- e. CLOSED SESSION (if needed; 6:00-7:00 p.m., or as deemed appropriate)
- f. SILENT INVOCATION
- g. PLEDGE OF ALLEGIANCE
- h. PRESENTATIONS
- i. PROCLAMATIONS
- j. RECOGNITIONS
- k. CITY COUNCIL REPORTS
- l. CITY MANAGER'S REPORT
- m. CITY ATTORNEY'S REPORT
- n. OTHER REPORTS
- o. PUBLIC COMMENT FOR ITEMS NOT ON THE AGENDA
- p. ADOPTION OF AGENDA
- q. CONSENT CALENDAR
- r. PUBLIC HEARINGS
- s. OTHER BUSINESS
- t. FUTURE COUNCIL INITIATED AGENDA ITEMS

u. CLOSED SESSION

v. ADJOURNMENT

SECTION 6. PUBLIC COMMENT

6.1 Public Comment: Persons present at meetings of the City Council may comment on individual items on the agenda at the time the items are scheduled to be heard. In addition, comments may be offered on items not on the agenda under that portion of the agenda. In accordance with State law, matters not scheduled on the agenda cannot be acted upon by the City Council, but items raised by the public during public comment may be referred to a future City Council agenda at the request of the Mayor or City Council.

6.2 Limitations: The public comment period may be 3 minutes for items on the agenda or items not listed on the agenda. Speakers are called in the order the speaker cards are submitted. Project applicants or appellants will be allowed more than the designated 3 minutes in accordance with City Council Policy 03-01. Consistent with this policy, the Mayor or Presiding Officer may recall an applicant or appellant to address questions after the public comment is heard. In addition, applicants will be given time at the end of the public hearing to address any questions or comments.

The Mayor or Presiding Officer may allow speakers who wish to speak under public comment for items not on the agenda to concede a portion of their time, specifically, one speaker may concede a portion of their time to one other speaker. For all other business items, the Mayor or Presiding Officer may allow speakers more time and/or allow speakers to concede a portion of their time to a designated speaker of a group, specifically up to two speakers may concede their time to one speaker, unless a majority of the City Council objects. Speakers that wish to designate a group speaker shall notify the City Clerk before discussion on the item begins. Additionally, any speaker that concedes their time must be present at that City Council meeting. Speaker who would like to share documents or presentations may do so by submitting said document to the City Clerk by noon on the day of the City Council Meeting. Speaker may not share videos or presentations with videos embedded within them.

6.3 Procedure: To address the City Council, each speaker is requested to fill out a Speaker Card and turn it in to the City Clerk before discussion on the agenda item begins. The speaker is requested to provide their name, contact information, and the subject(s) upon which the speaker wishes to address the City Council. Speakers who do not wish to provide their name should provide an alternative designation so that they can be called to speak by the City Clerk.

Public comment may be provided in writing for items on the agenda, as well as for items not on the agenda. Public comment in writing may be submitted via email to ccpubliccomment@morganhill.ca.gov or by mail to the City Clerk at 17575 Peak Avenue, Morgan Hill, CA 95037. Please email your comments to the City Clerk no later than 3:00 p.m. on Tuesday (the day before the City Council meeting) for your comments to be submitted to the members of the City Council with sufficient time to review the comments. You may continue to provide written comments up to noon on Wednesday (the day of the meeting although Council Members may not have sufficient time to review them. Public

comments submitted to the City Clerk after noon the day of the meeting will be provided to the City Council as time allows.

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

SECTION 7. PROCEDURES FOR THE CONDUCT OF MEETINGS

7.1 Role of the Mayor/Presiding Officer:

- a.** The Presiding Officer of the City Council, who shall be the Mayor or in the Mayor's absence shall be the Mayor Pro Tempore, or in their absence any other designated member of the City Council, shall be responsible for maintaining the order and decorum of meetings. It shall be the duty and responsibility of the Presiding Officer to ensure that the rules of operation and decorum contained herein are observed. The Presiding Officer shall maintain control of communication between Council Members and between the Council, staff, and public.
- b.** Communication with Council Members:
 1. Council Members should request the floor from the Presiding Officer before speaking.
 2. When one member of the Council has the floor and is speaking, other Council Members shall not interrupt or otherwise disturb the speaker.
 3. During both questions, when one Council Member has the floor, they are limited to 5 minutes. During discussion, the Mayor and Council Members as a whole are limited to 15 minutes. The time limit may be extended at the Mayor's discretion.
 4. With the concurrence of the Mayor, a Council Member holding the floor may address a question to another Council Member. The Council Member being questioned may or may not respond while the floor is still held by the Council Member asking the question. The reply shall be limited to the question asked.
- c.** The Mayor or Presiding Officer may declare that an item within the meeting will be conducted in "workshop" format, which means that the procedures described in section 7.1B do not strictly apply. This is to allow for a more open discussion without strict formalities. The Mayor or Presiding Officer may end the workshop format for the item at his/her discretion.
- d.** Communication with Members of the Public Addressing the Council
 1. The Mayor or Presiding Officer shall open the floor for public testimony as appropriate.
 2. After a witness or subject matter expert has addressed the City Council during public comment, Council members may only ask questions of witnesses or

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subject matter experts. Such questions should be directed to the person through the Presiding Officer unless the Presiding Officer grants the Council Member permission to directly question the person.

3. Staff members, through the City Manager, shall be a resource to the City Council to answer questions arising during discussions between Council Members and between Council Members and members of the public. Communications in this regard shall be through the Presiding Officer.
4. Members of the public shall direct their questions and comments through the Presiding Officer.
- 7.2 Rules of Order: The City Council adopts no specific rules of order except those listed herein. The City Council shall refer to The Standard Code of Parliamentary Procedure by Alice Sturgis (McGraw Hill) as a guide for the conduct of meetings. The Sturgis guideline regarding not requiring seconds for governmental bodies' motions, resolutions or ordinances is not adopted as the rule in the City. The Mayor or Presiding Officer has the discretion to impose reasonable rules at any particular meeting based upon facts and circumstances found at any particular meeting. These latter rules will be followed unless objected to by a majority of the City Council members present.
- 7.3 Motions: The Mayor or any member of the City Council may bring a matter of business on the agenda before the Council by making a motion. Before the matter can be considered or debated it must be seconded. Once the motion has been properly made and seconded, the Presiding Officer shall open the matter for full debate offering the first opportunity to debate to the moving party and, thereafter, to any Council Member recognized by the Mayor or Presiding Officer. Debate shall be closed upon consent of a majority of the Council.
- 7.4 Reconsideration: Immediately after a vote on a matter, any member of the City Council may request to have his/her vote changed on a matter before the Council moves on to the next item. Such a request will be granted by the Mayor or Presiding Officer unless a majority of the Council objects.

A matter may be reconsidered by the City Council if a member on the prevailing side of the vote requests reconsideration. Such a motion may be made at a meeting where such action is taken or at a subsequent meeting of the Council, however, nothing in this policy precludes the majority of members of the City Council from requesting reconsideration of any item.

7.5 Debate:

- a. The discussions and deliberations at meetings of the City Council are to secure the informed judgement of Council members on proposals submitted for decision. This purpose is best served by the exchange of thought through discussion and debate.

Debate is regulated by these rules in order to assure every member a reasonable and equal opportunity to be heard.

- b. Obtaining the Floor for Debate:

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As soon as a debatable motion has been stated to the Council by the Mayor or Presiding Officer, any member of the Council has a right to discuss it after obtaining the floor. The member obtains the floor by seeking recognition from the Mayor or Presiding Officer. A member who has been recognized is entitled to be heard so long as he/she observes the rules of debate.

c. Speaking More Than Once:

To encourage the full participation of all members of the Council, no member or members shall be permitted to monopolize the discussion of the question. If a Council member has already spoken and other members wish to speak, the latter members should be recognized in preference to the member who has already spoken. However, if no other members seek recognition, the Mayor or Presiding Officer may recognize the member who has already spoken.

d. Relevancy of Debate:

All discussion must be relevant to the motion before the City Council. A member is given the floor only for the purpose of discussing the pending question; discussion which departs is out of order. The Mayor or Presiding Officer should then direct the speaker to limit discussion to the question before the City Council.

A motion-its nature or consequences-may be attacked vigorously. But it is never permissible to attack the motives, character, or personality of a member either directly or by innuendo or implication. It is the duty of the Mayor or Presiding Officer instantly to stop any member who engages in personal attacks. It is the motion, not its proposer, that is the subject of debate. Meetings must discuss measures and ideas, not people.

Arguments, for or against a measure, should be stated as concisely as possible.

Debate must be fundamentally impersonal. All discussion is addressed to the Mayor or Presiding Officer and must never be directed to any individual.

e. Mayor's Duties During Debate:

The Mayor or Presiding Officer has the responsibility of controlling and expediting debate. A Council member who has been recognized to speak on a question has a right to the undivided attention of the Council.

It is the duty of the Mayor or Presiding Officer to keep the subject clearly before the members, to rule out irrelevant discussion, and to restate the question whenever necessary.

SECTION 8. DECORUM

- 8.1 Council Members: Members of the City Council value and recognize the importance of the trust invested to them by the public to accomplish the business of the City. Council Members shall accord the utmost courtesy to each other, to City employees, and to the public appearing before the City Council.

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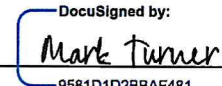
- 8.2** City Employees: Members of City staff shall observe the same rules of order and decorum applicable to the City Council. City staff shall act at all times in a business and professional manner towards Council Members and members of the public.
- 8.3** Public: Members of the public attending City Council meetings shall observe the same rules of order and decorum applicable to the City Council.
- 8.4** Noise in the Chamber: Noise emanating from the audience within the Council Chamber or lobby area, which disrupts City Council meetings, shall not be permitted.
- 8.5** Sergeant-at-Arms: The Chief of Police, or his/her designated representative shall be ex-officio Sergeant-at-Arms of the City Council.

SECTION 9. VIOLATIONS OF PROCEDURES

- 9.1** Nothing in these policies and procedures shall invalidate a properly noticed and acted upon action of the City Council in accordance with State Law.

This policy shall remain in effect until modified by the City Council.

APPROVED:

DocuSigned by:

9581D1D2BBAF481...
MARK TURNER, MAYOR

Request from Council Member Martinez Beltran

Per the discussion at our 2/21 Council meeting, and our follow up conversation, I would like to request a future agenda item to discuss a statement , a resolution, a proclamation, an issued statement or open letter by all Council Members or a letter on behalf of Council to send to federal officials for sustainable peace to support all of our community and end the war and the loss of life in Israel and Palestine.

Cities have taken the following actions: 1) adopted a resolution, 2) issued a proclamation, 3) issued a statement or open letter signed by all Council Members (risks violating the Brown Act if done without public discussion), or 4) voted to write a letter on behalf of the council to federal officials regarding the Israel-Palestine conflict.

It is important we acknowledge the pain and suffering being experienced locally by our neighbors who have been impacted by the war in Israel and Palestine. It is important we denounce any Anti-Semitism, Anti-Arab or Islamophobic sentiments, incidents, violence, etc. It is important we reaffirm our neighbors' sense of safety here in Morgan Hill, our home, so everyone knows they are supported and valued at home. And that we acknowledge our wish for sustainable peace I know all of our community hopes for and offer support how we can, which is the Morgan Hill way.



Memorandum

City Clerk's Office

Date: January 25, 2024

To: Christina Turner

From: Michelle Bigelow

Subject: Remote Public Comments and Public Video

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 must take reasonable steps to prevent exposure to verbal conduct based on protected classifications (including race, religion, gender, and/or sexual orientation) that are 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 comments because of the increasing incidents of antisemitic callers.

A staff report was presented at the City Council meeting on December 6, 2023. The City Council directed staff to explore options to allow for public comment on Zoom requiring registration/authentication.

Staff is seeking direction from the City Council on:

- Does the Council wish to allow remote public comments?
 - If yes:
 1. Does the Council wish to put a registration and/or verification in place?
 2. Does the Council wish to show a list of names for all remote participants?
 3. Does the Council wish to allow or require meeting attendees to show their video?

Registration/Verification Options for Remote Public Comment

Should the City Council decide that it wants to allow remote public comment and to put measures in place to help protect employees and the Community from hostile verbal conduct, there are a few options to consider:

- Option 1: Require both registration and authentication on Zoom
 - Uses an existing available tool requiring no additional expenditures or staff management of another program during City Council meetings
 - Requires minimal additional staff time to verify/manage speakers
 - Authentication allows the host (the City) to restrict webinar attendees to sign-in users only, confirming that they have a legitimate email account
 - Registration allows the host to view and manage the registrants, be aware of how many will potentially join, and it ensures that attendees do not share their attendance link with others, ensuring that each person joining has to register with a unique email address
 - Scheduling a webinar with registration requires registrants to complete a brief form before receiving the link to join the webinar. This allows the agency to collect the names, email addresses, and other information from the registrants
 - It can be set not to allow attendees to change their name
- Option 2: Require registration through an online form
 - Requires speakers to sign up via an online form on the City website
 - Requires a cutoff time to allow staff review
 - Requires more staff time to manage speakers/requests
 - No added cost, as the form would be created through the City's website
 - Registration allows the host to view and manage the registrants, and be aware of how many will potentially join
- Option 3: CivicBell Virtual Speaker Card
 - This product is still in the beta testing phase and has no current agencies using it
 - Ensures the speaker is a real person and not a "bot"
 - Prevents participant from changing name
 - Cost \$2,000 annually
 - Requires an additional tool and additional staff time

* Important note: We cannot prohibit speakers from using assumed or false names. None of the options listed above stop workarounds, and we may still experience hate speech and use of vulgar names.

Meeting Attendee Video

Staff recommend against allowing remote meeting participants to show their video. We are seeking a balance between inclusion and protection. For in-person meetings, we leverage uniformed Police presence for physical protection. We protect online meetings by leveraging software restrictions such as not allowing video and requiring running the latest software version.

It was just four months ago when we experienced extremely disturbing hate speech in a meeting, amplifying the urgency of our security measures. Before that incident, we had inappropriate graphic images displayed on two separate occasions at City meetings.

"Zoom bombing" is so serious it is now considered a federal crime. The reality is that security is in direct conflict with convenience. However, convenience is no longer an acceptable reason to reject necessary security measures.

Staff believes the Council should consider the continuation of our existing practice, which permits public comments exclusively in person or in writing. This approach is not only a pragmatic response to the escalating threats we face but also a commitment to prioritizing the safety and integrity of our meetings.

From: [Yvonne Martinez Beltran](#)
To: [Christina Turner](#)
Subject: Continued Agenda Item on Remote Access from workshop
Date: Wednesday, February 14, 2024 9:05:54 PM

Hello Christina,

Please find much of my original email forwarded requesting an agenda item to discuss remote access which we attempted at our workshop on 2/2 but were not able to conduct a vote with a Councilmember missing. At the 2/2 workshop I requested the remote access agenda item come back to council at our next meeting 2/21 which was 3 weeks later as the staff report was prepared for the 2/2 meeting and was presented but we simply were missing a Councilmember.

We as Council Members have the right and are allowed to continue to join City Council meetings by remote access, and our residents who have elected us should also enjoy that privilege. We cannot control what people say online nor in person in council chambers and just as one chairing the meeting could pause and excuse everyone during an inappropriate in-person speaker they could excuse everyone during an inappropriate online speaker.

I would like to have an immediate conversation on how to continue remote public comment while protecting our community from the horrible and hateful comments we endured. Closing remote access to our City Council meetings for even one meeting is not ideal but understandable only to allow us the time to find the best way to conduct it.

Closing down virtual public comment is a near sighted solution and counteracts all the progress and engagement we benefited from due to COVID. I am most worried about parents who can't come in who are nursing a baby, helping kids with homework waiting for their item to come up, those to intimidated due to language barriers or lack of understanding of Councils role and that we are simply no one different than their neighbor, with the responsibility and privilege to serve them to come in person, those in traffic, essential workers, an elderly person who wants to stay updated, youth, those without transportation, someone home sick, etc.

Not to say I don't worry about those who regularly attend and how they will fare without virtual public comment. I do. But I worry less knowing they will no doubt show up, and know how to and are comfortable reaching out to my colleagues and I so they can be heard. Those interactions I am confident will continue, so it will be those we never see, that are unfamiliar, challenged in someway to make it physically or too intimidated to attend that they will be let out by this change.

We have invested in upgrading our technical capabilities and need to stay on top of technology

to maximize public engagement. we could provide registration, etc for additional vetting to help or add a delay which can help identify disingenuous speakers but we cannot control what everyone says in person or online.

Additionally, please note the request is to also list the names of participants on zoom so our meetings are transparent as to who is participating. Thank you.

In Community,

Yvonne Martínez Beltrán (pronouns: she/her/hers)

Councilwoman

City of Morgan Hill

17575 Peak Avenue, Morgan Hill, CA 95037

yvonne.martinezelbeltran@morganhill.ca.gov

morganhill.ca.gov | [facebook](#) | [twitter](#)