



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, June 19, 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 participate by teleconference/video conference. Information on how the public may observe and participate in the meeting is below.

MEETING PARTICIPATION

Morgan Hill City Council meetings are held in person. The community may attend in person or via Zoom (video/teleconference). The meetings are also live-streamed on the City's website, Facebook page, and Channel 17.

Those wishing to participate in the meetings remotely must register in advance at <https://bit.ly/MHCityCouncilMeeting>. Additionally, Zoom participants must be running the latest version or will be required to update to the latest version before being able to join the meeting remotely.

Remote participation is also available by calling (669) 900-9128 and entering webinar id: 873 3200 8380#. Dial *9 to raise your hand, and be called upon to speak for up to 3 minutes. Dial *6 to unmute.

PUBLIC COMMENT

Public comment may be offered verbally at the meeting or in writing before the meeting.

Those attending remotely may only offer public comment for items on the agenda in one of four categories:

- Consent Calendar

- Other Business
- Public Hearings
- Closed Session

Public comment will be heard from those attending in person first with the submission of a speaker card. Once that is complete, we will move to those on Zoom that have their hand raised. Following public comment from Zoom, we will close the public comment period for that item.

Remote public comment for items not on the agenda will not be accepted.

Written public comment may be submitted to the City Clerk:

- In person at the City Council Meeting;
- Via email to ccpubliccomment@morganhill.ca.gov; or
- Hand delivered or mailed 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) so that your comments can be submitted to the members of the City Council with sufficient time to review them. 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 noon (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 or by email at 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

PROCLAMATIONS

Proclaiming the month of July 2024 as Parks and Recreation Month

RECOGNITIONS

Recognizing the 2024 outgoing Library, Culture, and Arts and Parks and Recreation Commissioners

CITY COUNCIL REPORTS

Council Member Borgioli

CITY MANAGER'S REPORT

CITY ATTORNEY'S REPORT

OTHER REPORTS

PUBLIC COMMENT

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

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

ADOPTION OF AGENDA

CONSENT CALENDAR

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

1. **ACCEPT THE CALIFORNIA HIGHWAY PATROL CANNABIS TAX GRANT IN THE AMOUNT OF \$344,230**

Recommendation:

1. Adopt a Resolution Accepting the California Highway Patrol Cannabis Tax Grant in the amount of \$344,230; and
2. Authorize the City Manager to execute the California Highway Patrol Cannabis Tax Grant agreement.

2. **ADOPT AMENDED RESOLUTION PLACING A MEASURE ON THE BALLOT TO ENACT A TWELVE CONSECUTIVE YEAR LIMIT ON COMBINED MAYORAL, CITY COUNCIL, AND TREASURER SERVICE**

Recommendation:

Adopt an amended resolution placing a measure on the ballot to enact a twelve consecutive year limit on combined Mayoral, City Council, and Treasurer service.

3. **ADOPT A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A MEMORANDUM OF AGREEMENT TO PARTICIPATE IN THE REGIONAL PUBLIC FACILITY RESILIENCY IMPLEMENTATION PROJECT AND SECURE GRANT FUNDS IN AN AMOUNT OF \$3.6 MILLION**

Recommendation:

1. Adopt a resolution authorizing the City Manager or her designee to negotiate and execute a Memorandum of Agreement as a Partner Agency for the purpose of securing grant funds in the amount of \$3,599,871 from the United States Environmental Protection Agency's Climate Pollution Reduction Grants program.

2. Authorize the City Manager or her designee to negotiate and execute any documents necessary to accept and effectuate the grants.

4. **APPROVE A CONSULTANT AGREEMENT WITH CSG CONSULTANTS, INC. FOR BUILDING PLAN REVIEW SERVICES FOR A TOTAL NOT TO EXCEED AMOUNT OF \$320,000**

Recommendation:

Approve the professional services agreement with CSG Consultants, Inc, for Building Division plan review services for a total not to exceed amount of \$320,000.

5. **APPROVE A TWO-YEAR CONSULTANT AGREEMENT WITH PLANET FUTSAL, INC. DBA FUTSAL KINGZ TO PROVIDE YOUTH FUTSAL, SOCCER CLASSES, AND CAMPS FOR A TOTAL NOT TO EXCEED AMOUNT OF \$150,000**

Recommendation:

Authorize the City Manager to execute a two-year consultant agreement with Planet Futsal, Inc. DBA Futsal Kingz to provide youth futsal, soccer classes, and camps not to exceed to \$150,000, with a one-year extension option, subject to budget appropriation.

6. **APPROVE CONSULTANT AGREEMENT WITH HOUSEKEYS, INC FOR BELOW MARKET RATE (BMR) HOMEOWNERSHIP AND RENTAL PROGRAM ADMINISTRATION SERVICES**

Recommendation:

1. Approve Consultant Agreement for Below Market Rate Housing (BMR) Homeownership and Rental Program services through June 30, 2028, for \$2,489,095 from July 1, 2024 – June 30, 2028 with optional extension; and
2. Authorize the City Manager to execute and administer the contract.

7. **APPROVE ENGINEERING-RELATED CONSULTANT AGREEMENTS FOR DESIGN PROFESSIONALS FOR ON-CALL ENGINEERING PLAN REVIEW & TECHNICAL SUPPORT SERVICES, AND ON-CALL MAP REVIEW & CITY SURVEYOR SERVICES**

Recommendation:

Approve and authorize the City Manager to execute and administer six agreements to be specifically authorized by the City Manager:

1. **CSG CONSULTANTS, INC.** in the amount of \$1,324,130, and \$883,836 additional compensation on an extended two-year term, for a total agreement amount not to exceed \$2,207,966 to provide both On-Call

Engineering Plan Review & Technical Support Services, and On-Call Map Review & City Surveyor Services;

2. **HARRIS & ASSOCIATES, INC.** in the amount of \$519,000, and \$390,000 additional compensation on an extended two-year term, for a total agreement amount not to exceed \$909,000 to provide On-Call Engineering Plan Review & Technical Support Services;
3. **GHIRARDELLI ASSOCIATES, INC.** in the amount of \$126,000, and \$96,000 additional compensation on an extended two-year term, for a total agreement amount not to exceed \$222,000 to provide On-Call Engineering Plan Review & Technical Support Services;
4. **ASSOCIATED ENGINEERING-SURVEYING SERVICE, INC.**, doing business as **HANNA-BRUNETTI** in the amount of \$144,000, and \$109,000 additional compensation on an extended two-year term, for a total agreement amount not to exceed \$253,000 to provide On-Call Map Review & City Surveyor Services;
5. **RUGGERI-JENSEN-AZAR (RJA)** in the amount of \$39,000, and \$29,000 additional compensation on an extended two-year term, for a total agreement amount not to exceed \$68,000 to provide On-Call Map Review & City Surveyor Services; and
6. **MNS ENGINEERS, INC.** in the amount of \$39,000, and \$29,000 additional compensation on an extended two-year term, for a total agreement amount not to exceed \$68,000 to provide On-Call Map Review & City Surveyor Services.

8. **APPROVE THE JUNE 5, 2024 CITY COUNCIL MEETING MINUTES**

Recommendation:

Approve minutes.

9. **AWARD ON-CALL DOOR AND GATE REPAIR MAINTENANCE SERVICE AGREEMENT WITH WEST COAST DOORS AND GATES FOR A TOTAL NOT TO EXCEED AMOUNT OF \$200,000**

Recommendation:

1. Award a two-year maintenance service agreement to West Coast Doors and Gates for a not to exceed amount of \$200,000 for on-call door and gate repair services with three one-year extensions, subject to budget appropriation; and
2. Authorize the City Manager to execute and administer the Agreement.

OTHER BUSINESS

10. APPROVE THE REAL PROPERTY AGREEMENT WITH FATTORIA PUBLIC MARKET, INC. TO LEASE AND OPTION FOR SALE OF CITY OWNED AGRICULTURAL PROPERTY FOR AGRI-TOURISM DEVELOPMENT

Recommendation:

1. Authorize the City Manager to execute an option to lease with future option of sale of City-owned Agricultural Property to Fattoria Public Market; and
2. Authorize the City Manager to execute future lease and sale agreements as outlined in the option agreement.

11. CONSIDER UPDATES TO COUNCIL POLICY 97-01 REGARDING RULES FOR CONDUCT OF COUNCIL MEETINGS, PLACEMENT OF ITEMS ON THE AGENDA, AND MATTERS TO BE RECONSIDERED

Recommendation:

Consider updates to City Council Policy CP 97-01 related to not taking a position on matters outside of the Morgan Hill City Council's subject matter jurisdiction.

PUBLIC HEARINGS

12. ADOPT THE FISCAL YEAR (FY) 2024-25 AND 2025-26 OPERATING BUDGET, FY 2024-25 THROUGH 2029-30 CAPITAL IMPROVEMENT PROGRAM BUDGET, ADOPT FY 2024-25 APPROPRIATIONS LIMIT, APPROVE FY 2024-25 COMMUNITY FUNDING RECOMMENDATIONS, ADOPT FY 2023-24 BUDGET AMENDMENT, AND ADOPT THE REVISED SALARY SCHEDULES FOR AMERICAN FEDERATION OF STATE, COUNTY, AND MUNICIPAL EMPLOYEES; MANAGEMENT, PROFESSIONAL, AND CONFIDENTIAL EMPLOYEES EFFECTIVE JUNE 23, 2024; AND ELECTED OFFICIALS AND COUNCIL APPOINTED POSITIONS EFFECTIVE DECEMBER 2024

Recommendation:

1. Open/Close Public Hearing; and
2. Adopt resolution to:
 - a. Adopt the FY 2024-25 and 2025-26 Operating Budget; and
 - b. Adopt the FY 2024-25 through 2029-30 Capital Improvement Program Budget; and
 - c. Adopt the 2024-25 Appropriations Limit and Appropriations Limit Adjustment Factors; and
3. Approve the FY 2024-25 Community Funding recommendations; and
4. Adopt resolution to amend FY 2023-24 Budget; and
5. Adopt the revised salary schedules for American Federation of State, County, and Municipal Employees; Management, Professional, and Confidential Employees effective June 23, 2024; and Elected Officials and Council Appointed Positions effective December 2024.

FUTURE COUNCIL INITIATED AGENDA ITEMS

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

ADJOURNMENT

NOTICE

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

PUBLIC COMMENT

Members of the Public are entitled to directly address the City Council concerning any item described in the notice of this meeting during consideration of that item. If you wish to address the Council on any item on this agenda, please complete a speaker request card located in the foyer of the Council Chambers and deliver it to the Minutes Clerk before the City Council discussion on the item. You are not required to give your name on the speaker card 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 participating via Zoom, please raise your virtual hand to be called. When called, you will be unmuted and recognized for speaking. 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 note that public comment for items not on the agenda are not accepted virtually.

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



PARKS AND RECREATION MONTH

July is Parks and Recreation Month and we're celebrating all month long! Join us for these free events and programs happening in Morgan Hill.

July 5 | Free Mini Golf Day for Morgan Hill Residents | 1pm-4pm

Morgan Hill residents can play a round of mini golf at the Aquatics Center for free! Proof of Morgan Hill residency is required.

July 10 | Otter Pops at Downtown Splash Pad | 11am-3pm

Join us at the Splash Pad for free water play and otter pops!

July 12 | Free Swim Day at the Aquatics Center for Morgan Hill Residents | 1pm-4pm

Residents are welcome to spend the day splashing into fun at the Morgan Hill Aquatics Center. Proof of Morgan Hill residency is required. Visit www.mhaquaticscenter.com for pool and facility rules.

July 18 | Free Centennial Recreation Center Day for Morgan Hill Residents | 5am-9:30pm

Residents are welcome to spend the day using the fitness center, taking group exercise classes, swimming in the indoor pool, and being a part of the CRC community. Kids Club not included. Proof of Morgan Hill residency is required.

July 18 | Magical Bridge: Got Talent! Part II | 6pm-8pm

Join us at the Magical Bridge Playground for part II of "Got Talent"! This is a great opportunity to share your talent with our community on stage! All talents are welcome, including but not limited to instruments, dancing, singing, storytelling, etc.

July 30 | Free Intro to Pickleball Class | 5:30pm-6:30pm

Join us at the outdoor pickleball courts located inside of Community Park for a free introductory class. Learn how to play the fastest growing sport in America! Bring water, wear comfortable clothes/shoes, and get ready to have fun!



CITY COUNCIL STAFF REPORT

MEETING DATE: June 19, 2024

PREPARED BY:

Mario Ramirez, Police Captain

APPROVED BY: City Manager

ACCEPT THE CALIFORNIA HIGHWAY PATROL CANNABIS TAX GRANT IN THE AMOUNT OF \$344,230

RECOMMENDATION(S)

1. Adopt a Resolution Accepting the California Highway Patrol Cannabis Tax Grant in the amount of \$344,230; and
2. Authorize the City Manager to execute the California Highway Patrol Cannabis Tax Grant agreement.

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Enhancing Public Safety

2024-2025 Strategic Priorities

Fiscal Sustainability

Guiding Documents

Public Safety Master Plan

Vision Zero

REPORT NARRATIVE:

On February 20, 2024, Morgan Hill Police Department (MHPD) applied for a grant to bolster our ongoing efforts to reduce impaired driving within our Community.

MHPD sought funding for two 2024 Dodge Durango police vehicles, two 2024 BMW 1250 RT police motorcycles, a Driving Under the Influence (DUI) Checkpoint trailer, and funding for 20 DUI saturation patrols and two DUI checkpoints.

The equipment and saturation patrols have proven to be effective ways of identifying impaired drivers and removing them from our City's roadways. The DUI Checkpoints are valuable in identifying DUI motorists but also in public education regarding the effects of alcohol and operating a motor vehicle.

On June 6, 2024, California Highway Patrol's (CHP) Cannabis Tax Fund Grant Program

(CTFGP) has conditionally approved \$344,230 for MHPD.

In order to receive this grant funding, CHP is requesting documentation from the City of Morgan Hill City Council authorizing MHPD to receive the requested funding. Additionally, staff recommend the City Council authorize the City Manager to enter into the Grant Agreement with CHP's CTFGP.

COMMUNITY ENGAGEMENT:

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

ALTERNATIVE ACTIONS:

The City Council could choose not to approve this grant funding and MHPD will not staff additional saturation patrols or obtain additional equipment for DUI enforcement.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

MHPD has received Selective Traffic Enforcement Program (STEP) grants through the Office of Traffic Safety (OTS) and the CHP Cannabis Tax Grant (CHP-CTG).

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

10/1/2007 to 9/30/2008 - \$9,536
 10/1/2009 to 9/30/2010 - \$13,131
 10/1/2010 to 9/30/2011 - \$18,895
 10/1/2012 to 9/30/2013 - \$24,750
 10/1/2013 to 9/30/2014 - \$36,800
 10/1/2018 to 9/30/2019 - \$43,000
 10/1/2023 to 10/1/2024- \$60,000
 07/1/2023 to 07/1/2024- \$ 10,144 (CHP-CTG)

FISCAL AND RESOURCE IMPACT:

Below is a matrix outlining the requested funding from CHP'S CTFGP. Additional appropriations will be added to tonight's Budget Hearing and Adoption.

California Highway Patrol Cannabis Tax Fund Grant Program		
Labor Costs:	20 Saturation Patrols	\$19,860.00
	2 DUI Checkpoints (x10 Officers)	\$26,480.00
	2024 Dodge Durango Pursuit AWD V-8 (x2)	\$110,030.00

Equipment Costs:	2024 BMW R 1250 RT (x2)	\$58,409.22
	DUI Checkpoint Trailer	\$65,735.50
Other Direct Costs:	2024 Dodge Durango Outfitting (x2)	\$42,242.64
	2024 BMW R 1250 RT Outfitting (x2)	\$21,472.24
Total requested:		\$344,229.60

CEQA (California Environmental Quality Act):

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

DEPARTMENT OF CALIFORNIA HIGHWAY PATROL

601 North 7th Street
Sacramento, CA 95811
(916) 843-4360
(800) 735-2929 (TT/TDD)
(800) 735-2922 (Voice)



June 6, 2024

File No.: 060.15426.17369

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

Dear Mr. Kuhlen:

On behalf of the California Highway Patrol (CHP), it is my pleasure to inform you, the Morgan Hill Police Department, is conditionally approved for Cannabis Tax Fund Grant Program (CTFGP) funding in the amount of \$344,229.60. The purpose of this grant funding is to help your agency reduce and mitigate the impacts of impaired driving in your community.

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

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

Sincerely,

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

K. M. DAVIS, Chief
Enforcement and Planning Division



RESOLUTION NO. 24-XXX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AUTHORIZING THE CITY MANAGER OR HER DESIGNEE TO ACCEPT A GRANT PAYMENT OF \$344,229.60 FROM CALIFORNIA HIGHWAY PATROL'S CANNABIS TAX FUND GRANT PROGRAM

WHEREAS, the City of Morgan Hill, a municipal corporation and general law city duly organized and existing under and pursuant to the Constitution and laws of the State of California ("City"), is authorized to enter into contracts and agreements for the benefit of the City; and

WHEREAS, the reasons supporting the purchase described in, and that is the subject of, this Resolution are set forth in detail in that certain City Council Staff Report entitled Accept the California Highway Patrol Cannabis Tax Grant submitted for City Council consideration at its meeting of June 19, 2024, submitted to the City Council by the City Manager (the "Staff Report"), the contents of which Staff Report are incorporated herein by this reference; and

WHEREAS, the consideration by City Council of the adoption of this Resolution has been duly noticed pursuant to applicable laws and has been placed upon the City Council Meeting Agenda on the date set forth in the Staff Report, or to such date that the City Council may have continued or deferred consideration of this Resolution, and on such date the City Council conducted a duly noticed public meeting at which meeting the City Council provided members of the public an opportunity to comment and be heard and considered any and all testimony and other evidence provided in connection with the adoption of this Resolution; and

WHEREAS, the activities allowed under this Resolution do not constitute a project under the provisions of California Environmental Quality Act of 1970; and

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

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

Section 1. Recitals. The City Council does hereby find, determine and resolve that all of the foregoing recitals are true and correct.

Section 2. Approval and Authorization. The City Council does further resolve, order and/or direct as follows:

- a. That the City is in support of the payment for the purchase of two 2024 Dodge Durango police vehicles, two 2024 BMW 1250 RT police motorcycles, a Driving Under the Influence (DUI) Checkpoint trailer, and funding for 20 DUI saturation patrols and two DUI checkpoints and therefore approves receipt of the grant funding.
- b. That the City Manager is hereby delegated authority to and is authorized to take all other ministerial actions that may be necessary or appropriate to implement the provisions of this Resolution.

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

PASSED AND ADOPTED by the City Council of the City of Morgan Hill at its meeting held on this 19th day of June 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 June 19, 2024.

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

DATE: _____

MICHELLE BIGELOW, City Clerk

CITY COUNCIL STAFF REPORT

MEETING DATE: June 19, 2024

PREPARED BY:

Michelle Bigelow, City Clerk

APPROVED BY: City Manager

ADOPT AMENDED RESOLUTION PLACING A MEASURE ON THE BALLOT TO ENACT A TWELVE CONSECUTIVE YEAR LIMIT ON COMBINED MAYORAL, CITY COUNCIL, AND TREASURER SERVICE

RECOMMENDATION(S)

Adopt an amended resolution placing a measure on the ballot to enact a twelve consecutive year limit on combined Mayoral, City Council, and Treasurer service.

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Fostering a Positive Organizational Culture

Preserving and Cultivating Public Trust

Enhancing Diversity and Inclusiveness

REPORT NARRATIVE:

On February 21, 2024, the Council adopted resolutions calling for the November 5, 2024, election and placing two measures on the ballot; one proposing changing the mayor's term from two to four years and the second to place term limits in place for the Mayor and Council (Attachment 1). At the June 5, 2024, City Council meeting, the Council directed staff to bring an amended term limit ballot measure resolution forward at the June 19, 2024, meeting to include the treasurer position.

Background

Government Code Section 36502(b) specifies that the City Council or the residents of the City may propose, by initiative, a proposal to limit the number of terms a member of the City Council may serve on the City Council or the number of terms an elected mayor may serve. Any proposal to limit the number of terms a member of the city council may serve on the city council, or the number of terms an elected mayor may serve, shall apply prospectively only and shall not become operative unless the proposition is submitted to the electors of the City at a regularly scheduled election and a majority of the votes cast favor its adoption. Limitations may be placed on the number of consecutive terms that Council Members may serve and may also be placed on the number of terms that a person may serve during their lifetime.

In addition, pursuant to Government Code Section 36502(b), a term limit ordinance applies only prospectively. This means that any term of office that commenced before

the ordinance's effective date would not count as a term served for implementing the ordinance. In the case of the treasurer, if the ballot measure passes, the 12 year term would start in 2028.

COMMUNITY ENGAGEMENT:

This report serves to inform the Community of the City Council's discussion regarding term limits for the City Treasurer.

ALTERNATIVE ACTIONS:

The City Council may direct staff to take no further action.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On May 3, 2023, the Council directed staff to bring back this topic for Council consideration. On June 7, 2023, the Council directed staff to research term limits and bring information back to the City Council to review and provide direction. On January 17, 2024, the Council discussed enacting term limits for the Council and commissions and whether or not to change the Mayor's term from two to four years. The Council decided to continue the conversation to a future meeting. On February 21, 2024, the Council adopted resolutions calling for the November 5, 2024, election and placing two measures on the ballot; one proposing changing the mayor's term from two to four years and the second to place term limits in place for the Mayor and Council. At the June 5, 2024, City Council meeting, the Council directed staff to bring an amended term limit ballot measure resolution forward at the June 19, 2024, meeting to include the treasurer position.

FISCAL AND RESOURCE IMPACT:

Amending the current ballot measure resolution to add the treasurer does not incur an additional cost. The current estimated cost for a ballot measure is \$60,000.

CEQA (California Environmental Quality Act):

Not a Project.

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

CITY COUNCIL STAFF REPORT

MEETING DATE: February 21, 2024

PREPARED BY:

Michelle Bigelow, City Clerk

APPROVED BY: City Manager

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(S)

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.

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Fostering a Positive Organizational Culture

Preserving and Cultivating Public Trust

Enhancing Diversity and Inclusiveness

REPORT NARRATIVE:

On May 3, 2023, the Council directed staff to bring this topic back for Council consideration. On June 7, 2023, the Council directed staff to research term limits and bring information back to the City Council to review and provide direction. The City of Morgan Hill does not have term limits for the Council or commissions. Should the City

Council want to put term limits in place for the elected positions of Mayor and Council Member, it would require voter approval. Term limits for commissions can be put in place by the Council's adoption of an ordinance. On January 17, 2024, the Council discussed enacting term limits for the Council and commissions and whether or not to change the Mayor's term from two to four years. The Council decided to continue the conversation to a future meeting.

Background

Government Code Section 36502(b) specifies that the City Council or the residents of the City may propose, by initiative, a proposal to limit the number of terms a member of the City Council may serve on the City Council or the number of terms an elected mayor may serve. Any proposal to limit the number of terms a member of the city council may serve on the city council, or the number of terms an elected mayor may serve, shall apply prospectively only and shall not become operative unless the proposition is submitted to the electors of the City at a regularly scheduled election and a majority of the votes cast favor its adoption. Limitations may be placed on the number of consecutive terms that Council Members may serve and may also be placed on the number of terms that a person may serve during their lifetime.

A few term-limit ordinances are currently being used throughout the state, and they generally fall within four models. However, these are examples, and the Council may choose term limits that serve our Community in the best way:

- Two or three consecutive four-year terms for Council Members and two or more consecutive two-year terms for the Mayor are followed by a hiatus of a specified duration (typically one, two, or four years) before the incumbent can seek election to additional terms.
- Two or three consecutive terms of four years for Council Members and two or more terms of two years for the Mayor.
- Eight or ten-year maximum consecutive terms for Council Members and the Mayor, followed by a hiatus of a specified duration (typically 1, 2, or 4 years) before the incumbent is eligible to seek election to additional terms.
- Eight or ten-year maximum consecutive terms for Council Members and the Mayor.

In addition, pursuant to Government Code Section 36502(b), a term limit ordinance applies only prospectively. This means that any term of office that commenced before the ordinance's effective date would not count as a term served for implementing the ordinance.

NEXT STEPS:

Calling for the November 5, 2024, General Election

Pursuant to Election Code § 10002, the attached Resolution "A" calls for a General Municipal Election to be held on Tuesday, November 5, 2024, to elect a Mayor for a

two-year term; one Council Member from District A for a four-year term; one Council Member from District C for a four-year term, and the City Treasurer for a four-year term.

Section 7 of Resolution “A” provides “that in the event of a tie vote (if any two or more persons receive, an equal and the highest number of votes for an office) the City Council, in accordance with Election Code § 15651(b), shall conduct a special runoff election to resolve the tie vote and such special runoff election is to be held on a Tuesday not less than 40 days nor more than 125 days after the administrative or judicial certification of the election which resulted in a tie vote.”

The Council can adopt Resolution “A”, as presented, with the requirement that a tie vote will be resolved by special election. Should the Council wish to resolve a tie vote by lot, the Council should amend Section 7 of the Resolution “A” to read:

“SECTION 7. That in the event of a tie vote (if any two or more persons receive an equal and the highest number of votes for an office) as certified by the County of Santa Clara, Registrar of Voters Office, the City Council, in accordance with Election Code § 15651(a), shall set a date and time and place and summon the candidates who have received the tie votes to appear and will determine the tie by lot.”

Section 5 of Resolution “B”, Candidates’ Statements, establishes a 200-word limitation for the Candidates’ Statements. Per City Council Resolution No. 16-005, Section 6 of Resolution B provides that candidates pay half the estimated costs to submit a “Candidate Statement.” The Santa Clara County Registrar of Voters Office has not yet provided Candidate Statement estimates.

The City Council typically certifies the general municipal election results in the second week in December following the election.

Proposed Ballot Measures

If the Council wants to place a term limit measure on the November 2024 ballot, staff has prepared a draft ballot measure that would:

- Limit individuals to consecutive terms of 12 years as either Mayor or Council Member.
- Allow a termed-out Mayor or Council Member to run for election again after a waiting period of four years.

These terms can be modified per City Council direction.

If the Council wishes to change the Mayor's term from 2 years to 4 years, staff has prepared a draft ballot measure to extend the Mayoral term.

Term Limits for Boards and Commissions

Chapter 2.22.010 of the Morgan Hill Municipal Code established four formal Boards and Commissions. These are the Planning Commission, the Parks and Recreation Commission, the Library Culture and Arts Commission, and the Disaster Council. Currently, there are no term limits for any of the boards and commissions. Staff is seeking direction regarding the following:

- Should the City adopt term limits for some or all of the boards and commissions?
- If the Council wants to adopt term limits for boards and commissions, how long should members be allowed to serve?
- If a member is termed out, should the member be allowed to serve on a different board or commission?
- Should a termed-out member be allowed to apply again after a waiting period, and if so, what should the waiting period be?
- Should term limits for boards and commissions be set by policy, which allows flexibility in the event that there is difficulty in filling vacancies, or should term limits be enacted by ordinance, which requires a formal process to amend.

COMMUNITY ENGAGEMENT:

This report serves to inform the Community of the City Council's discussion regarding term limits.

ALTERNATIVE ACTIONS:

The City Council may direct staff to take no further action.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On May 3, 2023, the Council directed staff to bring back this topic for Council consideration. On June 7, 2023, the Council directed staff to research term limits and bring information back to the City Council to review and provide direction. On January 17, 2024, the Council discussed enacting term limits for the Council and commissions and whether or not to change the Mayor's term from two to four years. The Council decided to continue the conversation to a future meeting.

FISCAL AND RESOURCE IMPACT:

Should the City Council move forward with placing a measure(s) on the ballot, the estimated cost is \$60,000 per ballot measure.

CEQA (California Environmental Quality Act):

Not a Project.

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



State of California

GOVERNMENT CODE

Section 36502

36502. (a) A person is not eligible to hold office as councilmember, city clerk, or city treasurer unless he or she is at the time of assuming the office an elector of the city, and was a registered voter of the city at the time nomination papers are issued to the candidate as provided for in Section 10227 of the Elections Code.

If, during his or her term of office, he or she moves his or her place of residence outside of the city limits or ceases to be an elector of the city, his or her office shall immediately become vacant.

(b) Notwithstanding any other provision of law, the city council of a general law or charter city may adopt or the residents of the city may propose, by initiative, a proposal to limit or repeal a limit on the number of terms a member of the city council may serve on the city council, or the number of terms an elected mayor may serve. Any proposal to limit the number of terms a member of the city council may serve on the city council, or the number of terms an elected mayor may serve, shall apply prospectively only and shall not become operative unless it is submitted to the electors of the city at a regularly scheduled election and a majority of the votes cast on the question favor the adoption of the proposal. Notwithstanding the provisions of this subdivision, the provisions of any city charter that, on January 1, 1996, impose limitations on the number of terms a member of the city council may serve on the city council, or the number of terms an elected mayor may serve, shall remain in effect. Unless otherwise prohibited by a city charter, any city charter may be amended pursuant to this section or pursuant to the procedures specified in the charter, to include the limitation authorized in this subdivision.

(Amended by Stats. 1995, Ch. 432, Sec. 5. Effective January 1, 1996.)



Term Limits



Term Limits Examples

Term Limits by Seat

select term limits:
2 terms; 3 terms, etc.

Examples:

Council Member for 2 terms (8 years)
or
Mayor for 2 terms (4 years)
or
Council Member for 2 terms (8 years)
followed by Mayor for 2 terms
(4 years)

OR

Maximum Consecutive Term in Years

select term:
10 yrs, 12 yrs, etc.

Examples:

Council Member for 10 years
or
Mayor for 10 years
or
Council Member for 8 years (2 terms)
followed by Mayor for 2 years (1 term)

Allow a hiatus between
terms limits

OR

Create a lifetime term limit

Council Member Term = 4 years

Mayor Term = 2 years

Council Discussion/Action



- Does the City Council wish to put term limits in place?
 - Yes:
 - Direct staff to bring back a resolution placing term limits on the November 2024 ballot.
 - Provide direction to staff on:
 - Term limits per seat i.e. Council Member x terms and Mayor x terms

Or

- Term limits of total x consecutive years

Council Discussion/Action Cont.



- Provide direction ...:
 - Whether to allow a hiatus between term limits

Or

- Create a lifetime term limit

- Does the City Council wish to put term limits in place for commissions?
 - Yes:
 - Direct staff to bring back an ordinance codifying term limits for commissions.

Council Discussion/Action Cont.



- Does the City Council wish to change the mayoral term from two to four years?
 - Yes:
 - Direct staff to bring back a resolution placing the mayoral term on the November 2024 ballot.

QUESTIONS?



CITY OF MORGAN HILL

RESOLUTION “A”

RESOLUTION NO. 24-XXX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL, CALIFORNIA, CALLING, AND GIVING NOTICE FOR THE HOLDING OF A GENERAL MUNICIPAL ELECTION TO BE HELD ON TUESDAY, NOVEMBER 5, 2024, FOR THE ELECTION OF CERTAIN OFFICERS AS REQUIRED BY THE PROVISIONS OF THE LAWS OF THE STATE OF CALIFORNIA RELATING TO GENERAL LAW CITIES

WHEREAS, under the provisions of the laws relating to general law cities in the State of California a General Municipal Election shall be held on Tuesday, November 5, 2024, for the election of Municipal Officers.

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

SECTION 1. Pursuant to the requirements of the laws of the State of California relating to General Law Cities, there is called and ordered to be held in the City of Morgan Hill, California, on Tuesday, November 5, 2024, a General Municipal Election for the purpose of electing a Mayor for the full term of two-years, a Member of the City Council from District “A”, a Member of the City Council from District “C”, and a City Treasurer for the full terms of four-years.

SECTION 2. That the ballots to be used at the election shall be in form and content as required by law.

SECTION 3. That the City Clerk is authorized, instructed, and directed to coordinate with the Registrar of Voters of the County of Santa Clara to procure and furnish any and all official ballots, notices, printed matter and all supplies, equipment and paraphernalia that may be necessary in order to properly and lawfully conduct the election.

SECTION 4. That the polls for the election shall be open at seven o’clock a.m. of the day of the election and shall remain open continuously from that time until eight o’clock p.m. of the same day when the polls shall be closed, pursuant to Election Code § 10242, except as provided in § 14401 of the Elections Code of the State of California.

SECTION 5. That in all particulars not recited in this resolution, the election shall be held and conducted as provided by law for holding municipal elections.

SECTION 6. That notice of the time and place of holding the election is given and the City Clerk is authorized, instructed, and directed to give further or additional notice of the election, in time, form and manner as required by law.

SECTION 7. The City Council authorizes the City Clerk to administer said election and all reasonable and actual election expenses shall be paid by the City upon presentation of a properly submitted bill.

SECTION 8. That the City Clerk shall certify to the passage and adoption of this Resolution and enter it into the book of original Resolutions.

PASSED AND ADOPTED by the City Council of Morgan Hill at a Regular Meeting held on the 21st day of February 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 February 21, 2024.

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

DATE: _____

MICHELLE BIGELOW, City Clerk

RESOLUTION “B”

RESOLUTION NO. 24-XXX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL, CALIFORNIA, REQUESTING THE BOARD OF SUPERVISORS OF THE COUNTY OF SANTA CLARA TO CONSOLIDATE A GENERAL MUNICIPAL ELECTION TO BE HELD ON TUESDAY, NOVEMBER 5, 2024 WITH THE GUBERNATORIAL STATEWIDE GENERAL ELECTION TO BE HELD ON THE SAME DATE PURSUANT TO § 10403 OF THE ELECTIONS CODE

WHEREAS, the City Council of the City of Morgan Hill called a General Municipal Election to be held on Tuesday, November 5, 2024, for the purpose of the election of a Mayor, a Member of the City Council from District “A”, a Member of the City Council from District “C”, and a City Treasurer, and;

WHEREAS, it is desirable that the General Municipal Election be consolidated with the statewide Gubernatorial General Election to be held on the same date and that within the city the precincts, polling places and election officers of the two elections be the same, and that the Registrar of Voters Office of the County of Santa Clara canvass the returns of the General Municipal Election and that the election be held in all respects as if there were only one election;

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

SECTION 1. That pursuant to the requirements of §10403 of the Elections Code, the Board of Supervisors of the County of Santa Clara is hereby requested to consent and agree to the consolidation of a General Municipal Election with the statewide Gubernatorial General Election on Tuesday, November 5, 2024, for the purpose of the election of a Mayor, a Member of the City Council from District A, a Member of the City Council from District C, and a City Treasurer.

SECTION 2. That the Board of Supervisors of the County of Santa Clara is requested to issue instructions to the Registrar of Voters Office to take any and all steps necessary for the holding of the consolidated election.

SECTION 3. That the Registrar of Voters of the County of Santa Clara is authorized to canvass the returns of the General Municipal Election. The election shall be held in all respects as if there were only one election, and only one form of ballot shall be used. The election will be held and conducted in accordance with the provisions of law regulating the statewide/general election.

SECTION 4. That the City of Morgan Hill recognizes that additional costs will be incurred by the County of Santa Clara by reason of this consolidation and agrees to reimburse the County for any costs.

SECTION 5. Candidate Statements. Candidates shall not be permitted to submit materials other than the Candidate Statement with the sample ballot and voter's pamphlet. The Candidate Statement shall be two hundred (200) words or less.

SECTION 6. Candidate Statement Fee. Pursuant to City Council Resolution No. 16-005, adopted January 20, 2016, candidates will be required to pay half of the costs charged by the Santa Clara County Registrar of Voters Office to submit and publish a Candidate Statement at the time the Candidate Statement is filed with the City Clerk.

SECTION 7. That the City Clerk is hereby directed to file a certified copy of this resolution with the Board of Supervisors and the Registrar of Voters Office of the County of Santa Clara.

SECTION 8. That the City Clerk shall certify to the passage and adoption of this resolution and enter it into the book of original resolutions.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Morgan Hill at a regular meeting held on the 21st day of February 2024.

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 a regular meeting held on February 21, 2024.

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

DATE: _____

MICHELLE BIGELOW, City Clerk

RESOLUTION “C”

RESOLUTION NO. 24-XXX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL, CALIFORNIA, SUBMITTING TO THE VOTERS AT THE NOVEMBER 5, 2024, GENERAL MUNICIPAL ELECTION, A BALLOT MEASURE TO ENACT TERM LIMITS FOR CITY COUNCIL MEMBERS

WHEREAS, a General Municipal Election has been called and is to be held in the City of Morgan Hill, California, on Tuesday, November 5, 2024; and,

WHEREAS, Government Code section 36502 provides that a general law city may enact limits on the number of terms a member of the city council may serve by a majority vote of the electors of the city; and,

WHEREAS, on February 21, 2024, the City Council met and considered a proposal to place term limits on the November 5, 2024, ballot; and,

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

SECTION 1. Pursuant to the requirements of the State of California, at the General Municipal Election on Tuesday, November 5, 2024, the following question shall be submitted to the voters:

Shall the measure amending the Morgan Hill Municipal Code to establish a twelve consecutive year limit on combined mayoral and city council service be adopted?	YES
	NO

and

SECTION 2. That the text of the ballot measure is attached to this resolution as Attachment A.

SECTION 3. The ballots to be used at the election shall be in the form and content as required by law.

SECTION 4. The election on this measure shall be held, voting precincts designated, ballots be printed, polls opened and closed, ballots counted and returned, returns canvassed, the returns made, and result ascertained and determined, and all other proceedings conducted in connection with the election, under the regulations of the Registrar of Voters of Santa Clara

County, in accordance with the provisions of the law governing general municipal elections in general law cities.

SECTION 5. The City Council authorizes all members of the City Council to file written argument(s) In Favor of or Against the measure described in Section 1 above, not exceeding 300 words, accompanied by the printed name(s) and signature(s) of the author(s) submitting it, in accordance with Article 4, Chapter 3, Division 9 of the Elections Code of the State of California.

SECTION 6. An argument for or against the measure shall not exceed 300 words in length. If more than one argument is submitted for the measure or more than one argument against the measure, the City Clerk shall select the argument to be included with the ballot materials. The arguments may be changed or withdrawn until and including the date fixed by the City Clerk, after which no arguments for or against the measure may be submitted to the City Clerk.

SECTION 7. The primary arguments for and against the measure shall be submitted to the City Clerk by five p.m. on August 9, 2024, to meet the deadline established by the Santa Clara County Registrar of Voters for primary arguments. The arguments shall be filed with the City Clerk, signed, with the printed name(s) and signature(s) of the author(s) submitting it, or if submitted on behalf of an organization, the name of the organization and the printed name and signature of at least one of its principal officers who is the author of the argument. The arguments shall be accompanied by the Form of Statement to Be Filed by Author(s) of the Argument to be provided by the City Clerk.

SECTION 8. In accordance with Elections Code section 9285(b), the City of Morgan Hill hereby authorizes the filing of rebuttal arguments as set forth below and in accordance with state law.

The elections official shall send a copy of an argument in favor of the proposition to the authors of any argument against the measure and a copy of an argument against the measure to the authors of any argument in favor of the measure immediately upon receiving the arguments.

The author, or a majority of the authors, of any argument relating to the measure may prepare and submit a rebuttal argument not exceeding 250 words or may authorize in writing any other person or persons to prepare, submit, or sign the rebuttal argument.

A rebuttal argument may not be signed by more than five authors.

The rebuttal arguments shall be filed with the City Clerk, signed with the printed name(s) and signature(s) of the author(s) submitting it, or if submitted on behalf of an organization, the name of the organization and the printed name and signature of at least one of its principal officers, by five p.m. on August 16, 2024, to meet the deadline established by the Santa Clara County Registrar of Voters for rebuttal arguments. The rebuttal arguments shall be accompanied by the Form of Statement to be provided by the City Clerk and to be filed by the author(s) of the argument.

Rebuttal arguments shall be printed in the same manner as the direct arguments. Each

rebuttal argument shall immediately follow the direct argument which it seeks to rebut.

SECTION 9. The City Attorney shall prepare an impartial analysis of the measure.

SECTION 10. That in all particulars not recited in this resolution, the election shall be held and conducted as provided by law for holding municipal elections.

SECTION 11. If, at the election, a majority (50% plus 1) of the votes cast on the measure are in favor of the measure, then the measure shall be deemed to have been accepted and approved by the votes upon the date that the City of Morgan Hill declares the vote and shall go into effect ten (10) days after that date, pursuant to Section 9217 of the Elections Code.

SECTION 12. That notice of the time and place of holding the election is given, and the City Clerk is authorized, instructed, and directed to give further or additional notice of the election in time, form, and manner as required by law.

SECTION 13. That the City Clerk shall certify the passage and adoption of this resolution and enter it into the book of original Resolutions.

PASSED AND ADOPTED by the City Council of the City of Morgan Hill at a regular meeting held on the 21st day of February 2024 by the following vote:

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

∞ 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 a Regular Meeting held on February 21, 2024.

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

DATE: _____

MICHELLE BIGELOW, City Clerk

ATTACHMENT A

ORDINANCE NO. _____, NEW SERIES

**AN ORDINANCE OF THE CITY OF MORGAN HILL ADDING
A NEW SECTION 1.16.025 (“TERM LIMITS”) TO CHAPTER
1.16 (“ELECTIONS”) OF TITLE 1 (“GENERAL PROVISIONS”)
OF THE MORGAN HILL MUNICIPAL CODE**

THE PEOPLE OF THE CITY OF MORGAN HILL DO ORDAIN AS FOLLOWS:

SECTION 1: Section 1.16.025 (“Term Limits”) of Chapter 1.16 (“ELECTIONS”) of Title 1 (“GENERAL PROVISIONS”) is hereby added to read as follows:

1.16.025 – Term Limits

- A. A person may serve a combined maximum of twelve consecutive years of elective terms as either a City Councilmember or as Mayor.
- B. Once a person reaches the combined consecutive elective terms provided in subsection A, the former Councilmember or Mayor is not eligible to be a candidate for election or appointed to serve again on the City Council until the expiration of four years following the end of the officer’s elective service.
- C. If a person has only two available years of service remaining under the combined term limit provided in subsection (A), that person is not eligible to be a candidate for a four-year seat until the expiration of four years following their last service. The person may thereafter serve as Mayor, or a Councilmember as provided in subsection (B).

SECTION 2. Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

RESOLUTION “D”

RESOLUTION NO. 24-XXX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL, CALIFORNIA, SUBMITTING TO THE VOTERS AT THE NOVEMBER 5, 2024, GENERAL MUNICIPAL ELECTION, A BALLOT MEASURE TO ENACT TERM LIMITS FOR CITY COUNCIL MEMBERS

WHEREAS, a General Municipal Election has been called and is to be held in the City of Morgan Hill, California, on Tuesday, November 5, 2024; and,

WHEREAS, in 1996, the electors of Morgan Hill enacted a measure creating a directly elected mayor with a mayoral term of two years; and

WHEREAS, Government Code section 34900 provides that a general law city may submit to the electors the question of whether an elected mayor shall serve a two-year or a four-year term; and,

WHEREAS, on February 21, 2024, the City Council met and considered a proposal to place a measure on the November 5, 2024, ballot to extend the mayoral term to four years; and,

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

SECTION 1. Pursuant to the requirements of the State of California, at the General Municipal Election on Tuesday, November 5, 2024, the following question shall be submitted to the voters:

Shall the measure to have the term of office for the directly elected Mayor of Morgan Hill be four years rather than the current two years be adopted?	YES
	NO

and

SECTION 2. That the text of the ballot measure is attached to this resolution as Attachment A.

SECTION 3. The ballots to be used at the election shall be in the form and content as required by law.

SECTION 4. The election on this measure shall be held, voting precincts designated, ballots be printed, polls opened and closed, ballots counted and returned, returns canvassed, the returns made, and result ascertained and determined, and all other proceedings conducted in connection with the election, under the regulations of the Registrar of Voters of Santa Clara County, in accordance with the provisions of the law governing general municipal elections in general law cities.

SECTION 5. The City Council authorizes all members of the City Council to file written argument(s) In Favor of or Against the measure described in Section 1 above, not exceeding 300 words, accompanied by the printed name(s) and signature(s) of the author(s) submitting it, in accordance with Article 4, Chapter 3, Division 9 of the Elections Code of the State of California.

SECTION 6. An argument for or against the measure shall not exceed 300 words in length. If more than one argument is submitted for the measure, or more than one argument against the measure, the City Clerk shall select the argument to be included with the ballot materials. The arguments may be changed or withdrawn until and including the date fixed by the City Clerk, after which no arguments for or against the measure may be submitted to the City Clerk.

SECTION 7. The primary arguments for and against the measure shall be submitted to the City Clerk by five p.m. on August 9, 2024, to meet the deadline established by the Santa Clara County Registrar of Voters for primary arguments. The arguments shall be filed with the City Clerk, signed, with the printed name(s) and signature(s) of the author(s) submitting it, or if submitted on behalf of an organization, the name of the organization and the printed name and signature of at least one of its principal officers who is the author of the argument. The arguments shall be accompanied by the Form of Statement to Be Filed by Author(s) of Argument to be provided by the City Clerk.

SECTION 8. In accordance with Elections Code section 9285(b), the City of Morgan Hill hereby authorizes the filing of rebuttal arguments as set forth below and in accordance with state law.

The elections official shall send a copy of an argument in Favor of the proposition to the authors of any argument against the measure and a copy of an argument against the measure to the authors of any argument in Favor of the measure immediately upon receiving the arguments.

The author, or a majority of the authors, of any argument relating to the measure may prepare and submit a rebuttal argument not exceeding 250 words or may authorize in writing any other person or persons to prepare, submit, or sign the rebuttal argument.

A rebuttal argument may not be signed by more than five authors.

The rebuttal arguments shall be filed with the City Clerk, signed with the printed name(s) and signature(s) of the author(s) submitting it, or if submitted on behalf of an organization, the name of the organization and the printed name and signature of at least one of its principal officers, by five p.m. on August 16, 2024, to meet the deadline established by the Santa Clara County Registrar of Voters for rebuttal arguments. The rebuttal arguments shall be accompanied

by the Form of Statement to be provided by the City Clerk and to be filed by the author(s) of the argument.

Rebuttal arguments shall be printed in the same manner as the direct arguments. Each rebuttal argument shall immediately follow the direct argument which it seeks to rebut.

SECTION 9. The City Attorney shall prepare an impartial analysis of the measure.

SECTION 10. That in all particulars not recited in this resolution, the election shall be held and conducted as provided by law for holding municipal elections.

SECTION 11. If, at the election, a majority (50% plus 1) of the votes cast on the measure are in Favor of the measure, then the measure shall be deemed to have been accepted and approved by the votes upon the date that vote is declared by the City of Morgan Hill and shall go into effect ten (10) days after that date, pursuant to Section 9217 of the Elections Code.

SECTION 12. That notice of the time and place of holding the election is given, and the City Clerk is authorized, instructed, and directed to give further or additional notice of the election in time, form, and manner as required by law.

SECTION 13. That the City Clerk shall certify to the passage and adoption of this resolution and enter it into the book of original Resolutions.

PASSED AND ADOPTED by the City Council of the City of Morgan Hill at a regular meeting held on the 21st day of February 2024 by the following vote:

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

∞ 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. , adopted by the City Council at a Regular Meeting held on February 21, 2024.

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

DATE: _____

MICHELLE BIGELOW, City Clerk

ATTACHMENT A

ORDINANCE NO. _____, NEW SERIES

**AN ORDINANCE OF THE CITY OF MORGAN HILL
AMENDING SUBSECTION A. OF SECTION 1.16.020
("ELECTION OF CITY COUNCIL MEMBERS") OF CHAPTER
1.16 ("ELECTIONS") OF TITLE 1 ("GENERAL PROVISIONS")
OF THE MORGAN HILL MUNICIPAL CODE**

THE PEOPLE OF THE CITY OF MORGAN HILL DO ORDAIN AS FOLLOWS:

SECTION 1: Subsection A of Section 1.16.020 ("Election of City Council Members") of Chapter 1.16 ("ELECTIONS") of Title 1 ("GENERAL PROVISIONS") is hereby amended to read as follows:

1.16.025 – Term Limits

"A. As established by measures D and E, enacted by the voters on March 26, 1996, and as amended by the voters on November 5, 2024, the mayor shall be elected directly by the electors for a term of four years."

SECTION 2. Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

From: [Yvonne Chavez](#)
To: [CC Public Comment](#)
Subject: [EXTERNAL] Term Limits for City Counsel
Date: Wednesday, September 6, 2023 1:40:11 PM

To all concerned

I am voicing my opinion that I believe we should have Term Limits for City Counsel. We need to have constant and fresh eyes for keeping the wonderful town growing at the right pace. Some times I think members all they see are dollar signs and it's pushing the business and good people out of town. Keep it real.

Yvonne Chavez
Long time resident

Sent from my iPhone

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From: [Yvonne Chavez](#)
To: [CityCouncil](#)
Subject: [EXTERNAL] Term limits
Date: Wednesday, September 6, 2023 1:32:04 PM

Hi

I am sending my desire to set term limits for city council.

This I believe will keep the ideas fresh and up to date.

Please consider for tonight meeting.

Regards
Yvonne Chavez
Home Owner in
Morgan Hill

Sent from my iPhone

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From: [Christina Turner](#)
To: [Kim Mancera](#); [Michelle Bigelow](#)
Subject: FW: [EXTERNAL] No Term Limits
Date: Monday, January 15, 2024 7:43:55 PM

To supplement.

From: Carolyn Wallace <carolyn.wallace6@gmail.com>
Sent: Monday, January 15, 2024 5:56 PM
To: Gino Borgioli <Gino.Borgioli@morganhill.ca.gov>; Yvonne Martinez Beltran <yvonne.martinezbeltran@morganhill.ca.gov>; Rene Spring <Rene.Spring@morganhill.ca.gov>; Marilyn Librers <marilyn.librers@morganhill.ca.gov>; Christina Turner <Christina.Turner@morganhill.ca.gov>; Donald Larkin <Donald.Larkin@morganhill.ca.gov>; Michelle Bigelow <Michelle.Bigelow@morganhill.ca.gov>; Mark Turner <mark.turner@morganhill.ca.gov>
Subject: [EXTERNAL] No Term Limits

Dear Morgan Hill City Council:

I am a resident of Morgan and asked that you please vote to oppose term limits.
We need effective leadership and limits should not be imposed,

Thank you,
Carolyn Wallace

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From: [Christina Turner](#)
To: [Michelle Bigelow](#); [Kim Mancera](#)
Subject: FW: [EXTERNAL] Oppose Term Limits
Date: Monday, January 15, 2024 7:43:44 PM

To supplement.

-----Original Message-----

From: ewallace@garlic.com <ewallace@garlic.com>

Sent: Monday, January 15, 2024 6:13 PM

To: Mark Turner <mark.turner@morganhill.ca.gov>; Gino Borgioli <Gino.Borgioli@morganhill.ca.gov>; Yvonne Martinez Beltran <yvonne.martinezbeltran@morganhill.ca.gov>; Rene Spring <Rene.Spring@morganhill.ca.gov>; Marilyn Librers <marilyn.librers@morganhill.ca.gov>; Christina Turner <Christina.Turner@morganhill.ca.gov>; Donald Larkin <Donald.Larkin@morganhill.ca.gov>; Michelle Bigelow <Michelle.Bigelow@morganhill.ca.gov>
Subject: [EXTERNAL] Oppose Term Limits

I am a citizen of Morgan Hill and I asked that you please vote to oppose term limits.

We need good leaders and the citizens should be able to elect the leaders they want, it should not be based on time in service, it should be based on performance in office.

Thank you,
Eric Wallace

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From: [Christina Turner](#)
To: [Michelle Bigelow](#); [Kim Mancera](#)
Subject: FW: [EXTERNAL] Re: Term Limits
Date: Tuesday, January 16, 2024 8:49:54 AM

Supplement.

From: Tim Herlihy <tim@creativemfgsol.com>
Sent: Tuesday, January 16, 2024 7:33 AM
To: Mark Turner <mark.turner@morganhill.ca.gov>; Gino Borgioli <Gino.Borgioli@morganhill.ca.gov>; Rene Spring <Rene.Spring@morganhill.ca.gov>; Christina Turner <Christina.Turner@morganhill.ca.gov>; Donald Larkin <Donald.Larkin@morganhill.ca.gov>; Michelle Bigelow <Michelle.Bigelow@morganhill.ca.gov>; Yvonne Martinez Beltran <yvonne.martinezbeltran@morganhill.ca.gov>
Subject: [EXTERNAL] Re: Term Limits

Resending with Yvonne's correct email.

On Tue, Jan 16, 2024 at 7:29 AM Tim Herlihy <tim@creativemfgsol.com> wrote:

Good Morning,

I am a business owner, and resident in Morgan Hill, and I am opposed to term limits. The residents of Morgan Hill should be allowed to determine who we want representing us, and how long we want our elected officials to represent us for.

Limits should not be imposed on good leadership.

Sincerely,

Tim Herlihy
Creative Manufacturing Solutions Inc
18400 Sutter Blvd
Morgan Hill Ca 95037
P:(408)327-0600
F:(408)327-0603

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From: [Michelle Bigelow](#)
To: [Kim Mancera](#)
Cc: [Christina Turner](#)
Subject: FW: Term Limits
Date: Tuesday, January 16, 2024 8:36:54 AM

Supplement

Michelle Bigelow, MMC, CPMC
City Clerk/Public Information Officer
she | her | hers ([what's this?](#))

City of Morgan Hill
City Clerk's Office
17575 Peak Avenue, Morgan Hill, CA 95037

D: 408.310.4678 **O:** 408.779.7259
michelle.bigelow@morganhill.ca.gov
morganhill.ca.gov | [facebook](#) | [twitter](#)

From: gordon@gordonkellyphoto.com <gordon@gordonkellyphoto.com>
Sent: Monday, January 15, 2024 10:28 PM
To: Mark Turner <mark.turner@morganhill.ca.gov>; Gino Borgioli
<Gino.Borgioli@morganhill.ca.gov>; Yvonne Martinez Beltran
<yvonne.martinezbeltran@morganhill.ca.gov>; Rene Spring <Rene.Spring@morganhill.ca.gov>;
Marilyn Librers <marilyn.librers@morganhill.ca.gov>; Christina Turner
<Christina.Turner@morganhill.ca.gov>; Donald Larkin <Donald.Larkin@morganhill.ca.gov>; Michelle
Bigelow <Michelle.Bigelow@morganhill.ca.gov>
Subject: [EXTERNAL] Term Limits

Hello All,

It has come to my attention that the subject of term limits will be discussed at a future meeting. As a 10 year resident of Morgan Hill, I am opposed to term limits at the city and county level. I'm asking that you please vote to also oppose term limits. Thank you!

Best Regards,
Gordon Kelly

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From: [Christina Turner](#)
To: [Michelle Bigelow](#); [Kim Mancera](#)
Subject: FW: [EXTERNAL] Resident of Morgan Hill
Date: Monday, January 15, 2024 4:53:50 PM

Please supplement.

-----Original Message-----

From: maria negrete <marianegrete01@yahoo.com>
Sent: Monday, January 15, 2024 4:53 PM
To: Mark Turner <mark.turner@morganhill.ca.gov>; Michelle Bigelow <Michelle.Bigelow@morganhill.ca.gov>; Gino Borgioli <Gino.Borgioli@morganhill.ca.gov>; Christina Turner <Christina.Turner@morganhill.ca.gov>; Marilyn Librers <marilyn.librers@morganhill.ca.gov>; Rene Spring <Rene.Spring@morganhill.ca.gov>; Yvonne Martinez Beltran <yvonne.martinezbeltran@morganhill.ca.gov>; Donald Larkin <Donald.Larkin@morganhill.ca.gov>
Subject: [EXTERNAL] Resident of Morgan Hill

“I’m a resident of Morgan Hill and I’m asking you to please vote to oppose term limits.”

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From: [Christina Turner](#)
To: [Michelle Bigelow](#); [Kim Mancera](#)
Subject: FW: [EXTERNAL] RE: No Local Term Limits!
Date: Monday, January 15, 2024 4:36:30 PM

Please supplement.

From: Scott Stotler <scott@stotlerdesigngroup.com>
Sent: Monday, January 15, 2024 4:34 PM
To: Gino Borgioli <Gino.Borgioli@morganhill.ca.gov>; Yvonne Martinez Beltran <yvonne.martinezbeltran@morganhill.ca.gov>; Michelle Bigelow <Michelle.Bigelow@morganhill.ca.gov>; Marilyn Librers <marilyn.librers@morganhill.ca.gov>; Mark Turner <mark.turner@morganhill.ca.gov>; Rene Spring <Rene.Spring@morganhill.ca.gov>; Donald Larkin <Donald.Larkin@morganhill.ca.gov>; Christina Turner <Christina.Turner@morganhill.ca.gov>
Subject: [EXTERNAL] RE: No Local Term Limits!

Hello council members and city staff,

Happy New Year!

Through some chat with local friends in Morgan Hill, I understand there is some discussion of term limits?

We are and have been Morgan Hill residents for 50 years since 1974. We have raised our family here and attended Morgan Hill schools.

Throughout my career since 1983, I have worked with city staff and have personally known every Mayor and most council members since then.

We have seen many qualified Council members and Mayors serve our Morgan Hill community and win re-election several times.

We strongly believe that in a small community, the voting citizens should have final say in selecting our council members and Mayors.

When we have a dedicated member, it is best to keep them!

I have also seen council members and Mayors voted out by the people which is always a possibility. It is always an option!

Voting is the voice and choice of our local citizens.

For these above reasons..."We strongly oppose term limits in our local community elections!"

This always allows the Morgan Hill residents to determine their desired results.

It is only fair that...if a candidate obtains the peoples votes, this candidate can always run to be elected again without term limit.

Morgan Hill citizens have seen the benefits of "no term limits" by dedicated and competent representatives serving our wonderful city.

At the end of the day, voting people "in or out" is the way this was meant to work, and best for our neighborhoods!

Kind regards,

Scott and Liz Stotler

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From: [Christina Turner](#)
To: [Michelle Bigelow](#); [Kim Mancera](#)
Subject: FW: Term Limits - City of Morgan Hill
Date: Monday, January 15, 2024 4:33:43 PM

Please supplement.

-----Original Message-----

From: Shawn Cabral <SCabral@gocompass.com>
Sent: Monday, January 15, 2024 4:32 PM
To: Mark Turner <mark.turner@morganhill.ca.gov>; Christina Turner <Christina.Turner@morganhill.ca.gov>
Cc: Gino Borgioli <Gino.Borgioli@morganhill.ca.gov>; Yvonne Martinez Beltran <yvonne.martinezbeltran@morganhill.ca.gov>
Subject: [EXTERNAL] Term Limits - City of Morgan Hill

Good Afternoon All

>

> I am a current Morgan Hill resident and homeowner and I'm asking you to please vote to oppose term limits. The City of Morgan Hill does not currently have term limits and there's no reason to start now. Thank you for your time.

>

> Shawn Cabral

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From: [Christina Turner](#)
To: [Michelle Bigelow](#); [Kim Mancera](#)
Cc: [Donald Larkin](#)
Subject: FW: [EXTERNAL] Term Limits - Opposed
Date: Monday, January 15, 2024 4:23:31 PM

To supplement for Item 15.

From: amanda@thefreelagency.com <amanda@thefreelagency.com>
Sent: Monday, January 15, 2024 1:50 PM
To: Mark Turner <mark.turner@morganhill.ca.gov>; Gino Borgioli <Gino.Borgioli@morganhill.ca.gov>; Yvonne Martinez Beltran <yvonne.martinezbeltran@morganhill.ca.gov>; Rene Spring <Rene.Spring@morganhill.ca.gov>; Marilyn Librers <marilyn.librers@morganhill.ca.gov>; Christina Turner <Christina.Turner@morganhill.ca.gov>; Donald Larkin <Donald.Larkin@morganhill.ca.gov>; Michelle Bigelow <Michelle.Bigelow@morganhill.ca.gov>
Subject: [EXTERNAL] Term Limits - Opposed

I am a resident and business owner in Morgan Hill, and I am opposed to term limits. The residents of Morgan Hill should be allowed to determine who we want representing us, and how long we want our elected officials to represent us for. Limits should not be imposed on good leadership.

Thank you.

Amanda Freel
President
The Freel Agency, Inc.
Private Investigators
CA PI License #29010, formerly CA PI
License #22490
17705 Hale Avenue, Building "I" Suite #1
Morgan Hill, CA 95037
Phone: [\(408\)799-3752](tel:4087993752)
Fax: [\(866\)504-3826](tel:8665043826)
www.thefreelagency.com

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From: [Christina Turner](#)
To: [Michelle Bigelow](#); [Kim Mancera](#)
Cc: [Donald Larkin](#)
Subject: FW: [EXTERNAL] Opposition to term limits
Date: Monday, January 15, 2024 4:22:05 PM

To supplement for Item 15.

-----Original Message-----

From: Bernard Mulligan <bernardmulligan@me.com>

Sent: Monday, January 15, 2024 4:12 PM

To: Mark Turner <mark.turner@morganhill.ca.gov>; Gino Borgioli <Gino.Borgioli@morganhill.ca.gov>; Marilyn Librers <marilyn.librers@morganhill.ca.gov>; Rene Spring <Rene.Spring@morganhill.ca.gov>; Yvonne Martinez Beltran <yvonne.martinezbeltran@morganhill.ca.gov>; Christina Turner <Christina.Turner@morganhill.ca.gov>; Michelle Bigelow <Michelle.Bigelow@morganhill.ca.gov>; Donald Larkin <Donald.Larkin@morganhill.ca.gov>
Subject: [EXTERNAL] Opposition to term limits

As a Morgan Hill resident I oppose term limits. Bernie Mulligan Sent from my iPhone

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From: [Christina Turner](#)
To: [Michelle Bigelow](#); [Kim Mancera](#)
Subject: FW: [EXTERNAL] Term limits
Date: Monday, January 15, 2024 4:21:33 PM

To supplement for Item 15. Please note that the two comments that we have already included as a supplement are labeled as Item 17 (a carryover from the agenda when we first agendized).

From: Laurie Conforti <laurieconforti@gmail.com>
Sent: Monday, January 15, 2024 3:27 PM
To: Rene Spring <Rene.Spring@morganhill.ca.gov>; Christina Turner <Christina.Turner@morganhill.ca.gov>; Donald Larkin <Donald.Larkin@morganhill.ca.gov>; gino.borgio@morganhill.ca.gov; Marilyn Librers <marilyn.librers@morganhill.ca.gov>; Mark Turner <mark.turner@morganhill.ca.gov>; Michelle Bigelow <Michelle.Bigelow@morganhill.ca.gov>; Yvonne Martinez Beltran <yvonne.martinezelbeltran@morganhill.ca.gov>
Subject: [EXTERNAL] Term limits

Good afternoon,

I am a resident of Morgan Hill and I'm asking you to please vote to oppose term limits. I believe the voters should determine who the elected officials are and how long they serve.

Regards,

Laurie Conforti

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From: [Michelle Bigelow](#)
To: [Kim Mancera](#)
Cc: [Christina Turner](#)
Subject: FW: [EXTERNAL] Term Limits
Date: Tuesday, January 16, 2024 9:38:40 AM

Supplement

Michelle Bigelow, MMC, CPMC
City Clerk/Public Information Officer
she | her | hers ([what's this?](#))

City of Morgan Hill
City Clerk's Office
17575 Peak Avenue, Morgan Hill, CA 95037

D: 408.310.4678 **O:** 408.779.7259
michelle.bigelow@morganhill.ca.gov
morganhill.ca.gov | [facebook](#) | [twitter](#)

From: BECKY PALM <beamer42@fastmail.com>
Sent: Tuesday, January 16, 2024 9:06 AM
To: Mark Turner <mark.turner@morganhill.ca.gov>; Gino Borgioli <Gino.Borgioli@morganhill.ca.gov>; Yvonne Martinez Beltran <yvonne.martinezbeltran@morganhill.ca.gov>; Rene Spring <Rene.Spring@morganhill.ca.gov>; Marilyn Librers <marilyn.librers@morganhill.ca.gov>; Christina Turner <Christina.Turner@morganhill.ca.gov>; Donald Larkin <Donald.Larkin@morganhill.ca.gov>; Michelle Bigelow <Michelle.Bigelow@morganhill.ca.gov>
Subject: [EXTERNAL] Term Limits

I'm a resident of Morgan Hill and I'm asking you to please vote to oppose term limits.

Thank you
Becky Palm
Morgan Hill, CA

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From: [Michelle Bigelow](#)
To: [Kim Mancera](#)
Cc: [Christina Turner](#)
Subject: FW: [EXTERNAL] Opposition to Term Limits
Date: Tuesday, January 16, 2024 10:29:30 AM

Supplement

Michelle Bigelow, MMC, CPMC
City Clerk/Public Information Officer
she | her | hers ([what's this?](#))

City of Morgan Hill
City Clerk's Office
17575 Peak Avenue, Morgan Hill, CA 95037

D: 408.310.4678 **O:** 408.779.7259
michelle.bigelow@morganhill.ca.gov
morganhill.ca.gov | [facebook](#) | [twitter](#)

From: Jim Di Vittorio <mapleleaf@garlic.com>
Sent: Tuesday, January 16, 2024 10:16 AM
To: Mark Turner <mark.turner@morganhill.ca.gov>; Gino Borgioli
<Gino.Borgioli@morganhill.ca.gov>; Yvonne Martinez Beltran
<yvonne.martinezbeltran@morganhill.ca.gov>; Rene Spring <Rene.Spring@morganhill.ca.gov>;
Marilyn Librers <marilyn.librers@morganhill.ca.gov>; Christina Turner
<Christina.Turner@morganhill.ca.gov>; Donald Larkin <Donald.Larkin@morganhill.ca.gov>; Michelle
Bigelow <Michelle.Bigelow@morganhill.ca.gov>
Subject: [EXTERNAL] Opposition to Term Limits

Dear Mayor and City Council Members,

My opposition to term limits is grounded in the fundamental principle of empowering the people. If the majority supports a candidate, they should have the ability to retain them in office. Conversely, if the majority disapproves of a candidate, they should have the prerogative to remove them. The decision should ultimately rest with the people.

Sincerely,

Jim Di Vittorio
Maple Leaf RV Park
15200 Monterey Road
Morgan Hill, CA 95037
408-461-0107

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From: [Christina Turner](#)
To: [Michelle Bigelow](#); [Kim Mancera](#)
Subject: FW: [EXTERNAL] Some basic facts on Term Limits
Date: Tuesday, January 16, 2024 8:21:43 PM

Please supplement.

From: Joe Baranowski <joe.b@mh-rgc.org>
Sent: Tuesday, January 16, 2024 4:30 PM
To: Mark Turner <mark.turner@morganhill.ca.gov>; Rene Spring <Rene.Spring@morganhill.ca.gov>; Yvonne Martinez Beltran <yvonne.martinezbeltran@morganhill.ca.gov>; Marilyn Librers <marilyn.librers@morganhill.ca.gov>
Cc: CC Public Comment <CCPublicComment@morganhill.ca.gov>; Michelle Bigelow <Michelle.Bigelow@morganhill.ca.gov>
Subject: [EXTERNAL] Some basic facts on Term Limits

Re: Agenda Item #15, Provide Direction Regarding City Council Term Limits, January 17, 2024 City Council Meeting

According to a summary prepared by the City of Saratoga and presented at their February 17th, 2021 city council meeting, Gilroy and Morgan Hill are the only two cities in Santa Clara County that do not have term limits for council and mayor seats.

According to the Santa Clara County Registrar of Voters, recent ballot measures for Term Limits were approved by an overwhelming majority of voters:

November 2020

Los Gatos Measure B PASSED: **82.41%** Yes, 17.59% No

November 2022

Milpitas Measure F PASSED: **78.68%** Yes, 21.32% No

Saratoga Measure C PASSED **76.72%** Yes, 23.28% No

Does anyone REALLY think voters in Morgan Hill have a different view or desire to have Term Limits? Based on what data?

Do you REALLY want citizens to force you to put Term Limits, which will be on citizens terms, on a ballot via yet another Initiative that would once again just show how out of touch you are with your constituents?

Joe Baranowski

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From: [Christina Turner](#)
To: [Michelle Bigelow](#); [Kim Mancera](#)
Subject: FW: [EXTERNAL] comment Morgan Hill City Council January 17 2024 #15 term limits
Date: Tuesday, January 16, 2024 8:25:14 PM

Supplement.

From: D. Muirhead <doug.muirhead@stanfordalumni.org>
Sent: Tuesday, January 16, 2024 9:03 AM
To: CC Public Comment <CCPublicComment@morganhill.ca.gov>
Subject: [EXTERNAL] comment Morgan Hill City Council January 17 2024 #15 term limits

Hello Morgan Hill City Council,
A comment for your meeting January 17 2024
Item #15 City Council term limits and Mayoral term

I have mixed feelings about term limits.
Our goal should be to have some new eyes and new ideas
balanced with knowledge of institution history and processes.
And "institution" includes all those agencies on which you serve
as outside assignments.

Some of those who run for office have previous government experience.
In Morgan Hill that is probably Planning Commission and School Board.
For them we have some sense of how they will behave on the dais.
Others are completely unknown to us. For them the knowledge base
is the Staff. It would be nice to have a probationary period for
anyone first being elected to a government body. We do not have
that and I do not approve of recalls except for criminal acts and
gross incompetence. Given the power imbalance between the Mayor
and the District members, we should keep the term for Mayor at
two years.

Not all politicians will be dedicated, competent, knowledgeable public servants.
The ones I would like to term out either act entitled or choose to force
their values on us by passing laws rather than making the effort to build
consensus. Unlike State and Federal offices, I do not see much advantage
to being an incumbent when running for City offices. If you choose to try
term limits, I would lean toward three (3) terms. I have been sharing my
ideas about good local government since 2011 so I have a sense of how long
12 years feels. A very long time indeed!

Regards, Doug Muirhead, Morgan Hill resident

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From: [Christina Turner](#)
To: [Michelle Bigelow](#); [Kim Mancera](#)
Subject: FW: [EXTERNAL] Agenda Item 15 Directions for Term Limits and Mayoral Term for 1/17/24 council meeting.
Date: Tuesday, January 16, 2024 7:57:47 PM

To supplement.

From: Armando Be <barmando3@gmail.com>
Date: January 16, 2024 at 5:19:05 PM PST
To: CityCouncil <CityCouncil@morganhill.ca.gov>
Subject: [EXTERNAL] Agenda Item 15 Directions for Term Limits and Mayoral Term for 1/17/24 council meeting.

Dear City Council Members,

I want to express my preference for term limits. There are many good reasons for term limits. One: It eliminates career politicians. Two: it promotes new ideas. Three: It fights the influence of special interests.

A term limit is a legal restriction that limits the number of terms an officeholder may serve. When term limits are imposed in presidential and semi-presidential systems they act as a method to curb the potential for a monopoly of power, where a leader effectively becomes "President for Life". In regards to the City of Morgan Hill and our elected officials for Council and Mayor, historically elected members have served on our council for periods have approached twenty years. When we combine all the time these elected individuals have served on commissions, local school boards and panels, we can see that they have had exclusive influence in the decision making in Morgan Hill politics for long periods of time. It is time for this situation to change.

One should consider that people that serve on an elected body for excessively long interval of time stop being effective leaders in their elected positions. They lose a certain willingness to listen to their constituency and feel they no longer have to mind to the will of the people. This is because there is no longer anyone that can successfully challenge them in an election. They are susceptible to the influence of special interest that continually support their reelection and are less inclined to be responsive or accountable to the will of the people. Term Limits will create opportunities for other people to run and will bring in new leadership with fresh perspectives and visions to the governing body. More people will be encouraged to run.

Morgan Hill should adopt Term Limits for the positions of Mayor and Council Members. This will open the current positions that have historically become locked by long term incumbents. It is time that long term incumbents either move up to a higher elected office in the county or state political arenas or they step out of Morgan Hill politics after they are termed out.

New people brings new ideas. The concept of citizen politicians is that our representatives in the community serve the people and then return to their former position in society to live and work under the laws and policies they have enacted. Term limits will ensure our representatives do not make a career out of local politics.

Regards,
Armando Benavides
408 829-4798

bcc: Interested citizens.

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From: [Michelle Bigelow](#)
To: [Kim Mancera](#)
Cc: [Christina Turner](#)
Subject: FW: [EXTERNAL] Term Limits
Date: Wednesday, January 17, 2024 9:21:28 AM

Supplement

Michelle Bigelow, MMC, CPMC
City Clerk/Public Information Officer
she | her | hers (what's this?)

City of Morgan Hill
City Clerk's Office
17575 Peak Avenue, Morgan Hill, CA 95037

D: 408.310.4678 O: 408.779.7259
michelle.bigelow@morganhill.ca.gov
morganhill.ca.gov | [facebook](#) | [twitter](#)

-----Original Message-----

From: Katherine Napoli <kathycnapoli@gmail.com>
Sent: Wednesday, January 17, 2024 9:14 AM
To: Mark Turner <mark.turner@morganhill.ca.gov>; Gino Borgioli <Gino.Borgioli@morganhill.ca.gov>; Yvonne Martinez Beltran <yvonne.martinezbeltran@morganhill.ca.gov>; Rene Spring <Rene.Spring@morganhill.ca.gov>; Marilyn Librers <marilyn.librers@morganhill.ca.gov>; Christina Turner <Christina.Turner@morganhill.ca.gov>; Donald Larkin <Donald.Larkin@morganhill.ca.gov>; Michelle Bigelow <Michelle.Bigelow@morganhill.ca.gov>
Subject: [EXTERNAL] Term Limits

Good Morning:

As a Morgan Hill taxpayer, I fully support term limits. I have witnessed the benefits of term limits at the school district, city council, supervisor and state level. It allows new people to run for office with new ideas and diverse communities to become involved in decisions that affect all.

This issue is too important and far reaching to decide tonight. All of the community should have sufficient time and opportunity to comment on two, three, etc.. in a thoughtful and intentional process.

Regards,

Kathy Chavez Napoli

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From: [Michelle Bigelow](#)
To: [Kim Mancera](#)
Cc: [Christina Turner](#)
Subject: FW: [EXTERNAL] Term Limits
Date: Wednesday, January 17, 2024 10:19:37 AM

Supplement

Michelle Bigelow, MMC, CPMC
City Clerk/Public Information Officer
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City Clerk's Office
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D: 408.310.4678 O: 408.779.7259
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-----Original Message-----

From: daniel harney <djharn@yahoo.com>
Sent: Wednesday, January 17, 2024 10:14 AM
To: Mark Turner <mark.turner@morganhill.ca.gov>
Cc: Mark Turner <mark.turner@morganhill.ca.gov>; Gino Borgioli <Gino.Borgioli@morganhill.ca.gov>; Yvonne Martinez Beltran <yvonne.martinezbeltran@morganhill.ca.gov>; Rene Spring <Rene.Spring@morganhill.ca.gov>; Marilyn Librers <marilyn.librers@morganhill.ca.gov>; Christina Turner <Christina.Turner@morganhill.ca.gov>; Donald Larkin <Donald.Larkin@morganhill.ca.gov>; Michelle Bigelow <Michelle.Bigelow@morganhill.ca.gov>
Subject: [EXTERNAL] Term Limits

Council Members,

As a person who has previously served on the city council for Gilroy, I know and appreciate the difficult decisions you have to make as council members. I am sure you can agree, progress in government is equivalent to running a marathon. Much like a marathon runner who requires dedication, cross training and fostering strong relationships with coaches and sponsors, council members require time to develop and hone policy making skills, developing strong relationships with local, regional and state level leaders and developing a long term plan to implement changes to improve the quality of life for residents.

As a homeowner in Morgan Hill and a small business owner (employing approximately 20 employees), I urge you to vote in opposition to term limits at your upcoming city council meeting. I am sure you can agree that collectively you have made great progress and yet have many more challenges in the future to see your plans through. Implementing term limits would cause disruption. Let's keep the brightest and best representatives on the council as long as the voters support them.

Thank you for your time and dedication!

Also, please be reminded that as a homeowner and small business owner, I feel very fortunate to have Christina Turner as my City Manager. She is an exceptional leader with integrity that is second to none. I hope you agree that she is a top performer in all aspects of her duties as a City Manager.

Sincerely,

Dan Harney

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From: [Michelle Bigelow](#)
To: [Kim Mancera](#)
Cc: [Christina Turner](#)
Subject: FW: [EXTERNAL] Term limits
Date: Wednesday, January 17, 2024 1:56:50 PM

Supplement

Michelle Bigelow, MMC, CPMC
City Clerk/Public Information Officer
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City Clerk's Office
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-----Original Message-----

From: Ranga Rayudu <rrayudu@gmail.com>
Sent: Wednesday, January 17, 2024 1:40 PM
To: CityCouncil <CityCouncil@morganhill.ca.gov>
Subject: [EXTERNAL] Term limits

To the members of the City Council:

I write today as a concerned citizen of Morgan Hill. I favor term limits of all government positions at all levels, and request the Council to institute term limits for themselves. Although there are one or two council members I would love to see stay indefinitely, it would be a contradiction in terms of representative democracy preventing the centralization of power at any scale. There is no knowledge or experience required in governance that should be considered of greater value to the future of the city than the value of newly chosen representatives, an immediate measure of the will of the public. I am sure you can see the national need to now more than ever demonstrate this principle in action, and hope you will do your part at the local level.

Thank you for your consideration,
Ranga Rayudu

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From: [Joe Baranowski](#)
To: [Mark Turner](#); [Rene Spring](#); [Yvonne Martinez Beltran](#); [Marilyn Librers](#)
Cc: [CC Public Comment](#); [Michelle Bigelow](#)
Subject: [EXTERNAL] A follow-up Re: Some basic facts on Term Limits
Date: Wednesday, January 17, 2024 12:38:34 PM

Hello again,

Last night, upon receiving an unwanted and unsolicited reply to an email that I did not send to him, Mr. Borgioli indicated that he believes that receiving "over 50 emails against term limits citing let the people decide" is enough of a reason to make a decision on an important policy question.

I HOPE the rest of you show more seriousness of thought and a basic understanding of sample size and statistical significance than that! Come on.

Do you even remember this issue was discussed several times in the past? Do you recall what long-time advocates Steve Chappell and Marby Lee said after waiting for hours? If they don't send in a letter, will you take that to mean see they don't really care cuz they didn't respond to someone's request to send in a letter in the last 72-hours?

Mr. Borgioli clearly didn't even remember them speaking just a few days later! He claimed on social media that Mr. Benivedes and "one council member and two or three ND ppl seem to believe we have a problem". And yet in that very same post, **16** residents (not including Mr Benivedes or myself or anyone else that is currently shown in any attached supplement as of the time of sending this email) stated **unequivocal support for term limits, 2 residents were opposed** and 2 or 3 were undecided. But unless you send in an email in a 72-hour window, you don't get to have any input? https://nextdoor.com/p/Ks5rJp_52BLg?view=detail&init_source=search&query=term%20limits If your argument is ~ "let the voters decide", please see my email from yesterday (all valid sample sizes!) and explain why you believe Morgan Hill voters would have a drastically different preference than every other city in Santa Clara County that has allowed voters to decide on Term Limits. THAT I can't wait to hear. Regards, Joe Baranowski

----- On Tue, 16 Jan 2024 16:29:59 -0800 **Joe Baranowski** <joe.b@mh-rgc.org> wrote -
--

Re: Agenda Item #15, Provide Direction Regarding City Council Term Limits, January 17, 2024 City Council Meeting

According to a summary prepared by the City of Saratoga and presented at their February 17th, 2021 city council meeting, Gilroy and Morgan Hill are the only two cities in Santa Clara County that do not have term limits for council and mayor seats.

According to the Santa Clara County Registrar of Voters, recent ballot measures for Term Limits were approved by an overwhelming majority of voters:

November 2020

Los Gatos Measure B PASSED: **82.41%** Yes, 17.59% No

November 2022

Milpitas Measure F PASSED: **78.68%** Yes, 21.32% No

Saratoga Measure C PASSED **76.72%** Yes, 23.28% No

Does anyone REALLY think voters in Morgan Hill have a different view or desire to have Term Limits? Based on what data?

Do you REALLY want citizens to force you to put Term Limits, which will be on citizens terms, on a ballot via yet another Initiative that would once again just show how out of touch you are with your constituents?

Joe Baranowski

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From: [Michelle Bigelow](#)
To: [Kim Mancera](#)
Cc: [Christina Turner](#)
Subject: FW: Agenda Item #15 - Term Limits, - January 17, 2024 City Council Meeting
Date: Wednesday, January 17, 2024 2:42:11 PM

Supplement

Michelle Bigelow, MMC, CPMC
City Clerk/Public Information Officer
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From: Miguel Jimenez <migueljimenez22@hotmail.com>
Sent: Wednesday, January 17, 2024 2:41 PM
To: Mark Turner <mark.turner@morganhill.ca.gov>; Gino Borgioli <Gino.Borgioli@morganhill.ca.gov>; Marilyn Librers <marilyn.librers@morganhill.ca.gov>; Yvonne Martinez Beltran <yvonne.martinezbeltran@morganhill.ca.gov>; Rene Spring <Rene.Spring@morganhill.ca.gov>
Cc: CC Public Comment <CCPublicComment@morganhill.ca.gov>; Michelle Bigelow <Michelle.Bigelow@morganhill.ca.gov>
Subject: [EXTERNAL] Agenda Item #15 - Term Limits, - January 17, 2024 City Council Meeting

Dear City Council,

I hope this email finds you well.

I'm writing to voice my support for term limits. In general, I think having individuals in the same elected position for many years isn't ideal. I think term limits may reduce potential overreach in power by incumbents that hold the same position in office for an extended period of time.

I think having new City Council members and mayors at least periodically brings in new perspectives and ideas and really embodies the notion of government by the people.

According to The Pew Research Center 87% of Americans favor term limits for members of Congress. Both Democrats and Republicans overwhelmingly support term limits on a national level.

My understanding is that 9 out of the 10 largest cities in the U.S. have term limits including the City of San Jose.

Some elected officials may say we have elections which can act as a way to make sure there's an opportunity for new residents to participate in the governing process. However, I don't think an election is a substitute for term limits. Incumbents have significant advantages over challengers. I don't think our representative democracy was ever meant to have career politicians.

Sincerely,
Miguel

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From: [Michelle Bigelow](#)
To: [Kim Mancera](#)
Cc: [Christina Turner](#)
Subject: FW: [EXTERNAL] Agenda Item #15 - Term Limits, - January 17, 2024 City Council Meeting
Date: Wednesday, January 17, 2024 2:53:58 PM

Supplement

Michelle Bigelow, MMC, CPMC
City Clerk/Public Information Officer
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City Clerk's Office
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From: Susie Jimenez <susieuhherjimenez@gmail.com>
Sent: Wednesday, January 17, 2024 2:52 PM
To: Mark Turner <mark.turner@morganhill.ca.gov>; Gino Borgioli <Gino.Borgioli@morganhill.ca.gov>; Marilyn Librers <marilyn.librers@morganhill.ca.gov>; Yvonne Martinez Beltran <yvonne.martinezbeltran@morganhill.ca.gov>; Rene Spring <Rene.Spring@morganhill.ca.gov>
Cc: CC Public Comment <CCPublicComment@morganhill.ca.gov>; Michelle Bigelow <Michelle.Bigelow@morganhill.ca.gov>
Subject: [EXTERNAL] Agenda Item #15 - Term Limits, - January 17, 2024 City Council Meeting

Dear City Council,

Happy New Year!

I'm a resident of Morgan Hill and I want to note my support for term limits. Having individuals in the same elected position for many years isn't ideal. Term limits may reduce potential overreach in power by incumbents that hold the same position in office for an extended period of time.

Having new City Council members and mayors brings in new perspectives and ideas and really embodies the notion of government by the people.

According to The Pew Research Center 87% of Americans favor term limits for members of Congress. Both Democrats and Republicans overwhelmingly support term limits on a national level.

My understanding is that 9 out of the 10 largest cities in the U.S. have term limits including the City of San Jose.

Some elected officials may say we have elections which can act as a way to make sure there's an opportunity for new residents to participate in the governing process. However, I don't think an election is a substitute for term limits. Incumbents have significant advantages over challengers. I don't think our representative democracy was ever meant to have career politicians.

Sincerely,
Susie Jimenez

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From: [Michelle Bigelow](#)
To: [Kim Mancera](#)
Cc: [Christina Turner](#)
Subject: FW: [EXTERNAL] Term limits...
Date: Wednesday, January 17, 2024 3:30:01 PM

Supplement

Michelle Bigelow, MMC, CPMC
City Clerk/Public Information Officer
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City of Morgan Hill
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michelle.bigelow@morganhill.ca.gov
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From: Jim Leslie <Jim@JimLeslie.com>
Sent: Wednesday, January 17, 2024 3:28 PM
To: CityCouncil <CityCouncil@morganhill.ca.gov>
Subject: [EXTERNAL] Term limits...

Morgan Hill Mayor and City Council Members:

I'd like to offer my view on term limits for your consideration.

Term limits are just fine and healthy for any community. My recommendation is that the term limits for the Morgan Hill City Council member positions as well as for the mayor's office should be for two years duration with a two term limit. If the members do a good job, they'll be re-elected; if they don't, then the city can change course. In addition, there will be less likelihood that graft will take place and more emphasis on responsible focus on serving the citizens of our town.

Regardless of political position, we've all seen the unhealthy results of a failure to implement term limits in Washington, D.C. as well as in Sacramento. Let's not have a repeat of that in our community.

...one man's view.

Best regards,

Jim Leslie



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From: [Michelle Bigelow](#)
To: [Kim Mancera](#)
Cc: [Christina Turner](#)
Subject: FW: [EXTERNAL] Vote on Term Limits
Date: Wednesday, January 17, 2024 3:49:44 PM

supplement

Michelle Bigelow, MMC, CPMC
City Clerk/Public Information Officer
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City of Morgan Hill
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From: Ibni Adam <adamfamily786@gmail.com>
Sent: Wednesday, January 17, 2024 3:48 PM
To: Mark Turner <mark.turner@morganhill.ca.gov>; Gino Borgioli <Gino.Borgioli@morganhill.ca.gov>; Yvonne Martinez Beltran <yvonne.martinezbeltran@morganhill.ca.gov>; Rene Spring <Rene.Spring@morganhill.ca.gov>; Marilyn Librers <marilyn.librers@morganhill.ca.gov>; Christina Turner <Christina.Turner@morganhill.ca.gov>; Donald Larkin <Donald.Larkin@morganhill.ca.gov>; Michelle Bigelow <Michelle.Bigelow@morganhill.ca.gov>
Subject: [EXTERNAL] Vote on Term Limits

I'm a resident of Morgan Hill and I'm asking you to please vote to oppose term limits.

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From: [Michelle Bigelow](#)
To: [Kim Mancera](#)
Cc: [Christina Turner](#)
Subject: FW: [EXTERNAL] Vote on Term Limits
Date: Wednesday, January 17, 2024 3:59:47 PM

Supplement

Michelle Bigelow, MMC, CPMC
City Clerk/Public Information Officer
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City of Morgan Hill
City Clerk's Office
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From: Saboor Ghani <saboor.ghani5@gmail.com>
Sent: Wednesday, January 17, 2024 3:53 PM
To: Christina Turner <Christina.Turner@morganhill.ca.gov>; Donald Larkin <Donald.Larkin@morganhill.ca.gov>; Gino Borgioli <Gino.Borgioli@morganhill.ca.gov>; Marilyn Librers <marilyn.librers@morganhill.ca.gov>; Mark Turner <mark.turner@morganhill.ca.gov>; Michelle Bigelow <Michelle.Bigelow@morganhill.ca.gov>; Rene Spring <Rene.Spring@morganhill.ca.gov>; Yvonne Martinez Beltran <yvonne.martinezbeltran@morganhill.ca.gov>
Subject: [EXTERNAL] Vote on Term Limits

I'm a resident of Morgan Hill and I'm asking you to please vote to oppose term limits.

Saboor Ghani

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From: [Christina Turner](#)
To: [Michelle Bigelow](#); [Kim Mancera](#)
Cc: [Donald Larkin](#)
Subject: FW: [EXTERNAL] Re: Term limits...
Date: Wednesday, January 17, 2024 4:23:21 PM

Supplement.

From: Armando Be <barmando3@gmail.com>
Sent: Wednesday, January 17, 2024 3:35 PM
To: Jim Leslie <Jim@jimleslie.com>
Cc: CityCouncil <CityCouncil@morganhill.ca.gov>
Subject: [EXTERNAL] Re: Term limits...

Good points. thanks for standing up for term limits. 12 out of 15 cities in the county have term limits. Morgan Hill, Gilroy, and Los Altos Hill are the only cities that don't. Also, every measure placed before the voters of those 12 cities passed by 75 --85% of the voters.

On Wed, Jan 17, 2024 at 3:27 PM Jim Leslie <Jim@jimleslie.com> wrote:

Morgan Hill Mayor and City Council Members:

I'd like to offer my view on term limits for your consideration.

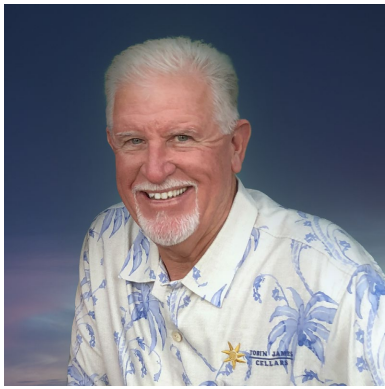
Term limits are just fine and healthy for any community. My recommendation is that the term limits for the Morgan Hill City Council member positions as well as for the mayor's office should be for two years duration with a two term limit. If the members do a good job, they'll be re-elected; if they don't, then the city can change course. In addition, there will be less likelihood that graft will take place and more emphasis on responsible focus on serving the citizens of our town.

Regardless of political position, we've all seen the unhealthy results of a failure to implement term limits in Washington, D.C. as well as in Sacramento. Let's not have a repeat of that in our community.

...one man's view.

Best regards,

Jim Leslie



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From: [Michelle Bigelow](#)
To: [Kim Mancera](#)
Cc: [Christina Turner](#)
Subject: Fwd: [EXTERNAL] "Term limits for elected city officials"
Date: Thursday, January 18, 2024 6:12:12 AM

Supplement

Michelle Bigelow, MMC, CPMC
City Clerk/Public Information Officer
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Begin forwarded message:

From: Sally Casas <scasas999@gmail.com>
Date: January 17, 2024 at 8:55:55 PM PST
To: CityCouncil <CityCouncil@morganhill.ca.gov>
Subject: [EXTERNAL] "Term limits for elected city officials"

Good evening,

Regarding tonight council meeting agenda:

Please be advised that as a voter and resident of Morgan Hill, I definitely support "term limits" for all elected officials.

Sally Casas
17305 Monterey Rd. #211
Morgan Hill, CA 95037

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From: [Michelle Bigelow](#)
To: [Kim Mancera](#)
Cc: [Christina Turner](#)
Subject: FW: [EXTERNAL] Term limits
Date: Wednesday, January 17, 2024 5:59:46 PM

Supplement

Michelle Bigelow, MMC, CPMC
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From: Janet MC ELROY <janetmichie1@gmail.com>
Sent: Wednesday, January 17, 2024 5:57 PM
To: CityCouncil <CityCouncil@morganhill.ca.gov>
Subject: [EXTERNAL] Term limits

I am a resident of Morgan Hill and I support term limits for elected officials. I think 3 terms allows the benefit of experience and also makes way for new people with new ideas.
Janet McElroy

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From: [Christina Turner](#)
To: [Michelle Bigelow](#); [Kim Mancera](#)
Subject: FW: [EXTERNAL] Term limits
Date: Thursday, January 18, 2024 12:49:44 PM

Please supplement.

-----Original Message-----

From: Susie Smith <susie2878@yahoo.com>
Sent: Wednesday, January 17, 2024 6:00 PM
To: Mark Turner <mark.turner@morganhill.ca.gov>; Gino Borgioli <Gino.Borgioli@morganhill.ca.gov>; Yvonne Martinez Beltran <yvonne.martinezbeltran@morganhill.ca.gov>; Rene Spring <Rene.Spring@morganhill.ca.gov>; Marilyn Librers <marilyn.librers@morganhill.ca.gov>; Christina Turner <Christina.Turner@morganhill.ca.gov>
Subject: [EXTERNAL] Term limits

> To Whom it May Concern;

> Is a life long resident of Morgan Hill I have never seen an issue with term limits. The voters have always made their voice count during elections. I seen no need for term limits and ask that you vote against it.

> Thank you
> Susie Smith
>

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GOVERNMENT CODE

Section 36502

36502. (a) A person is not eligible to hold office as councilmember, city clerk, or city treasurer unless he or she is at the time of assuming the office an elector of the city, and was a registered voter of the city at the time nomination papers are issued to the candidate as provided for in Section 10227 of the Elections Code.

If, during his or her term of office, he or she moves his or her place of residence outside of the city limits or ceases to be an elector of the city, his or her office shall immediately become vacant.

(b) Notwithstanding any other provision of law, the city council of a general law or charter city may adopt or the residents of the city may propose, by initiative, a proposal to limit or repeal a limit on the number of terms a member of the city council may serve on the city council, or the number of terms an elected mayor may serve. Any proposal to limit the number of terms a member of the city council may serve on the city council, or the number of terms an elected mayor may serve, shall apply prospectively only and shall not become operative unless it is submitted to the electors of the city at a regularly scheduled election and a majority of the votes cast on the question favor the adoption of the proposal. Notwithstanding the provisions of this subdivision, the provisions of any city charter that, on January 1, 1996, impose limitations on the number of terms a member of the city council may serve on the city council, or the number of terms an elected mayor may serve, shall remain in effect. Unless otherwise prohibited by a city charter, any city charter may be amended pursuant to this section or pursuant to the procedures specified in the charter, to include the limitation authorized in this subdivision.

(Amended by Stats. 1995, Ch. 432, Sec. 5. Effective January 1, 1996.)

RESOLUTION NO. 24-~~XXX~~008

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL, CALIFORNIA, SUBMITTING TO THE VOTERS AT THE NOVEMBER 5, 2024, GENERAL MUNICIPAL ELECTION, A BALLOT MEASURE TO ENACT TERM LIMITS FOR THE MAYOR, CITY COUNCIL MEMBERS, AND THE CITY TREASURER

WHEREAS, a General Municipal Election has been called and is to be held in the City of Morgan Hill, California, on Tuesday, November 5, 2024; and,

WHEREAS, it is desirable that the General Municipal Election be consolidated with the statewide Gubernatorial General Election to be held on the same date and that within the city the precincts, polling places and election officers of the two elections be the same, and that the Registrar of Voters Office of the County of Santa Clara canvass the returns of the General Municipal Election and that the election be held in all respects as if there were only one election;and

WHEREAS, Government Code section 36502 provides that a general law city may enact limits on the number of terms a member of the city council may serve by a majority vote of the electors of the city; and,

WHEREAS, on February 21, 2024 and June 19, 2024, the City Council met and considered a proposal to place term limits on the November 5, 2024, ballot; and,

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

SECTION 1. Pursuant to the requirements of the State of California, at the General Municipal Election on Tuesday, November 5, 2024, the following question shall be submitted to the voters:

Shall the measure amending the Morgan Hill Municipal Code to establish a twelve consecutive year limit on combined mayoral, and city council, <u>and treasurer</u> service be adopted?	YES
	NO

and

SECTION 2. That the text of the ~~ballot measure ordinance~~ is attached to this resolution as Attachment A.

SECTION 3. The ballots to be used at the election shall be in the form and content as required by law.

SECTION 4. That pursuant to the requirements of §10403 of the Elections Code, the Board of Supervisors of the County of Santa Clara is hereby requested to consent and agree to the consolidation of a General Municipal Election with the statewide Gubernatorial General Election on Tuesday, November ~~85~~, 2024~~2~~, for the purpose of the election of a Mayor, a Member of the City Council from District ~~AB~~, and a Member of the City Council from District ~~CD~~, a City Treasurer, and two ballot measures.

SECTION 5. That the Board of Supervisors of the County of Santa Clara is requested to issue instructions to the Registrar of Voters Office to take any and all steps necessary for the holding of the consolidated election.

SECTION 6. That the Registrar of Voters of the County of Santa Clara is authorized to canvass the returns of the General Municipal Election. The election shall be held in all respects as if there were only one election, and only one form of ballot shall be used. The election will be held and conducted in accordance with the provisions of law regulating the statewide/general election.

SECTION 7. That the City of Morgan Hill recognizes that additional costs will be incurred by the County of Santa Clara by reason of this consolidation and agrees to reimburse the County for any costs.

SECTION 8. The election on this measure shall be held, voting precincts designated, ballots be printed, polls opened and closed, ballots counted and returned, returns canvassed, the returns made, and result ascertained and determined, and all other proceedings conducted in connection with the election, under the regulations of the Registrar of Voters of Santa Clara County, in accordance with the provisions of the law governing general municipal elections in general law cities.

SECTION 9. The City Council authorizes all members of the City Council to file written argument(s) In Favor of or Against the measure described in Section 1 above, not exceeding 300 words, accompanied by the printed name(s) and signature(s) of the author(s) submitting it, in accordance with Article 4, Chapter 3, Division 9 of the Elections Code of the State of California.

SECTION 10. An argument for or against the measure shall not exceed 300 words in length. If more than one argument is submitted for the measure or more than one argument against the measure, the City Clerk shall select the argument to be included with the ballot materials. The arguments may be changed or withdrawn until and including the date fixed by the City Clerk, after which no arguments for or against the measure may be submitted to the City Clerk.

SECTION 11. The primary arguments for and against the measure shall be submitted to the City Clerk by five p.m. on August 9, 2024, to meet the deadline established by the Santa

Clara County Registrar of Voters for primary arguments. The arguments shall be filed with the City Clerk, signed, with the printed name(s) and signature(s) of the author(s) submitting it, or if submitted on behalf of an organization, the name of the organization and the printed name and signature of at least one of its principal officers who is the author of the argument. The arguments shall be accompanied by the Form of Statement to Be Filed by Author(s) of the Argument to be provided by the City Clerk.

SECTION 12. In accordance with Elections Code section 9285(b), the City of Morgan Hill hereby authorizes the filing of rebuttal arguments as set forth below and in accordance with state law.

The elections official shall send a copy of an argument in favor of the proposition to the authors of any argument against the measure and a copy of an argument against the measure to the authors of any argument in favor of the measure immediately upon receiving the arguments.

The author, or a majority of the authors, of any argument relating to the measure may prepare and submit a rebuttal argument not exceeding 250 words or may authorize in writing any other person or persons to prepare, submit, or sign the rebuttal argument.

A rebuttal argument may not be signed by more than five authors.

The rebuttal arguments shall be filed with the City Clerk, signed with the printed name(s) and signature(s) of the author(s) submitting it, or if submitted on behalf of an organization, the name of the organization and the printed name and signature of at least one of its principal officers, by five p.m. on August 16, 2024, to meet the deadline established by the Santa Clara County Registrar of Voters for rebuttal arguments. The rebuttal arguments shall be accompanied by the Form of Statement to be provided by the City Clerk and to be filed by the author(s) of the argument.

Rebuttal arguments shall be printed in the same manner as the direct arguments. Each rebuttal argument shall immediately follow the direct argument which it seeks to rebut.

SECTION 13. The City Attorney shall prepare an impartial analysis of the measure.

SECTION 14. That in all particulars not recited in this resolution, the election shall be held and conducted as provided by law for holding municipal elections.

SECTION 15. If, at the election, a majority (50% plus 1) of the votes cast on the measure are in favor of the measure, then the measure shall be deemed to have been accepted and approved by the votes upon the date that the City of Morgan Hill declares the vote and shall go into effect ten (10) days after that date, pursuant to Section 9217 of the Elections Code.

SECTION 16. That notice of the time and place of holding the election is given, and the City Clerk is authorized, instructed, and directed to give further or additional notice of the election in time, form, and manner as required by law.

SECTION 17. That the City Clerk shall certify the passage and adoption of this resolution and enter it into the book of original Resolutions.

PASSED AND ADOPTED by the City Council of the City of Morgan Hill at a regular meeting held on the ~~21st~~-19th day of ~~February~~-June 2024 by the following vote:

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

∞ 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~~008, adopted by the City Council at a Regular Meeting held on ~~February 21~~June 19, 2024.

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

DATE: _____

MICHELLE BIGELOW, City Clerk

ATTACHMENT A

ORDINANCE NO. _____, NEW SERIES

**AN ORDINANCE OF THE CITY OF MORGAN HILL ADDING
A NEW SECTION 1.16.025 (“TERM LIMITS”) TO CHAPTER
1.16 (“ELECTIONS”) OF TITLE 1 (“GENERAL PROVISIONS”)
OF THE MORGAN HILL MUNICIPAL CODE**

THE PEOPLE OF THE CITY OF MORGAN HILL DO ORDAIN AS FOLLOWS:

SECTION 1: Section 1.16.025 (“Term Limits”) of Chapter 1.16 (“ELECTIONS”) of Title 1 (“GENERAL PROVISIONS”) is hereby added to read as follows:

1.16.025 – Term Limits

- A. A person may serve a combined maximum of twelve consecutive years of elective terms as ~~either~~ a City Councilmember, ~~or as~~ Mayor, or Treasurer.
- B. Once a person reaches the combined consecutive elective terms provided in subsection A, the former Councilmember, ~~or~~ Mayor, or Treasurer is not eligible to be a candidate for election or appointed to serve again on the City Council until the expiration of four years following the end of the officer’s elective service.
- C. If a person has only two available years of service remaining under the combined term limit provided in subsection (A), that person is not eligible to be a candidate for a four-year seat until the expiration of four years following their last service. The person may thereafter serve as Mayor, ~~or a~~ Councilmember, or Treasurer as provided in subsection (B).

SECTION 2. Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

CITY COUNCIL STAFF REPORT

MEETING DATE: June 19, 2024

PREPARED BY:

Tanya Carothers, Environmental Services Administrator

APPROVED BY: City Manager

ADOPT A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A MEMORANDUM OF AGREEMENT TO PARTICIPATE IN THE REGIONAL PUBLIC FACILITY RESILIENCY IMPLEMENTATION PROJECT AND SECURE GRANT FUNDS IN AN AMOUNT OF \$3.6 MILLION

RECOMMENDATION(S)

1. Adopt a resolution authorizing the City Manager or her designee to negotiate and execute a Memorandum of Agreement as a Partner Agency for the purpose of securing grant funds in the amount of \$3,599,871 from the United States Environmental Protection Agency's Climate Pollution Reduction Grants program.
2. Authorize the City Manager or her designee to negotiate and execute any documents necessary to accept and effectuate the grants.

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Protecting the Environment

Maintaining and Enhancing Infrastructure

Supporting our Youth, Seniors, and Entire Community

2024-2025 Strategic Priorities

Fiscal Sustainability

Healthy Community

Guiding Documents

Climate Action Plan

REPORT NARRATIVE:

The purpose of this report is to provide the City Council with an opportunity to consider adopting a resolution (Attachment 1) that would allow the City to enter into a Memorandum of Agreement (MOA) (Attachment 2) that will enable the City to participate as a coalition partner in the Public Facility Resiliency Implementation Project (PFRIP) and secure grant funds in the amount of \$3,599,871 from the United States Environmental Protection Agency's Climate Pollution Reduction Grants program.

The PFRIP will be a regional funding source and implementation project for design and

construction of publicly owned and operated fuel-switching, electric vehicle (EV) charging, and solar/battery storage projects in Santa Clara County, California. As a Coalition led by Silicon Valley Clean Energy (SVCE), the Cities of San José, Sunnyvale, Morgan Hill, Mountain View, and Cupertino, in collaboration with San Francisco Bay Area Planning and Urban Research Association (SPUR) and Prospect Silicon Valley, will implement greenhouse gas (GHG) reduction measures at 62 critical and community-serving facilities, throughout the County, all meeting EPA-defined disadvantaged criteria and \$49,999,997 worth of electrification projects and supporting performance assessments and community engagement activities.

Under the grant, the City of Morgan Hill would commit to the oversight, management, and completion of the Centennial Recreation Center (CRC) Electrification Project, which includes the following components:

- Replacement of four gas boilers with electric boilers
- Replacement of the pool heater with an electric heat pump
- Replacement of Kitchen appliances with electric appliances
- Increase in microgrid battery storage
- Required electrical upgrades to support these enhancements
- Installation of an electric vehicle charging unit
- Installation of a mural completed by a local artist that will incorporate a clean energy theme and designed to inspire and intrigue across Morgan Hill's diverse cultural and socioeconomic backgrounds
- Ongoing public engagement and outreach for the life of the project.

COMMUNITY ENGAGEMENT:

Involve

As part of the Grant submittal, the City engaged with community based organizations to acquire partnership opportunities and support for this project. The City received letters from seven organizations, six of which included a commitment to partner on the project through participation in engagement and outreach opportunities within the community for the duration of the project. Letters received were from the American Association of University Women (AAUW) - Morgan Hill, Morgan Hill Community Garden, Climate Action Pathways for Schools, Mothers Out Front Silicon Valley, Elders Climate Action – Northern California Chapter, Morgan Hill Youth Climate Action Team, and Silicon Valley Youth Climate Action.

The Centennial Recreation Center (CRC) Electrification Project is consistent with the City's Climate Action Plan (CAP) goal to convert all municipal buildings to all-electric by 2035. Implementing the project will essentially be one big community engagement activity as residents see changes to their local recreation center, the addition of local art via a mural, and also community events organized by SPUR to showcase completed projects.

ALTERNATIVE ACTIONS:

The Council could decide to not approve the resolution and direct staff not to accept the grant funding, if offered. This would result in the following missed opportunities: for the City to move toward achievement of CAP goals; to improve local air quality; participate in a regional initiative that will significantly reduce GHG emissions; grant funding to come to the City; and to engage with residents in a meaningful way on the topic of community resiliency to impacts from climate change.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On December 15, 2021, [the City adopted a Climate Action Plan](#) which guides City staff to work toward achieving building electrification goals and actions, including a goal to convert all municipal buildings to all-electric by 2035.

FISCAL AND RESOURCE IMPACT:

The grant amount is expected to fully cover the estimated Centennial Recreation Center (CRC) Electrification Project cost of \$3.6 million. Additionally, there should not be an increase in operating costs from switching to electric. Furthermore, the project will replace our aging infrastructure, which is also nearing end of life. The Grant will require a significant amount of staff time, therefore, the Grant includes funding for a 0.4 FTE to cover the time that will be needed to complete this project. Engagement in clean energy initiatives are included in the work program of the Public Services Department.

CEQA (California Environmental Quality Act):

Categorical Exemption

The Project is the retrofit of an existing building and install of an electric vehicle charger, and will occur within an existing building footprint and its associated parking lot. The project will be exempt under the California Environmental Quality Act (CEQA) section 15301 *Existing Facilities*.

RESOLUTION NO. 24-xxx

**A RESOLUTION OF THE COUNCIL OF THE CITY OF
MORGAN HILL AUTHORIZING THE CITY MANAGER OR
HER DESIGNEE TO NEGOTIATE AND EXECUTE A
MEMORANDUM OF AGREEMENT AS A PARTNER
AGENCY FOR THE PURPOSE OF SECURING GRANT
FUNDS FROM THE UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY’S CLIMATE POLLUTION
REDUCTION GRANTS PROGRAM AND NEGOTIATE AND
EXECUTE ANY DOCUMENTS NECESSARY TO ACCEPT
AND EFFECTUATE THE GRANTS**

WHEREAS, the United States Environmental Protection Agency (“EPA”) has established the Climate Pollution Reduction Grants program under the 2022 Inflation Reduction Act, offering planning and implementation grants to support ambitious measures for significant cumulative greenhouse gas (“GHG”) reductions; and

WHEREAS, the Climate Pollution Reduction Grants program provides funds in two (2) phases, planning grants and implementation grants, with planning grants to be utilized for the development of priority climate action plans and competitive implementation grants to be utilized to implement GHG reduction programs, policies, projects, and measures identified in priority climate action plans; and

WHEREAS, on September 23, 2023, the United States EPA released the Notice of Funding Opportunity for the Climate Pollution Reduction Grants program; and

WHEREAS, the County of Santa Clara submitted a Priority Climate Action Plan which enables eligible lead organizations and coalitions of partners to apply for implementation grants; and

WHEREAS, the City intends to serve as a Coalition Partner Agency, demonstrating a collaborative and regional approach to maximizing greenhouse gas reductions and community benefits; and

WHEREAS, the City desires to authorize the City Manager or her designee to accept grant funds from the United States EPA Climate Pollution Reduction Grants program as a coalition partner along with other jurisdictional coalition partners which will allow the City to reduce GHG emissions from municipal buildings.

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

The City Manager or her designee is hereby authorized to:

1. Negotiate and execute a Memorandum of Agreement as a Partner Agency for the purpose of securing grant funds from the United States Environmental Protection Agency’s Climate Pollution Reduction Grants program.
2. Negotiate and execute any documents necessary to accept and effectuate the grants.

PASSED AND ADOPTED by the City Council of the City of Morgan Hill at its meeting held on this 19th day of June, 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 June 19, 2024.

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

DATE: _____

MICHELLE BIGELOW, City Clerk

**MEMORANDUM OF AGREEMENT AMONG COALITION PARTNERS FOR
PUBLIC FACILITY RESILIENCY IMPLEMENTATION PROJECT
ADMINISTRATION AND IMPLEMENTATION**

This Memorandum of Agreement (“MOA”) is entered into by and between Silicon Valley Clean Energy, a joint powers authority registered in the state of California; City of Cupertino, a municipal corporation of the state of California; City of Morgan Hill, a municipal corporation of the state of California; City of Mountain View, a municipal corporation of the state of California; City of San José, a municipal corporation of the state of California; City of Sunnyvale, a municipal corporation of the state of California; Prospect Silicon Valley, a nonprofit corporation registered in the state of California; and SPUR – San Francisco Bay Area Planning & Urban Research Association, a nonprofit corporation registered in the state of California; collectively “Parties” or “Coalition Partners” or individually as a “Party” or “Coalition Partner.”

RECITALS

- A. The impacts of climate change have contributed to a warming climate and power outages, which call for improvements at public facilities to make them more resilient and energy-independent;
 - B. Silicon Valley Clean Energy (“SVCE”) provides clean electricity service, and has an interest in supporting reliable and resilient electricity service and reducing the costs to provide this service through achieving greater economies of scale by displacing fossil gas consumption with greater use of clean electricity and through the efficient use of energy among public facilities in its service area;
 - C. The Parties have worked collaboratively to identify and plan for the installation of improvements in public buildings in the jurisdictions of Cupertino, Morgan Hill, Mountain View, San José, and Sunnyvale to enhance resiliency and reduce greenhouse gas (“GHG”) emissions;
 - D. The 2022 Inflation Reduction Act (“IRA”) established the Climate Pollution Reduction Grants (“CPRG”) program which provides funds for implementation grants administered by the United States Environmental Protection Agency (“EPA”);
 - E. The Parties jointly prepared a CPRG application (“Grant Application”) for submission to the EPA entitled the *Public Facility Resiliency Implementation Project* (“PFRIP”) to obtain implementation grant funding (“Grant”) to design, construct, and evaluate the identified public building improvements;
 - F. SVCE submitted said Grant Application on behalf of the Parties to the EPA on April 1, 2024, with SVCE acting as “Lead Coalition Partner”;
 - G. On March 26, 2024, the City of San José adopted Resolution No. RES2024-83 to become a Coalition Partner.
 - H. On March 26, 2024, the City of Mountain View adopted Resolution No. 18878 authorizing the City Manager or their designee to execute a Memorandum of Agreement with partnering agencies.
 - I. On June 4, 2024, the City of Cupertino adopted Resolution No. 24-050 to become a Coalition Partner.
 - J. On June 18, 2024, the City Council of the City of Sunnyvale approved Sunnyvale’s participation as a Coalition Partner by approving this Memorandum of Agreement.
- .

K. On June 19, 2024, the City of Morgan Hill adopted a resolution to become a Coalition Partner.

L. The Parties desire to execute this MOA to govern the use of Grant funds to implement the PFRIP and to set out the obligations of the Parties for the life of the Grant term; and

M. This MOA establishes policies, responsibilities, and obligations of the Parties.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

SECTION 1. PURPOSE OF THE MOA

The purpose of this MOA is to establish:

- The obligations and responsibilities of each Party for the management and operation of the PFRIP.
- Agreed upon roles, responsibilities, and commitments made by each Party to ensure PFRIP success is aligned with overall PFRIP goals, objectives, and target outputs.
- An operating model for the Parties.
- How the collaboration and partnerships associated with the Parties will benefit the PFRIP.
- The resources each Party will contribute to the PFRIP.

SECTION 2. EFFECTIVE DATE AND TERM

This MOA shall be effective on June 30, 2024, and shall remain effective until all obligations associated with the awarded Grant have been fulfilled, subject to the termination provisions below. For information purposes only, the anticipated performance period for the Grant is expected to begin October 1, 2024 and end December 31, 2029; however, the exact period may vary. This MOA shall terminate early in the event that Grant funds are not awarded or in the event that Grant funds are rescinded and all of the Parties' obligations associated with the rescinded Grant funds have been fulfilled. In the event that the Grant is funded in an amount less than the requested \$49,999,997, the Parties shall immediately meet and confer regarding the feasibility of the PFRIP and possible modifications to the project list for the PFRIP. The Parties shall document any proposed changes to the PFRIP in writing. If the Parties do not agree to accept the Grant funds and perform the PFRIP with a reduced award, SVCE shall not execute the Grant agreement associated with the Grant award and this MOA will terminate upon the expiration of the period during which the Grant agreement must be signed to accept awarded funds.

SECTION 3. RESPONSIBILITIES OF THE PARTIES

For purposes of the Grant, SVCE, as the lead applicant and Lead Coalition Partner, shall report to the EPA, oversee the full scope of work, and oversee the proper financial management of the Grant. All Parties commit to perform the obligations as described in the PFRIP workplan, attached as Exhibit A of this MOA and incorporated herein by this reference ("PFRIP Workplan"), and to expend Grant funds as described in the PFRIP budget, attached as Exhibit B of this MOA and incorporated herein by this reference ("PFRIP Budget"). The Grant narrative submitted to the EPA is included as Exhibit C, and is included to provide further context for the obligations agreed to in Exhibit A. All Parties other than SVCE are Grant subrecipients and shall be accountable to and support SVCE, lead applicant, for proper

use of Grant funding and successful PFRIP implementation. Parties shall not terminate or reduce their obligations under this MOA unless all Parties agree in writing and, to the extent it is required, the EPA supports the modification. No Party shall unreasonably withhold agreement to termination or reduction of obligations, and all parties shall reasonably cooperate in seeking EPA approval for such modifications.

SECTION 4. COSTS

The Parties anticipate that the Grant funds will be sufficient to complete the PFRIP completely and in conformance with the PFRIP Workplan and agree to take all reasonable and necessary steps to complete the PFRIP within the PFRIP Budget. However, in the event that Grant funds are not adequate to complete PFRIP, the Parties will immediately meet and confer to discuss how to address budget shortfalls. Each Party agrees to work in good faith to resolve budget shortfalls with the goal of completing the proposed or modified projects identified in the Work Plan through methods that may include seeking additional funding from their respective agencies, reducing project scopes, or similar modifications to bring a project within budget. However, the Parties acknowledge that the resolution of budget shortfalls may require additional commitments that are unknown and may require additional approval from their Boards or City Councils and that the outcome of such approvals cannot be guaranteed. The Parties agree that any resolution to such budget shortfalls shall not be contrary to, nor cause a breach or violation of the obligations and responsibilities contained in the Grant agreement executed between the EPA and SVCE, nor be contrary to any EPA requirements associated with the Grant. The Parties agree to cooperate in good faith as provided in Sections 3 and 4 of this MOA to seek EPA approval to modify or remove projects if Grant funds are inadequate to complete a PFRIP project.

SECTION 5. RECORDS AND ACCOUNTS AND THEIR RETENTION

SVCE, as well as all other Parties, will keep complete and accurate financial, payroll, and procurement records related to the PFRIP. Upon reasonable notice to another Party, any Party to this MOA may inspect the financial records of another Party related to the PFRIP. Financial records, supporting documents, statistical records, and all other records pertinent to the PFRIP must be retained by all Parties for a period of seven years from the date of termination or expiration of this MOA. If there is litigation, claims, audits, negotiations or other actions that involve any of the records cited and that have started before the expiration of the retention period, then such records must be retained until completion of the actions and resolution of all issues, or the expiration of the retention, whichever occurs later. The Parties to this MOA are subject to the California Public Records Act and shall cooperate with each other in regard to any request for records.

SECTION 6. FURTHER ASSURANCES

6.1 Additional Documents: Each Party will adopt, execute, and make any and all further assurances, documents, instruments, and resolutions as may be reasonably necessary or proper to carry out the intention or to facilitate the Party's performance of their obligations under this MOA.

6.2: Compliance with Law. Each Party shall keep itself informed of all local, state and federal ordinances, laws and regulations which in any manner affect those employed by it or in any way

affect the performance under this MOA. Each Party shall at all times observe and comply with all such ordinances, laws and regulations. Each Party shall be fully responsible for complying with all California public works and public bidding requirements including but not limited to payment of prevailing wage. To the extent required by California law, each Party shall ensure that prevailing wages are paid, that the project budget for labor reflects these prevailing wage requirements, and that the project complies with all other requirements of prevailing wage law. Each Party is responsible for any environmental review necessitated by its project. The other Parties shall not be liable at law or in equity occasioned by failure of another Party to comply with this section.

6.3: Compliance with Terms of EPA Grant Agreement: If Grant is awarded, SVCE shall provide each Party with a copy of the final EPA Grant Agreement. Each Party affirms that it will review the EPA Grant Agreement and agrees to comply with all applicable terms therein and to cooperate and assist SVCE with compliance.

SECTION 7. REPRESENTATIONS AND WARRANTIES

Each Party represents and warrants to all other Parties as follows:

7.1 Authority: Each Party has the full legal right, power, and authority under the laws of the State of California to enter into this MOA and to carry out all of its obligations herein.

7.2 Due Execution: Each Party's representatives who sign this MOA are duly authorized to sign and bind their respective agency.

7.3 Valid, Binding, and Enforceable Obligations: This MOA has been authorized and executed by each Party and constitutes the legal, valid, and binding agreement of the Parties, and is enforceable according to its terms.

SECTION 8. REMEDIES NOT EXCLUSIVE

Any failure by any Party to perform the responsibilities outlined herein, including all Exhibits attached hereto, shall be deemed a breach of this MOA. In the event of any dispute regarding the proper interpretation of this MOA, the Parties shall first immediately meet and confer to attempt to resolve the dispute. If the dispute remains unresolved, the Parties may agree to mediation or other non-binding resolution processes or may pursue any other remedies available in law or equity. Notwithstanding any other available remedies, Parties must return any Grant disbursements to SVCE that were not utilized consistent with the terms of this MOA or the EPA Grant Agreement. SVCE retains the right to withhold Grant disbursements from any Party whose performance is inconsistent with the terms of this MOA or the EPA Grant Agreement.

SECTION 9. INDEMNIFICATION

In lieu of and notwithstanding the pro rata risk allocation, which might otherwise be imposed between the Parties pursuant to Government Code Section 895.6, the Parties agree that all losses or liabilities incurred by a Party shall not be shared pro rata but, instead, the Parties agree that, pursuant to Government Code Section 895.4, each of the Parties hereto shall fully indemnify and hold each of the

other Parties, their officers, board members, employees, and agents, harmless from any claim, expense or cost, damage, penalty, or liability imposed for injury (as defined in Government Code Section 810.8) occurring by reason of breach of this MOA or the negligent acts or omissions or willful misconduct of the indemnifying Party, its officers, employees, or agents, under or in connection with or arising out of any work, authority, or jurisdiction delegated to such Party under this MOA. No Party, nor any officer, board member, or agent thereof shall be responsible for any damage or liability occurring by reason of the breach of this MOA, negligent acts or omissions or willful misconduct or intentional acts of any other Party hereto, its officers, board members, employees, or agents, under or in connection with or arising out of any work authority or jurisdiction delegated to such other Party under this MOA. The obligations set forth in this paragraph will survive the termination and expiration of this MOA.

SECTION 10. SEVERABILITY

The provisions of this MOA shall be severable, and if any clause, sentence, paragraph, provision, or other part shall be adjudged by any court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions of this MOA will be valid and binding on the Parties.

SECTION 11. AMENDMENTS

This MOA may only be amended by a written agreement signed by all of the Parties.

SECTION 12. COUNTERPARTS

This MOA may be executed in counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

SECTION 13. USE OF ELECTRONIC SIGNATURES

Unless otherwise prohibited by law, 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 SVCE. For the purposes of this MOA, the approved methods of signing shall be via DocuSign or original ink signature signed in counterpart and scanned over to SVCE via electronic mail.

SECTION 14. INTERPRETATION, PRIOR AGREEMENTS AND AMENDMENTS.

This MOA, including all Exhibits attached hereto, represents the entire understanding of the Parties as to those matters contained herein. In the event that the terms specified in any of the Exhibits attached hereto conflict with any of the terms specified in the body of this MOA, the terms specified in the body of this MOA shall control. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This MOA may be modified only by a written amendment duly executed by the Parties to this MOA.

SECTION 15. NO LEGAL RELATIONSHIP

By entering into this MOA, the Parties are neither forming, nor do they intend to form a partnership, agency, or any other legal entity relationship. No Party is authorized to bind or to act as the agent or legal representative of the other Party for any purpose, and neither Party is granted any express or implied right or authority to assume or create any obligation or responsibility on behalf of or in the name of any other Party.

SECTION 16. GOVERNING LAW AND VENUE

This MOA has been executed and delivered in, and shall be construed and enforced in accordance with, the laws of the State of California. In the event that a suit shall be brought by any Party to this MOA, the Parties agree that the venue shall be exclusively vested in the state courts of the County of Santa Clara or, where otherwise appropriate, exclusively in the United States District Court, Northern District of California, San Jose, California.

SECTION 17. NOTICES

Any notices provided under this MOA must be in writing and may be given either by mail or e-mail to the following addresses:

SVCE

Monica Padilla: monica.padilla@svcleanenergy.org

Anthony Eulo: anthony.eulo@svcleanenergy.org

and

SVCE

333 W. El Camino Real, Suite 330

Sunnyvale CA 94087

Attention: Chief Executive Officer

City of Cupertino

Pamela Wu: PamelaW@cupertino.gov

Ursula Syrova: UrsulaS@cupertino.gov

City of Morgan Hill

Chris Ghione: Chris.Ghione@morganhill.ca.gov

Tanya Carothers: tanya.carothers@morganhill.ca.gov

Barbara Voss: Barbara.Voss@morganhill.ca.gov

City of Mountain View

Denise Lin

City of Mountain View

500 Castro Street.

Mountain View, CA 94041

denise.lin@mountainview.gov

City of San Jose
Carol Boland Whattam
City of San Jose
200 E Santa Clara St., 5th Floor,
San Jose, CA 95113

City of Sunnyvale
Christina Raby
City of Sunnyvale
456 W. Olive Ave.
Sunnyvale, CA 94086

Prospect Silicon Valley
Doug Davenport
Prospect Silicon Valley
3031 Tisch Way, 110 Plaza West
San Jose, CA 95128
doug.davenport@prospectsv.org

SPUR
Sarah Atkinson, Sam Fishman, Pia Gheen
SPUR
654 Mission Street
San Francisco, CA 94105

IN WITNESS OF, the Parties have executed the MOA as of the last date set forth below:

Silicon Valley Clean Energy
Date:

Approval as to form, Silicon Valley Clean Energy Counsel
Date:

City of Cupertino
Date:

Approval as to form, Cupertino City Attorney
Date:

City of Morgan Hill

Date:

Approval as to form, Morgan Hill City Attorney

Date:

City of Mountain View

Date:

Approval as to form, Mountain View City Attorney

Date:

City of San José, Director of the Office of the City Manager, Sarah Zarate

Date:

Approval as to form, San José City Attorney, Arlene Silva

Date:

City of Sunnyvale

Date:

Approval as to form, Sunnyvale City Attorney

Date:

Prospect Silicon Valley Chief Executive Officer

Date:

SPUR Executive Director

Date:

Chief Financial Officer

Date:

EXHIBIT A
PFRIP WORKPLAN

SECTION 1: OVERALL PROJECT SUMMARY AND APPROACH

The Public Facility Resiliency Implementation Project ('PFRIP') will be a regional funding source and implementation project for design and construction of publicly owned and operated fuel-switching, electric vehicle ('EV') charging, and solar/battery storage projects in Santa Clara County, California. As a Coalition led by Silicon Valley Clean Energy ('SVCE'), the Cities of San José, Sunnyvale, Morgan Hill, Mountain View, and Cupertino, in collaboration with SPUR and Prospect Silicon Valley ('ProspectSV'), will implement greenhouse gas (GHG) reduction measures at 62 critical and community-serving facilities all meeting EPA-defined disadvantaged criteria and \$49,999,997 worth of electrification projects and supporting performance assessments and community engagement activities.

SECTION 2: RESPONSIBILITIES OF SILICON VALLEY CLEAN ENERGY ("SVCE")

- Act as the Lead Coalition Partner
- Submit a Memorandum of Agreement ("MOA") signed by all Coalition Partners by July 1, 2024, to EPA
- Establish the Public Facility Resiliency Fund (Fund)
- Manage the contractor selection process for the consultant to perform the GHG Performance Analysis and related work required for the project
- Ensure timely distribution of the Fund (see Section 3) to the Coalition Partners for use in PFRIP Semi-annual reports including submitting reimbursement receipts to the EPA every six months following award acceptance, on March 31 and September 30, or the closest prior business day, annually. The Project Plans for GHG Performance and Building Design Performance and each's respective Quality Assurance Performance Plan (QAPP), and the Low Income Benefit Report and Community Engagement Plan, will be submitted by September 30, 2025. The Final Project Report and reimbursement receipts will be submitted by September 30, 2029.

SECTION 3: RESPONSIBILITIES OF ALL COALITION PARTNERS

- City Coalition Partners are responsible for leading the design, construction, inspection, and maintenance of their GHG reduction measures; take an active role in planning and implementing the project equity analysis, performance evaluation, community engagement, and workforce development activities; and fulfilling all reporting requirements, for activities that take place in its jurisdiction.
- City Coalition Partners shall contract for design and construction as needed, within its jurisdiction
- Cooperate and submit all necessary and requested information to SVCE in a complete and timely manner, for SVCE to submit any reports or documentation required by the Grant Agreement.
- Coalition will meet monthly to plan upcoming activities, review recent progress, share news, challenges, lessons learned, and best practices, and coordinate activities. All final report information and receipts will be provided to SVCE by Coalition Partners no later than two weeks prior to a relevant reporting deadline to ensure timely report submittal to the EPA. Semi-annual reports will be provided on March 31 and September 30, or the closest prior

business day, throughout the Grant term until the Final Report due date of September 30, 2029.

- Funding shall be disbursed by SVCE to Coalition Partners as follows:
 - SVCE shall develop and distribute a reporting and reimbursement schedule within three months of executing the Grant Agreement that will establish deadlines for the receipt of reports and reimbursement requests and describe the reporting format and contents for the reports. These requirements will be established to comply with the Grant Agreement;
 - Coalition partners submit progress reports and reimbursement requests that comply with the Grant Agreement executed with the EPA on or prior to the submittal deadline established by SVCE for the reporting period;
 - SVCE shall submit all qualifying and complete reimbursement requests received to the EPA for the reporting period;
 - SVCE shall distribute funding to Coalition Partners within 30 days of receiving funding from the EPA.

SECTION 4: RESPONSIBILITIES OF CITY OF CUPERTINO (“CUPERTINO”)

- Do all things necessary to implement the following project (“Cupertino Project”): upgrades to the cooling, heating, and water heating components at Quinlan Community Center. The Cupertino Project will install Heat Pump HVAC and Heat Pump Water Heating. The Cupertino Project will include HPWH and HVAC retrofit requiring full construction planning, design, and bid package and is expected to include an 18-month performance period.

SECTION 5: RESPONSIBILITIES OF CITY OF MORGAN HILL (“MORGAN HILL”)

- Do all things necessary to implement the following project (“Morgan Hill Project”): Centennial Recreation Center (“CRC”) Electrification Project, which includes the following components:
 - Replacement of 4 gas boilers with electric boilers
 - Replacement of the pool heater with an electric heat pump
 - Replacement of Kitchen appliances with electric appliances
 - Increase in microgrid battery storage
 - Required electrical upgrades to support these enhancements
 - Installation of an electric vehicle charging unit

Morgan Hill will seek meaningful engagement with low-income and disadvantaged communities continuously for the life of the Grant by providing outreach, engagement, input opportunities, and information about the project in both English and Spanish languages. Morgan Hill will partner with local groups including the public library, AAUW, and climate action groups to reach a wide range of residents. Additionally, Morgan Hill is proposing to install a mural completed by a local artist that will incorporate a clean energy theme. The artwork will be designed to inspire and intrigue across Morgan Hill’s diverse cultural and socioeconomic backgrounds.

SECTION 6: RESPONSIBILITIES OF CITY OF MOUNTAIN VIEW (“MOUNTAIN VIEW”)

- Do all things necessary to implement the following projects (“Mountain View Project(s)”): Resiliency and decarbonization infrastructure improvements in the form of Solar and battery installation, and heat pump HVAC installation at two sites: Mountain View Sports Pavilion at Graham Middle School - 191.5 kW Solar & 2.5 MWh BESS & Heat Pump HVAC and Whisman Sports Center at Crittenden Middle School - - 66.7 kW Solar & 250 kWh BESS

Mountain View will provide in-kind community engagement with low-income and disadvantaged communities throughout the development and implementation of the grant. Mountain View’s Sustainability and Resiliency Division and Multicultural Engagement Program (“MEP”) would partner to provide linguistically and culturally appropriate outreach to incorporate community input and provide updates throughout the grant process. Mountain View is also undergoing other planning processes that will involve community engagement around resiliency infrastructure and programming that can be leveraged for PFRIP. Mountain View will consider community feedback from these processes to inform the CPRG projects.

SECTION 7: RESPONSIBILITIES OF CITY OF SAN JOSE (SAN JOSE)

- Do all things necessary to implement the following projects (“San José Project(s)”):

Microgrid construction at six critical facilities:

- Roosevelt Community Center - 200 kW Solar System & 800 kWh BESS¹ & Controller
- Happy Hollow– Kelley Park Campus - 200 kW Solar System, 1200 kWh BESS & Controller
- Fire Stations 23, 32, and 36 – each 75 kW Solar System, 176 kWh BESS & Controller
- Fire Training & Emergency Operations Center - 880kWh and 660kWh BESS & Controller

The San José Project will also:

- Retrofit 100 gas water heaters at 50 facilities citywide with heat pumps,
- Install 60 Level 2 EV chargers at the EOC that will be available for public use,
- Develop a Project Website and social media to display PFRIP GHG emissions reductions and milestones in real-time, and
- Hold translated meetings and a celebratory Climate Art Fair to engage community members in climate action and inform them about the facility improvements.

San José’s 100 Heat Pump Water Heater Retrofits at 50 facilities: San José will contract with one its existing vendors for purchase of heat pump water heating (“HPWH”) equipment and conduct installations using existing Citywide Facilities Maintenance Staff or contractors. HPWH will be installed at a rate of 2 per month following an initial training period, sponsored through the Project Work Force Development plan (see Section 9). All projects are expected to be installed and inspected by June 30, 2029.

San José’s Roosevelt Community Center, Happy Hollow-Kelley Park Campus and Fire Station 32 has already been designed and the other two will move immediately to construction bid package procurement. The three projects are expected to have two (2) year performance periods and serve as baseline comparison models for the Design Parameters Analysis.

- Four (4) events total will be planned to showcase completed projects and encourage climate action countywide, two by the San José Office of Economic and Cultural Affairs as a Climate Art Fair, and two by SPUR (see Section 10).

¹ Battery Energy Storage System (BESS)

- San José will host a Project Website including GHG Dashboard for displaying reduced emissions as projects are completed, and 5 community presentations translated into the County's three (3) widely spoken non-English languages of Spanish, Vietnamese, and Mandarin Chinese including live translation for community meetings.
- The project includes a focused community engagement plan that will build upon San José's Climate action plans and City Infrastructure Strategy that are informed by prior extensive community, technical, and stakeholder processes.
- San José partners with the Santa Clara County Office of Labor Standard Enforcement on prevailing wage and wage theft policies to ensure countywide wage equity and prevent wage theft. San José's Office of Equality Assurance will oversee prevailing wages for the project and help monitor companies who would be contracted for project implementation to ensure that their workers are properly paid for the work they do.

SECTION 8: RESPONSIBILITIES OF CITY OF SUNNYVALE ("SUNNYVALE")

- Do all things necessary to implement the following projects ("Sunnyvale Project(s)")

All-electric rebuild of two critical facilities:

Sunnyvale Project- Fire Station 2 will install (based on initial design estimations):

- 12 electric rooftop packaged heat pump HVAC with optimizers
- Up to two 80-gallon electric heat pump water heaters
- 2 built-in induction cooktops
- 4 EV chargers for all-electric fire trucks at the station and EV infrastructure upgrades
- 75 kWh Solar + 176 kWh BESS
- Community engagement - digital dashboard in lobby or front of building
- Design and construction

Sunnyvale Project- Water Pollution Control Plant , Cleanwater Center will install (based on initial design estimations):

- 114 kW Solar System
- 1 Heat Pump Water Heater
- 3 Electric Heat Pump HVAC units and 1 large HVAC heat pump
- Electrical Design and Construction

The Fire Station 2 project will have already been designed at the start of year one and will be ready to move immediately to Permitting. The Water Pollution Control Plant project will be in Planning and Design at the start of year one and, by the end of year one, will have moved to Permitting. Both projects are expected to have two-year performance periods and serve as baseline comparison models for the Design Parameters Analysis.

- Sunnyvale plans to bolster its engagement with low-income and disadvantaged communities throughout the development and implementation period of the Grant term using in-kind funds
- Sunnyvale's Sustainability team plans to partner with the City's EAI team to develop outreach materials in Spanish, Mandarin and Tagalog to design linguistically and culturally appropriate outreach materials for engagement throughout the Grant term.

SECTION 9: RESPONSIBILITIES OF PROSPECT SILICON VALLEY (“PROSPECTSV”)

- Lead Design Parameters Performance and Workforce Development
- Lead the design parameters performance evaluation and workforce development activities
- Contract with an experienced engineering team from Point Energy Innovations and IDEAs Consulting to lead the Coalition in establishing a basis of design for each project to be performed under PFRIP. The approach will be as follows and include a QAPP:
 - Develop a *Roadmap for Community Resilience Center Features (Roadmap)*. These will be Design Guidelines for essential features of the community resiliency centers included in the project, providing a consistent benchmark for building construction performance, capacity for services, and energy efficiency.
 - Develop a *PFRIP Standard RFP/RFQ and Mechanical Engineering and Plumbing (MEP) Bid Package*: These will be guidelines, scope elements, and team qualifications provided to each City’s project team for securing standardized qualified design and construction services.
 - Develop and Implement *Decarbonization Retrofit and Resilience Upgrades Assessments*: Review each facility’s pre and post construction conditions, required upgrades, and available funds against the *Roadmap, RFP, and Bid Package Guidance* to provide project-specific performance metrics assessing build quality and final facility features and service capacity to local community members (e.g. air quality protection, water supply, power resiliency, or shelter). Results of this review would be provided in a project metrics and performance report.
- Lead Workforce Development Activities. Training Modules and Apprenticeship Program will be developed in Year 1. Trainings will be provided to city staff and 50 low income individuals, sponsored by the grant, in years 4-5, with final program evaluation submitted by September 30, 2029. All projects, performance assessments, community engagement, and reports will be completed by September 30, 2029.
- Coordinate a training series for building industry practitioners on building decarbonization and zero-carbon building systems. ProspectSV has partnered with DMG North, a representative of leading HVAC (Heating, Ventilation, and Air Conditioning) equipment manufacturers in Northern California, to establish a Northern California Training Center in the Bay Area. This center will be available for industry training and education over the duration of the Grant period and beyond. DMG North regularly hosts training sessions with Trade Professionals, Professional organizations, Unions, Vocational Schools, Colleges, and Universities. They have committed to being a resource for the industry and to help educate and train others, which will have a far-reaching impact on commercializing this in the marketplace. The training series, to be developed under PFRIP funding in Year 1, would be based on the experience of veteran workforce development professionals with a history of supporting clean technology workforce efforts across the Bay Area. The program will include classroom and webinar training and speaking engagements, but also will leverage the partnerships of professional organizations like Sustainable Purchasing Leadership Council, North American Sustainable Refrigerants Council, International Facilities Management Association, and others to reach the broadest and most relevant stakeholders across the buildings industry value chain. Special attention will be paid to the buildings design and modeling industry through a network of design leaders engaged in as program advisors. The program will be available to the Coalition Partners’ staff as in service training, and up to 50 low income residents seeking journeyman plumbing or electrician credentials, during years 2-5 of the Grant period.

SECTION 10: RESPONSIBILITIES OF SAN FRANCISCO BAY AREA PLANNING & URBAN RESEARCH ASSOCIATION (“SPUR”)

- Lead the Equity Analysis, Community Engagement and managing consultant work on GHG Performance analysis and the Quality Assurance Project Plan.
- Lead the Coalition Partners and contract with a consultant to conduct the GHG performance analysis including:
 - A Quality Assurance Project Plan (“QAPP”) will be developed and submitted by the end of Year 1. The QAPP will be developed using: electricity and utility data, temporary metering for peak loads, summer and winter monitoring, real-time and modeled GHG emission benefits.
 - Electricity and utility data analyzed at each site for a period of at least 2 years preceding the kickoff of construction to provide site-specific EUI, Natural Gas Usage, and a calculated GHG Emissions factor baseline comparison.
 - Temporary metering will be used to determine peak loads and energy generation or usage profiles for each installed measure following construction completion. Sites will be monitored for a period of 2 months – 2 years depending on timeline for construction completion (see 3.c below).
 - For sites with longer performance periods, both summer and winter peak monitoring will be assessed in real time. For entirely new facilities such as San José Fire Stations 23 and 36 and Sunnyvale San José Fire Station 2, the avoided GHGs and summer/winter peaks will be modeled based on minimum two-month temporary metering and profiles of like counterparts within the project’s portfolio or other similar existing facilities.
 - As projects are assessed for real-time or modeled GHG emissions benefits, the results will be displayed using an online dashboard included in the project website
- Lead Equity Performance and Community Engagement
 - Equity Performance: submit the Low Income Benefit Report by September 30, 2025, and the Final Evaluation by September 30, 2029. This will include direct and indirect benefits to low-income and disadvantaged communities.
 - Guiding questions include: How does this project address the pressing needs of marginalized groups? Are there data gaps? What additional data would help analyze the project to better understand its equity impacts? If so, how can SPUR obtain better data? What past investments/budget allocations have there been to this group/geography? These are the types of questions that SPUR’s assessment of the project will consider in its equity analysis (developed the Equity Framework of Analysis - Guiding Questions for Policy Projects.
 - Community Engagement: Submit the community engagement plan by September 30, 2025. As part of outreach: SPUR can host two events at SPUR Urban Center in San Francisco. One of these events will be hosted after the final project assessment is complete to share findings from the Project with regional stakeholders. SPUR will also support Project partners in organizing two additional events. These events are meant to highlight the upgrades made at facilities through a festive community gathering, report back on assessment findings, particularly community benefits achieved through the specific facility’s upgrade or retrofit in addition to benefits achieved across the entire project.
 - As leader of the PFRIP’s Community Engagement and Equity assessment, SPUR will engage the community through surveys and interviews of residents who are served by

these facilities, in addition to facility staff members, heat pump and microgrid installers, and other key people engaged in the resilience upgrades and decarbonization retrofits.

- Lead research and written assessment on outcomes and learnings from the *Public Facility Resiliency Implementation Project*.
 - Include findings from the SPUR-led portion of the Project:
 - GHG-emission reduction impact & GHG reduction and cost savings calculations
 - Low Income Benefit Report
 - Outcomes from the community engagement process
 - Include findings from other coalition members and facility implementation projects. This will require support from project partners in data gathering. This may include:
 - An overview of the participating municipalities' public facility building portfolio and why the subset of buildings was chosen for funding.
 - A review of the approach of the Project's "by-equipment" versus "by-building" with an explanation of the resiliency upgrades and the decarbonization retrofits and how this approach reduced the impact on operations and other conditions.
 - A review of the Project's design standards
 - Workforce development impacts from the partnership with ProspectSV
 - Three case studies of representative buildings that underwent resiliency upgrades or decarbonization retrofits: What was the process of retrofit, what was learned, who are communities served by buildings, and what were the community benefits or disbenefits? What specific planning, zoning and permitting issues or experiences that arose during project implementation?
 - Challenges and Best Practices: What can be learned from these projects to support other jurisdictions in making their public facilities more resilient through electrification transitions and other upgrades?

SECTION 11: SCHEDULE OF ACTIVITIES AND DELIVERABLES

Refer to Exhibit C for the full grant application, including a proposed schedule of activities, deliverables, and budget estimates.

Consolidated Budget Table

Public Facilities Resiliency Implementation Project

BUDGET BY YEAR							
COST-TYPE	CATEGORY	YEAR 1	YEAR 2	YEAR 3	YEAR 4	YEAR 5	TOTAL
Direct Costs	TOTAL PERSONNEL	\$1,154,236	\$981,111	\$1,109,626	\$1,067,385	\$873,498	\$5,185,857
	TOTAL FRINGE BENEFITS	\$638,092	\$507,853	\$583,354	\$571,556	\$403,076	\$2,703,931
	TOTAL TRAVEL	\$200	\$200	\$350	\$3,850	\$3,900	\$8,500
	TOTAL EQUIPMENT	\$4,234,377	\$7,898,698	\$2,603,764	\$939,304	\$4,914,244	\$20,590,387
	TOTAL SUPPLIES	\$0	\$500	\$5,000	\$0	\$11,100	\$16,600
	TOTAL CONTRACTUAL	\$7,220,066	\$5,195,311	\$2,369,705	\$2,440,199	\$1,660,932	\$18,886,212
	TOTAL OTHER	\$30,000	\$343,500	\$14,333	\$13,633	\$16,284	\$417,750
	TOTAL DIRECT	\$13,276,971	\$14,927,172	\$6,686,133	\$5,035,927	\$7,883,034	\$47,809,237
	TOTAL INDIRECT	\$555,640	\$431,915	\$466,222	\$442,749	\$294,234	\$ 2,190,759.80
TOTAL FUNDING		\$13,832,611	\$15,359,087	\$7,152,355	\$5,478,675	\$8,177,268	\$49,999,997

BUDGET BY PROJECT			
Project Number	Project Name	Total Cost	% of Total
1	Silicon Valley Clean Energy (Grant Administration)	\$1,415,775	3%
2	San Jose Portfolio Project (6 microgrids, EVSE, 100 HPHWs, 1 Website, 5 Translated Community Meetings & Social Media Postings, & Climate Art Fair)	\$22,365,541	45%
3	Sunnyvale Portfolio Project (2 microgrids, HVAC Heat Pumps, HPWH, EVSE, Induction Cook Tops)	\$3,606,777	7%
4	Morgan Hill Portfolio Project (Electric Boilers & Pool Heater, Heat Pump HVAC, Electric Kitchen, and EVSE)	\$3,599,871	7%
5	Mountain View Portfolio Project (2 microgrids)	\$13,713,123	27%
6	Cupertino Portfolio Project (Heat Pump HVAC & HPHW)	\$1,951,321	4%
7	SPUR (Community Engagement, Equity, & GHG Performance Assessments)	\$1,556,411	3%
8	Prospect Silicon Valley (Building Design Performance & Workforce Development)	\$1,791,177	4%
Total	PFRIP Total	\$49,999,997	100%

Exhibit C: Grant Application Narrative

SECTION 1: OVERALL PROJECT SUMMARY AND APPROACH

The *Public Facility Resiliency Implementation Project* (PFRIP) will be a regional funding source and implementation project for design and construction of publicly owned and operated fuel-switching, electric vehicle (EV) charging, and solar/battery storage projects in Santa Clara County, CA. As a Coalition led by Silicon Valley Clean Energy (SVCE), the Cities of San José, Sunnyvale, Morgan Hill, Mountain View, and Cupertino, in collaboration with SPUR and Prospect Silicon Valley, will implement greenhouse gas (GHG) reduction measures at 62 critical and community-serving facilities all meeting EPA-defined disadvantaged criteria and \$49,999,997 worth of electrification projects and supporting performance assessments and community engagement activities. SVCE will be the coalition lead and submit a Memorandum of Agreement (MOA) signed by all coalition members by July 1, 2024. The MOA will describe the roles and responsibilities of each coalition member in implementing the proposed greenhouse gas reduction measures, including related equity analysis, performance evaluation, community engagement and workforce development activities, and fulfilling all reporting requirements for the grant performance period. SVCE will establish the *Public Facility Resiliency Fund* (Fund) and ensure timely distribution of the Fund to the coalition's members for use in PFRIP. Each coalition member City will be responsible for leading the design, construction, and maintenance of its GHG reduction measures; take an active role in planning and implementing the project equity analysis, performance evaluation, community engagement and workforce development activities; and fulfilling all reporting requirements, for activities that take place in its jurisdiction. SPUR will lead the equity, community engagement and GHG reduction performance analyses. Prospect Silicon Valley will lead the design parameters performance evaluation and workforce development activities.

PFRIP will benefit low income and disadvantaged communities throughout the Bay Area by electrifying and fortifying 62 critical facilities countywide such as community shelters and fire stations that serve the communities' most urgent needs during emergencies as first responders or cooling and heating centers, gathering/family reunification spaces and shelters for those without traditional homes or access to personal emergency equipment like generators. Publicly owned and operated facilities such as libraries, cultural facilities, and community or recreational centers are also equitable meeting spaces, providing daily childcare and eldercare programs or access to exercise and computer equipment to low-income individuals. When enhanced with decarbonized assets such as EV charging infrastructure and all-electric equipment and backup power, these spaces will become powerful community resiliency centers providing public charging access, and will move Bay Area cities towards national, state and local decarbonization goals¹.

a. Description of GHG Reduction Measures

The *Public Facility Resiliency Implementation Project* (PFRIP) will implement “Decarbonization Retrofits” that change natural gas powered equipment for electric counterparts in major building systems including Heating, Ventilation, and Air Conditioning (HVAC) replacements, water heating and pumping, and kitchen appliances; and install “Resiliency Upgrades” for green backup power in the form of solar and battery, or microgrids, that may be integrated with public Electric Vehicle Supply Equipment (EVSE). These same measures are listed in the San Benito County and Santa Clara County Priority Climate Action Plan (PCAP), under Measure BE-2 on page 19, (see file

¹ such as the [Department of Energy's Decarbonizing the U.S. Economy by 2050](#) plan, California Air Resources Control Board's [Advanced Clean Fleets Regulation](#) and California's [Clean Energy Transition Plan](#), Santa Clara County's [Silicon Valley 2.0](#), and local climate action plans, such as [Climate Smart San José](#), [Sunnyvale's Climate Action Playbook](#), [Morgan Hill's Climate Action Plan](#), [Mountain View's Sustainability Action Plan](#) and [Cupertino's CAP 2.0](#).

CA_SanBenito&SantaClaraCountiesMSAPCAP_SVCE_PFRIP) and were chosen for their transformative impact at achieving net-zero buildings, and wide recognition as the measures that lead to major greenhouse gas reductions in the multiple climate adaptation plans listed above, and many others. Each measure is listed in the Climate Pollution Reduction Implementation Grants (CPRG) Notice of Funding Opportunity, under the Electric Power, Transportation, and Building Sectors, as a recognized greenhouse gas reduction measure. Table 1 shows the locations and planned retrofits.

The GHG reduction measures will be implemented according to the project workplan, and scheduled milestones as described in Section 3 and completed before the end of the grant performance period. Completion dates are planned to provide a final performance evaluation period for assessing the actual GHG reduction benefit of each constructed measure in each facility. Underlying assumptions associated with this work plan are that projects will be contracted and initiated in a timely fashion as described by the workplan, all equipment will be available for purchase without major assembly line delays, and all additional power supplies needed for electrical system upgrades can be provided by the relevant utility companies within 1-2 years of design completion. Indeed, these same assumptions present project risks to impacting the project timeline, so early coordination with utility and equipment companies will be employed and construction milestones have intentionally been given contingency time and budget inflation to ensure timely deliverables are met. A thorough list of project risks and assumptions will be included in the Quality Assurance Project Plan (QAPP) upon award.

Number	Location Name	City	Decarbonization Retrofits			Resiliency Upgrades		
			Water Heating	HVAC	Kitchen	Solar System	Battery System	EVSE
1	50 Sites Total* - 100 Retrofits	San Jose	X					
2	Roosevelt Community Center	San Jose				X	X	
3	Happy Hollow Park & Zoo-Kelley Park	San Jose				X	X	
4	Fire Station #32	San Jose				X	X	
5	Fire Station #23	San Jose				X	X	
6	Fire Station #36	San Jose				X	X	
7	Fire Department Training & Emergency Operations Center	San Jose					X	X
8	Fire Station #2 & Joint Fire Academy Training Center	Sunnyvale	X	X	X	X	X	X
9	Water Pollution Control Plant Cleanwater Center	Sunnyvale		X		X		
10	Centennial Recreation Center	Morgan Hill	X	X	X		X	X
11	Mountain View Sports Pavilion	Mountain View		X		X	X	
12	Whisman Sports Center	Mountain View				X	X	
13	Cupertino Quinlan Community Center	Cupertino	X	X				

Table 1: List of the proposed GHG reduction measures to be implemented. *Full Site list available in Other Attachments file *Areas_SVCE_PFRIP*. All projects include the necessary electrical panel and distribution upgrades to support these enhancements.

i. Detailed Descriptions of City Coalition Members' Sub-Project GHG Reduction Measures:

San José Decarbonization and Resiliency Projects:

Through the regional grant application, the City of San José Public Works Department seeks \$22,365,541 in funding for microgrid construction at six critical facilities:

- Roosevelt Community Center - 200 kW Solar System & 800 kWh BESS² & Controller
- Happy Hollow– Kelley Park Campus - 200 kW Solar System, 1200 kWh BESS & Controller

² Battery Energy Storage System (BESS)

- Fire Stations 23, 32, and 36 – each 75 kW Solar System, 176 kWh BESS & Controller
- Fire Training & Emergency Operations Center - 880kWh and 660kWh BESS & Controller

The project will also:

- Retrofit 100 gas water heaters at 50 facilities citywide with heat pumps,
- Install 60 Level 2 EV chargers at the EOC that will be available for public use,
- Develop a Project Website and social media to display PFRIP GHG emissions reductions and milestones in real-time, and
- Hold translated meetings and a celebratory Climate Art Fair to engage community members in climate action and inform them about the facility improvements.

All 56 San José facilities are located within Justice-40 recognized Low Income and Disadvantaged (LIDAC) census tracts.

Roosevelt Community Center and Happy Hollow Park and Zoo are active community emergency shelters used for disasters, heating, and cooling relief. The centers are part of a network of local emergency shelters that are typically activated between 1-2 times per month, operating year-round as needed. Roosevelt Community Center also provides daily childcare and elder care programs, and community access to meeting rooms, computers, exercise equipment, locker room, and a commercial kitchen. Happy Hollow Park and Zoo covers a large campus including the Association of Zoos and Aquariums-certified zoo caring for rare and endangered animals, the Leininger Community Center offering community meeting rooms and commercial kitchen, and Kelley Park which contains a sanitary pump station requiring constant electrical power to prevent sewage entering nearby Coyote Creek. Fortifying these critical facilities with solar and battery backup power will provide full electrification potential to convert them to resiliency centers, ensure their use as emergency shelters during wide scale power outages or disasters, and protect natural resources including local water quality.

Fire Stations 23, 32, and 36 will be newly built critical facilities with all-electric construction. Existing buildings of Fire Stations 23 will be demolished, and rebuilt, while Fire Station 32 is a newly built as-yet unoccupied facility and Fire Station 36 will be an entirely new facility adding emergency protection to previously unprotected disadvantaged communities in South-Central San José.

The Fire Training and Emergency Operations Center (EOC) is one of two regional fire training facilities that trains firefighters stationed throughout Santa Clara County, and the central Emergency Operations Center for the 10th largest City in the United States. The EOC will be used as the countywide central emergency center during Super Bowl 2026. The site currently has a 416.6 kW solar system in place but needs two batteries to complete its microgrid design. The microgrid to be installed through the project will ensure continuous operation of the EOC during disasters, including the 60 Level 2 EV chargers that will be directly linked to the microgrid system. The EV chargers installed through the project will ensure that public EV charging is available in San José both during times of emergencies and daily, serving the disadvantaged community in which they will be built.

The project will also retrofit 100 gas water heaters at 50 community-serving facilities with heat pump models, providing significant greenhouse gas reductions to the countywide building portfolio. These community-serving facilities span the City's disadvantaged neighborhoods and include 4 emergency shelters, 17 community and youth centers, 9 libraries, 8 fire stations, 5 cultural and recreational facilities, 6 municipal offices or corporation yards, and 1 police facility. Retrofitting water heaters in these facilities will ensure their beneficial services and improve air quality within their disadvantaged communities.

Sunnyvale Decarbonization and Resiliency Projects:

The City of Sunnyvale seeks \$3,459,281 in funding for an all-electric rebuild of two critical facilities: Fire Station 2 and the Sunnyvale Water Pollution Control Plant.

Fire Station 2 is one of two regional fire training facilities to offer numerous required training courses for firefighters throughout Santa Clara County and serves two LIDAC communities in Sunnyvale. The Fire Station is also one where the community and firefighters can engage in events like the annual pancake breakfast. With the number of visitors and trainees coming through the Station, electrification of this building will have far reaching impacts in the community. Fire Station 2 meets multiple 90 percentile thresholds including PM 2.5 in the air, lack of green space, proximity to hazardous waste facilities and superfund sites, and traffic proximity and volume.

The project will install (based on initial design estimations):

- 12 electric rooftop packaged heat pump HVAC with optimizers
- Up to two 80-gallon electric heat pump water heaters
- 2 built-in induction cooktops
- 4 EV chargers for all-electric fire trucks at the station
- 75 kWh Solar + 176 kWh BESS

The Sunnyvale Water Pollution Control Plant is one of the oldest treatment plants on the West Coast. It works around the clock to provide essential wastewater treatment for all Sunnyvale residents and businesses. The Cleanwater Center is one of the necessary upgrades planned for this aging facility. Designed to LEED Gold standards, it will be an operational hub for the 67-person team who operates, maintains, and manages the Plant. It will also serve as the welcome center for the public, both visitors and participants in tours of the Plant made available to the public. The Cleanwater Center meets multiple 90 percentile thresholds including PM 2.5 in the air, expected agriculture loss rate, and projected wildfire risk.

- The project will install:
- 114 kW Solar System
- 1 Heat Pump Water Heater
- 3 Electric Heat Pump HVAC units and 1 large HVAC heat pump
- Electrical Design and Construction

Electrifying public buildings comes with increased costs and Play 2.2 of the City's Climate Action Playbook aims to eliminate fossil-fuel powered appliances and/or sources in public buildings upon rebuild or significant remodel. While Sunnyvale has established this goal, increasing construction costs and additional costs of electrification can be a burden. To ensure the City can continue to meet its CAP goals, grants to offset costs are required. Therefore, offsetting these costs through CPRG dollars will support the City in meeting its ambitious building decarbonization target to electrify 44% of existing buildings by 2030. Modernizing and electrifying Fire Station 2 and the Cleanwater Center will allow the City to continue to prioritize future public building decarbonization projects and foster healthy and safe working and training conditions for local firefighters and essential staff that serve Sunnyvale's diverse population and underserved communities.

Cupertino Decarbonization Project:

Through the regional grant application, the City of Cupertino Works Department seeks \$1,951,321 in funding for upgrades to the cooling, heating, and water heating components at Quinlan Community Center.

- The project will install: Heat Pump HVAC and Heat Pump Water Heating

Quinlan is a multi-use building providing staff office space, classrooms for recreation classes, space for the Cupertino Historical Society, and rentals. Quinlan is also used when the City needs to activate a shelter for heating, cooling, air quality, or most recently as space for displaced residents after a fire at a multi-family complex. The HVAC system at Quinlan was described in a building condition assessment study as being “in poor condition and well past its useful service life... [and is] an outdated pneumatic system that does not allow for remote monitoring or modern energy efficiency strategies.” Ventilation is not sufficient in the dance and fitness rooms, leading to doors being propped open. The 27,000 square foot facility was built in 1989 and the heating and cooling equipment is original to the building.

Morgan Hill Decarbonization and Resiliency Project:

Through the regional grant application, the City of Morgan Hill seeks \$3,599,871 in funding to support the Centennial Recreation Center (CRC) Electrification Project, which includes the following components:

- Replacement of 4 gas boilers with electric boilers
- Replacement of the pool heater with an electric heat pump
- Replacement of Kitchen appliances with electric appliances
- Increase in microgrid battery storage
- Required electrical upgrades to support these enhancements
- Installation of an electric vehicle charging unit

The proposed project will serve the entire City population including the City’s significant low-income population. The project will allow the CRC to act as a resilient heating, cooling, and gathering center for the community which will especially benefit residents who may not have heating or cooling at their own homes. Public facility electrification is a community-driven goal that was included by a community working-group in the City’s adopted CAP.

Mountain View Decarbonization and Resiliency Projects:

The City of Mountain View seeks \$13,860,618 in funds for resiliency and decarbonization infrastructure improvements in the form of Solar and battery installation, and heat pump HVAC installation at two sites:

- Mountain View Sports Pavilion at Graham Middle School - 191.5 kW Solar & 2.5 MWh BESS & Heat Pump HVAC
- Whisman Sports Center at Crittenden Middle School - 66.7 kW Solar & 250 kWh BESS

These retrofits and installations will support the middle schools’ operations, energy resiliency, and critical heating and cooling during extreme weather events. The middle schools serve 877 and 590 students respectively and allow public use of the facilities. Daily indoor air quality will be improved for students, staff, and the public. Both sites are designated community shelters used during climate-related

and other emergencies, and the microgrids will ensure their intended emergency use. These projects support the City of Mountain View's goal to provide a livable community for all, supporting sustainability and resiliency.

b. Demonstration of Funding Need

Bay Area cities are struggling to meet decarbonization goals due to the high cost of electrification equipment paired with lack of capital dollars available in many cities' General Funds, and inability to generate revenue within capital budgets. Bay Area cities are therefore looking to the Federal Infrastructure Bill for desperately needed assistance in meeting these ambitious goals, of which the CPRG represent the most significant funding opportunity to date. Other funding opportunities were either not awarded, deemed ineligible or insufficient for meeting individual Bay Area cities' resiliency needs. The CPRG alone offers Santa Clara County Cities an opportunity to create zonal decarbonization, a wide variety of greenhouse gas reductions and conduct portfolio-wide building electrification and resiliency that will enhance the quality of their residents' lives without further burdening California taxpayers who already pay some of the highest taxes and energy rates in the nation.

While the Santa Clara County Cities are committed to electrifying public buildings, costs for electrification improvements are beyond what is available in General Funds, and Public Works Departments are unable to generate revenue through special fees. For this reason, the San José Budget Office, for example, discourages the use of loans and is generally unable to take advantage of tax incentives without upfront funding sources. As another example of funding challenges, in 2023 the City of Cupertino lost approximately 75% of its sales tax revenue because of a state audit of a local vendor. Resulting budget cuts have made advancing modernization projects exceedingly difficult, so outside funding must be sought. While there are tax incentives such as the Inflation Reduction Act (IRA) direct pay available for solar and battery projects, they do not cover full costs. The City of Mountain View conducted an analysis of available federal and state funding sources that revealed that there is not a comparable funding opportunity to the CPRG which would cover the funding gap needed for solar and battery on just its two locations.

Santa Clara County cities explored federal funding sources in 2023 to cover the costs of needed electrification improvements, particularly for microgrid systems, without successful project fit. The EPA's GHG Reduction Fund Solar for All program covers residential solar only, and therefore is not an eligible funding opportunity for public facilities. Sunnyvale explored the Energy Efficiency Block Grant program for funds to support public facility electrification, however Sunnyvale's share at under \$200,000 was insufficient to offset construction and equipment costs. San José staff prepared sub-applications for both the Federal Emergency Management Agency (FEMA)'s Building Resilient Infrastructure and Communities and Hazard Mitigation Grant Program grants, which are widely considered to be the two most notable federal grants offering microgrid eligibility but were advised by California representative staff to withdraw due to inability to create a positive Benefit-Cost Analysis (BCA) analysis, and conflicting project needs. FEMA-funded equipment may be used as emergency measures only, which precludes use of microgrids for daily energy shaving and thus significantly reduces their GHG reduction benefit. FEMA's BCA metrics consider microgrid systems to be a type of generator, thus are not optimized for microgrid applications. Finally, FEMA standards do not consider power outages due to rolling blackouts, brownouts, Planned Power Safety Shutoff (PSPS), or other non-federally declared disasters eligible events for BCA analysis or use of FEMA-funded equipment. Bay Area municipalities need to install microgrid systems as emergency power backup for a myriad of non-federally recognized emergencies

such as storm-driven outages, locally centered fires, and minor earthquakes, and mitigating effects of planned outages or rolling blackouts that have become more common in Northern California as the electric grid is strained during summer and fall heat waves. While FEMA does not recognize these events as emergencies, Bay Area residents still experience them as such and require refuge during them.

Staff explored recent California state funding options and incentives for covering costs of microgrid equipment implementation or planning. The recently announced GFO-23-403 - Local Government Building Decarbonization Challenge and Integrated Climate Adaptation and Resiliency Program (ICARP)'s Extreme Heat Resiliency grants do not offer significant enough funding amounts for implementing regional GHG reductions. San José staff applied to the ICARP Regional Resiliency Planning Grants program in June 2023 for a Microgrids Roadmap Planning Grant but were not awarded. The San José City Manager's Office was awarded an Adaptation Planning Grant through ICARP that will be used to create a citywide climate adaption plan that will include the implementation elements listed in this application among a variety of climate priorities.

Staff chose to include EVSE in this proposal due to previous EVSE grant incompatibility or lack of success. Staff are exploring ICARP's GF-23-306 grant program but due to the 100-port minimum, the EVSE projects included in this proposal do not meet that program's minimum requirements. San José, Sunnyvale, and Morgan Hill explored the Department of Transportation (DOT) Charging and Fueling Infrastructure (CFI) Discretionary Grant Program. The City of Morgan Hill found that CFI did not allow for installation of chargers at key local locations, including the City's recreation center which is a local hub, due to corridor-proximity requirements; and Sunnyvale Fire Station 2 also had incompatible project fit. The City of San José submitted applications for both CFI's Community and Corridor implementation funding grants in June 2023 but were awarded neither.

Finally, the Cities of San José and Sunnyvale investigated both state and federal earmarks for assistance; Sunnyvale was unsuccessful, and San José's individual infrastructure needs far outweigh the funding cap of these programs, making the listed microgrid projects in particular ineligible for earmarks. Finally, the outlook is not good for California state sponsored earmarks, and possibly grants as well with the upcoming expected State budget deficit. Tax-based revenue is the only option, aside from grants, for generating new funding and seen as last resort that should only be leveed on citizens if grant sources do not produce results. As stated above, Santa Clara County Cities are looking to the Federal Infrastructure Bill for much needed assistance to meet resiliency goals without increasing financial burdens to our low income and disadvantaged citizens.

The CPRG grant will provide much-needed funding for a portfolio of decarbonization, microgrid, and EVSE projects throughout Santa Clara County that cannot be matched by any other funding source available within the last 18 months. The funding request in this proposal would cover the gap between existing IRA and other federal/state incentives, and the full cost of the projects, for a portfolio of GHG reduction measures at 62 large public facilities achieving zonal decarbonization in Santa Clara County.

c. Transformative Impact

Market transformation of emerging GHG emission reduction technology—While low-pollution equipment like heat pumps have matured technologically, they remain stuck in an “early adopter” stage in much of the US market, characterized by low market penetration compared with gas counterparts. There's reason to believe that, as the market matures, the cost of heat pumps will drop significantly, and market penetration of electric appliances will consequently accelerate as it becomes affordable relative

compared to gas-fired appliances.³ A National Renewable Energy Laboratory study projects that costs for HVAC heat pumps and heat pump water heaters will decrease by 30%–40% and 50%–55%, respectively, by 2050.⁴ These cost reductions will be driven by innovation spurred by research and development funding, changes in consumer choice that increase demand, and consequent increases in heat pump production. The speed and success of this market transformation will have enormous implications for California’s climate goals—gas heating equipment in homes and businesses is still responsible for roughly 10% of California’s total greenhouse gas emissions.⁵

In addition, in 2023, the Bay Area Air Quality Management District (BAAQMD) passed a “first in the nation” rule phasing out the sale of gas heating in the Bay Area by 2031. As a result of this strong and unequivocal signal to the market, Bay Area communities are already well-positioned to accelerate the regional market development of heat pumps. However, further heat pump market maturation is needed before the phase-out to improve affordability relative to gas appliances and market integration.

PFRIP will support the market transformation by:

1. **Increasing demand for heat pumps** through the replacement of 106 gas water heaters with heat pump water heaters at 54 facilities countywide. Heat pumps baseline costs remain higher than their gas counterparts. Additional investments from cities and municipalities are needed to sustain market momentum and bring heat pumps into price competitiveness with gas equipment. Investments in public facilities can accelerate the market and contribute to overall heat pump affordability relative to gas appliances in two key ways:
 - a. *Demand signal*: *PFRIP* represents a sustained public investment in turnkey projects with predictable timelines and appliance investments. This can send a high profile and robust demand signal to manufacturers and distributors and boost the regional supply chain for zero-pollution equipment (See Technical Appendix, page 1 for Cost Projections Figure).
 - b. *Workforce capacity*: *PFRIP* proposes investments in workforce training for contractors. Contractor training remains a critical bottleneck in the installation of electric equipment, and consequently the cost, complexity of retrofits, and overall market demand for heat pumps. Training contractors in building electrification will contribute to market penetration of heat pumps and represent a sustained benefit for Santa Clara County communities as these newly trained workers continue to install zero-pollution equipment well beyond the lifespan of the *PFRIP*.
2. **Contributing to regulatory and technical lessons**: Siting and installing electrical equipment in buildings often requires careful planning, navigation of incentives, and overcoming technical and regulatory hurdles. These challenges can increase the cost of zero-pollution equipment, slowing demand, and stalling market transformation. Federal investment in public facility electrification will provide city planners, elected officials, and energy providers with an up-close experience

³ Rosenow, Jan, Duncan Gibb, Thomas Nowak, and Richard Lowes. 2022. “Heating up the Global Heat Pump Market.” *Nature Energy* 7 (10): 901–4. doi:10.1038/s41560-022-01104-8.

⁴ Feinstein, Laura. 2024. “Closing the Electrification Affordability Gap.” SPUR. <https://www.spur.org/publications/spur-report/2024-02-26/closing-electrification-affordability-gap>. page 15, see Technical Appendix for Figure T1, page 1

⁵ “Zero-Emission Space and Water Heaters - Frequently Asked Questions (FAQs).” 2023. *California Air Resources Board (CARB)*. May. <https://ww2.arb.ca.gov/our-work/programs/building-decarbonization/zero-emission-space-and-water-heater-standards/faq>.

with electrification for diverse building types. This in turn will drive the development of smart policies to address regulatory and technical frictions. Some example lessons might include:

- a. *Panel and service upgrades*: Installing new electrical equipment, like heat pumps, risks triggering electrical panel and service upgrades, which can increase upfront costs, and require utilities to invest in additional distribution infrastructure and increase electric rates for its customers. Piloting the electrification of public buildings will generate lessons in optimizing panel load for medium and large-scale buildings to avoid panel and service upgrades. These lessons can in turn inform how municipalities encourage and support building electrification across the South Bay.
 - b. *Learning to reduce regulatory and “red-tape” barriers*: Regulatory barriers exist to siting, installing, and permitting heat pumps. These barriers vary across jurisdictions. By engaging in turnkey programs, Santa Clara municipalities can identify changes to city ordinances and permitting processes that can smooth the siting and installation of electric equipment.
 - c. *Electrification planning for localities*: Building electrification planning resources, such as Switch is On, Quit Carbon, and regional and local “concierge” services, are making electrification planning easier. However, navigating local peculiarities in contractor matching, available incentives, building types, and permitting and building ordinances, remain a challenge at all scales of building electrification. PFRIP will spur the creation of new electrification planning resources that are tailored to local building stocks, legal realities, contractor services, and incentives.
3. **Education**: There is a need to educate distributors, contractors, cities, and residents about zero-pollution equipment, and pathways to electrification. Electrifying public buildings allows cities to lead by example and offer examples of building electrification that are highly visible for the wider community. Through contractor education, the PFRIP can prompt contractors to promote the installation of heat pumps over gas water heaters. Through public education, the PFRIP can prompt residents to switch out gas water heaters for heat pumps more quickly than the BAAQMD phase-out requires.

Santa Clara County is at the forefront of pioneering research and innovative practices aimed at significantly reducing greenhouse gas emissions. Microgrids and EVSE technology reflect similar trends for pricing, adoption and needs for market expansion as discussed above for heat pumps. For example, additional EVSE at public facilities will accommodate a rapidly transitioning personnel vehicle market.⁶—San José saw the fastest growth in EVs of any major US city. These Cities have embraced a dynamic business incubation approach that melds participatory design with a unified commitment to slashing GHG emissions, fostering a vibrant ecosystem of innovative solutions. This approach is poised to unlock novel pathways, policies, and programs with potential for replication beyond their borders.

SECTION 2: IMPACT OF GHG REDUCTION MEASURES

a. Magnitude of GHG Reductions from 2025 through 2030

⁶ Source: Nadia Popovich, "The Bay Area Leads the National Shift to Electric Vehicles" New York Times. <https://www.nytimes.com/2024/03/12/us/bay-area-electric-vehicles.html>

According to the San Benito County and Santa Clara County MSA Priority Climate Action Plan (PCAP), Santa Clara County has 630 municipally owned buildings with 53,200 square feet (sqft) of building space with a collective GHG reduction potential of at least 32,970 MT CO² for the 2025-2030 period. Collectively buildings account for 43% of greenhouse gas emissions in Santa Clara County, with 23% of that coming from natural gas appliances.

Pilot implementation will achieve widescale decarbonization of major appliances and additional decarbonization via microgrid resiliency technology and EV charger infrastructure at 62 very large facilities in Santa Clara County. Based on the PCAP, each building has an average 2025-2030 period reduction potential of 52.33 MT CO². However, based on a simple per square foot (sqft) estimate, PFRIP measures implemented can reduce greenhouse gas emissions by up to 0.62 MT CO² per sqft for the 2025-2030 period. Based on the San Jose HPWH cohort of known building gross floor area (GFA), the PFRIP Coalition has potential GHG reduction of over 2,100,860.18 MT CO². These GHG Reduction calculations are available in the GHGcalcs_Silicon Valley Clean Energy_PFRIP.xlsx, Tab entitled "PCAP Calcs".

Staff also conducted a benchmarking analysis on a subset of available buildings' energy data to scope the GHG reduction potential for the pilot portfolio utilizing the EPA's ENERGY STAR Portfolio Manager (ENERGY STAR). The data exported from ENERGY STAR supports the hypothesis that the annual emissions reduction potential from these measures will be much greater than indicated in the PCAP, as emissions reductions for the San José subset of heat pump water heater replacements alone showed potential direct GHG savings of at least 1239.5 MT CO² for 2025-2030⁷, plus indirect GHG emissions savings of 1831.55 MT CO², or 3,245 MT CO².

b. Magnitude of GHG Reductions from 2025 through 2050

According to the PCAP, Santa Clara County's 630 municipally owned buildings have a collective GHG reduction potential of at least 655,774 MT CO² for the 2025-2050 period, providing an average per building reduction estimate of 1040.91 MT CO² for the period.

Pilot implementation will achieve widescale decarbonization of major HVAC and heating appliances and additional decarbonization via microgrid resiliency technology and EV charger infrastructure at 62 facilities in Santa Clara County. Based on the PCAP, measures implemented can reduce greenhouse gas emissions by up to 64,536 MT CO² for the 2025-2050 period.

According to San José ENERGY STAR analysis, the annual emissions reduction potential from these measures could be much greater than indicated in the PCAP, as emissions reductions for the San José subset of heat pump water heater replacements alone showed potential direct GHG savings of at least 30987.5 MTCO₂ for 2025-2050, plus indirect GHG emissions savings of 45788.75 MTCO₂ by 2050, or 76776.25 MT CO².

c. Cost Effectiveness of GHG Reductions

According to the PCAP, the total average cost effectiveness for the period of 2025 -2030 will be at least \$49,999,997/3,245 MT CO² = \$15,409.90 per MT CO² by 2030, on average. The total cost of San José's heat pump replacements will be \$1,684,035.38 including all equipment, labor, permitting, and staff

⁷ Conservative assessment assumes all replacements will be completed by 2029, with only one year of operation. Per work plan, ~24 units per year will be installed, creating additional expected GHG savings for the 2025-2030 time period that will be assessed in the project performance evaluation.

oversite, so the total cost effectiveness potential of these measures alone could be as efficient as \$548.36 per MT CO² by 2030 per heat pump replacement.

d. Documentation of GHG Reduction Assumptions

The PCAP emission potential benefits were calculated using IPCC recommended methods and under an EPA-approved QAPP. However, this analysis used a very conservative estimate of countywide building counts only that did not include other types of non-building facilities, such as pools, bathrooms, and pump stations, that are included in the PFRIP portfolio, and estimated emissions based on an average per building energy usage and local utility provider fuel mix specifications rather than actual usage. Details about the accounting methods used in the PCAP can be found in the attached PCAP copy and relevant sections have been provided in the Technical Appendix, Techappx_Silicon Valley Clean Energy_PFRIP.

According to the Natural Resources Defense Council (NRDC)⁸, heat pump water heater conversion can reduce onsite emissions by up to 50-70%. Microgrids can provide the potential for full electrification of a building combined with power savings during times of peak grid demand, such as summer and fall 5-9 pm hours, or during times when the grid is typically gas power plant fed, such as 12-4 am.

Staff also conducted a benchmarking analysis to scope the GHG reduction potential for the pilot portfolio utilizing the EPA's ENERGY STAR Portfolio Manager (ENERGY STAR) and real building energy usage values on a subset of available buildings' energy data. 12 months of Electricity and gas utility data from each of the City of San José's 50 planned heat pump retrofit sites were entered to ENERGY STAR for the calendar year of 2023⁹ to provide a 2023 annual Direct GHG Emissions (Metric Tons CO₂e) and Indirect (Location-Based) GHG Emissions (Metric Tons CO₂e) value for each building. Data was exported from ENERGY STAR and applied to the heat pump water emissions reductions factor of 50% for each location to achieve an expected annual emissions reduction. The export table including relevant building ENERGY STAR IDs and spreadsheet calculations are available in the Technical Appendix spreadsheet, GHGcalcs_Silicon Valley Clean Energy_PFRIP.

Cost effectiveness values were calculated using the EPA's required cost effectiveness calculation equation applied to 1) whole cost of all PFRIP measures (including all budget categories) divided by the Sum of Quantified GHG reductions from 2025-2030 according to the PCAP and 2) whole cost of San José heat pump conversions (including all budget categories) alone divided by the Sum of Quantified GHG reductions from 2025-2030 according to the ENERGY STAR analysis. Additional details about the GHG Reduction Assumptions and methods used to calculate are available in the in the Technical Appendix.

SECTION 3: ENVIRONMENTAL RESULTS – OUTPUTS, OUTCOMES, AND PERFORMANCE MEASURES

a. Expected Outputs and Outcomes

The project will assess output and outcome metrics in alignment with the PCAP, and in pursuit of the actual GHG benefit, comparing energy and GHG values pre-installation to post-installation at all existing facilities.

The following output metrics are included in the PCAP and will be quantified:

⁸ [Electric Heat Pumps Can Slash Emissions in California Homes \(nrdc.org\)](https://www.nrdc.org/resources/reports-and-publications/electric-heat-pumps-can-slash-emissions-in-california-homes)

⁹ In a few instances 2023 data was not fully available, so 2022 values were used. The appendix provides details about the calculations and includes the ENERGY STAR data output.

- Number of facilities retrofitted
- Number of carbon-free appliances purchased or installed

In addition, the project will assess the following outcomes:

- Average energy savings per building, both as electricity and natural gas usage
- Average energy cost savings per building, both as electricity and natural gas usage
- Average Energy Usage Intensity (EUI) reduction per building
- Total quantity of avoided GHG emissions as calculated from real time energy use, production, an/or storage in microgrids and EVSE
- Total quantity of GHGs reduced from natural gas appliances switched to electric
- Amount of reduced purchased fuel by fuel type
- Assess feasibility of quantifying CAP and HAP emissions reduction
- Actual Cost effectiveness of avoided GHGs
- Assess feasibility of avoided CAP and HAP emissions

b. Performance Measures and Plan

i. GHG Reduction Performance:

Immediately following award acceptance, SPUR will lead the Coalition to select a consultant to conduct the GHG performance analysis. A QAPP will be developed and submitted by the end of Year 1. Electricity and utility data will be analyzed at each site for a period of at least 2 years preceding the kickoff of construction to provide site specific EUI, Natural Gas Usage, and a calculated GHG Emissions factor baseline comparison. Temporary metering will be used to determine peak loads and energy generation or usage profiles for each installed measure following construction completion. Sites will be monitored for a period of 2 months – 2 years depending on timeline for construction completion (see 3.c below). For sites with longer performance periods, both summer and winter peak monitoring will be assessed in real time. For entirely new facilities such as San José Fire Stations 23 and 36 and Sunnyvale San José Fire Station 2, the avoided GHGs and summer/winter peaks will be modelled based on minimum two month temporary metering and profiles of like counterparts within the project’s portfolio or other similar existing facilities. As projects are assessed for real-time or modelled GHG emissions benefits, the results will be displayed using an online dashboard included in the project website, described in Sections 3c and 4.

ii. Work Plan Performance: Design Guidelines and Evaluation

The *Public Facility Resiliency Fund* fuels an ambitious set of facility upgrades to establish a network of community resilience centers serving disadvantaged and vulnerable communities across Santa Clara County. It is critical each location will produce a consistent set of facility features and service capacity, based on local needs. To that end, Prospect Silicon Valley, (ProspectSV) with an experienced engineering team from Point Energy Innovations and IDeAs Consulting, will lead the Coalition to establish a basis of design for each project to be performed under PFRIP. The approach will be as follows and include a QAPP:

- Develop a *Roadmap for Community Resiliency Center Features (Roadmap)*. These will be Design Guidelines for essential features of the community resiliency centers included in the project, providing a consistent benchmark for building construction performance, capacity for services, and energy efficiency.

- Develop a *PFRIP Standard RFP/RFQ and Mechanical Engineering and Plumbing (MEP) Bid Package*: These will be guidelines, scope elements, and team qualifications provided to each City's project team for securing standardized qualified design and construction services.
- Develop and Implement *Decarbonization Retrofit and Resilience Upgrades Assessments*: Review each facility's pre and post construction conditions, required upgrades, and available funds against the *Roadmap, RFP, and Bid Package Guidance* to provide project-specific performance metrics assessing build quality and final facility features and service capacity to local community members (e.g. air quality protection, water supply, power resiliency, or shelter). Results of this review would be provided in a project metrics and performance report.

c. Authorities, Implementation Timeline, and Milestones

SVCE is a Joint Powers Authority eligible to lead this grant¹⁰, and will establish the *Public Facility Resiliency Fund* (Fund) ensuring timely project reimbursement and distribution of the Fund to the Coalition's members for use in the PFRIP. Each coalition member City will be responsible to lead design, construction, and inspection of its GHG reduction measures; take an active role in planning and implementing the project equity analysis, performance evaluation, community engagement and workforce development activities; and fulfill all reporting requirements, for activities that take place in its jurisdiction. SPUR will lead the Equity Analysis, Community Engagement and GHG Performance. Prospect Silicon Valley will lead Design Parameters Performance and Workforce Development. Each Coalition member City has the authority to carry out its proposed measures, and will contract for design and construction as needed, within its jurisdiction. Assistance will be required from Pacific Gas and Electric (PG&E), the local utility provider, for installing electrical panel and transmission related upgrades to accommodate increased electrical capacity at each site.

Major Workplan Milestones:

a. Administration and Reporting: Prior to grant award and acceptance, SVCE will lead development and submittal of the Coalition's Memorandum of Agreement (MOA) by July 1, 2024. The Workplan is expected to initiate with grant award by October 1, 2024, and complete five years later by September 30, 2029. Semi-annual reports including reimbursement receipts will be submitted to the EPA every six months following award acceptance, on March 31 and September 30, or the closest prior business day, annually. The Project Plans for GHG Performance and Building Design Performance and each's respective Quality Assurance Performance Plan (QAPP), and the Low Income Benefit Report and Community Engagement Plan, will be submitted by September 30, 2025. The Final Project Report and reimbursement receipts will be submitted by September 30, 2029.

SVCE Project Management & Reporting	Year 1	Year 2	Year 3	Year 4	Year 5
	10/1/2024 - 9/30/2025	10/1/2025 - 9/30/2026	10/1/2026 - 9/30/2027	10/1/2027 - 9/30/2028	10/1/2028 - 9/30/2029
Quality Assurance Performance Plan Submittal, including all Performance Project Plans	Completed by Sep 30, 2025				
Semi-Annual Reports Submittals	1 each by Mar 31 & Sep 30	1 each by Mar 31 & Sep 30	1 each by Mar 31 & Sep 30	1 each by Mar 31 & Sep 30	1 each by Mar 31 & Sep 30
Low Income Benefit Report & Community Engagement Plan	Completed by Sep 30, 2024				
Final GHG & Design Parameters Performance, Equity Analysis, & Workforce Development Reports					Completed by Sep 30, 2029
Final Report Submittal					Completed by Sep 30, 2029

¹⁰ Silicon Valley Clean Energy's Joint Powers Authority Charter may be viewed in the file Attachment, *Executed JPA_SVCE_PFRIP*.

b. Decarbonization Projects:

i. San José's 100 Heat Pump Water Heater Retrofits at 50 facilities: The City of San José will contract with one its existing vendors for purchase of heat pump water heating (HPWH) equipment and conduct installations using existing Citywide Facilities Maintenance Staff. HPWH will be installed at a rate of 2 per month following an initial training period, sponsored through the Project Work Force Development plan (see Section 5). All projects are expected to be installed and inspected by June 30, 2029.

San Jose 50 Sites Total - 100 HPWH Retrofits	Year 1 10/1/2024 - 9/30/2025	Year 2 10/1/2025 - 9/30/2026	Year 3 10/1/2026 - 9/30/2027	Year 4 10/1/2027 - 9/30/2028	Year 5 10/1/2028 - 9/30/2029
Planning, Design, & Permitting	22 total by Sep 30	46 total by Sep 30	70 total by Sep 30	94 total by Sep 30	100 Total by June 30
Installation - HPWH	22 total by Sep 30	46 total by Sep 30	70 total by Sep 30	94 total by Sep 30	100 Total by June 30
Inspection	22 total by Sep 30	46 total by Sep 30	70 total by Sep 30	94 total by Sep 30	100 Total by June 30
Performance Period		22 total by Sep 30	46 total by Sep 30	70 total by Sep 30	100 Total by Sep 30

ii. The City of Cupertino's project will include HPWH and HVAC retrofit requiring full construction planning, design, and bid package and is expected to include an 18-month performance period.

Cupertino Cupertino Quinlan Community Center	Year 1 10/1/2024 - 9/30/2025	Year 2 10/1/2025 - 9/30/2026	Year 3 10/1/2026 - 9/30/2027	Year 4 10/1/2027 - 9/30/2028	Year 5 10/1/2028 - 9/30/2029
Planning, Design, & Permitting	X	X			
Bid Package Procurement & Construction - HPWH, HVAC			X		
Inspection				X	
Performance Period				X	X

c. Resiliency Upgrades at Pre-Designed Facilities: San José's Roosevelt Community Center, Happy Hollow-Kelley Park Campus and Fire Station 32, and Sunnyvale's Fire Station 2 projects have already been designed. Fire Station 32 will be ready to move immediately to construction, Fire Station 2 to Permitting, and the other two will move immediately to construction bid package procurement. The four projects are expected to have two year performance periods and serve as baseline comparison models for the Design Parameters Analysis.

San Jose Roosevelt Community Center	Year 1 10/1/2024 - 9/30/2025	Year 2 10/1/2025 - 9/30/2026	Year 3 10/1/2026 - 9/30/2027	Year 4 10/1/2027 - 9/30/2028	Year 5 10/1/2028 - 9/30/2029
Bid Package Procurement & Construction - Solar, BESS	X				
Inspection		X			
Performance Period			X	X	Project Complete
San Jose Happy Hollow Park & Zoo-Kelley Park	Year 1 10/1/2024 - 9/30/2025	Year 2 10/1/2025 - 9/30/2026	Year 3 10/1/2026 - 9/30/2027	Year 4 10/1/2027 - 9/30/2028	Year 5 10/1/2028 - 9/30/2029
Bid Package Procurement & Construction - Solar, BESS	X				
Inspection		X			
Performance Period			X	X	Project Complete
San Jose Fire Station #32	Year 1 10/1/2024 - 9/30/2025	Year 2 10/1/2025 - 9/30/2026	Year 3 10/1/2026 - 9/30/2027	Year 4 10/1/2027 - 9/30/2028	Year 5 10/1/2028 - 9/30/2029
Construction - Solar, BESS	X				
Inspection		X			
Performance Period			X	X	Project Complete
Sunnyvale Fire Station 2	Year 1 10/1/2024 - 9/30/2025	Year 2 10/1/2025 - 9/30/2026	Year 3 10/1/2026 - 9/30/2027	Year 4 10/1/2027 - 9/30/2028	Year 5 10/1/2028 - 9/30/2029
Planning, Design, & Permitting	X				
Bid Package Procurement & Construction - HPWH, HVAC, Solar, BESS, EVSE, Kitchen	X	X	X		
Inspection			X		
Performance Period			X	X	X

f. Resiliency Upgrades at Existing Facilities: Most projects will take place at existing facilities. Immediately following award acceptance, Cities will conduct procurement for design services as needed; this task is rolled into the Planning, Design, & Permitting task on each milestone table below. All projects are expected to be completed no later than June 30, 2029, to allow for a minimum two month performance period - projects inspected in Year 4 will have a minimum 18 month period.

San Jose Fire Department Training & Emergency Operations Center (EOC)	Year 1	Year 2	Year 3	Year 4	Year 5
10/1/2024 - 9/30/2025	10/1/2025 - 9/30/2026	10/1/2026 - 9/30/2027	10/1/2027 - 9/30/2028	10/1/2028 - 9/30/2029	
Planning, Design, & Permitting	X				
Bid Package Procurement & Construction - BESS, EVSE		X			
Inspection			X		
Performance Period				X	X
Sunnyvale Cleanwater Center	Year 1	Year 2	Year 3	Year 4	Year 5
10/1/2024 - 9/30/2025	10/1/2025 - 9/30/2026	10/1/2026 - 9/30/2027	10/1/2027 - 9/30/2028	10/1/2028 - 9/30/2029	
Planning, Design, & Permitting	X				
Bid Package Procurement & Construction - HVAC, Solar, HPWH		X	X		
Inspection				X	
Performance Period				X	X
Morgan Hill Centennial Recreation Center	Year 1	Year 2	Year 3	Year 4	Year 5
10/1/2024 - 9/30/2025	10/1/2025 - 9/30/2026	10/1/2026 - 9/30/2027	10/1/2027 - 9/30/2028	10/1/2028 - 9/30/2029	
Planning, Design, & Permitting	X	X			
Bid Package Procurement & Construction - HPWH, HVAC, BESS, EVSE, Kitchen		X	X		
Inspection			X		
Performance Period				X	X
Mountain View Mountain View Sports Pavilion	Year 1	Year 2	Year 3	Year 4	Year 5
10/1/2024 - 9/30/2025	10/1/2025 - 9/30/2026	10/1/2026 - 9/30/2027	10/1/2027 - 9/30/2028	10/1/2028 - 9/30/2029	
Planning, Design, & Permitting	X	X	X		
Bid Package Procurement & Construction - HVAC, Solar, BESS			X	X	X
Inspection					X
Performance Period					X
Mountain View Whisman Sports Center	Year 1	Year 2	Year 3	Year 4	Year 5
10/1/2024 - 9/30/2025	10/1/2025 - 9/30/2026	10/1/2026 - 9/30/2027	10/1/2027 - 9/30/2028	10/1/2028 - 9/30/2029	
Planning, Design, & Permitting	X	X	X		
Bid Package Procurement & Construction - Solar, BESS			X	X	X
Inspection					X
Performance Period					X

e. Resiliency Upgrades at New Facilities: San José is building new Fire Stations 23 and 36 that will be all-electric construction including microgrids. Both projects will conduct land acquisition in years 1-2 that will not be grant covered and are expected to have six month performance periods including modeling analyses informed by on-site metering of at least a two month period.

San Jose Fire Station #23	Year 1	Year 2	Year 3	Year 4	Year 5
10/1/2024 - 9/30/2025	10/1/2025 - 9/30/2026	10/1/2026 - 9/30/2027	10/1/2027 - 9/30/2028	10/1/2028 - 9/30/2029	
Planning, Design, & Permitting			X		
Bid Package Procurement & Construction - Solar, BESS				X	
Inspection					X
Performance Period					X
San Jose Fire Station #36	Year 1	Year 2	Year 3	Year 4	Year 5
10/1/2024 - 9/30/2025	10/1/2025 - 9/30/2026	10/1/2026 - 9/30/2027	10/1/2027 - 9/30/2028	10/1/2028 - 9/30/2029	
Planning, Design, & Permitting			X		
Bid Package Procurement & Construction - Solar, BESS				X	
Inspection					X
Performance Period					X

f. Performance Evaluations: SPUR will lead evaluation for GHG Performance and ProspectSV will lead Building Design Performance. All Project Plans with QAPPs will be submitted September 30, 2024. Final Performance Reports will be submitted by the end of the grant term, by September 30, 2029.

SPUR - GHG Performance Assessment	Year 1	Year 2	Year 3	Year 4	Year 5
	10/1/2024 - 9/30/2025	10/1/2025 - 9/30/2026	10/1/2026 - 9/30/2027	10/1/2027 - 9/30/2028	10/1/2028 - 9/30/2029
Consultant Procurement	Completed by Mar 31, 2025				
Develop & Submit Project Plan & Quality Assurance Performance Plan	Completed by Sep 30, 2025				
Develop & Conduct Baseline Facilities' Benchmarking & Individual Technology Performance Assessments (e.g. HPHW)		X			
Microgrid Performance Assessments		X	X	X	X
Final Performance Data Analysis & Report Submittal					Completed by Sep 30, 2029
Prospect Silicon Valley - Design Parameters Performance	Year 1	Year 2	Year 3	Year 4	Year 5
	10/1/2024 - 9/30/2025	10/1/2025 - 9/30/2026	10/1/2026 - 9/30/2027	10/1/2027 - 9/30/2028	10/1/2028 - 9/30/2029
Develop & Submit Roadmap for Resilience Centers Features, Including Quality Assurance Project Plan	Completed by Sep 30, 2025				
Develop Specific Project Assessments	X	X			
Develop Mechanical Electrical Plumbing (MEP) Design Conceptual Bid Package	X	X	X		
Develop Standard RFP for Design & Construction Services	X				
Review and Design of Construction Documents, Assist Construction Bid Process & Implementation	X	X	X	X	X
Final Performance Evaluation & Report Submittal				X	Completed by Sep 30, 2029

g. Community Engagement and Online Reporting: SPUR will lead Equity Performance and Community Engagement and submit the Project Plan and Low Income Benefit Report by September 30, 2024, and the Final Evaluation by September 30, 2029. Four events total will be planned to showcase completed projects and encourage climate action countywide, two managed by SPUR and two by the City of San José Office of Economic and Cultural Affairs as a Climate Art Fair. San José will host a Project Website including GHG Dashboard for displaying reduced emissions as projects are completed, and 5 community presentations translated into the County's three widely spoken non-English languages of Spanish, Vietnamese, and Mandarin Chinese including live translation for community meetings.

SPUR - Community Engagement	Year 1	Year 2	Year 3	Year 4	Year 5
	10/1/2024 - 9/30/2025	10/1/2025 - 9/30/2026	10/1/2026 - 9/30/2027	10/1/2027 - 9/30/2028	10/1/2028 - 9/30/2029
Project Plan Development & Submittal	Completed by Sep 30, 2025				
Interview Planning & Partnership Development	X	X			
Initial Low Income Benefit Report Development & Submittal	X				
Interviews & Surveys with Residents, Staff, & Others involved			X	X	
Community Engagement Events (3 total)				X	X
Post-Project Evaluation & Report Submittal					Completed by Sep 30, 2029
San Jose - Community Engagement & Website	Year 1	Year 2	Year 3	Year 4	Year 5
	10/1/2024 - 9/30/2025	10/1/2025 - 9/30/2026	10/1/2026 - 9/30/2027	10/1/2027 - 9/30/2028	10/1/2028 - 9/30/2029
Website Initial Development & Annual Updates	X	X	X	X	X
Annual Translated Presentations	X	X	X	X	X
Community Engagement Events Planning (3 total)				X	X
Community Engagement Events Implementation (3 total)					X

h. Workforce Development: ProspectSV will lead Workforce Development Activities. Training Modules and Apprenticeship Program will be developed in Year 1. Trainings will be provided to city staff and 50 low income individuals, sponsored by the grant, in years 4-5, with final program evaluation submitted by September 30, 2029.

Prospect Silicon Valley	Year 1	Year 2	Year 3	Year 4	Year 5
	10/1/2024 - 9/30/2025	10/1/2025 - 9/30/2026	10/1/2026 - 9/30/2027	10/1/2027 - 9/30/2028	10/1/2028 - 9/30/2029
Develop Training & Apprenticeship Program; Submit Project Plan	Completed by Sep 30, 2025				
Implement Municipal training		X	X	X	X
Implement Apprenticeship Program		X	X	X	X
Annual Assessment		X	X	X	X
Final Assessment					Completed by Sep 30, 2029

All projects, performance assessments, community engagement, and reports will be completed by September 30, 2029.

SECTION 4: LOW-INCOME AND DISADVANTAGED COMMUNITIES

a. Community Benefits

All locations proposed for the PFRIP's GHG reduction measures meet EPA-defined criteria as disadvantaged census tracts, either by directly meeting the Disadvantaged criteria, or by meeting 2 or more 90th percentile for recognized environmental or socioeconomic stressors according to the Climate and Economic Justice Screening Tool (), such as PM 2.5, traffic volume and proximity, and linguistic

isolation. The relevant CEJST census tracks are listed under Attachment, *Areas_SVCE_PFRIP*. On The Cover Page displays a map of the full project service area, planned measures by category, the corresponding disadvantaged census tracks per CEJST layers, and the number of CEJST 90th percentile stressors met at each site.

Lower income individuals use Santa Clara County community centers, recreation centers, and libraries daily for child and elder care programs and to access books, computers, workout equipment, and meeting rooms. These facilities are established and trusted neighborhood focal points used year-round for community-building activities, providing resources to residents, and supporting and strengthening community relationships. In addition, fire department facilities exist primarily to assist the most vulnerable communities, either those experiencing physical threats or health issues. The facilities featured in PFRIP are activated during disasters like major storms, fires, flood events, and heat waves and are used as emergency shelters and cooling/heating centers to provide residents respite from the elements. Low-income and vulnerable communities are most likely to be impacted by hazards and disaster events like flooding, heat waves, and power outages.¹¹ For example, in the event of a heat wave, lower-income residents most often live in older apartment buildings without air conditioning or are unable to afford AC utility costs. Lower-income residents are also more likely to live in neighborhoods with less tree cover, making their homes and neighborhoods hotter on average.¹² For example, South Central San José has less tree cover and is hotter than other neighborhoods of the city.¹³ During heat waves, low-income residents benefit greatly from public cooling centers. By advancing resiliency retrofits at these facilities, many of these public facilities will soon be able to maintain critical community services using microgrid systems. PFRIP will improve community services at the facilities with a mix of decarbonization retrofits and resiliency upgrades. Community benefits may differ depending on the measure implemented, see detailed community benefits below.

Resiliency upgrades will include photo voltaic (PV), battery energy storage systems (BESS) installations, and microgrids installations, that may be integrated with public EV charging infrastructure. PFRIP's resiliency upgrades will realize several direct benefits to the community:

- *Improved access to services and increased resilience to climate hazards:* Many of the facilities undergoing PV, BESS, and microgrid upgrades are activated during hazards like major storms, fires, flood events, and heat waves and are used as emergency shelters and cooling/heating centers to provide residents respite from the elements. These distributed energy resources will enhance the energy security and stability of these facilities, making them less vulnerable to power shutoffs and outages during hazards. Upgrading community centers and recreation centers will increase the capacity of facilities to serve residents continuously during times of intermittent power shutoffs and outages, offering a space for community members to access

¹¹ US EPA, OA. 2021. "EPA Report Shows Disproportionate Impacts of Climate Change on Socially Vulnerable Populations in the United States." News Release. September 2. <https://www.epa.gov/newsreleases/epa-report-shows-disproportionate-impacts-climate-change-socially-vulnerable>.

¹² Zhou, Weiqi, Ganlin Huang, Steward T.A. Pickett, Jing Wang, M.L. Cadenasso, Timon McPhearson, J. Morgan Grove, and Jia Wang. 2021. "Urban Tree Canopy Has Greater Cooling Effects in Socially Vulnerable Communities in the US." *One Earth* 4 (12): 1764–75. doi:10.1016/j.oneear.2021.11.010.

¹³ "SJSU News | Learn By Doing/ Excite Your Mind." 2024. Accessed March 28. <https://sisunews.com/article/lack-of-trees-proves-harmful-to-sj-san-josé-state-and-city-experts-say-deficit-in-canopy-coverage-causes-inequality-and-climate-issues>.

shelter, information, and electrical power (e.g. for charging phones) when nearby homes and businesses may lack power or have experienced other hazard-related damages. Low-income residents are disproportionately vulnerable to climate hazards due to several factors, including limited resources, socioeconomic disparities, and inequitable access to infrastructure and services. During heat waves, low-income residents benefit greatly from public cooling centers because they lack access to air conditioning or cannot afford to pay utility costs. Finally, by transitioning to electric-powered heating, cooling, and appliances, communities will also decrease their carbon footprint and contribute to mitigating climate change impacts.

- *Lower electricity bills and net metering for solar PV means reinvestment in community services:* PV, combined with BESS, allows for buildings to supply their own electricity during much of the year, and during a large portion of the day. BESS allows buildings to continue to use energy produced by PV passed peak sunlight hours. Net metering policies allow for PV energy producers to sell excess energy back to the grid during peak sunlight hours. Together, these upgrades allow buildings to save on utility bills, sell PV energy to further reduce energy bills, and use bill savings to reinvest in building services and amenities.

Decarbonization retrofits will change natural gas-powered equipment for electric counterparts in major building systems including Heating, Ventilation, and Air Conditioning (HVAC) replacements, water heating and pumping, and kitchen appliances. *PFRIP's retrofits* will realize several direct benefits to the community:

- *Improved public health resulting from reductions in co-pollutants:* By transitioning from fossil fuel-based appliances, like gas water heaters, to cleaner electric appliances like heat pumps, nitrous oxide, and particulate matter concentrations decrease and air quality improves, reducing respiratory issues such as asthma and allergies. Electrifying gas stoves to induction stoves eliminates carbon monoxide and other particulate matter concentrations, reducing harmful indoor air pollutants in the facilities in question. Furthermore, electrification often involves the adoption of energy-efficient technologies, leading to lower emissions from energy generation and further mitigating air pollution, which is linked to cardiovascular and respiratory diseases.
- *Improved access to services and amenities:* Many public facilities struggle with deferred maintenance on infrastructure due to lack of funding. This can lead to disruption in access to certain services for community members. For example, community centers may provide hot showers, but if the facility's hot water heater is old it may break often and require repairs. Replacing older appliances with upgraded electric appliances will improve the quality of the equipment and reduce service disruptions for the community.
- *Energy cost savings mean reinvestment in community services:* When heating water or air, heat pumps are three to four times more energy efficient than their gas counterparts. Additionally, forecasts of energy rates in California estimate that gas rates are likely to escalate faster than electric rates over time. With the addition of solar panels, batteries, and microgrids, building maintenance budgets have the potential to realize savings year-over-year, freeing up additional resources for improvements and community services.
- *Workforce training opportunities:* Workforce training opportunities, led by Prospect Silicon Valley, will provide contractors with the skills required to install zero-pollution equipment, such as all-electric heat pump water heaters and heat pump HVACs. This partnership will not only directly support the proposed municipal facilities retrofits but will also expand the workforce

needed to decarbonize the South Bay’s municipal (and residential) building stock, and accelerate the transition off of gas heating in buildings. The training program will be available to 50 low-income individuals free of charge and will include apprenticeship ride-along with City staff during installation and maintenance of proposed resiliency upgrades and decarbonization retrofits.

Continued assessment—To determine the *Public Facility Resiliency Implementation Project’s* GHG-emission reduction impact and community benefits, including the direct and indirect benefits to low-income and disadvantaged communities, SPUR will conduct an assessment to share outcomes and best practices associated with the Project. By the end of Year 1, SPUR will submit a Low Income Benefit Assessment and Equity Analysis Project Plan. Final assessment findings will be shared as a report and will be ready in advance of the five-year grant deadline.

The assessment will generally include:

- An overview of the participating municipalities’ public facility building portfolio and why this subset of buildings was chosen for funding.
- A review of the approach of the Project’s “by-equipment” versus “by-building” approach with an explanation of the resiliency upgrades and the decarbonization retrofits and how this approach reduced the impact on operations and other conditions.
- GHG reduction and cost savings calculations
- A review of the Project’s design standards
- Workforce development impacts from the partnership with Prospect Silicon Valley
- Three case studies of representative buildings that underwent resiliency upgrades or decarbonization retrofits: What was the process of retrofit, what was learned, who are communities served by buildings, and what were the community benefits or disbenefits? What specific planning, zoning and permitting issues or experiences that arose during project implementation?
- Equity Analysis (see below for more details)
- Challenges and Best Practices: What can be learned from these projects to support other jurisdictions in making their public facilities more resilient through electrification transitions and other upgrades?

To operationalize equity in its policy work, SPUR developed the *Equity Framework of Analysis - Guiding Questions for Policy Projects*. This equity framework was adopted to ensure SPUR’s research methodology and practices are inclusive, collaborative, and responsive to the needs of impacted people. This Framework will guide the assessment of this Project. Guiding questions include: How does this project address the pressing needs of marginalized groups? Are there data gaps? What additional data would help analyze the project to better understand its equity impacts? If so, how can SPUR obtain better data? What past investments/budget allocations have there been to this group/geography? These are the types of questions that SPUR’s assessment of the project will consider in its equity analysis.

b. Community Engagement

SPUR

As leader of the PFRIP’s Community Engagement and Equity assessment, SPUR will engage the community through surveys and interviews of residents who are served by these facilities, in addition to facility staff members, heat pump and microgrid installers, and other key people engaged in the resilience upgrades and decarbonization retrofits. The findings from this assessment will be shared through a free SPUR public event and regional outreach. SPUR will also support the municipalities in

implementing community engagement and public education plans, including co-hosting two public events at municipal facilities that have undergone a resiliency upgrade or decarbonization retrofit. These events are meant to highlight the upgrades made at each facility through a festive community gathering and report back on assessment findings, particularly community benefits achieved through the specific facility's upgrade or retrofit in addition to benefits achieved across the entire project.

City of San José

The project includes a focused community engagement plan that will build upon San José's Climate action plans and City Infrastructure Strategy that are informed by prior extensive community, technical, and stakeholder processes. Improving grid resiliency through microgrids and decarbonizing buildings and commutes are specific strategies of the *Pathway to Carbon Neutrality* as well as the *City Infrastructure Strategy, Brilliant at Basics*. From 2018 to 2021, San José undertook an extensive community engagement process to co-create *Electrify San José: Framework for Existing Building Electrification* that lays out how to reduce greenhouse gas emissions from existing buildings in San José through building electrification, while bringing to the forefront the concerns and priorities of historically marginalized communities. Over a year and half of monthly meetings with two community-based organizations (CBOs) representing San José's Latinx and Spanish communities, three community forums with over 40 CBOs, labor, environmental, development and housing organizations, and five public outreach meetings, participants identified three relevant overarching community needs and priorities: 1. Housing and energy costs 2. Clean and reliable energy 3. Health and air quality

Many families throughout San José are not able to purchase ventilation systems to cool their homes and protect their indoor environments from air pollution. San José residents are concerned about more frequent smoky days from the wildfire season, and pollution from highways and industrial sites that disproportionately affects low-income communities. Vulnerable populations living in areas of higher air pollution are already experiencing disproportionately negative health outcomes, such as higher rates of asthma. In addition, many longtime residents who are not working in the tech industry have seen their living costs skyrocket without a proportional wage increase. San José families are already struggling to pay their utility bills. Eleven percent of San José households have a high energy burden, which means they spend above 6 percent of household income on utility bills, while 6 percent of households have a severe energy burden, meaning they spend above 10 percent of household income on utility bills. It is critical that building electrification does not exacerbate housing and energy unaffordability in San José, particularly for those who are already struggling to remain in their homes and in the city.

Guided by the findings of these previous engagement activities, the City's Public Works Department conducted a wide ranging map assessment of City census tracts aligned with the CEJST layer to identify facilities in the most economically challenged areas for the CPRG decarbonization and resiliency measures. In addition, the proposed workplan and budget includes a community engagement plan that will ensure all citizens are given the resources to be heard by including engagement strategies targeted at Spanish, Vietnamese, and Mandarin Chinese speakers as well as low-income residents. Planned strategies for language accessibility include live communication in native languages, virtual input opportunities, and a fully translated project website. In addition to the countywide work led by SPUR, the Public Works Department will work with the San José Office of Economic and Cultural Affairs to hold a Climate Action Fair including two community engagement events within its jurisdiction.

City of Morgan Hill

The City of Morgan Hill's adopted Climate Action Plan (CAP) was developed with significant input from a community working group which saw the importance of public facility electrification. They specified a goal in the CAP to convert all municipal buildings to all-electric by 2035. The CPRG funds would be a significant step toward meeting this community-driven goal because it would allow the City to fully electrify one of the community's key cultural hubs.

The City of Morgan Hill will seek meaningful engagement with low-income and disadvantaged communities continuously for the life of the grant by providing outreach, engagement, input opportunities, and information about the project in both English and Spanish languages. The City will partner with local groups including the public library, school groups, AAUW, and climate action groups to reach a wide range of residents. Additionally, the City is proposing to install a mural completed by a local artist that will incorporate a clean energy theme. The artwork will be designed to inspire and intrigue across the City's diverse cultural and socioeconomic backgrounds.

The City of Morgan Hill has more affordable housing units per capita than any other city in northern California. The City has been planned in a way that incorporates affordable housing throughout the community and as a result the City does not have a specific census tract that is identified in the Climate and Economic Justice Screening Tool as LIDAC, although the Centennial Recreation Center is located within a census tract that meets several of the tool's individual disadvantaged metrics. In addition to acting as a heating, cooling, and reunification center, Morgan Hill's recreation center also offers services for the elderly, children, and youth, and provides affordable activities and workout equipment to the entire community including a significant lower income population.

City of Mountain View

The City of Mountain View, in partnership with local organizations, conducted outreach in 2023 to inform its resiliency efforts. For example, the Community Services Agency (a nonprofit organization which has partnered with the City for more than 40 years on social safety net services) and the City worked together to conduct surveys in English, Spanish, and Chinese at the Senior Center to 120 senior nutrition program participants. Survey results highlighted opportunities to increase public awareness of cooling centers (such as Mountain View Sports Pavilion and Whisman Sports Center) and augment citywide resiliency infrastructure. This raised the CPRG grant as a timely opportunity to enhance the City's facilities with resiliency improvement.

If awarded, the City of Mountain View will engage with low-income and disadvantaged communities throughout the development and implementation of the grant. For many years, the City's Multicultural Engagement Program (MEP) has been building relationships within the City's culturally diverse populations and neighborhoods, including among the Hispanic/Latino, Chinese, and Russian communities. The City has a civic engagement academy that is offered in Spanish and Chinese. MEP also provides translation/interpretation services and culturally appropriate outreach. The City's Sustainability and Resiliency Division and MEP would partner to provide linguistically and culturally appropriate outreach to incorporate community input and provide updates throughout the grant process. The City is also undergoing other planning processes that will involve community engagement around resiliency infrastructure and programming that can be leveraged for PFRIP. Over the coming year, the City will develop a Community Resiliency Strategy as well as the Parks and Recreation Strategic Plan.

Outreach for these projects will include surveys, partnerships with community groups, one-on-one meetings or interviews, and community meetings, many of which will offer translation or interpretation options and childcare. The City will consider community feedback from these processes to inform the CPRG projects.

City of Sunnyvale

The City of Sunnyvale adopted its Climate Action Playbook (CAP 2.0 or Playbook) in 2019 with significant input from the community through surveys, public meetings, workshops and input from a community advisory committee. The City and community emphasized the importance of public facility electrification when feasible, to ensure the City is doing its part to contribute to the community wide GHG reduction targets. Play 2.2 of the City's Playbook specifies a target to convert municipal buildings to all-electric upon rebuild or significant remodel to assist in reducing natural gas emissions from existing buildings. Currently, the City is updating its specific work plan for implementing the Playbook, Game Plan 2028. The most recent presentation of analysis of this work plan highlights the importance of reducing natural gas from existing buildings to achieve the City's 2030 goal. The City conducted outreach to the community to gather input on the Draft Game Plan through workshops, online surveys available in English and Spanish, email blasts, and presentations to community groups. The current Draft outlines increasing the City's goals for reducing natural gas use to 42% in residential and 38% in commercial by 2030. The CPRG funds would be a significant step toward meeting these ambitious goals because it would allow the City to fully electrify two critical operations centers, monitor their energy performance and serve as model buildings to justify the need for advancing building electrification of municipal facilities on a broader scale.

If awarded, the City of Sunnyvale plans to bolster its engagement with low-income and disadvantaged communities throughout the development and implementation period of the grant term. As part of the design and construction process for city facilities, the City hosts public meetings in local spaces to invite the community to provide feedback and input on the design and construction plans. In 2021, the City of Sunnyvale hired an Equity, Access and Inclusion (EAI) Manager and established an equity, access and inclusion team of staff from each City department to advance the City's reach and engagement with its most vulnerable populations. In addition, the City adopted Council Policy 7.2.1 specifically for community engagement, which was developed after the City hosted a series of listening sessions to hear from the community. The policy ensures the community is well informed about local issues and City Programs and Services. This is part of a larger obligation called the Sunnyvale Unity Commitment which commits the city to creating a culture of belonging where all members of our diverse community feel included, heard, and respected. The City's Sustainability team plans to partner with the EAI team to develop outreach materials in Spanish, Mandarin and Tagalog to design linguistically and culturally appropriate outreach materials for engagement throughout the grant term. Both facilities in Sunnyvale's application are important community engagement centers, will serve as educational centers for the public and will demonstrate the City's ability to meet climate goals and targets set for and by the community.

SECTION 5: JOB QUALITY

The City of San José partners with the Santa Clara County Office of Labor Standard Enforcement on prevailing wage and wage theft policies to ensure countywide wage equity and prevent wage theft. San José's Office of Equality Assurance will oversee prevailing wages for the project and help monitor companies who would be contracted for project implementation to ensure that their workers are

properly paid for the work they do. The Office of Equality Assurance conducts active enforcement of prevailing wages on City contracts.

To expand the regional work force, team member ProspectSV would coordinate a training series for building industry practitioners on building decarbonization and zero-carbon building systems. ProspectSV has partnered with DMG North, a representative of leading HVAC (Heating, Ventilation, and Air Conditioning) equipment manufacturers in Northern California, to establish a Northern California Training Center in the Bay Area. This center will be available for industry training and education over the duration of the grant period and beyond. DMG North regularly hosts training sessions with Trade Professionals, Professional organizations, Unions, Vocational Schools, Colleges, and Universities. They have committed to being a resource for the industry and to help educate and train others, which will have a far-reaching impact on commercializing this in the marketplace. The training series, to be developed under PFRIP funding in Year 1, would be based on the experience of veteran workforce development professionals with a history of supporting clean technology workforce efforts across the Bay Area. The program will include classroom and webinar training and speaking engagements, but also will leverage the partnerships of professional organizations like Sustainable Purchasing Leadership Council, North American Sustainable Refrigerants Council, International Facilities Management Association, and others to reach the broadest and most relevant stakeholders across the buildings industry value chain. Special attention will be paid to the buildings design and modeling industry through a network of design leaders engaged in as program advisors. The program will be available to the Coalition's staff as in service training, and up to 50 low income residents seeking journeyman plumbing or electrician credentials, during years 2-5 of the grant period.

SECTION 6: PROGRAMMATIC CAPABILITY AND PAST PERFORMANCE

a. Past Performance

The Coalition led by SVCE collectively has considerable experience with receiving and managing federal and non-federal grants. The City of San José manages more than 100 federal awards for various grant types. In fiscal year 2022-2023, San José reported more than \$196 Million (M) in federal grant awards and expenditures. Two key examples of grants completed within the last three years include: 1) the U.S. Department of the Treasury's Coronavirus Relief Fund¹⁴ which provided \$178M during the Pandemic to cover community needs for food, shelter, testing, and other essentials and 2) CalOES Public Safety Power Shutoff Allocation¹⁵ which provided \$500,000 for emergency response. The City of Cupertino recently received and expended \$214,549 in grant funds through State of California Proposition 68 OGALS¹⁶ to build the city's first full-sized basketball court, filling a gap in recreational variety in the Parks Master Plan. For the fiscal year ending June 30, 2023, the City of Sunnyvale reported 32 federal awards

¹⁴ Grantor: U.S. Department of the Treasury's Coronavirus Relief Fund; Grant Assistance Number: OIG-CA-20-021, from March 1, 2020 – December 31, 2022; Total Funding: \$178,295,348; How Spent: \$90.1M in personnel costs of dedicated time responding to the COVID-19 emergency; \$29.9M in food and necessities distribution; \$27.2M in unhoused sheltering/support; \$20.4M in local assistance; \$4.5M testing, tracing and isolation; and \$2.2M facility improvements

¹⁵ Grantor: State of California Governor's Office of Emergency Services (CalOES) Public Safety Power Shutoff Allocation; Grant Assistance Number: 085-68000; Grant Dates: July 1, 2019 – February 29, 2024; How Spent: \$99,360 for development of City's Power Vulnerability Plan; \$122,340 in design and specifications for New Emergency Generators for Fire Station #28 and Police Sub Station; \$240,900 in Radio Communications Equipment for Public Safety; and \$37,400 in Radio Communications Equipment for Non-Public Safety.

¹⁶ Grantor: California Department of Parks and Recreation via Office of Grants and Local Services (OGALS); Grant Name: California Drought, Water, Parks, Climate, Coastal Protection, and Outdoor Access for All Act of 2018; Grant Assistance Number: 18-43-016 and 18-43-017; Grant Amount: \$214,549; Grant Term: through 12/31/2021 - 7/31/2024; How Funding Was Spent: Remove existing landscape, irrigation, storm drain, Install a full-size basketball court (court surface, backboards/nets, drainage). Remove and replace existing walking path leading to new basketball court. Total: \$214,549 spent by 12/31/23.

and \$29.7M in federal grant expenditures; City of Mountain View reported 11 federal awards and \$10.8M in federal grant expenditures; and the City of Morgan Hill reported 4 federal awards and \$800,732 in federal grant expenditures¹⁷. SVCE administered a \$1.5M grant from the CAPP¹⁸ in FY21-22 that helped California energy customers reduce past due energy account balances during the Pandemic.

b. Reporting Requirements

The PFRIP Coalition members successfully complete grants compliance reporting accurately and timely. In early 2024, the Cities of Morgan Hill, Mountain View, San José, and Sunnyvale completed their Single Audit on the Schedule of Expenditures of Federal Awards required by the Uniform Guidance with no material weaknesses or significant deficiencies regarding the review of the Schedule of Expenditures of Federal Awards, which includes all federal awards received directly from federal agencies and federal awards passed-through other governmental agencies. In 2023, Cupertino expended the OGALS funds 7 months ahead of the deadline. In 2022, the Department of Treasury's Office of Inspector General (OIG) conducted Desk Review of the Coronavirus Relief Funds of \$178.2M for the City of San José. After completing their Desk Review, Treasury OIG indicated that they had no findings, exemptions, and no questionable/unallowable costs. As proven by the OIG's Annual Desk Review, all reporting and financing requirements were completed on time and within budget.

c. Staff Expertise

Silicon Valley Clean Energy (SVCE) has substantial experience with handling and distributing funds. SVCE regularly provides its constituents grant opportunities and financial assistance, such as the CAPP, and this expertise will apply to distributing subawards to the Coalition members as a pass-through entity. SVCE has an annual 2023 operating budget of \$324.5M¹⁹ and typically keeps 300 days of cash on hand, expecting 365 this calendar year, and an "A" Credit Rating²⁰, putting the organization in a stable and experienced position for managing and distributing the *Public Facility Resiliency Fund*. The PFRIP Coalition of Cities is fully positioned and ready to complete PFRIP on schedule within a 5-year grant term following acceptance of the grant award. Immediately following acceptance of award, each City can contract with one of its existing vendors for planning, design, permitting and implementation of measures. Each City's procurement requirements for services, supplies, and equipment generally meet the Uniform Grant Guidance (UGG) (2 CFR 200) minimum requirements. The competitive procurement process, through a third-party web-based bid solicitation platform, ensures open and free competition for purchasing, and provides small business considerations and credits and provides measures to prevent conflicts of interest. The history of the procurement process is documented thoroughly to include selection of contract type, cost for the contract, solicitation of bids, responses from potential contractors, determination that the price is reasonable and any amendments to the contracts. PFRIP will follow the Best Practice Guide for Procuring Services, Supplies, and Equipment under EPA Assistance Agreements.

SECTION 7: BUDGET

a. Budget Detail

¹⁷ Federal Audit Clearing House, OMB# 3090-0330, EXP: 09/30/2026, <https://app.fac.gov/dissemination/search/>

¹⁸ Grant Administrator: [California Arrearage Payment Program](#) (CAPP); No Grant Assistance Number, Total Amount: \$1,545,172; grant term ended September 30, 2022; <https://www.csd.ca.gov/CAPP>

¹⁹ Silicon Valley Clean Energy Authority; Independent Auditors Report, Financial Statements Years Ended: September 30, 2023, September 30, 2022; <https://svcleanenergy.org/wp-content/uploads/Silicon-Valley-Clean-Energy-Authority-9.30.2023-Financial-Statements-FINAL.pdf>

²⁰ RatingsDirect, S&P Global Ratings, [Silicon Valley Clean Energy Authority, California; Retail Electric, May 11, 2023](#)

The Total Cost for PFRIP is \$49,999,997. Full budget details for all categories including itemized charges can be viewed in the Budget Spreadsheet *Budget_SVCE_PFRIP*, and Budget Appendix *Budgetcalcs_SVCE_PFRIP* which includes a Table of Staff Rates covering Personnel, Fringe, and Indirect Hourly Rates.

- i. Personnel: Total Cost: \$5,185,857 based on 45 classifications spanning SVCE and all sub-awardees developed from staff time hourly rates of actual known employees and the hours or percentage of Full Time Employee (FTE) required to complete grant objectives.
- ii. Fringe Benefits: Total Cost: \$2,703,931 based on 45 classifications spanning SVCE and each sub-awardee, as a percentage of Personnel time of actual known employees that varies by organizational benefits but typically includes: health premiums (medical, dental, vision), flexible spending/health reimbursement accounts, workers' compensation, life insurance, and disability leave. Fringe rates may vary upon union, benefit choices, and retirement system tier.
- iii. Travel: Total Cost: \$8,500 based on local, in-state, and out-of-state travel needs for implementing community engagement strategies and subsequent project performance presentations at two conferences.
- iv. Equipment: Total Cost: \$20,590,387 based on 62 implementation sites' costs for installing GHG reductions measures, including but not limited to, heat pump water heaters, heat pump HVAC, and solar systems and batteries at various capacities.
- v. Supplies: Total Cost: \$16,600 based on two sites' electric cooking appliances and four community events' needs.
- vi. Contractual: Total Cost: \$18,886,212 based on all vendor services needed to produce PFRIP outcomes, including but not limited to design, permitting, construction, GHG and Building Design performance and community engagement.
- vii. Other: Total Cost: \$417,750 based on stipends for qualifying low income trainees and community engagement participation, community art and celebratory events.
- viii. Indirect Charges: Total Cost: \$2,190,759.80 based on 45 classifications spanning SVCE and each sub-awardee, as a percentage of personnel salaries that vary by organizational overhead needs or approved Negotiated Indirect Cost Rate Agreement (NICRA).

b. Expenditure of Awarded Funds

To ensure that grant award is efficiently expended on time within the grant period, the PFRIP Coalition will meet monthly to plan upcoming activities and review recent progress; and through the [Santa Clara County Climate Collaborative](#), providing opportunities to share news, challenges, lessons learned, and best practices, and coordinate activities. All final report information and receipts will be provided to SVCE by sub-awardees no later than two weeks prior to a relevant reporting deadline (see Section 3c) to ensure timely report submittal to the EPA. Semi-annual reports will be provided on March 31 and September 30, or the closest prior business day, throughout the grant term until the Final Report due date of September 30, 2029.

c. Reasonableness of Costs

All PFRIP's Direct and Indirect costs are necessary to construct the GHG reduction measures and conduct specific grant performance and community engagement. Costs were calculated through engineering and project manager review and assessment, supported by vendor quotes to the extent possible and represent the most feasible and reasonable costs available at the time of this proposal.

CITY COUNCIL STAFF REPORT

MEETING DATE: June 19, 2024

PREPARED BY:

Eric Blomquist, Building Official

APPROVED BY: City Manager

APPROVE A CONSULTANT AGREEMENT WITH CSG CONSULTANTS, INC. FOR BUILDING PLAN REVIEW SERVICES FOR A TOTAL NOT TO EXCEED AMOUNT OF \$320,000

RECOMMENDATION(S)

Approve the professional services agreement with CSG Consultants, Inc, for Building Division plan review services for a total not to exceed amount of \$320,000.

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Enhancing Public Safety

Maintaining and Enhancing Infrastructure

2024-2025 Strategic Priorities

Fiscal Sustainability

REPORT NARRATIVE:

The Building Division uses consultant services to assist with building plan reviews for verification of code compliance. These services are on an as-needed basis and include the following: residential and non-residential building plan reviews, structural only plan reviews, fire plan reviews, expedited plan reviews, and certified access specialist consultation. The Building Division processes approximately 2,500 permits annually. Plan reviews are performed by the Building Official, the Building Manager, and the Plan Check Engineer. About 10% of plan reviews are completed by consultant services. The City relies on consultant services in order to assist the Building Division with the timely processing of non-residential projects and to comply with the Permit Streamlining Act for residential projects.

In April 2024, the Building Division requested quotes from multiple consultants for building plan review services to be performed in a remote location on an as-needed basis. The City received a total of four responses from Shums Coda and Associates, 4Leaf, CSG Consultants, and Bureau Veritas.

The four consultants' fee schedules and schedule of performance were compared to ensure the most efficiency for the City. All four consultants' fee schedules were based on a percentage of the City collected fees. The variation in the fees is that three of the consultants, including CSG Consultants' fees are based on 65% of the building plan check fee and the other consultant charges 55% of the total fees collected by the City. The building plan check fee is less than the total City fees collected. Since the consultant with the lower percentage is based on the higher fee, it will result in approximately the same fee being paid to all the consultants. The performance schedule varied significantly between the consultants for review times of large projects. One consultant was not able to guarantee a plan review time, two consultants indicated there would be 15 business days for initial review and 10 business days for rechecks and the last one, CSG Consultants, can perform the reviews in 10 business days for initial review and 5 business days on rechecks.

After the comparison, staff recommend continuing utilizing CSG Consultants for building plan review services. CSG Consultants is able to ensure that a large project review would be performed in a shorter time frame, allowing the City staff additional time to process the applications, resulting in time savings for the applicant and compliance with the Permit Streamlining Act. The Building Division is currently utilizing CSG Consulting for these building plan review services. If the staff recommendation is approved, there will be an uninterrupted service of building plan reviews since the current building plan review consulting services contract will expire on June 30, 2024.

COMMUNITY ENGAGEMENT:

Inform:

This report serves to inform the community of the recommended professional services agreement with CSG Consultants, INC. to provide building plan check/review assistance.

ALTERNATIVE ACTIONS:

The Council could decide not to approve this professional service agreement. This will result in no project plan review support services until a new consultant contract is approved. This alternative is not recommended as it may delay project approvals and may result in violations of the Permit Streamlining Act.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The Council approved the past building plan review professional service agreement on November 16, 2022.

FISCAL AND RESOURCE IMPACT:

The cost for Building plan review services is included in the Development Services Fund's Recommended FY 2024-2025 and FY 2025-2026 budgets and is part of the

Building Division 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.

**CONSULTANT AGREEMENT
CSG CONSULTANTS, INC.**

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

1. **City Authority.** This Agreement is entered into pursuant to the action of the Morgan Hill City Council taken on _____, _____, 20____.
2. **Term of Agreement.** This Agreement shall cover services rendered from the Effective Date of this Agreement until June 30, 2026 at which time CONSULTANT'S services shall be completed. The City Manager is authorized to extend the term of this Agreement provided the compensation does not exceed the City Manager's authority pursuant to Chapter 3.04 of the Morgan Hill Municipal Code, unless otherwise authorized by City Council. Any such extension shall be in writing and signed by both Parties to this Agreement.
3. **Scope of Service.** The services to be performed by CONSULTANT shall be providing plan review services for the Building Division as further described in **Exhibit A**.
4. **Compensation.** CONSULTANT shall be compensated as follows:
 - 4.1. **Amount.** \$320,000.00. Total compensation to CONSULTANT under this Agreement during its initial term set forth in Section 2 above shall not exceed THREE HUNDRED TWENTY THOUSAND DOLLARS and shall be billed based on the rate and basis set forth in **Exhibit B**. If the City Manager extends the term of this Agreement pursuant to the provisions of Section 2 above, the City Manager shall have the authority to increase the maximum compensation allowed to be paid to CONSULTANT, so long as City Council has appropriated sufficient funds therefor, the Parties mutually agree to such amount in a writing signed by both Parties to this Agreement and provided further that in no event shall such maximum compensation allowed for the term exceed the City Manager's authority pursuant to Chapter 3.04 of the Morgan Hill Municipal Code, unless otherwise authorized by City Council.
 - 4.2. **Billing.** CONSULTANT shall provide CITY with an invoice containing the dated, detailed, and itemized descriptions of all services performed and expenses incurred (if such expenses are reimbursable pursuant to Exhibit B) by CONSULTANT on a monthly basis unless otherwise specified in Exhibit B. All invoices shall be sent to the CITY addressed to the department head or project manager identified below in Section 13 Notices. Any rate charged shall be prorated where services are interrupted or not provided for any rate period (for example, any monthly rate charge should be prorated when services were interrupted or provided for only part of the month). For services billed on an hourly rate, the minimum unit of billed time shall not exceed one tenth of one hour. CITY shall pay for services and expenses (if so provided in Exhibit B) up to the limit of compensation set forth above, that in the CITY's judgment were necessary and reasonable. Services for work performed and expenses incurred in excess of the total compensation set forth in paragraph 4.1 above shall be at no cost to CITY.
5. **Termination.** CITY or CONSULTANT shall have the right to terminate this Agreement, without cause, by giving thirty (30) days' written notice or less under urgent circumstances. Upon such termination, CONSULTANT shall submit to CITY an itemized statement of services performed for which compensation has not been paid. CITY may require CONSULTANT to complete certain work product or documents and

CONSULTANT shall deliver to CITY all documents in its possession without additional compensation to CONSULTANT. The City Manager of CITY is authorized to terminate this Agreement, in whole or in part, on behalf of CITY.

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

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

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

7.1. **Insurance Types and Amounts.**

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

7.1.2. **Automobile Liability.** CONSULTANT shall maintain Automobile Liability covering all owned, non-owned and hired automobiles (if CONSULTANT does not own automobiles, then CONSULTANT shall maintain Hired/Non-owned Automobile Liability) against claims and liabilities for personal injury, death, or property damage providing protection in the minimum amount of: (i) one million dollars (\$1,000,000.00)

combined single limit for any one accident or occurrence, or (ii) the maximum amount of such insurance available to CONSULTANT under CONSULTANT's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

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

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

7.1.5. Professional Liability.

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

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

- 7.1.6. Sexual Abuse/Molestation Liability (SML): If the performance of CONSULTANT's work or service under this Agreement involves contact with minors, CONSULTANT shall procure and maintain Sexual Abuse and Molestation insurance in the minimum amount of: (i) two hundred thousand dollars (\$200,000.00) each claim, or (ii) the maximum amount of such insurance available to CONSULTANT under CONSULTANT's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.
- 7.1.7. Crime/Fidelity Bond. If the performance of CONSULTANT'S work or service under this Agreement relates to or involves handling of CITY monies, CONSULTANT shall procure and maintain Crime insurance, in the minimum amount of: (i) three hundred thousand dollars (\$300,000.00) per occurrence, covering all CONSULTANT'S officers and employees, for loss of CITY monies caused by dishonesty and/or theft.
- 7.2. **Endorsements**. CONSULTANT shall provide proof of the following endorsements, listed for each policy for which endorsements are required, as outlined below:
- 7.2.1. General Liability and pollution liability (when pollution liability applies).
- 7.2.1.1. "Additionally Insured" - The City of Morgan Hill, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers are named as additional insureds on a form at least as broad as ISO Form CG 20 10 for ongoing operations.
- 7.2.1.2. "Waiver of Rights of Subrogation" - The insurer waives the right of subrogation against the City of Morgan Hill and CITY'S elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers; and
- 7.2.1.3. "Primary and Non-Contributing" - Insurance shall be endorsed to be primary and non-contributory and will not seek contribution from the City's insurance or self-insurance and shall be at least as broad as ISO Form CG 20 01.
- 7.2.2. Workers Compensation.
- If the performance of CONSULTANT'S work or service under this Agreement involves access to or activity on any property or premises owned or occupied by the CITY, including, but not limited to, CONSULTANT'S presence during site visits and meetings, then insurer waives the right of subrogation against the City of Morgan Hill and the CITY's elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers.
- 7.3. **Qualification of Insurers**. All insurance required pursuant to this Agreement must be issued by a company licensed and admitted, or otherwise legally authorized to carry out insurance business in the State of California, and each insurer must have a current A.M. Best's financial strength rating of "A" or better and a financial size rating of "VII" or better.
- 7.4. **Certificates**. CONSULTANT shall furnish CITY of Morgan Hill with copies of all certificates as outlined herein, whether new or modified, promptly upon receipt. In the event of a claim or legal action, CONSULTANT shall promptly furnish CITY of Morgan Hill with copies of all policies outlined herein. No policy subject to the CONSULTANT's agreement with the CITY shall be canceled or materially changed except after thirty (30) days' notice by the insurer to

CITY. A "material change" is a change that results in non-compliance with any insurance requirements in this section 7. Certificates, including renewal certificates, may be mailed electronically to riskmgmt@morganhill.ca.gov or delivered to the Certificate Holder address provided herein.

Certificate Holder address:

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

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

9. **Compliance with Law.**

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

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

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

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

Judgments or Decisions During Term of Contract: If at any time during the term of this Agreement, a court or investigatory government agency issues a final judgment, decision or order finding that CONSULTANT or an subcontractor it employs to perform work under this Agreement has violated any applicable wage and hour law, or CONSULTANT learns of such

a judgment, decision, or order that was not previously disclosed, CONSULTANT shall inform the City Attorney, no more than fifteen (15) days after the judgment, decision or order becomes final or of learning of the final judgment, decision or order. CONSULTANT and its subcontractors shall promptly satisfy and comply with any such judgment, decision, or order, and shall provide the City Attorney with documentary evidence of compliance with the final judgment, decision or order within five (5) days of satisfying the final judgment, decision or order. The City reserves the right to require CONSULTANT to enter into an agreement with the City regarding the manner in which any such final judgment, decision, or order will be satisfied.

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

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

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

10. **Independent Contractor**. CONSULTANT is an independent contractor and not an agent or employee of CITY.

11. **Confidentiality**. All data, documents, or other information received by CONSULTANT from CITY or prepared in connection with CONSULTANT'S services under this Agreement are deemed confidential and shall not be disclosed to any third party by CONSULTANT without prior written consent by CITY.

12. **Conflict of Interest and Reporting**. CONSULTANT shall at all times avoid conflict of interest or appearance of conflict of interest in performance of this Agreement.

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

Address of CONSULTANT is as follows:

CSG CONSULTANTS INC.
550 Pilgrim Drive
Foster City, CA 94404

Address of CITY is as follows:

Eric Blomquist
City of Morgan Hill
17575 Peak Ave.
Morgan Hill, CA 95037

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

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

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

16. **Maintenance of Records.**

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

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

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

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

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

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

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

21. **Defense and Indemnification.**

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

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

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

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

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

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

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

24. **Interpretation.** This Agreement is a negotiated document and shall be deemed to have been drafted jointly by the Parties, and no rule of construction or interpretation shall apply against any particular Party based on a contention that the Agreement was drafted by one of the Parties including, but not limited to,

California Civil Code § 1654, the provisions of which are hereby waived. This Agreement shall be construed and interpreted in a neutral manner.

25. **Notice of Security and/or Privacy Incident.** If CONSULTANT, or its subconsultant, suspect, discover or are notified of a data security incident or potential breach of security and/or privacy relating to CITY PII, PHI and/or PCI, CONSULTANT shall immediately, but in no event later than forty-eight (48) hours from suspicion, discovery or notification of the incident or potential breach, notify CITY of such incident or potential breach. CONSULTANT shall, upon CITY's request, investigate such incident or potential breach, inform the CITY of the results of any such investigation, and assist the CITY in maintaining the confidentiality of such information. In addition to the foregoing, CONSULTANT shall provide CITY with any assistance necessary to comply with any state and/or federal laws requiring the provision of notice of any privacy incident or security breach with respect to any CITY PII, PHI and/or PCI to the affected or impacted individuals and/or organizations, in addition to any notification to applicable state and federal agencies. CONSULTANT agrees that it shall reimburse CITY for all expenses, costs, attorneys' fees, and resulting fines, penalties, and damages associated with such incident, breach, investigation and/or notification.

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

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

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

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

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[Signatures on Next Page]

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

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

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

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

ATTEST:

CITY OF MORGAN HILL

City Clerk/Deputy City Clerk

City Manager

Michelle Bigelow
Print Name

Christina J. Turner
Print Name

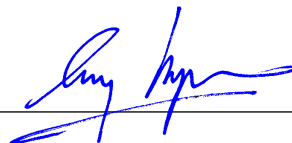
Date: _____

Date: _____

APPROVED AS TO FORM:

City Attorney

By: _____



Donald A. Larkin
Print Name

Cyrus Kianpour, President

Print Name and Title of Signer.

If Corporate: Chairman, President or Vice President

Date: _____

Date: 5/29/2024

By: _____



Nourdin Khayata, Secretary

Print Name and Title of Signer.

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

Date: 5/29/2024

EXHIBIT A SCOPE OF SERVICES

CONSULTANT shall provide CITY with plan review services through registered engineers and/or ICC certified, engineers with a range of experiences including LEED, OSHPD 3 and CASp. Projects may include residential new construction, residential additions, residential remodels, commercial new construction, commercial remodels, and tenant improvements.

Plan review services may include:

- **Residential and Non-Residential Building Plan Review**
- **Structural Only Plan Review**
- **Expedited Building Plan Review**
- **Building Plan Review**
- **Fire Plan Review**
- **CASp Consultation**
- **Expedited Plan Review**

CSG will coordinate the pickup and return of all plans via CSG staff or licensed courier service.

**EXHIBIT B
SCHEDULE OF COMPENSATION RATES**

CONSULTANT fee schedule will be based on a percentage of the City's building plan check fee and include initial plan review and two subsequent reviews. Additional reviews, deferred submittals, revisions and RFIs will be charged at the appropriate hourly rate below. RFIs for larger developments will be performed at an hourly rate, and turnaround times will be agreed upon in advance with CITY.

REVIEW TYPE / ROLE	ALL INCLUSIVE FEE/ HOURLY RATE
Residential and Non-Residential Building Plan Review	65% of City's Building Plan Check Fee
Structural Only Plan Review	50% of City's Building Plan Check Fee
Expedited Building Plan Review Building Plan Review	90% of City's Building Plan Check Fee
Fire Plan Review	\$140
CASp Consultation	\$156
Building Plan Review	\$141
Expedited Plan Review	1.5 x Hourly Rate

All hourly rates include salaries, benefits, workers compensation insurance, local travel and miscellaneous office expenses. Should the scope of work change, or circumstances develop which necessitate special handling, CONSULTANT will notify CITY prior to proceeding. Overtime services will be billed at 1.5x the applicable hourly rate. On each anniversary of the contract start date, CSG will initiate a rate increase for all hourly rates based on change in CPI for the applicable region. CONSULTANT will invoice once a month for services rendered during the previous month.

**EXHIBIT C
SCHEDULE OF PERFORMANCE**

TYPE OF REVIEW	INITIAL REVIEW (BUSINESS DAYS)	RE-CHECK (BUSINESS DAYS)
Residential New Construction	10	5
Residential Additions	10	5
Small Residential Remodels	10	5
Commercial New Construction & Large/Complex Projects *1	10	5
Commercial Additions	10	5
Small Commercial Remodels/ Tenant Improvements	10	5
Expedited	5	5

***1Turnaround time may vary with the complexity and magnitude of the project. If a review is anticipated to take longer than the maximum turnaround time, CONSTULANT will notify the CITY'S representative and negotiate additional time required to ensure an appropriate level of review.**

The number of working days associated with the plan check turnaround time is based on time of project submittal. The first working day will be the day the project is received by CONSTULANT if submitted by 3:00 PM. For a project that is received by CONSULTANT after 3:00 PM, the first working day will be the next business day.

CITY COUNCIL STAFF REPORT

MEETING DATE: June 19, 2024

PREPARED BY:

Jennie Tucker, Recreation Manager

APPROVED BY: City Manager

APPROVE A TWO-YEAR CONSULTANT AGREEMENT WITH PLANET FUTSAL, INC. DBA FUTSAL KINGZ TO PROVIDE YOUTH FUTSAL, SOCCER CLASSES, AND CAMPS FOR A TOTAL NOT TO EXCEED AMOUNT OF \$150,000

RECOMMENDATION(S)

Authorize the City Manager to execute a two-year consultant agreement with Planet Futsal, Inc. DBA Futsal Kingz to provide youth futsal, soccer classes, and camps not to exceed to \$150,000, with a one-year extension option, subject to budget appropriation.

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Supporting our Youth, Seniors, and Entire Community

2024-2025 Strategic Priorities

Fiscal Sustainability

Guiding Documents

Bikeways, Trails, and Recreation Master Plan

REPORT NARRATIVE:

The Parks and Recreation Division regularly engages independent contractors for the delivery of recreational activities and programs to the Morgan Hill and surrounding community. Upon acceptance of a contractor proposal, staff works with the contractor to determine the specifications of the activity, facility availability, participant minimums and maximums, and participant age range. All contractors set their own prices and schedules for their activities or programs. The Division advertises the programs in the activity guide and manages all enrollment and registration. The contractor invoices the City for sixty percent (60%) of the total class revenue.

Planet Futsal, INC. DBA Futsal Kingz has been providing their services to the City of Morgan Hill for the past few years and staff has received positive feedback from participants. Traditionally, all instructor agreements are executed to not exceed sixty thousand (\$60,000), which is within the threshold for the City Manager's approval. Due to the popularity of Futsal Kingz, the course offerings and enrollment have expanded and will now exceed the threshold for City Manager approval and therefore require City

Council approval.

COMMUNITY ENGAGEMENT:

Involve

The success of classes and programs offered by independent contractors in the Parks and Recreation Division, relies heavily on participation from the community. The community is involved in the ultimate success of the program by continuing to enroll in classes and programs.

ALTERNATIVE ACTIONS:

The City Council could decide not to approve the agreement and direct staff to reduce the number of courses offered by this independent contractor, resulting in a negative impact on customer satisfaction and loss of revenue for the City.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The City Council has not taken prior action on this agreement. The amount of the previous agreements was under the threshold for City Council approval.

FISCAL AND RESOURCE IMPACT:

The agreement is subject to budget appropriation by City Council. Funding of the \$150,000 is included in the Fiscal Year 2024-2025 and 2025-2026 recommended biennial budget, in the General Fund (010), within the Parks and Recreation Division (010.2140.42226). The expenditures are fully offset by revenue.

CEQA (California Environmental Quality Act):

Categorical Exemption

The planned management and use of City facilities falls within the CEQA categorical exemption of Class 1, Existing Facilities.

CONSULTANT AGREEMENT
Planet Futsal, Inc. DBA Futsal Kingz

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

1. **City Authority.** This Agreement is entered into pursuant to the action of the Morgan Hill City Council taken on _____, _____, 20____.
2. **Term of Agreement.** This Agreement shall cover services rendered from the Effective Date of this Agreement until June 30, 2026 at which time CONSULTANT'S services shall be completed. The City Manager is authorized to extend the term of this Agreement for a maximum period of one year. Any such extension shall be in writing and signed by both Parties to this Agreement.
3. **Scope of Service.** The services to be performed by CONSULTANT shall be to provide youth futsal and soccer classes and/or camps.
4. **Compensation.** CONSULTANT shall be compensated as follows:
 - 4.1. **Amount.** 60% of the resident-member registration fees to CONSULTANT. Compensation under this Agreement during its initial term set forth in Section 2 above shall not exceed \$150,000(ONE HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS). If the City Manager extends the term of this Agreement pursuant to the provisions of Section 2 above, the City Manager shall have the authority to increase the maximum compensation allowed to be paid to CONSULTANT, so long as City Council has appropriated sufficient funds therefor, the Parties mutually agree to such amount in a writing signed by both Parties to this Agreement, and provided further that in no event shall such maximum compensation allowed for the term exceed the City Manager's authority pursuant to Chapter 3.04 of the Morgan Hill Municipal Code, unless otherwise authorized by City Council.
 - 4.2. **Billing.** CONSULTANT shall provide CITY with a monthly invoice containing the dated, detailed, and itemized descriptions of all services performed by CONSULTANT. All invoices shall be sent to the CITY addressed to the department head or project manager identified below in Section 14 Notices. Any rate charged shall be prorated where services are interrupted or not provided for any rate period (for example, any monthly rate charge should be prorated when services were interrupted or provided for only part of the month). CITY shall pay for services and expenses (if so provided) up to the limit of compensation set forth above, that in the CITY's judgment were necessary and reasonable. Services for work performed and expenses incurred in excess of the total compensation set forth in paragraph 4.1 above shall be at no cost to CITY.
5. **Termination.** CITY or CONSULTANT shall have the right to terminate this Agreement, without cause, by giving thirty (30) days' written notice or less under urgent circumstances. Upon such termination, CONSULTANT shall submit to CITY an itemized statement of services performed for which compensation has not been paid. CITY may require CONSULTANT to complete certain work product or documents and CONSULTANT shall deliver to CITY all documents in its possession without additional compensation to

CONSULTANT. The City Manager of CITY is authorized to terminate this AGREEMENT, in whole or in part, on behalf of CITY.

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

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

7.1. **Insurance Types and Amounts.**

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

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

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

CONSULTANT shall provide its Certificate of Permission to Self-Insure, duly authorized by the Department of Industrial Relations.

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

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

7.2.1. **General Liability**.

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

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

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

7.2.2. **Workers Compensation**.

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

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

7.4. **Certificates**. CONSULTANT shall furnish City of Morgan Hill with copies of all certificates as outlined herein, whether new or modified, promptly upon receipt. In the event of a claim or legal action, CONSULTANT shall promptly furnish City of Morgan Hill with copies of all policies outlined herein. No policy subject to the CONSULTANT's agreement with the CITY shall be canceled or materially changed except after thirty (30) days' notice by the insurer to CITY. A "material change" is a change that results in non-compliance with any insurance requirements

in this Section 7. Certificates, including renewal certificates, may be mailed electronically to riskmgmt@morganhill.ca.gov or delivered to the Certificate Holder address provided herein.

Certificate Holder address:

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

8. **Background Checks.** CONSULTANT, as well as their employees, subcontractors, and volunteers (hereinafter collectively "STAFF"), must satisfy the following requirements, prior to providing in-person or virtual services contracted with the CITY:

- 8.1. CONSULTANT STAFF must pass a background check using LiveScan. If an individual has been convicted of a crime other than a minor traffic violation, the individual cannot work or be present in any CITY facility unless he/she receives a criminal record exemption from the CITY.
- 8.2. CONSULTANT must designate a human resources administrator responsible for attestation to background check requirement.
- 8.3. CONSULTANT designated human resources administrator shall not attest for their own background check. Background checks for these individuals shall be submitted to the CITY for review.
- 8.4. CONSULTANT shall not attest for their own, or for any person legally related to CONSULTANT, background check. Background checks for these individuals shall be submitted to the CITY for review.
- 8.5. CONSULTANTS with limited numbers of employees may request individual background check(s) through the City as an alternative to provisions 8.1 through 8.4 in this section.
- 8.6. CONSULTANT is responsible for all costs associated with the background checks for its STAFF.

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

10. **Compliance with Law**

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

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

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

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

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

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

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

11. **Independent Contractor**. CONSULTANT is an independent contractor and not an agent or employee of CITY.

12. **Confidentiality**. All data, documents, or other information received by CONSULTANT from CITY or prepared in connection with CONSULTANT'S services under this Agreement are deemed confidential and shall not be disclosed to any third party by CONSULTANT without prior written consent by CITY.

13. **Conflict of Interest and Reporting**. CONSULTANT shall at all times avoid conflict of interest or appearance of conflict of interest in performance of this Agreement.

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

Address of CONSULTANT is as follows:

Planet Futsal, Inc. DBA Futsal Kingz
14938 Camden Ave, Ste 93
San Jose, CA 95124

Address of CITY is as follows:

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

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

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

17. **Maintenance of Records**.

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

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

performance of this Agreement for a period of three years after final payment under the Agreement.

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

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

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

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

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

22. **Defense and Indemnification.**

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

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

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

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

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

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

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

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

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

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

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

[Signatures on Next Page]

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

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

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

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

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

ATTEST:

CITY OF MORGAN HILL

City Clerk/Deputy City Clerk

City Manager

Michelle Bigelow
Print Name

Christina J. Turner
Print Name

Date: _____

Date: _____

APPROVED AS TO FORM:

Planet Futsal, Inc. DBA Futsal Kingz

City Attorney

By:

Donald A. Larkin
Print Name

Name
& Title: **TOM BROUGH - OWNER**

Print Name and Title of Signer.

If Corporate: Chairman, President or
Vice President

Date: _____

Date: **5/17/24**

By:

Name
& Title: **TIM NEWSOME - DIRECTOR**

Print Name and Title of Signer.

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

Date: **5/17/24**

CITY COUNCIL STAFF REPORT

MEETING DATE: June 19, 2024

PREPARED BY:

Rebecca Garcia, Housing Director

APPROVED BY: City Manager

APPROVE CONSULTANT AGREEMENT WITH HOUSEKEYS, INC FOR BELOW MARKET RATE (BMR) HOMEOWNERSHIP AND RENTAL PROGRAM ADMINISTRATION SERVICES

RECOMMENDATION(S)

1. Approve Consultant Agreement for Below Market Rate Housing (BMR) Homeownership and Rental Program services through June 30, 2028, for \$2,489,095 from July 1, 2024 – June 30, 2028 with optional extension; and
2. Authorize the City Manager to execute and administer the contract.

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Supporting our Youth, Seniors, and Entire Community
Enhancing Diversity and Inclusiveness

2024-2025 Strategic Priorities

Affordable Housing and Homelessness

Guiding Documents

Morgan Hill 2035 General Plan

REPORT NARRATIVE:

The City of Morgan Hill's Below Market Rate Housing (BMR) Homeownership and Rental Program helps qualifying buyers and renters obtain affordably priced homes and apartments. Today, the BMR Program portfolio comprises 600 Below Market Rate ownership and rental income-restricted units in over 89 subdivisions. These numbers exclude the number of resale units that are processed each year. New housing construction is required to make 10 to 15 percent of all units affordable based on the affordable requirements of the Inclusionary Housing Ordinance. The Program requires asset management, education, monitoring, and compliance.

Participating homebuyers and renters must be income-eligible. Homebuyers must be pre-approved to qualify for a fixed-rate, fixed-term mortgage financially and must have a minimum 3 percent down payment from their funds to purchase a home. Applicants are

placed in a lottery for an opportunity to purchase or rent a unit when it becomes available, either through new construction or resale/vacancy of an existing unit. Priority in the lottery is provided for eligible buyers who live or work within the city limits. BMR units have a resale affordability restriction recorded on the title to preserve the long-term affordability of the unit for an additional 45 years (ownership) and 55 years (rental) at the time of sale or lease. The BMR monthly rental prices are consistent with the State's Housing Community Development's income guidelines and adjusted for household size.

HouseKeys, Inc. administers the City's BMR Program on behalf of the City. The program administration includes the sale or rental of BMR units, marketing, outreach and education, qualification of homebuyers and renters; and general asset management, which includes monitoring for compliance, providing annual BMR valuation updates to the County Tax Assessor, and many other activities required to maintain the integrity and sustainability of the BMR program. HouseKeys also provides support and guidance on complex transactional scenarios that arise as a result of administering a robust portfolio with varying historical rules and requirements, "layered" down payment assistance, and various financing structures and sources of funds.

Housekeys has been administering the City's BMR Program since 2015. Over the past two contracted years, HouseKeys has committed more resources to homeownership, rental, technology, and customer service to improve its ability to implement the Inclusionary Housing Ordinance. This includes hosting 190 online and in-person events, in both English and Spanish, for prospective rental and homeownership applicants with nearly 1,100 attendees. This team also fielded 74 service tickets from existing homeowners in the program. In the last two years, 1,090 new households applied for the homeownership program and 1,228 applied for the rental program. The current applicant pool managed by HouseKeys is 9,976. The interest for affordable rental product is equally strong and growing. Over 400 applications were received for the first 12 (of 78 total) affordable rental units at the 389 Vida At Morgan Hill Apartments located on Butterfield Blvd. There were 401 applications for 2 vacancies at Morgan Ranch.

For the Homeownership program, Houskeys helped the community navigate through a difficult lending environment when interest rates jumped from below 3.0% to over 7.0%. Many BMR participants were challenged to qualify for housing. This impacted the sale of BMR units in projects like Jasper by Trumark, located on Monterey Road, which included 15 for-sale Moderate-Income Inclusionary Units that were priced at \$675,600. In response, HouseKeys discounted its fee to the builder by \$200,000 to negotiate a reprice of \$599,000 per unit, attracting 540 applicants after only getting 25 applicants in the first round. The Houskeys marketing team also launched the Andalusia Project by Dividend, which attracted 135 applicants for 4 Low-Income Units, and onboarded two projects by Brookfield and Toll Brothers that will add 19 new Moderate-Income ownership units to the program.

HouseKeys possesses unique historical knowledge of the City's program and remains the single business that can fulfill the comprehensive service requirements of the 40+ year BMR portfolio. The City has also benefited from the expertise that HouseKeys

provides as the BMR administrator for 23 cities throughout California. Additionally, HouseKeys has been a valuable partner in the continuous evaluation of Morgan Hill's BMR Program--one of the region's oldest, largest, rapidly growing affordable housing portfolios. Consistent with the proposed FY 2024-25 and 2025-26 City Budget, it is recommended that the Council approve the HouseKeys Agreement for continued BMR administration services for a four-year term through June 30, 2028, for \$2,489,095. A one-year extension with a five percent increase is authorized subject to budget appropriations. The annual cost to the City is consistent with previous administration fees, accounting for an annual five percent increase. The contract is reflective of the size of the BMR portfolio and projected growth.

COMMUNITY ENGAGEMENT:

This report serves to inform the community on the proposed consultant agreement with HouseKeys.

ALTERNATIVE ACTIONS:

The Council could choose not to approve the proposed contract. Should Council not approve the proposed contract, staff asks that Council provide further direction regarding the management of the BMR program or, alternatively, direct staff to return to Council with alternative options for management.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On July 15, 2015, the Council adopted a transition plan to contract with Nyanda & Associates (HouseKeys) to provide the continued administration of the BMR program.

On May 18, 2016, the Council approved an agreement with HouseKeys for BMR administration services for FY 2016-17 for \$500,000.

On December 7, 2016, the Council approved a contract amendment which extended HouseKeys BMR administration contract through FY 2017-18 for an additional \$500,000. Additionally, at that time, loan administration services were added to Housekey's scope of work for FY 2016-17 and 2017-18 for \$50,000 in total.

On May 16, 2018, the Council approved an agreement with HouseKeys for BMR Administration for FY 2018-19 and FY 2019-20 in the amount of \$1,050,000, with a one-year extension option.

On June 2, 2021, the Council approved the amendment to the HouseKeys agreement for BMR administration services through June 30, 2022, for \$550,000 each year.

On June 15, 2022, the Council approved the HouseKeys agreement for BMR services through June 30, 2024, for \$550,000 each year, totaling \$1,100,000 from July 1, 2022–June 30, 2024.

FISCAL AND RESOURCE IMPACT:

The agreement for BMR services is for \$2,489,095 from July 1, 2024, to June 30, 2028,

and the cost for the first two years of the agreement are included in the recommended Fiscal Years 2024-25 and 2025-26 Budget.

CEQA (California Environmental Quality Act):

This is not a Project; it is an administrative activity that will not result in direct or indirect physical changes in the environment.

CONSULTANT AGREEMENT HOUSEKEYS INC.

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

1. **City Authority.** This Agreement is entered into pursuant to the action of the Morgan Hill City Council taken on _____, ____, 20__.
2. **Term of Agreement.** This Agreement shall cover services rendered July 1, 2024 until June 30, 2028 at which time CONSULTANT'S services shall be completed. The City Manager is authorized to extend the term of this Agreement for a maximum period of one year provided the compensation does not exceed the City Manager's authority pursuant to Chapter 3.04 of the Morgan Hill Municipal Code, unless otherwise authorized by City Council. Any such extension shall be in writing and signed by both Parties to this Agreement.
3. **Scope of Service.** The services to be performed by CONSULTANT shall be to administer Morgan Hill's Below Market Rate Ownership and Rental Housing Program as further described in **Exhibit A**.
4. **Compensation.** CONSULTANT shall be compensated as follows:
 - 4.1. **Amount.** \$2,489,095.00. Total compensation to CONSULTANT under this Agreement during its initial term set forth in Section 2 above shall not exceed Two Million Four Hundred Eighty-Nine Thousand and Ninety-Five Dollars , and shall be billed based on the rate and basis set forth in **Exhibit B**. If the City Manager extends the term of this Agreement pursuant to the provisions of Section 2 above, the City Manager shall have the authority to increase the maximum compensation allowed to be paid to CONSULTANT, so long as City Council has appropriated sufficient funds therefor, and the Parties mutually agree to such amount in a writing signed by both Parties to this Agreement. In no event shall such increased compensation allowed to be paid to CONSULTANT for the extended term exceed the amount paid for the immediately preceding year of service plus five percent.
 - 4.2. **Billing.** CONSULTANT shall provide CITY with an invoice containing the dated, detailed, and itemized descriptions of all services performed and expenses incurred (if such expenses are reimbursable pursuant to Exhibit B) by CONSULTANT on a monthly basis unless otherwise specified in Exhibit B. All invoices shall be sent to the CITY addressed to the department head or project manager identified below in Section 13 Notices. Any rate charged shall be prorated where services are interrupted or not provided for any rate period (for example, any monthly rate charge should be prorated when services were interrupted or provided for only part of the month). For services billed on an hourly rate, the minimum unit of billed time shall not exceed one tenth of one hour. CITY shall pay for services and expenses (if so provided in Exhibit B) up to the limit of compensation set forth above, that in the CITY's judgment were necessary and reasonable. Services for work performed and expenses incurred in excess of the total compensation set forth in paragraph 4.1 above shall be at no cost to CITY.
5. **Termination.** CITY or CONSULTANT shall have the right to terminate this Agreement, without cause, by giving thirty (30) days' written notice or less under urgent circumstances. Upon such termination, CONSULTANT shall submit to CITY an itemized statement of services performed for which compensation

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

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

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

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

7.1. **Insurance Types and Amounts.**

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

providing protection in the minimum amount of: (i) one million dollars (\$1,000,000.00) combined single limit for any one accident or occurrence, or (ii) the maximum amount of such insurance available to CONSULTANT under CONSULTANT's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

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

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

7.1.5. Professional Liability.

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

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

- 7.1.6. **Sexual Abuse/Molestation Liability (SML)**: If the performance of CONSULTANT's work or service under this Agreement involves contact with minors, CONSULTANT shall procure and maintain Sexual Abuse and Molestation insurance in the minimum amount of: (i) two hundred thousand dollars (\$200,000.00) each claim, or (ii) the maximum amount of such insurance available to CONSULTANT under CONSULTANT's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.
- 7.1.7. **Crime/Fidelity Bond**. If the performance of CONSULTANT'S work or service under this Agreement relates to or involves handling of CITY monies, CONSULTANT shall procure and maintain Crime insurance, in the minimum amount of: (i) three hundred thousand dollars (\$300,000.00) per occurrence, covering all CONSULTANT'S officers and employees, for loss of CITY monies caused by dishonesty and/or theft.
- 7.2. **Endorsements**. CONSULTANT shall provide proof of the following endorsements, listed for each policy for which endorsements are required, as outlined below:
- 7.2.1. **General Liability and pollution liability (when pollution liability applies)**.
- 7.2.1.1. "Additionally Insured" - The City of Morgan Hill, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers are named as additional insureds on a form at least as broad as ISO Form CG 20 10 for ongoing operations.
- 7.2.1.2. "Waiver of Rights of Subrogation" - The insurer waives the right of subrogation against the City of Morgan Hill and CITY'S elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers; and
- 7.2.1.3. "Primary and Non-Contributing" - Insurance shall be endorsed to be primary and non-contributory and will not seek contribution from the City's insurance or self-insurance and shall be at least as broad as ISO Form CG 20 01.
- 7.2.2. **Workers Compensation**.
- If the performance of CONSULTANT'S work or service under this Agreement involves access to or activity on any property or premises owned or occupied by the CITY, including, but not limited to, CONSULTANT'S presence during site visits and meetings, then insurer waives the right of subrogation against the City of Morgan Hill and the CITY's elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers.
- 7.3. **Qualification of Insurers**. All insurance required pursuant to this Agreement must be issued by a company licensed and admitted, or otherwise legally authorized to carry out insurance business in the State of California, and each insurer must have a current A.M. Best's financial strength rating of "A" or better and a financial size rating of "VII" or better.
- 7.4. **Certificates**. CONSULTANT shall furnish CITY of Morgan Hill with copies of all certificates as outlined herein, whether new or modified, promptly upon receipt. In the event of a claim or legal action, CONSULTANT shall promptly furnish CITY of Morgan Hill with copies of all policies outlined herein. No policy subject to the CONSULTANT's agreement with the CITY shall be canceled or materially changed except after thirty (30) days' notice by the insurer to CITY. A "material change" is a change that results in non-compliance with any insurance

requirements in this section 7. Certificates, including renewal certificates, may be mailed electronically to riskmgmt@morganhill.ca.gov or delivered to the Certificate Holder address provided herein.

Certificate Holder address:

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

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

9. **Compliance with Law.**

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

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

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

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

Judgments or Decisions During Term of Contract: If at any time during the term of this Agreement, a court or investigatory government agency issues a final judgment, decision or order finding that CONSULTANT or an subcontractor it employs to perform work under this Agreement has violated any applicable wage and hour law, or CONSULTANT learns of such a judgment, decision, or order that was not previously disclosed, CONSULTANT shall inform the City Attorney, no more than fifteen (15) days after the judgment, decision or order becomes

final or of learning of the final judgment, decision or order. CONSULTANT and its subcontractors shall promptly satisfy and comply with any such judgment, decision, or order, and shall provide the City Attorney with documentary evidence of compliance with the final judgment, decision or order within five (5) days of satisfying the final judgment, decision or order. The City reserves the right to require CONSULTANT to enter into an agreement with the City regarding the manner in which any such final judgment, decision, or order will be satisfied.

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

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

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

10. **Independent Contractor**. CONSULTANT is an independent contractor and not an agent or employee of CITY.

11. **Confidentiality**. All data, documents, or other information received by CONSULTANT from CITY or prepared in connection with CONSULTANT'S services under this Agreement are deemed confidential and shall not be disclosed to any third party by CONSULTANT without prior written consent by CITY.

12. **Conflict of Interest and Reporting**. CONSULTANT shall at all times avoid conflict of interest or appearance of conflict of interest in performance of this Agreement.

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

Address of CONSULTANT is as follows:

Housekeys, Inc.
358 Digital Drive
Morgan Hill, CA. 95037

Address of CITY is as follows:

Name: Rebecca	with a copy to:
Garcia City of Morgan	City Clerk
Hill 17575 Peak Ave.	City of Morgan Hill
Morgan Hill, CA 95037	17575 Peak Avenue
	Morgan Hill, CA 95037

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

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

16. **Maintenance of Records.**

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

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

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

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

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

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

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

21. **Defense and Indemnification.**

21.1. **Defense and Indemnification.** CONSULTANT shall, to the fullest extent permitted by law, indemnify, defend and hold harmless CITY, its elected or appointed officials, boards, agencies,

officers, agents, employees, and volunteers (“INDEMNITEES”) from and against any and all claims, liabilities, expenses, liens, or damages of any nature, including liability for bodily injury, property damage or personal injury, and including reasonable attorneys' fees and expenses, that arise out of, pertain to, or relate to the performance of this Agreement or the failure to comply with any obligations contained in this Agreement by CONSULTANT, and/or its agents, officers, employees, subcontractors, or independent contractors (“CLAIM”).

21.2. Exceptions. CONSULTANT is not required to indemnify INDEMNITEES against liability for bodily injury, property damage or personal injury, or any other loss, damage or expense arising from the sole negligence or willful misconduct of the CITY, including any claims that the City's adopted policies or practices violate any state or federal law or policy or any other claims that are outside the control of Housekeys or its agents and/or employees.

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

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

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

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

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

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

25. **Notice of Security and/or Privacy Incident.** If CONSULTANT, or its subconsultant, suspect, discover or are notified of a data security incident or potential breach of security and/or privacy relating to CITY PII, PHI and/or PCI, CONSULTANT shall immediately, but in no event later than forty-eight (48) hours from suspicion, discovery or notification of the incident or potential breach, notify CITY of such incident or potential breach. CONSULTANT shall, upon CITY's request, investigate such incident or potential breach,

inform the CITY of the results of any such investigation, and assist the CITY in maintaining the confidentiality of such information. In addition to the foregoing, CONSULTANT shall provide CITY with any assistance necessary to comply with any state and/or federal laws requiring the provision of notice of any privacy incident or security breach with respect to any CITY PII, PHI and/or PCI to the affected or impacted individuals and/or organizations, in addition to any notification to applicable state and federal agencies. CONSULTANT agrees that it shall reimburse CITY for all expenses, costs, attorneys' fees, and resulting fines, penalties, and damages associated with such incident, breach, investigation and/or notification.

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

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

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

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

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[Signatures on Next Page]

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

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

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

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

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

ATTEST:

CITY OF MORGAN HILL

City Clerk/Deputy City Clerk

City Manager

Michelle Bigelow

Print Name

Christina J. Turner

Print Name

Date: _____

Date: _____

APPROVED AS TO FORM:

Housekeys, Inc.

City Attorney

By:

Donald A. Larkin

Print Name

Print Name and Title of Signer.

If Corporate: Chairman, President or
Vice President

Date: _____

Date: _____

By:

Print Name and Title of Signer.

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

Date: _____

**EXHIBIT A
SCOPE OF SERVICES**

HouseKeys Contract Scope of Work 2024-2028 Contract Term

Scope of Work

A. Introduction

Administrator provides program administration services for 4 City of Morgan Hill Programs.

Program Name	Inventory Type	Current Unit Count	New Units Projected
1. Affordable Homeownership Below Market Rate (BMR) Program (inclusive of Residential Development Control System (RDCS) units & Inclusionary Housing Ordinance units (IHO).	Homeownership	480	Currently there are 100 ownership units approved; however, the number of units going through the entitlement process is around 300, this is an estimate and subject to change.
2. Affordable Rental Program	Rental	93	Currently there are 80 rental units approved; however, this is an estimate and subject to change as it does not include potential projects in the development pipeline not yet approved.
CalHome Mortgage Downpayment Assistance Program	Finance	12	
BEGIN Downpayment Assistance	Finance	101	

Administrator will serve as the City's public interface to homebuilders, housing industry professionals, residents, and members of the public. This includes overall management and implementation of program policies as they may change from time to time with a goal of maintaining a minimum service level for Morgan Hill residents and those looking to move to Morgan Hill.

Administrator will serve as resident consultant to help bridge the gap between industry practices in mortgage lending, property management, and real estate sales with program policies. Additionally, Administrator preserves institutional knowledge about program practices and policies through staff turnover and changes in elected offices. Best practices and learnings will come from experience with Morgan Hill's programs as well as experience in other jurisdictions with similar program goals.

B. Program Development, Improvement and Maintenance

Each Program's policies will be formalized in a Program Guide

Program Name	Program Guide Document
Affordable Homeownership Program (AKA BMR Ownership Program)	1. Homebuyer Application Guide

	2. Homeowner Participation Guide a. Enforcement Section 3. Developer Compliance Guide
Affordable Rental Program (AKA BMR Rental Program)	1. Renter Application Guide 2. Tenant Participation Guide 3. Developer, Owner and Property Management Compliance Guide
Morgan Hill CalHome Mortgage Assistance Program	1. Homebuyer Application Guide 2. Homeowner (Borrower) Participation Guide 3. Servicing Compliance Guide
Morgan Hill BEGIN Downpayment Assistance	1. Homebuyer Application Guide 2. Homeowner (Borrower) Participation Guide 3. Servicing Compliance Guide

#	Scope Description	Additional Notes (if Applicable)
	Guidelines. Administrator will review and annually update BMR Program Guidelines and Policies in conjunction with direction from City Council, City Manager, and Staff as needed.	See Program Guide Chart above
	Legal Templates. Administrator will partner with the City to review legal templates for documents required for signature by homebuilders, housing industry professionals, program applicants and participants. Consultant shall supply documents typically used in residential real estate transactions (e.g., purchase and sale, lease, loan fundings, disclosures, acknowledgements, addendums, etc.)	Applicants include prospective renters and buyers. Participants include program homeowners, tenants, and borrowers
	Vendor Management. Administrator will create and maintain a list of approved vendors for the homeownership and finance programs. This includes loan officers, lenders, real estate agents, appraisers, escrow companies, and other third-party vendors critical to the purchase transaction. The list will be posted on the website and the process for becoming an approved vendor will be drafted and posted on the website.	

C. Program Inventory and Records Management

#	Scope Description	Additional Notes (if Applicable)
	Recordkeeping. Administrator shall maintain the City's existing database of hard copy and electronic files, applications, transaction records, property address, agreements, notes, and trust deeds and will be made available to City staff on an ongoing basis. All electronic records, databases, and correspondence will be considered work products that are property of the City of Morgan Hill and made available and updated monthly. The administrator will update City's records as needed and notify city of updates to ensure a coordinated seamless recordkeeping process.	
	Unit Tracking. Administrator will work with City staff to coordinate tracking of affordable and finance units produced.	

D. Program Operations – New Construction Pipeline, Application and Transaction Management

#	Scope Description	Additional Notes (if Applicable)
	Applicant Pool Management. Administrator will ensure year-round availability of signups from prospective applicants for each of the programs mentioned above. This will include maintaining an active interest list, identified by timestamp and application number. Administrator will serve as a point-of-contact for all inbound programs inquiries by email, website form, and phone.	
	Project Onboarding. Administrator will work alongside staff to onboard new construction projects with affordable for-sale or rental units. This includes drafting a marketing plan, unit delivery timeline, and unit location audit. Administrator will do its part to ensure developers comply with their affordable housing agreements at all phases of the initial sale and lease-up, and any required deliverables in the operating phase of the project (e.g., annual rental compliance). Develop an Affirmative Marketing Plan Template and require below market rate housing providers to develop Marketing Plans based on the template to reduce patterns of segregation and encourage integration in housing by promoting housing choices and opportunities regardless of one's protected characteristics, such as race, color, religion, national origin, or disability.	
	Initial Price and Initial Rent Calculations. Administrator will perform procedures to determine maximum sales price and rent for new construction projects, and update these figures as income limits change annually, and provide both the methodology and the sales price to the City and developer for posting on the City's Housing webpage and the HouseKeys Morgan Hill webpage.	
	Applicant Selection. Administrator will conduct all required selection processes (e.g., Lottery Selection) in a fair and transparent manner that conforms to fair housing and affirmative marketing standards in partnership with City Staff.	
	Processing and Underwriting. Administrator will process and underwrite applications submitted by prospective buyers, renters, and borrowers. This includes household size, income, employment, and asset verification.	
	Transaction Management. Administrator shall act as a transaction coordinator for new construction projects, charging fees in line with approved fee schedules. For rental projects, developer shall have the option to choose the Administrator to complete workflows related to the affordable housing agreement.	See Fee Schedule attached as Exhibit D
	Document Handling. Administrator will ensure accuracy, timely preparation, signature, and delivery of all necessary documents needed to complete programs transactions. The administrator will coordinate with all parties to these transactions as well. This includes escrow documents for purchase, lease documents for rental, and loan documents for financing programs.	

E. Program Operations – Existing Portfolio Management, Monitoring, Compliance & Enforcement

#	Scope Description	Additional Notes (if Applicable)
	Participant Roster Management. Administrator will maintain a list of active participants in the program including homeowners, tenants, and borrowers. This list will be updated as transactions take place (E.g., home sale or lease vacancy)	
	Ticket and Case Management. Administrator will serve as a point-of-contact for all inquiries and request for information on potential refinances, home resales, vacancies, compliance issues, troubleshooting and other matters that come up concerning the programs. All requests for service will be tracked as a “ticket” and any compliance-related matters will be tracked as a “case” and reported to City staff within 48 hours to the City and to measure the time it takes to resolve the issue. The City will be notified of the initial request and subsequently notified when the ticket is closed out.	
	2-Sided Transaction Management for Unit Turnover. Administrator will coordinate the two-sided transactions that involve a home resale or rental vacancy. This includes assisting homeowners to sell their home according to the deed restriction and property management companies to fill a vacancy according to the project agreement. On the other side, HouseKeys is engaging applicants, running selection workflows, processing and underwriting using application data, document handling, and transaction management.	
	Payoffs, Max Price, and Max Rent Calculations. Administrator will respond to requests for loan payoffs, maximum restricted resale price, and maximum rents. Calculations will include determining capital improvement credits for homeowners who’ve made substantial upgrades and account for proper depreciation. The administrator will create a user friendly feature to the website that allows a BMR owner to calculate the resale price themselves.	
	Conduct Compliance Exercises – Homeownership. Administrator will work alongside staff to complete monitoring exercises, including but not limited to: 1. Mailing Self-Certification Letters to Homeowners Biannual 2. Utilizing Data from County Assessor and City Utility Records to confirm Occupancy 3. Track Self-Certification responses and maintain a list of homeowners who are non-compliant 4. Work with Staff to identify and cure any default issues related to non-compliance. Provide a monthly update to Staff.	
	Conduct Annual Compliance Exercises – Rental. Administrator will work alongside staff to complete monitoring exercises, including but not limited to: 1. Collect Project-Level Documents to ensure rents charged conform to program requirements (e.g., rent roll, property status report, management plan, selection criteria, etc.) 2. Delivering compliance packets to the property management site teams to be distributed to tenants 3. Audit tenant packages (e.g., up to 25%) to confirm that tenants meet income requirements. 4. Work with Staff to cure any default issue related to non-compliance.	

	Default Management and Loss Mitigation. Administrator will work alongside staff to act on cases involving default or potential loss. This will include: 1. Conducting follow-up interviews with homeowners, property managers, or tenants 2. Provide staff with calculations and valuations needed to assess the feasibility of any proposed action 3. Maintain a log of active cases with quarterly status reports 4. For legal matters, all cases will be referred to the City Attorney's Office and Administrator will provide the office with any information needed to assist with the case	All escalations involving legal assistance will be considered "out of scope" and subject to Special Project Fee hourly rates
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F. Program Reporting

#	Scope Description	Additional Notes (if Applicable)
	Monthly Reporting. Administrator will provide the city with monthly reports reflecting the following: 1. Number of new program applicants for each program 2. Number of active Drawings for available homes for rent or sale 3. Number of Drawing Entrants for each Drawing 4. Number of Active Resales and Vacancies 5. Number of Active New Construction Units for Sale or Rent 6. Name and Number of Developers with New Units for Sale or Rent 7. New Homeownership Portfolio Findings: Notices of Default, Notices of Sale, or Bankruptcy Filings 8. New Service Ticket Requests from Homeowners (E.g, Refinance, Sale) 9. New Service Ticket Requests from Property Managers (E.g., Vacancies) 10. New Transactions Completed (e.g., Homes Sold, Leases Signed) 11. Workshops held and Scheduled in English and Spanish 12. Workshop Attendance Reports in English and Spanish 13. Active Asset Management Cases with Status 14. Total Revenue Generated from Program Transactions	
	Staff Reports. Administrator will assist Staff to prepare staff reports that involve the housing programs in its scope. This may include recommending a best practice or amendment to an existing policy to improve program delivery. An example of this is when we changed the minimum DPA return.	
	County Assessor and other 3rd Party Reports. Administrator will furnish the County Assessor and other approved third-parties with reports on the maximum restricted sale price of homeownership units and other required data, and provide a copy to City Staff annually at the same time it is provided to County Assessor.	

G. Program Marketing, Content Development, and Customer Service

#	Scope Description	Additional Notes (if Applicable)
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	Program Materials. Administrator will prepare and update program pamphlets, handouts, flyers, presentations, and guides to assist program applicants, participants, partners, and other stakeholders to better understand the programs within its scope.	
	Program Website and Social Media. Administrator will maintain a program web presence that will link to the City of Morgan Hill website. Additionally, Administrator will provide web and social media content in both English and Spanish	
	Outreach and Presentations. Administrator will host at least 6 outreach events per year in the City of Morgan Hill. This includes at least 2 presentations in Spanish. These events will be hosted at community locations, including local business and school sites. Administrator will also participate in up to 3 “general affordable housing educational events, including in-person and virtual townhalls, farmers markets, city and school festivals, and other community events.	
	Customer Service. Administrator will maintain acceptable response times for inbound emails, service requests, and phone calls. This includes, but is not limited to: 1. Phone calls returned within 48 hours 2. Emails returned within 48 hours 3. Scheduling Onsite Appointments with Applicants 4. Respond to Service Ticket Requests that come in through the website within 48 hours 5. Administrator will provide HouseKeys staff to be located at City Hall a minimum of 2 times a month for 8 hours to serve as a knowledgeable and consistent liaison to both staff and residents, enhancing customer service to the city and residents.	

Exhibit B
City of Morgan Hill
Annual HouseKeys Budget and Schedule of Compensation Rates and Costs 2024*

Department Breakdown as of 2024	
Executive	\$ 250,000.00
Single-Family Ownership Programs	\$ 700,000.00
Multi-Family Rental Programs	\$ 500,000.00
Housing Finance Programs	\$ 110,000.00
Customer Service and Support	\$ 420,000.00
Product, Data, and Technology	\$ 945,000.00
Communications	\$ 120,000.00
Legal	\$ 200,000.00
Total Department Expense	\$ 3,245,000.00
Total Annual Budget*	\$ 3,844,000.00
Income Sought from Other Sources	\$ 3,266,500.00
1st Year Payment from City of Morgan Hill	\$ 577,500.00

*Note: Out years assumes budget growth in line with 5% growth in Morgan Hill contract along with other revenue sources

- This is a 4-year contract
- Year one beginning July 1, 2024, is for \$577,500 (a 5% increase from the current \$550,000)
- Year two is for \$606,375 beginning July 1, 2025, and a 5% embedded incremental increase each year after for the 4-year term.

Schedule of Compensations Rates:

Year 1: \$577,500

Year 2: \$606,375 (5%: 577,500 + \$28,875.00)

Year 3: \$636,693 (5%: 606,375 + \$30,318.00)

Year 4: \$668,527 (5%: 636,693 + \$31,834.00)

Total: \$2,489,095.00

Distribution of Payments

Time Frame and Total	Initial Payment on July 1	Payment July 1 to June 30th
Year 1: \$577,500	\$120,000.00	\$38,125 First Friday of each month
Year 2: \$606,375	\$120,000.00	\$40,531.25 First Friday of each month
Year 3: \$636,693	\$120,000.00	\$43,057.75 First Friday of each month
Year 4: \$668,527	\$120,000.00	\$45,710.58 First Friday of each month

**EXHIBIT C
SCHEDULE OF PERFORMANCE**

During the term of this CONSULTANT Agreement, CONSULTANT will continue administration of the CITY'S BMR (Below Market Rate) Ownership and Rental Program, and the CITY's BEGIN and CalHome Program.

EXHIBIT D
HOUSEKEYS FEE SCHEDULE (2024-2025) – Morgan Hill

#	Description	Fee ¹	Fee Cap / Max	Billed To
1	Program Administration	Determined by Contract		Agency
2	Rental Unit Processing Fee (New Construction/Existing Vacancies)	Up to \$1,500.00 per lease transaction	Up to \$1,500 per lease transaction	Developer [Agreement]
3	Rental Annual Compliance Recertification Process Fee (100% of resident files)	Up to \$150 per unit	Up to \$150 per unit	Developer [Agreement]
4	Project-level Annual Review	No fee	No fee	No fee
5	Tenant-level Annual Review (10% of resident files)	No fee	No fee	No fee
6	Loan Processing Transaction Fee	\$1,250.00 per transaction ²	\$1,250.00 per transaction	Owner / Lender
7	Refinance & Document Processing Fee	\$500 per transaction ²	\$500 per transaction	Homeowner [Agreement]
8	New Ownership Sales Transaction Fee	3% of Sales Price	Maximum \$18,000.00 Minimum \$5,000.00	Developer [Agreement]
9	Ownership Resale Transaction Fee	6% of New Sales Price	Maximum \$36,000.00	Homeowner / Added to Sales Price [Agreement]
10	Acquisition and Ownership Resale / Rehab Transaction Fee	5% of Resale Restriction Price plus 5% of New Sales Price	Maximum \$60,000.00	Homeowner / Added to Sales Price [Agreement]
11	Billing Rate for Projects Outside of Contract Scope	\$250.00 / hour	\$250.00 / hour	Up-Front Scope / Agency

¹ All Fees will be considered new fees. Any legacy legal agreements with fee structures written in the recorded documents will be honored and a discount will be applied, provided HouseKeys agrees.

CITY COUNCIL STAFF REPORT

MEETING DATE: June 19, 2024

PREPARED BY:

Maria Angeles, Senior Civil Engineer

APPROVED BY: City Manager

APPROVE ENGINEERING-RELATED CONSULTANT AGREEMENTS FOR DESIGN PROFESSIONALS FOR ON-CALL ENGINEERING PLAN REVIEW & TECHNICAL SUPPORT SERVICES, AND ON-CALL MAP REVIEW & CITY SURVEYOR SERVICES

RECOMMENDATION(S)

Approve and authorize the City Manager to execute and administer six agreements to be specifically authorized by the City Manager:

1. **CSG CONSULTANTS, INC.** in the amount of \$1,324,130, and \$883,836 additional compensation on an extended two-year term, for a total agreement amount not to exceed \$2,207,966 to provide both On-Call Engineering Plan Review & Technical Support Services, and On-Call Map Review & City Surveyor Services;
2. **HARRIS & ASSOCIATES, INC.** in the amount of \$519,000, and \$390,000 additional compensation on an extended two-year term, for a total agreement amount not to exceed \$909,000 to provide On-Call Engineering Plan Review & Technical Support Services;
3. **GHIRARDELLI ASSOCIATES, INC.** in the amount of \$126,000, and \$96,000 additional compensation on an extended two-year term, for a total agreement amount not to exceed \$222,000 to provide On-Call Engineering Plan Review & Technical Support Services;
4. **ASSOCIATED ENGINEERING-SURVEYING SERVICE, INC.**, doing business as **HANNA-BRUNETTI** in the amount of \$144,000, and \$109,000 additional compensation on an extended two-year term, for a total agreement amount not to exceed \$253,000 to provide On-Call Map Review & City Surveyor Services;
5. **RUGGERI-JENSEN-AZAR (RJA)** in the amount of \$39,000, and \$29,000 additional compensation on an extended two-year term, for a total agreement amount not to exceed \$68,000 to provide On-Call Map Review & City Surveyor Services; and
6. **MNS ENGINEERS, INC.** in the amount of \$39,000, and \$29,000 additional compensation on an extended two-year term, for a total agreement amount not to exceed \$68,000 to provide On-Call Map Review & City Surveyor Services.

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

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

2024-2025 Strategic Priorities

Fiscal Sustainability

Guiding Documents

Economic Blueprint
Storm Drain Master Plan
Water System Master Plan
Wastewater System Master Plan

REPORT NARRATIVE:

Staff augmentation services are a critical need for the City's Engineering functions. The City uses consultants in line with the sustainable budget strategy to ensure required workload is accomplished as an alternative to bringing on additional staff. This approach allows for on-call services that can be used as needed to support the review of private development projects, program management, and other general engineering service and technical support functions for the Engineering Division.

Over the course of many years, the City has contracted with consultants to assist with land development engineering review, map review, stormwater and floodplain management program tasks, construction inspection, and other technical support services. It is anticipated that consultant services will continue to be needed for Fiscal Years (FY) 2024-25 through 2026-27 for development application reviews (especially to keep up with the accelerated permit processing timeline required by California Senate Bill 330 ([SB 330](#))), stormwater program and floodplain management program activities.

On February 27, 2024, Engineering staff issued a Request for Qualifications (RFQ) for two service categories: On-Call Engineering Plan Review & Technical Support Services, and On-Call Map Review & City Surveyor Services.

The objective of the RFQ was to establish two separate on-call lists, with a maximum of four pre-qualified and experienced firms per list, for plan review & technical support, and map review and City Surveyor services. The two on-call lists will be valid for three years with the possibility of two, one-year term extensions.

There were eight firms that submitted their qualifications by the due date of March 28, 2024 for the On-Call Engineering Plan Review & Technical Support Services and eight firms for the On-Call Map Review & City Surveyor Services.

The proposals were evaluated by a four-member selection committee using the following criteria: Qualifications and Experience, Ability to Meet Project Timelines, Understanding of Services & Approach, and Overall Proposal. Attached is the Scoring Summary (Attachment A).

Staff Recommendations

After a thorough evaluation by the selection committee, staff recommends that the following firms be included in the two on-call lists:

Engineering Plan Review & Technical Support Services

1. CSG Consultants, Inc.
2. Harris & Associates, Inc.
3. Ghirardelli Associates, Inc.

Map Review & City Surveyor Services

1. Hanna-Brunetti
2. CSG Consultants, Inc.
3. Ruggeri-Jensen-Azar (RJA)
4. MNS Engineers, Inc.

The firms listed above, with the exception of Ghirardelli Associates, Inc., all have conducted work in the City in the past and demonstrated quality performance.

In addition to the standard consultant agreements, staff is also recommending City Council approval of additional compensation for each consultant for an extended two-year term. The additional compensation is to cover anticipated work for two more years following the initial three-year term of the agreements.

Staff is recommending the following agreement amounts for Council approval:

Consultant Name	Initial Agreement Amount	Additional Compensation Amount	Total Agreement Amount
1. CSG Consultants, Inc.			
On-Call Engineering Plan Review & Technical Support Services	\$1,285,130	\$854,836	\$2,139,966
On-Call Map Review & City Surveyor Services	\$39,000	\$29,000	\$68,000
Totals	\$1,324,130	\$883,836	\$2,207,966
2. Harris & Associates, Inc.	\$519,000	\$390,000	\$909,000
On-Call Engineering Plan Review & Technical Support Services			
3. Ghirardelli Associates, Inc.	\$126,000	\$96,000	\$222,000
On-Call Engineering Plan Review & Technical Support Services			
4. Hanna-Brunetti	\$144,000	\$109,000	\$253,000
On-Call Map Review & City Surveyor Services			
5. Ruggeri-Jensen-Azar (RJA)	\$39,000	\$29,000	\$68,000
On-Call Map Review & City Surveyor Services			

6. MNS Engineers, Inc.	\$39,000	\$29,000	\$68,000
On-Call Map Review & City Surveyor Services			

COMMUNITY ENGAGEMENT:

Inform

This report serves to inform the community of the six recommended agreement approvals for the Engineering Division and to provide a summary of the RFQ selection results.

The RFQ issued on February 27, 2024, was posted on the City's website and in Public Purchase until the RFQ due date of March 28, 2024. A separate solicitation email was sent to the engineering consultants that have done work in the City of Morgan Hill.

ALTERNATIVE ACTIONS:

The Council may wish to provide alternate direction on soliciting consultant services for the City's Engineering-related functions. Alternate direction may include the City Council having staff solicit new consultant proposals or approving a limited number of proposals. These alternative actions are not recommended and may delay the review/approval of projects, especially residential development projects, and may delay the completion of certain stormwater project reviews. These delays could result in fines or lawsuits against the City should the staff be unable to meet required State mandates.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

There are no prior City Council nor Commission actions related to the proposed agreement approvals.

FISCAL AND RESOURCE IMPACT:

The funding for the agreements for on-call services will come from the Development Services Fund 206 for development projects and from the Capital Improvement Program for other as-needed technical support services.

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 are exempted from environmental review under Section 15061(b)(3) of the State CEQA Guidelines. The agreements are covered by the general rule 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.

ATTACHMENT A

SCORING SUMMARY

ENGINEERING PLAN REVIEW & TECHNICAL SUPPORT SERVICES						
		EVALUATION CRITERIA				
Consultant Name		A. Overall Proposal	B. Qualifications & Experience	C. Ability to Meet Project Timelines	D. Understanding of Services & Approach	Total Points
1	CSG Consultants, Inc.	39	178	53	86	356
2	Harris & Associates	40	180	46	90	356
3	Ghirardelli Associates	39	180	44	70	333
4	MNS Engineers, Inc.	39	175	43	50	307
5	SNG & Associates, Inc.	38	167	43	51	299
6	Northstar	38	155	39	48	280
7	Ponticello Enterprises Consulting Engineers	37	160	33	42	272
8	Bureau Veritas North America, Inc.	34	144	34	44	256

MAP REVIEW & CITY SURVEYOR SERVICES						
		EVALUATION CRITERIA				
Consultant Name		A. Overall Proposal	B. Qualifications & Experience	C. Ability to Meet Project Timelines	D. Understanding of Services & Approach	Total Points
1	Hanna-Brunetti	24	181	52	82	339
2	CSG Consultants, Inc.	38	172	41	83	334
3	Ruggeri-Jensen-Azar (RJA)	37	170	47	76	330
4	MNS Engineers, Inc.	38	170	47	73	328
5	Kier + Wright	34	170	52	68	324
6	R.E.Y. Engineers, Inc.	38	175	43	63	319
7	GUIDA	37	168	38	67	310
8	Northstar	38	168	39	62	307

CONSULTANT AGREEMENT FOR DESIGN PROFESSIONALS CSG CONSULTANTS, INC.

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

1. **City Authority**. This Agreement is entered into pursuant to the action of the Morgan Hill City Council taken on _____, _____, 20____.
2. **Term of Agreement**. This Agreement shall cover services rendered from July 1, 2024 until June 30, 2027 ("Initial Term") at which time CONSULTANT'S services shall be completed. The City Manager is authorized to extend the term of this Agreement for a maximum of two additional one-year extensions ("Extended Term"). Any such extension shall be in writing and signed by both Parties to this Agreement.
3. **Scope of Service**. The services to be performed by CONSULTANT shall be 1) On-Call Engineering Plan Review & Technical Support Services; and 2) On-Call Map Review and City Surveyor Services for the Engineering Division as further described in **Exhibit A**.
4. **Compensation**. CONSULTANT shall be compensated as follows:
 - 4.1. **Amount**. \$1,324,130. Total compensation to CONSULTANT under this Agreement during its initial term set forth in Section 2 above shall not exceed One Million Three Hundred Twenty Four Thousand One Hundred Thirty dollars, and shall be billed based on the rate and basis set forth in **Exhibit B**. The City Manager shall have the authority to increase the maximum compensation allowed to be paid to CONSULTANT during the Extended Term period, so long as City Council has appropriated sufficient funds therefor, the Parties mutually agree to such amount in a writing signed by both Parties to this Agreement, and provided further that in no event shall such maximum compensation allowed for the extended term exceed the amount set forth in Section 4.1.1 below.
 - 4.1.1. Additional Compensation. The City Manager shall have the authority to approve additional compensation in an amount not to exceed \$883,836 during the Extended Term, for a combined total maximum compensation amount of \$2,207,966.
 - 4.2. **Billing**. CONSULTANT shall provide CITY with an invoice containing the dated, detailed, and itemized descriptions of all services performed and expenses incurred (if such expenses are reimbursable pursuant to Exhibit B) by CONSULTANT on a monthly basis unless otherwise specified in Exhibit B. All invoices shall be sent to the CITY addressed to the department head or project manager identified below in Section 13 Notices. Any rate charged shall be prorated where services are interrupted or not provided for any rate period (for example, any monthly rate charge should be prorated when services were interrupted or provided for only part of the month). For services billed on an hourly rate, the minimum unit of billed time shall not exceed one tenth of one hour. CITY shall pay for services and expenses (if so provided in Exhibit B) up to the limit of compensation set forth above, that in the CITY'S judgment were necessary and reasonable. Services for work performed and expenses incurred in excess of the total compensation set forth in paragraph 4.1 above shall be at no cost to CITY.

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

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

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

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

7.1. **Insurance Types and Amounts.**

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

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

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

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

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

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

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

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

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

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

7.2.2. Workers Compensation.

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

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

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

Certificate Holder address:

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

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

9. **Compliance with Law.**

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

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

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

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

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

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

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

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

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

Address of CONSULTANT is as follows:

CSG CONSULTANTS, INC.
3150 Almaden Expressway, Suite 255
San Jose, CA 95118

Address of CITY is as follows:

Maria Angeles	with a copy to:
Senior Civil Engineer	City Clerk
City of Morgan Hill	City of Morgan Hill
17575 Peak Avenue	17575 Peak Avenue
Morgan Hill, CA 95037	Morgan Hill, CA 95037

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

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

16. **Maintenance of Records.**

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

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

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

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

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

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

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

21. **Defense and Indemnification.**

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

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

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

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

21.5. **Right to Offset.** CITY shall have the right to offset against any compensation due CONSULTANT under this Agreement any amount due CITY from CONSULTANT as a result of CONSULTANT'S failure to pay CITY promptly any indemnification arising under

this Section (21) and any amount due CITY from CONSULTANT arising from CONSULTANT'S failure either to (i) pay taxes on amounts received pursuant to this Agreement or (ii) comply with applicable workers' compensation laws.

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

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

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

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

25. **Notice of Security and/or Privacy Incident.** If CONSULTANT, or its subconsultant, suspect, discover or are notified of a data security incident or potential breach of security and/or privacy relating to CITY PII, PHI and/or PCI, CONSULTANT shall immediately, but in no event later than forty-eight (48) hours from suspicion, discovery or notification of the incident or potential breach, notify CITY of such incident or potential breach. CONSULTANT shall, upon CITY's request, investigate such incident or potential breach, inform the CITY of the results of any such investigation, and assist the CITY in maintaining the confidentiality of such information. In addition to the foregoing, CONSULTANT shall provide CITY with any assistance necessary to comply with any state and/or federal laws requiring the provision of notice of any privacy incident or security breach with respect to any CITY PII, PHI and/or PCI to the affected or impacted individuals and/or organizations, in addition to any notification to applicable state and federal agencies. CONSULTANT agrees that it shall reimburse CITY for all expenses, costs, attorneys' fees, and resulting fines, penalties, and damages associated with such incident, breach, investigation and/or notification.

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

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

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

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

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[Signatures on Next Page]

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

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

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

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

ATTEST:

CITY OF MORGAN HILL

City Clerk/Deputy City Clerk

City Manager

Michelle Bigelow

Christina J. Turner

Print Name

Print Name

Date: _____

Date: _____

APPROVED AS TO FORM:

CSG CONSULTANTS, INC.

DocuSigned by:

Cyrus Kianpour

By: AC12FF2224A4B2...

City Attorney

Donald A. Larkin

Cyrus Kianpour, President

Print Name

Print Name and Title of Signer.

If Corporate: Chairman, President or Vice
President

Date: _____

Date: 6/11/2024

DocuSigned by:

Nourdin Khayata

By: DE17E22B4A242C...

Nourdin Khayata, Secretary

Print Name and Title of Signer.

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

Date: 6/11/2024

EXHIBIT A SCOPE OF SERVICES

A. On-Call Engineering Plan Review & Technical Support Services

The following are the types of tasks that are included in the CONSULTANT'S scope of services:

1. Standard and Expedited engineering plan review of improvement plans for conformance with adopted City standards, approved conditions of approval, and/or accepted industry practice, and to meet the established time limits for post-entitlement phase of residential permits subject to California Assembly Bill No. 2234. Plans and reports to be reviewed, include but are not limited to, grading, drainage, utilities, joint trench, streetlighting, traffic signal, signing/stripping, traffic control plans, Stormwater Pollution Prevention Plans (SWPPP), geotechnical reports, and traffic studies.
2. Review storm drain and/or sanitary sewer hydraulic calculations for conformance with City standards and/or accepted industry practice.
3. Review the civil engineering and site planning aspects of tentative maps and other land development entitlement applications for conformance with City standards, and to meet the established time limits for residential projects eligible for processing under California Senate Bill No. 330.
4. Review of Post-Construction Stormwater Runoff Management Plans (SWRMPs) and Stormwater Control Plans submitted by projects that are subject to the requirements of the Central Coast Regional Water Quality Control Board (Region 3); and other program management functions to comply with the City's National Pollutant Discharge Elimination System (NPDES) permit requirements.
5. Review floodplain proposals, provide Flood Program management support, and other related functions as needed.
6. Other general engineering services and inspection services as needed.

B. On-Call Map Review and City Surveyor Services

The following are the types of tasks that are included in the CONSULTANT'S scope of services:

1. Review of tract maps and parcel maps for conformance with the Subdivision Map Act. Provide stamp and signature on maps and other documents, as necessary, as the Acting City Surveyor.
2. Review of land surveying aspects of tentative maps for conformance with City standards as part of the City's entitlement process.
3. Review of lot line adjustments, certificates of compliance, vacation or abandonment of public right-of-way and public easements, plat maps, legal descriptions, and closure calculations for technical accuracy.

4. Perform traditional topographic surveys to determine locations and elevations of existing improvements, structures, and topographic features.
5. Develop legal descriptions and plat maps, and other survey-related tasks as needed.

EXHIBIT B SCHEDULE OF COMPENSATION RATES

Total Compensation for On-Call Engineering Plan Review & Technical Support Services during the initial term of this Agreement is \$1,285,130.

Total Compensation for On-Call Map Review and City Surveyor Services during the initial term of this Agreement is \$39,000.

CONSULTANT'S services will be billed on a time-and-materials basis according to the Standard Rates shown below. Any changes to the rate schedule shall be reflected in a written amendment between the Parties.

PROFESSIONAL ENGINEERING SERVICES	2024 HOURLY RATE	2025 HOURLY RATE	2026 HOURLY RATE
Administrative Assistant	\$90	\$95	\$100
Analyst	\$150	\$155	\$160
Construction Inspector	\$165	\$170	\$175
Assistant Resident Engineer	\$195	\$200	\$205
Assistant Engineer	\$165	\$170	\$175
Associate Engineer	\$200	\$205	\$210
Associate Surveyor	\$195	\$200	\$205
Senior Construction Inspector	\$185	\$190	\$195
Senior Engineer	\$220	\$230	\$240
Senior Land Surveyor	\$220	\$230	\$240
Resident Engineer	\$240	\$250	\$260
Structure Representative	\$240	\$250	\$260
Senior Project Manager	\$245	\$255	\$265
Principal Engineer	\$270	\$280	\$290
Senior Principal Engineer	\$290	\$300	\$310
Two-Person Survey Crew	\$395	\$405	\$415

All hourly rates include overhead costs including, but not limited to, salaries, benefits, workers' compensation insurance, travel and office expenses. CSG will coordinate the pickup and return of plans between CSG and agency offices. Overtime services and services provided outside of normal business hours will be billed at 1.5x the applicable hourly rate. CSG will deliver an invoice every month for services rendered during the previous month.

EXHIBIT C
SCHEDULE OF PERFORMANCE

CONSULTANT'S services will be on an as needed, on-call basis.

EXHIBIT D
Third Party Data Use Agreement

1. CONSULTANT agrees that it shall not use any information provided by CITY for any purpose other than for work performed pursuant to this Agreement without the prior express written consent of CITY. CONSULTANT also hereby acknowledges that the data delivered by CITY is for use by CONSULTANT only, and is not to be released to any other party by any means whatsoever, including the Internet, without prior written consent of CITY. CONSULTANT shall provide written notice to CITY of any subcontractor with whom Geographic Information System data (GIS DATA) is shared for purposes of performing work under this Agreement.
2. All data and files are intended for the use within the ordinary course of users' business and may not be sold, placed on the internet or otherwise provided to other parties. All data shall comply with all statutes such as California State Law, Government Code section 7928.205 which prohibits any state or local agency from posting the home address or telephone number of any "elected or appointed official," residing spouse, or child on the internet, and Revenue and Taxation Code sections 408, 408.1, 408.3, and 409 permitting the County Assessor to collect fees for certain information.
3. CITY, as rightful owners, shall retain all rights, title, interest, and copyright of the data. Any products using the GIS DATA must give credit to CITY as the source of the information. Any and all derivative products of the GIS DATA are owned by CITY and may not be used for any purpose other than performing work pursuant to this Agreement without prior written permission of CITY. All derivative products and resulting data shall be provided to CITY Project Manager and CITY GIS Manager at the completion of the work.
4. CONSULTANT and CITY understand and agree that the information provided pursuant to this Agreement is the product of professional services paid for by CITY and shall remain property of CITY. CONSULTANT may retain copies, including copies stored on magnetic media, only for information and reference, in connection with CONSULTANT'S use for work performed for CITY.
5. All of the above terms and conditions apply to any subcontractor retained by CONSULTANT.
6. In the event of a conflict between the terms and provisions of this Third Party Data Use Agreement and the terms and provisions of the CONSULTANT AGREEMENT, the terms of the CONSULTANT AGREEMENT shall govern and control.

Certificate Of Completion

Envelope Id: 60E02A9877014B38A5F62155F24BF0A6	Status: Completed
Subject: Complete with DocuSign: CSG Consultants Inc	
Source Envelope:	
Document Pages: 16	Signatures: 2
Certificate Pages: 5	Initials: 0
AutoNav: Enabled	
Envelope Stamping: Enabled	Envelope Originator:
Time Zone: (UTC-08:00) Pacific Time (US & Canada)	City Clerk's Office
	17575 Peak Ave
	Morgan Hill, CA 95037
	cityclerk@morganhill.ca.gov
	IP Address: 35.131.77.142

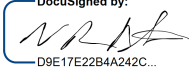
Record Tracking

Status: Original	Holder: City Clerk's Office	Location: DocuSign
6/10/2024 8:21:29 AM	cityclerk@morganhill.ca.gov	
Security Appliance Status: Connected	Pool: StateLocal	
Storage Appliance Status: Connected	Pool: City of Morgan Hill	Location: DocuSign

Signer Events

Signature	Timestamp
Cyrus Kianpour	Sent: 6/10/2024 8:25:55 AM
cyrus@csgengr.com	Viewed: 6/10/2024 10:38:15 AM
President	Signed: 6/11/2024 8:34:13 AM
CSG Consultants Inc.	
Security Level: Email, Account Authentication (None)	

Electronic Record and Signature Disclosure:
Accepted: 6/10/2024 10:38:15 AM
ID: 54ec4d2c-8cee-4778-8250-71b0c3d07e30

Nourdin Khayata	DocuSigned by:	Sent: 6/11/2024 8:34:14 AM
nourdin@csgengr.com		Viewed: 6/11/2024 10:04:07 AM
Secretary	D9E17E22B4A242C...	Signed: 6/11/2024 10:04:41 AM
Security Level: Email, Account Authentication (None)	Signature Adoption: Drawn on Device	
	Using IP Address: 12.117.181.134	
	Signed using mobile	

Electronic Record and Signature Disclosure:
Accepted: 6/11/2024 10:04:07 AM
ID: b5187cd6-1625-4660-aaf8-7a38cb989d85

In Person Signer Events

Editor Delivery Events

Agent Delivery Events

Intermediary Delivery Events

Certified Delivery Events

Carbon Copy Events

Maria Angeles	COPIED	Sent: 6/11/2024 10:04:41 AM
maria.angeles@morganhill.ca.gov		Viewed: 6/11/2024 7:03:26 PM
Senior Civil Engineer		
Security Level: Email, Account Authentication (None)		
Electronic Record and Signature Disclosure:		

Carbon Copy Events	Status	Timestamp
Accepted: 9/29/2023 9:18:56 AM ID: 85a7bb16-5cdd-4f6f-81a2-0e5e8830f210		
Angel Echavarria angel.echavarria@morganhill.ca.gov Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Accepted: 5/24/2024 10:56:44 AM ID: bdcf4ca3-452e-40ae-a03c-88df7eef4f85	COPIED	Sent: 6/11/2024 10:04:42 AM Viewed: 6/11/2024 10:22:32 AM
Cyrus Kianpour cyrus@csgengr.com President CSG Consultants Inc. Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Accepted: 6/10/2024 10:38:15 AM ID: 54ec4d2c-8cee-4778-8250-71b0c3d07e30	COPIED	Sent: 6/11/2024 10:04:43 AM
Nourdin Khayata nourdin@csgengr.com Secretary Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Accepted: 6/11/2024 10:04:07 AM ID: b5187cd6-1625-4660-aaf8-7a38cb989d85	COPIED	Sent: 6/11/2024 10:04:43 AM
Witness Events	Signature	Timestamp
Notary Events	Signature	Timestamp
Envelope Summary Events	Status	Timestamps
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Certified Delivered	Security Checked	6/11/2024 10:04:07 AM
Signing Complete	Security Checked	6/11/2024 10:04:41 AM
Completed	Security Checked	6/11/2024 10:04:43 AM
Payment Events	Status	Timestamps
Electronic Record and Signature Disclosure		

ELECTRONIC RECORD AND SIGNATURE DISCLOSURE

From time to time, City of Morgan Hill (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through the DocuSign system. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to this Electronic Record and Signature Disclosure (ERSD), please confirm your agreement by selecting the check-box next to 'I agree to use electronic records and signatures' before clicking 'CONTINUE' within the DocuSign system.

Getting paper copies

At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. You will have the ability to download and print documents we send to you through the DocuSign system during and immediately after the signing session and, if you elect to create a DocuSign account, you may access the documents for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a \$0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

Withdrawing your consent

If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

Consequences of changing your mind

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. Further, you will no longer be able to use the DocuSign system to receive required notices and consents electronically from us or to sign electronically documents from us.

All notices and disclosures will be sent to you electronically

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through the DocuSign system all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

How to contact City of Morgan Hill:

You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:

To contact us by email send messages to: michelle.bigelow@morganhill.ca.gov

To advise City of Morgan Hill of your new email address

To let us know of a change in your email address where we should send notices and disclosures electronically to you, you must send an email message to us at michelle.bigelow@morganhill.ca.gov and in the body of such request you must state: your previous email address, your new email address. We do not require any other information from you to change your email address.

If you created a DocuSign account, you may update it with your new email address through your account preferences.

To request paper copies from City of Morgan Hill

To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an email to michelle.bigelow@morganhill.ca.gov and in the body of such request you must state your email address, full name, mailing address, and telephone number. We will bill you for any fees at that time, if any.

To withdraw your consent with City of Morgan Hill

To inform us that you no longer wish to receive future notices and disclosures in electronic format you may:

- i. decline to sign a document from within your signing session, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;
- ii. send us an email to michelle.bigelow@morganhill.ca.gov and in the body of such request you must state your email, full name, mailing address, and telephone number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

Required hardware and software

The minimum system requirements for using the DocuSign system may change over time. The current system requirements are found here: <https://support.docusign.com/guides/signer-guide-signing-system-requirements>.

Acknowledging your access and consent to receive and sign documents electronically

To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please confirm that you have read this ERSD, and (i) that you are able to print on paper or electronically save this ERSD for your future reference and access; or (ii) that you are able to email this ERSD to an email address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format as described herein, then select the check-box next to ‘I agree to use electronic records and signatures’ before clicking ‘CONTINUE’ within the DocuSign system.

By selecting the check-box next to ‘I agree to use electronic records and signatures’, you confirm that:

- You can access and read this Electronic Record and Signature Disclosure; and
- You can print on paper this Electronic Record and Signature Disclosure, or save or send this Electronic Record and Disclosure to a location where you can print it, for future reference and access; and
- Until or unless you notify City of Morgan Hill as described above, you consent to receive exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you by City of Morgan Hill during the course of your relationship with City of Morgan Hill.

CONSULTANT AGREEMENT FOR DESIGN PROFESSIONALS HARRIS & ASSOCIATES, INC.

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

1. **City Authority**. This Agreement is entered into pursuant to the action of the Morgan Hill City Council taken on _____, _____, 20____.

2. **Term of Agreement**. This Agreement shall cover services rendered from July 1, 2024 until June 30, 2027 ("Initial Term") at which time CONSULTANT'S services shall be completed. The City Manager is authorized to extend the term of this Agreement for a maximum of two additional one-year extensions ("Extended Term"). Any such extension shall be in writing and signed by both Parties to this Agreement.

3. **Scope of Service**. The services to be performed by CONSULTANT shall be On-Call Engineering Plan Review & Technical Support Services for the Engineering Division as further described in **Exhibit A**.

4. **Compensation**. CONSULTANT shall be compensated as follows:

4.1. **Amount**. \$519,000. Total compensation to CONSULTANT under this Agreement during its initial term set forth in Section 2 above shall not exceed Five Hundred Nineteen Thousand dollars, and shall be billed based on the rate and basis set forth in **Exhibit B**. The City Manager shall have the authority to increase the maximum compensation allowed to be paid to CONSULTANT during the Extended Term period, so long as City Council has appropriated sufficient funds therefor, the Parties mutually agree to such amount in a writing signed by both Parties to this Agreement, and provided further that in no event shall such maximum compensation allowed for the extended term exceed the amount set forth in Section 4.1.1 below.

4.1.1. **Additional Compensation**. The City Manager shall have the authority to approve additional compensation in an amount not to exceed \$390,000 during the Extended Term, for a combined total maximum compensation amount of \$909,000.

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

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

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

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

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

7.1. **Insurance Types and Amounts.**

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

amount of such insurance available to CONSULTANT under CONSULTANT'S combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

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

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

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

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

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

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

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

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

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

7.2.2. Workers Compensation.

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

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

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

Certificate Holder address:

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

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

9. **Compliance with Law.**

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

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

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

WITH – OR HAS REACHED AGREEMENT WITH THE CITY REGARDING THE MANNER IN WHICH IT WILL SATISFY – ANY SUCH JUDGMENTS, DECISIONS OR ORDERS.

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

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

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

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

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

Address of CONSULTANT is as follows:

Harris & Associates, Inc.
60 W. Alisal Street, Suite 200, 2nd Floor
Salinas, CA 93901

Address of CITY is as follows:

Maria Angeles	with a copy to:
Senior Civil Engineer	City Clerk
City of Morgan Hill	City of Morgan Hill
17575 Peak Avenue	17575 Peak Avenue
Morgan Hill, CA 95037	Morgan Hill, CA 95037

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

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

16. **Maintenance of Records.**

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

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

16.3. **Ownership of Work Product.** All documents or other information developed or received by CONSULTANT for work performed under this Agreement shall be the property of CITY. CONSULTANT shall provide CITY with copies of these items upon demand or upon termination of this Agreement. Any modifications made by the CITY or any agents of the CITY, to any of the CONSULTANT'S work products or any partial use or reuse of these work products without the express written consent of the CONSULTANT will be at the CITY'S sole risk and without liability to the CONSULTANT.

17. **Familiarity with Work.** By executing this Agreement, CONSULTANT represents that: (1) it has investigated the work to be performed; (2) it has investigated the site of the work and is aware of all

conditions there; and (3) it understands the difficulties and restrictions of the work under this Agreement. Should CONSULTANT discover any conditions materially differing from those inherent in the work or as represented by CITY, it shall immediately inform CITY and shall not proceed, except at CONSULTANT'S risk, until written instructions are received from CITY.

18. **Time of Essence**. Time is of the essence in the performance of this Agreement. CONSULTANT shall not be responsible for delays caused by circumstances beyond its reasonable sole control.

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

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

21. **Defense and Indemnification**.

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

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

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

21.4. **Not limited by insurance**. The indemnity, defense and hold harmless provisions of this Agreement apply to all CLAIMS alleged against an INDEMNITEE, regardless of whether

any insurance policies are applicable. Policy limits do not act as a limitation upon the amount of indemnification or defense to be provided by CONSULTANT.

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

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

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

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

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

25. Notice of Security and/or Privacy Incident. If CONSULTANT, or its subconsultant, suspect, discover or are notified of a data security incident or potential breach of security and/or privacy relating to CITY PII, PHI and/or PCI, CONSULTANT shall immediately, but in no event later than forty-eight (48) hours from suspicion, discovery or notification of the incident or potential breach, notify CITY of such incident or potential breach. CONSULTANT shall, upon CITY's request, investigate such incident or potential breach, inform the CITY of the results of any such investigation, and assist the CITY in maintaining the confidentiality of such information. In addition to the foregoing, CONSULTANT shall provide CITY with any assistance necessary to comply with any state and/or federal laws requiring the provision of notice of any privacy incident or security breach with respect to any CITY PII, PHI and/or PCI to the affected or impacted individuals and/or organizations, in addition to any notification to applicable state and federal agencies. CONSULTANT agrees that it shall reimburse CITY for all expenses, costs, attorneys' fees, and resulting fines, penalties, and damages associated with such incident, breach, investigation and/or notification.

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

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

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

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

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[Signatures on Next Page]

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

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

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

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

ATTEST:

CITY OF MORGAN HILL

City Clerk/Deputy City Clerk

City Manager

Michelle Bigelow
Print Name

Christina J. Turner
Print Name

Date: _____

Date: _____

APPROVED AS TO FORM:

HARRIS & ASSOCIATES, INC.

DocuSigned by:

FRANK LOPEZ

By: 302888E2C9D142A...

City Attorney

Donald A. Larkin
Print Name

Frank S. Lopez, Vice President -
Engineering & Consulting
Print Name and Title of Signer.
If Corporate: Chairman, President or Vice
President
Date: 6/11/2024

Date: _____

Date: _____

DocuSigned by:

Preston Hatch

By: 3015226953EA405...

Preston Hatch, Executive Vice
President and Chief Financial Officer
Print Name and Title of Signer.
If Corporate: Secretary, Assistant
Secretary, Chief Financial Officer or
Assistant Treasurer

Date: 6/11/2024

Date: _____

EXHIBIT A SCOPE OF SERVICES

The following are the types of tasks that are included in the CONSULTANT'S scope of services:

1. Standard and Expedited engineering plan review of improvement plans for conformance with adopted City standards, approved conditions of approval, and/or accepted industry practice, and to meet the established time limits for post-entitlement phase of residential permits subject to California Assembly Bill No. 2234. Plans and reports to be reviewed, include but are not limited to, grading, drainage, utilities, joint trench, streetlighting, traffic signal, signing/striping, traffic control plans, Stormwater Pollution Prevention Plans (SWPPP), geotechnical reports, and traffic studies.
2. Review storm drain and/or sanitary sewer hydraulic calculations for conformance with City standards and/or accepted industry practice.
3. Review the civil engineering and site planning aspects of tentative maps and other land development entitlement applications for conformance with City standards, and to meet the established time limits for residential projects eligible for processing under California Senate Bill No. 330.
4. Review of Post-Construction Stormwater Runoff Management Plans (SWRMPs) and Stormwater Control Plans submitted by private development projects that are subject to the requirements of the Central Coast Regional Water Quality Control Board (Region 3); and other program management functions to comply with the City's National Pollutant Discharge Elimination System (NPDES) permit requirements.
5. Review floodplain proposals, provide Flood Program management support, and other related functions as needed.
6. Other general engineering services as needed.

EXHIBIT B SCHEDULE OF COMPENSATION RATES

CONSULTANT'S services will be billed on a time-and-materials basis according to the Standard Rates shown below. Any changes to the rate schedule shall be reflected in a written amendment between the Parties.

Engineering Services	Hourly Rates		
	2024	2025	2026
Principal-in-Charge/Vice President	\$315	\$325	\$342
Principal-in-Charge/Senior Director	\$300	\$309	\$325
Principal-in-Charge/Director	\$290	\$299	\$314
Senior Project Manager II	\$285	\$294	\$309
Senior Project Manager I	\$275	\$284	\$299
Project Manager III	\$250	\$258	\$271
Project Manager II	\$230	\$237	\$249
Project Manager I	\$210	\$217	\$228
Principal Engineer II	\$300	\$309	\$325
Principal Engineer I	\$285	\$294	\$309
Senior Engineer III	\$250	\$258	\$271
Senior Engineer II	\$220	\$227	\$239
Senior Engineer I	\$200	\$206	\$217
Engineer IV	\$180	\$186	\$196
Engineer III	\$160	\$165	\$174
Engineer II	\$150	\$155	\$163
Engineer I	\$130	\$134	\$141
Technical Support	\$110	\$114	\$120
Administrative	\$100	\$103	\$109

Notes: Rates are subject to adjustment due to promotions during the effective period of this schedule. Unless otherwise indicated in the cost proposal, hourly rates include most direct costs such as travel, equipment, computers, communications and reproduction (except large plan sets).

EXHIBIT C
SCHEDULE OF PERFORMANCE

CONSULTANT'S services will be on an as needed, on-call basis.

EXHIBIT D
Third Party Data Use Agreement

1. CONSULTANT agrees that it shall not use any information provided by CITY for any purpose other than for work performed pursuant to this Agreement without the prior express written consent of CITY. CONSULTANT also hereby acknowledges that the data delivered by CITY is for use by CONSULTANT only, and is not to be released to any other party by any means whatsoever, including the Internet, without prior written consent of CITY. CONSULTANT shall provide written notice to CITY of any subcontractor with whom Geographic Information System data (GIS DATA) is shared for purposes of performing work under this Agreement.
2. All data and files are intended for the use within the ordinary course of users' business and may not be sold, placed on the internet or otherwise provided to other parties. All data shall comply with all statutes such as California State Law, Government Code section 7928.205 which prohibits any state or local agency from posting the home address or telephone number of any "elected or appointed official," residing spouse, or child on the internet, and Revenue and Taxation Code sections 408, 408.1, 408.3, and 409 permitting the County Assessor to collect fees for certain information.
3. CITY, as rightful owners, shall retain all rights, title, interest, and copyright of the data. Any products using the GIS DATA must give credit to CITY as the source of the information. Any and all derivative products of the GIS DATA are owned by CITY and may not be used for any purpose other than performing work pursuant to this Agreement without prior written permission of CITY. All derivative products and resulting data shall be provided to CITY Project Manager and CITY GIS Manager at the completion of the work.
4. CONSULTANT and CITY understand and agree that the information provided pursuant to this Agreement is the product of professional services paid for by CITY and shall remain property of CITY. CONSULTANT may retain copies, including copies stored on magnetic media, only for information and reference, in connection with CONSULTANT'S use for work performed for CITY.
5. All of the above terms and conditions apply to any subcontractor retained by CONSULTANT.
6. In the event of a conflict between the terms and provisions of this Third Party Data Use Agreement and the terms and provisions of the CONSULTANT AGREEMENT, the terms of the CONSULTANT AGREEMENT shall govern and control.

Certificate Of Completion

Envelope Id: B0EF2849D0CE4FEC83706BB6494ACBC6	Status: Completed
Subject: Complete with DocuSign: Harris & Associates	
Source Envelope:	
Document Pages: 15	Signatures: 2
Certificate Pages: 5	Initials: 0
AutoNav: Enabled	
Envelope Stamping: Enabled	Envelope Originator:
Time Zone: (UTC-08:00) Pacific Time (US & Canada)	City Clerk's Office
	17575 Peak Ave
	Morgan Hill, CA 95037
	cityclerk@morganhill.ca.gov
	IP Address: 35.131.77.142

Record Tracking

Status: Original	Holder: City Clerk's Office	Location: DocuSign
6/10/2024 8:26:08 AM	cityclerk@morganhill.ca.gov	
Security Appliance Status: Connected	Pool: StateLocal	
Storage Appliance Status: Connected	Pool: City of Morgan Hill	Location: DocuSign

Signer Events

Signer Events	Signature	Timestamp
FRANK LOPEZ	DocuSigned by: FRANK LOPEZ 302888E2C9D142A...	Sent: 6/10/2024 8:30:45 AM
Frank.Lopez@weareharris.com		Viewed: 6/11/2024 3:17:21 PM
Vice President		Signed: 6/11/2024 3:18:24 PM
1401 Willow Pass Road, Suite 500, Concord, CA	Signature Adoption: Pre-selected Style	
Security Level: Email, Account Authentication (None)	Using IP Address: 174.194.193.22	
	Signed using mobile	

Electronic Record and Signature Disclosure:
Accepted: 6/11/2024 3:17:21 PM
ID: 07f2db1a-7e9f-4a5b-8273-8ea3405fe5ce

Preston Hatch	DocuSigned by: Preston Hatch 9015226953EA405...	Sent: 6/11/2024 3:18:24 PM
preston.hatch@weareharris.com		Viewed: 6/11/2024 3:40:36 PM
CFO		Signed: 6/11/2024 3:40:51 PM
Security Level: Email, Account Authentication (None)	Signature Adoption: Pre-selected Style	
	Using IP Address: 40.132.23.10	

Electronic Record and Signature Disclosure:
Accepted: 6/11/2024 3:40:36 PM
ID: 18af4dcb-c1ea-40cc-84db-d8569519412f

In Person Signer Events

Editor Delivery Events

Agent Delivery Events

Intermediary Delivery Events

Certified Delivery Events

Carbon Copy Events

Maria Angeles	COPIED	Sent: 6/11/2024 3:40:52 PM
maria.angeles@morganhill.ca.gov		Viewed: 6/11/2024 3:53:03 PM
Senior Civil Engineer		
Security Level: Email, Account Authentication (None)		
Electronic Record and Signature Disclosure:		

Carbon Copy Events	Status	Timestamp
Accepted: 9/29/2023 9:18:56 AM ID: 85a7bb16-5cdd-4f6f-81a2-0e5e8830f210 Angel Echavarria angel.echavarria@morganhill.ca.gov Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Accepted: 5/24/2024 10:56:44 AM ID: bdcf4ca3-452e-40ae-a03c-88df7eef4f85	COPIED	Sent: 6/11/2024 3:40:53 PM Viewed: 6/11/2024 3:44:15 PM
Frank Lopez Frank.Lopez@weareharris.com Vice President 1401 Willow Pass Road, Suite 500, Concord, CA Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Accepted: 6/11/2024 3:17:21 PM ID: 07f2db1a-7e9f-4a5b-8273-8ea3405fe5ce	COPIED	Sent: 6/11/2024 3:40:54 PM
Preston Hatch preston.hatch@weareharris.com CFO Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Accepted: 6/11/2024 3:40:36 PM ID: 18af4dcb-c1ea-40cc-84db-d8569519412f	COPIED	Sent: 6/11/2024 3:40:54 PM
Witness Events	Signature	Timestamp
Notary Events	Signature	Timestamp
Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	6/10/2024 8:30:45 AM
Certified Delivered	Security Checked	6/11/2024 3:40:36 PM
Signing Complete	Security Checked	6/11/2024 3:40:51 PM
Completed	Security Checked	6/11/2024 3:40:54 PM
Payment Events	Status	Timestamps
Electronic Record and Signature Disclosure		

ELECTRONIC RECORD AND SIGNATURE DISCLOSURE

From time to time, City of Morgan Hill (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through the DocuSign system. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to this Electronic Record and Signature Disclosure (ERSD), please confirm your agreement by selecting the check-box next to 'I agree to use electronic records and signatures' before clicking 'CONTINUE' within the DocuSign system.

Getting paper copies

At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. You will have the ability to download and print documents we send to you through the DocuSign system during and immediately after the signing session and, if you elect to create a DocuSign account, you may access the documents for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a \$0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

Withdrawing your consent

If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

Consequences of changing your mind

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. Further, you will no longer be able to use the DocuSign system to receive required notices and consents electronically from us or to sign electronically documents from us.

All notices and disclosures will be sent to you electronically

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through the DocuSign system all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

How to contact City of Morgan Hill:

You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:

To contact us by email send messages to: michelle.bigelow@morganhill.ca.gov

To advise City of Morgan Hill of your new email address

To let us know of a change in your email address where we should send notices and disclosures electronically to you, you must send an email message to us at michelle.bigelow@morganhill.ca.gov and in the body of such request you must state: your previous email address, your new email address. We do not require any other information from you to change your email address.

If you created a DocuSign account, you may update it with your new email address through your account preferences.

To request paper copies from City of Morgan Hill

To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an email to michelle.bigelow@morganhill.ca.gov and in the body of such request you must state your email address, full name, mailing address, and telephone number. We will bill you for any fees at that time, if any.

To withdraw your consent with City of Morgan Hill

To inform us that you no longer wish to receive future notices and disclosures in electronic format you may:

- i. decline to sign a document from within your signing session, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;
- ii. send us an email to michelle.bigelow@morganhill.ca.gov and in the body of such request you must state your email, full name, mailing address, and telephone number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

Required hardware and software

The minimum system requirements for using the DocuSign system may change over time. The current system requirements are found here: <https://support.docusign.com/guides/signer-guide-signing-system-requirements>.

Acknowledging your access and consent to receive and sign documents electronically

To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please confirm that you have read this ERSD, and (i) that you are able to print on paper or electronically save this ERSD for your future reference and access; or (ii) that you are able to email this ERSD to an email address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format as described herein, then select the check-box next to ‘I agree to use electronic records and signatures’ before clicking ‘CONTINUE’ within the DocuSign system.

By selecting the check-box next to ‘I agree to use electronic records and signatures’, you confirm that:

- You can access and read this Electronic Record and Signature Disclosure; and
- You can print on paper this Electronic Record and Signature Disclosure, or save or send this Electronic Record and Disclosure to a location where you can print it, for future reference and access; and
- Until or unless you notify City of Morgan Hill as described above, you consent to receive exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you by City of Morgan Hill during the course of your relationship with City of Morgan Hill.

CONSULTANT AGREEMENT FOR DESIGN PROFESSIONALS GHIRARDELLI ASSOCIATES, INC.

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

1. **City Authority**. This Agreement is entered into pursuant to the action of the Morgan Hill City Council taken on _____, _____, 20____.
2. **Term of Agreement**. This Agreement shall cover services rendered from July 1, 2024 until June 30, 2027 ("Initial Term") at which time CONSULTANT'S services shall be completed. The City Manager is authorized to extend the term of this Agreement for a maximum of two additional one-year extensions ("Extended Term"). Any such extension shall be in writing and signed by both Parties to this Agreement.
3. **Scope of Service**. The services to be performed by CONSULTANT shall be On-Call Engineering Plan Review & Technical Support Services for the Engineering Division as further described in **Exhibit A**.
4. **Compensation**. CONSULTANT shall be compensated as follows:
 - 4.1. **Amount**. \$126,000. Total compensation to CONSULTANT under this Agreement during its Initial Term set forth in Section 2 above shall not exceed One Hundred Twenty Six Thousand dollars, and shall be billed based on the rate and basis set forth in **Exhibit B**. The City Manager shall have the authority to increase the maximum compensation allowed to be paid to CONSULTANT during the Extended Term period, so long as City Council has appropriated sufficient funds therefor, the Parties mutually agree to such amount in a writing signed by both Parties to this Agreement, and provided further that in no event shall such maximum compensation allowed for the extended term exceed the amount set forth in Section 4.1.1 below.
 - 4.1.1. Additional Compensation. The City Manager shall have the authority to approve additional compensation during the Extended Term in an amount not to exceed \$96,000, for a combined total maximum compensation amount of \$222,000.
 - 4.2. **Billing**. CONSULTANT shall provide CITY with an invoice containing the dated, detailed, and itemized descriptions of all services performed and expenses incurred (if such expenses are reimbursable pursuant to Exhibit B) by CONSULTANT on a monthly basis unless otherwise specified in Exhibit B. All invoices shall be sent to the CITY addressed to the department head or project manager identified below in Section 13 Notices. Any rate charged shall be prorated where services are interrupted or not provided for any rate period (for example, any monthly rate charge should be prorated when services were interrupted or provided for only part of the month). For services billed on an hourly rate, the minimum unit of billed time shall not exceed one tenth of one hour. CITY shall pay for services and expenses (if so provided in Exhibit B) up to the limit of compensation set forth above, that in the CITY'S judgment were necessary and reasonable. Services for work performed and expenses incurred in excess of the total compensation set forth in paragraph 4.1 above shall be at no cost to CITY.

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

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

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

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

7.1. **Insurance Types and Amounts.**

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

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

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

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

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

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

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

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

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

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

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

7.2.2. Workers Compensation.

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

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

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

Certificate Holder address:

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

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

9. **Compliance with Law.**

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

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

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

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

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

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

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

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

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

Address of CONSULTANT is as follows:

Ghirardelli Associates, Inc.
2055 Gateway Place, Suite 470
San Jose, CA 95110

Address of CITY is as follows:

Maria Angeles	with a copy to:
Senior Civil Engineer	City Clerk
City of Morgan Hill	City of Morgan Hill
17575 Peak Avenue	17575 Peak Avenue
Morgan Hill, CA 95037	Morgan Hill, CA 95037

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

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

16. **Maintenance of Records.**

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

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

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

17. **Familiarity with Work.** By executing this Agreement, CONSULTANT represents that: (1) it has investigated the work to be performed; (2) it has investigated the site of the work and is aware of all conditions there; and (3) it understands the difficulties and restrictions of the work under this Agreement. Should CONSULTANT discover any conditions materially differing from those inherent in the work or

as represented by CITY, it shall immediately inform CITY and shall not proceed, except at CONSULTANT'S risk, until written instructions are received from CITY.

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

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

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

21. **Defense and Indemnification**.

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

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

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

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

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

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

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

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

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

25. Notice of Security and/or Privacy Incident. If CONSULTANT, or its subconsultant, suspect, discover or are notified of a data security incident or potential breach of security and/or privacy relating to CITY PII, PHI and/or PCI, CONSULTANT shall immediately, but in no event later than forty-eight (48) hours from suspicion, discovery or notification of the incident or potential breach, notify CITY of such incident or potential breach. CONSULTANT shall, upon CITY's request, investigate such incident or potential breach, inform the CITY of the results of any such investigation, and assist the CITY in maintaining the confidentiality of such information. In addition to the foregoing, CONSULTANT shall provide CITY with any assistance necessary to comply with any state and/or federal laws requiring the provision of notice of any privacy incident or security breach with respect to any CITY PII, PHI and/or PCI to the affected or impacted individuals and/or organizations, in addition to any notification to applicable state and federal agencies. CONSULTANT agrees that it shall reimburse CITY for all expenses, costs, attorneys' fees, and resulting fines, penalties, and damages associated with such incident, breach, investigation and/or notification.

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

27. Binding Agreement. Notwithstanding the provisions of Section 19 above, this Agreement shall bind any and all successors in interest, legal representatives and/or other permitted assignees or

transferees of CONSULTANT in the same manner as if those successors in interest, legal representatives or other permitted assignees or transferees had entered into this Agreement originally.

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

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

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[Signatures on Next Page]

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

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

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

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

ATTEST:

CITY OF MORGAN HILL

 City Clerk/Deputy City Clerk

 City Manager

 Michelle Bigelow

 Christina J. Turner

 Print Name

 Print Name

Date: _____

Date: _____

APPROVED AS TO FORM:

GHIRARDELLI ASSOCIATES, INC.

DocuSigned by:

Randall Bruner

By: 68C215886D8448...

 City Attorney

Randall Bruner, President and Chief
 Executive Officer

 Donald A. Larkin

 Print Name and Title of Signer.

 Print Name

If Corporate: Chairman, President or Vice

President

Date: _____

Date: 6/10/2024

DocuSigned by:

Raewyn Butcher

By: 9E99E6C5D6A40F...

 Raewyn Butcher, Secretary

 Print Name and Title of Signer.

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

Date: 6/10/2024

EXHIBIT A SCOPE OF SERVICES

The following are the types of tasks that are included in the CONSULTANT'S scope of services:

1. Standard and Expedited engineering plan review of improvement plans for conformance with adopted City standards, approved conditions of approval, and/or accepted industry practice, and to meet the established time limits for post-entitlement phase of residential permits subject to California Assembly Bill No. 2234. Plans and reports to be reviewed, include but are not limited to, grading, drainage, utilities, joint trench, streetlighting, traffic signal, signing/striping, traffic control plans, Stormwater Pollution Prevention Plans (SWPPP), geotechnical reports, and traffic studies.
2. Review storm drain and/or sanitary sewer hydraulic calculations for conformance with City standards and/or accepted industry practice.
3. Review the civil engineering and site planning aspects of tentative maps and other land development entitlement applications for conformance with City standards, and to meet the established time limits for residential projects eligible for processing under California Senate Bill No. 330.
4. Review of Post-Construction Stormwater Runoff Management Plans (SWRMPs) and Stormwater Control Plans submitted by projects that are subject to the requirements of the Central Coast Regional Water Quality Control Board (Region 3); and other program management functions to comply with the City's National Pollutant Discharge Elimination System (NPDES) permit requirements.
5. Review floodplain proposals, provide Flood Program management support, and other related functions as needed.
6. Other general engineering services as needed.

EXHIBIT B
SCHEDULE OF COMPENSATION RATES

CONSULTANT'S services will be billed on a time-and-materials basis according to the Standard Hourly Rates shown below. Any changes to the rate schedule shall be reflected in a written amendment between the Parties.

Classification	2024 Hourly Rates	2025 Hourly Rates	2026 Hourly Rates
Senior Principal Engineer	\$295	\$310	\$325
Principal Engineer	\$273	\$287	\$300
Senior Project Manager	\$257	\$270	\$283
Project Manager	\$242	\$254	\$267
Senior Engineer	\$231	\$242	\$255
Associate Engineer	\$205	\$215	\$226
Assistant Engineer	\$174	\$183	\$192
Senior Management Analyst	\$184	\$193	\$203
Management Analyst	\$158	\$166	\$174
Administrative Assistance	\$95	\$100	\$105
Engineering Trainee	\$85	\$89	\$94

- 1) Services are billed on a time-and-materials basis. All hourly rates include overhead costs. Overtime services provided outside of normal business hours will be billed at 1.5x the applicable rate.
- 2) Any extensive reproduction or delivery service charges shall be billed at actual.
- 3) Construction inspection activities are subject to prevailing wage requirements.
- 4) Per prevailing wage requirements, a shift differential is for any covered work shift beginning after 2pm
- 5) Rate sheet valid until 12/31/2026.

EXHIBIT C
SCHEDULE OF PERFORMANCE

CONSULTANT'S services will be on an as needed, on-call basis.

EXHIBIT D

Third Party Data Use Agreement

1. CONSULTANT agrees that it shall not use any information provided by CITY for any purpose other than for work performed pursuant to this Agreement without the prior express written consent of CITY. CONSULTANT also hereby acknowledges that the data delivered by CITY is for use by CONSULTANT only, and is not to be released to any other party by any means whatsoever, including the Internet, without prior written consent of CITY. CONSULTANT shall provide written notice to CITY of any subcontractor with whom Geographic Information System data (GIS DATA) is shared for purposes of performing work under this Agreement.
2. All data and files are intended for the use within the ordinary course of users' business and may not be sold, placed on the internet or otherwise provided to other parties. All data shall comply with all statutes such as California State Law, Government Code section 7928.205 which prohibits any state or local agency from posting the home address or telephone number of any "elected or appointed official," residing spouse, or child on the internet, and Revenue and Taxation Code sections 408, 408.1, 408.3, and 409 permitting the County Assessor to collect fees for certain information.
3. CITY, as rightful owners, shall retain all rights, title, interest, and copyright of the data. Any products using the GIS DATA must give credit to CITY as the source of the information. Any and all derivative products of the GIS DATA are owned by CITY and may not be used for any purpose other than performing work pursuant to this Agreement without prior written permission of CITY. All derivative products and resulting data shall be provided to CITY Project Manager and CITY GIS Manager at the completion of the work.
4. CONSULTANT and CITY understand and agree that the information provided pursuant to this Agreement is the product of professional services paid for by CITY and shall remain property of CITY. CONSULTANT may retain copies, including copies stored on magnetic media, only for information and reference, in connection with CONSULTANT'S use for work performed for CITY.
5. All of the above terms and conditions apply to any subcontractor retained by CONSULTANT.
6. In the event of a conflict between the terms and provisions of this Third Party Data Use Agreement and the terms and provisions of the CONSULTANT AGREEMENT, the terms of the CONSULTANT AGREEMENT shall govern and control.

Certificate Of Completion

Envelope Id: 981073B51A944145AB410602742A8A08	Status: Completed
Subject: Complete with DocuSign: GHIRARDELLI ASSOCIATES	
Source Envelope:	
Document Pages: 15	Signatures: 2
Certificate Pages: 5	Initials: 0
AutoNav: Enabled	
Envelopeld Stamping: Enabled	Envelope Originator:
Time Zone: (UTC-08:00) Pacific Time (US & Canada)	City Clerk's Office
	17575 Peak Ave
	Morgan Hill, CA 95037
	cityclerk@morganhill.ca.gov
	IP Address: 35.131.77.142

Record Tracking

Status: Original	Holder: City Clerk's Office	Location: DocuSign
6/10/2024 8:31:00 AM	cityclerk@morganhill.ca.gov	
Security Appliance Status: Connected	Pool: StateLocal	
Storage Appliance Status: Connected	Pool: City of Morgan Hill	Location: DocuSign

Signer Events

Signer Events	Signature	Timestamp
Randall Bruner	DocuSigned by: Randall Bruner 868C215886D8448...	Sent: 6/10/2024 8:37:32 AM
randy@ghirardelliassoc.com		Viewed: 6/10/2024 11:23:38 AM
President/CEO		Signed: 6/10/2024 11:25:26 AM
Ghirardelli Associates, Inc.		
Security Level: Email, Account Authentication (None)	Signature Adoption: Pre-selected Style Using IP Address: 99.44.171.46	

Electronic Record and Signature Disclosure:
Accepted: 6/10/2024 11:23:38 AM
ID: 89360155-c695-4ae7-8da5-21fbcf569a03

Raewyn Butcher	DocuSigned by: Raewyn Butcher D9E99E6C5D6A40F...	Sent: 6/10/2024 11:25:28 AM
raewyn@ghirardelliassoc.com		Viewed: 6/10/2024 4:09:01 PM
Executive Vice President Secretary		Signed: 6/10/2024 4:09:41 PM
Security Level: Email, Account Authentication (None)	Signature Adoption: Uploaded Signature Image Using IP Address: 49.190.0.160	

Electronic Record and Signature Disclosure:
Accepted: 6/10/2024 4:09:01 PM
ID: e0afdf18-39c9-43b4-a6db-f6715a8f0a33

In Person Signer Events

Editor Delivery Events

Agent Delivery Events

Intermediary Delivery Events

Certified Delivery Events

Carbon Copy Events

Maria Angeles	COPIED	Sent: 6/10/2024 4:09:42 PM
maria.angeles@morganhill.ca.gov		Viewed: 6/10/2024 4:40:09 PM
Senior Civil Engineer		
Security Level: Email, Account Authentication (None)		
Electronic Record and Signature Disclosure:		

Carbon Copy Events	Status	Timestamp
Accepted: 9/29/2023 9:18:56 AM ID: 85a7bb16-5cdd-4f6f-81a2-0e5e8830f210 Angel Echavarria angel.echavarria@morganhill.ca.gov Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Accepted: 5/24/2024 10:56:44 AM ID: bdcf4ca3-452e-40ae-a03c-88df7eef4f85	COPIED	Sent: 6/10/2024 4:09:42 PM Viewed: 6/10/2024 4:10:07 PM
Randall Bruner randy@ghirardelliassoc.com President/CEO Ghirardelli Associates, Inc. Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Accepted: 6/10/2024 11:23:38 AM ID: 89360155-c695-4ae7-8da5-21fbcf569a03	COPIED	Sent: 6/10/2024 4:09:43 PM
Raewyn Butcher raewyn@ghirardelliassoc.com Executive Vice President Secretary Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Accepted: 6/10/2024 4:09:01 PM ID: e0afdf18-39c9-43b4-a6db-f6715a8f0a33	COPIED	Sent: 6/10/2024 4:09:44 PM
Witness Events	Signature	Timestamp
Notary Events	Signature	Timestamp
Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	6/10/2024 8:37:33 AM
Certified Delivered	Security Checked	6/10/2024 4:09:01 PM
Signing Complete	Security Checked	6/10/2024 4:09:41 PM
Completed	Security Checked	6/10/2024 4:09:44 PM
Payment Events	Status	Timestamps
Electronic Record and Signature Disclosure		

ELECTRONIC RECORD AND SIGNATURE DISCLOSURE

From time to time, City of Morgan Hill (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through the DocuSign system. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to this Electronic Record and Signature Disclosure (ERSD), please confirm your agreement by selecting the check-box next to 'I agree to use electronic records and signatures' before clicking 'CONTINUE' within the DocuSign system.

Getting paper copies

At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. You will have the ability to download and print documents we send to you through the DocuSign system during and immediately after the signing session and, if you elect to create a DocuSign account, you may access the documents for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a \$0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

Withdrawing your consent

If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

Consequences of changing your mind

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. Further, you will no longer be able to use the DocuSign system to receive required notices and consents electronically from us or to sign electronically documents from us.

All notices and disclosures will be sent to you electronically

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through the DocuSign system all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

How to contact City of Morgan Hill:

You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:

To contact us by email send messages to: michelle.bigelow@morganhill.ca.gov

To advise City of Morgan Hill of your new email address

To let us know of a change in your email address where we should send notices and disclosures electronically to you, you must send an email message to us at michelle.bigelow@morganhill.ca.gov and in the body of such request you must state: your previous email address, your new email address. We do not require any other information from you to change your email address.

If you created a DocuSign account, you may update it with your new email address through your account preferences.

To request paper copies from City of Morgan Hill

To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an email to michelle.bigelow@morganhill.ca.gov and in the body of such request you must state your email address, full name, mailing address, and telephone number. We will bill you for any fees at that time, if any.

To withdraw your consent with City of Morgan Hill

To inform us that you no longer wish to receive future notices and disclosures in electronic format you may:

- i. decline to sign a document from within your signing session, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;
- ii. send us an email to michelle.bigelow@morganhill.ca.gov and in the body of such request you must state your email, full name, mailing address, and telephone number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

Required hardware and software

The minimum system requirements for using the DocuSign system may change over time. The current system requirements are found here: <https://support.docusign.com/guides/signer-guide-signing-system-requirements>.

Acknowledging your access and consent to receive and sign documents electronically

To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please confirm that you have read this ERSD, and (i) that you are able to print on paper or electronically save this ERSD for your future reference and access; or (ii) that you are able to email this ERSD to an email address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format as described herein, then select the check-box next to ‘I agree to use electronic records and signatures’ before clicking ‘CONTINUE’ within the DocuSign system.

By selecting the check-box next to ‘I agree to use electronic records and signatures’, you confirm that:

- You can access and read this Electronic Record and Signature Disclosure; and
- You can print on paper this Electronic Record and Signature Disclosure, or save or send this Electronic Record and Disclosure to a location where you can print it, for future reference and access; and
- Until or unless you notify City of Morgan Hill as described above, you consent to receive exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you by City of Morgan Hill during the course of your relationship with City of Morgan Hill.

CONSULTANT AGREEMENT FOR DESIGN PROFESSIONALS HANNA-BRUNETTI

THIS AGREEMENT is entered into and becomes effective on _____ (Effective Date), by and between the CITY OF MORGAN HILL, a municipal corporation, ("CITY"), and Associated Engineering-Surveying Service, Inc., a California corporation doing business as Hanna-Brunetti ("CONSULTANT"), hereinafter referred to collectively as "Parties." In consideration of the promises and the mutual covenants contained in this Agreement, the Parties agree as follows:

1. **City Authority.** This Agreement is entered into pursuant to the action of the Morgan Hill City Council taken on _____, _____, 20____.
2. **Term of Agreement.** This Agreement shall cover services rendered from July 1, 2024 until June 30, 2027 ("Initial Term") at which time CONSULTANT'S services shall be completed. The City Manager is authorized to extend the term of this Agreement for a maximum of two additional one-year extensions ("Extended Term"). Any such extension shall be in writing and signed by both Parties to this Agreement.
3. **Scope of Service.** The services to be performed by CONSULTANT shall be On-Call Map Review and City Surveyor Services for the Engineering Division as further described in **Exhibit A**.
4. **Compensation.** CONSULTANT shall be compensated as follows:
 - 4.1. **Amount.** \$144,000. Total compensation to CONSULTANT under this Agreement during its Initial Term set forth in Section 2 above shall not exceed One Hundred Forty Four Thousand dollars, and shall be billed based on the rate and basis set forth in **Exhibit B**. The City Manager shall have the authority to increase the maximum compensation allowed to be paid to CONSULTANT during the Extended Term period, so long as City Council has appropriated sufficient funds therefor, the Parties mutually agree to such amount in a writing signed by both Parties to this Agreement, and provided further that in no event shall such maximum compensation allowed for the extended term exceed the amount set forth in Section 4.1.1 below.
 - 4.1.1. **Additional Compensation.** The City Manager shall have the authority to approve additional compensation in an amount not to exceed \$109,000 during the Extended Term, for a combined total maximum compensation amount of \$253,000.
 - 4.2. **Billing.** CONSULTANT shall provide CITY with an invoice containing the dated, detailed, and itemized descriptions of all services performed and expenses incurred (if such expenses are reimbursable pursuant to Exhibit B) by CONSULTANT on a monthly basis unless otherwise specified in Exhibit B. All invoices shall be sent to the CITY addressed to the department head or project manager identified below in Section 13 Notices. Any rate charged shall be prorated where services are interrupted or not provided for any rate period (for example, any monthly rate charge should be prorated when services were interrupted or provided for only part of the month). For services billed on an hourly rate, the minimum unit of billed time shall not exceed one tenth of one hour. CITY shall pay for services and expenses (if so provided in Exhibit B) up to the limit of compensation set forth above, that in the CITY'S judgment were necessary and reasonable. Services for work performed and expenses incurred in excess of the total compensation set forth in paragraph 4.1 above shall be at no cost to CITY.

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

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

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

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

7.1. **Insurance Types and Amounts.**

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

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

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

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

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

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

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

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

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

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

7.2.2. Workers Compensation.

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

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

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

Certificate Holder address:

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

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

9. **Compliance with Law.**

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

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

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

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

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

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

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

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

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

Address of CONSULTANT is as follows:

Hanna-Brunetti
7651 Egleberry Street
Gilroy, CA 95020

Address of CITY is as follows:

Maria Angeles	with a copy to:
Senior Civil Engineer	City Clerk
City of Morgan Hill	City of Morgan Hill
17575 Peak Avenue	17575 Peak Avenue
Morgan Hill, CA 95037	Morgan Hill, CA 95037

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

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

16. **Maintenance of Records.**

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

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

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

17. **Familiarity with Work.** By executing this Agreement, CONSULTANT represents that: (1) it has investigated the work to be performed; (2) it has investigated the site of the work and is aware of all conditions there; and (3) it understands the difficulties and restrictions of the work under this Agreement. Should CONSULTANT discover any conditions materially differing from those inherent in the work or

as represented by CITY, it shall immediately inform CITY and shall not proceed, except at CONSULTANT'S risk, until written instructions are received from CITY.

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

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

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

21. **Defense and Indemnification**.

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

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

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

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

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

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

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

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

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

25. Notice of Security and/or Privacy Incident. If CONSULTANT, or its subconsultant, suspect, discover or are notified of a data security incident or potential breach of security and/or privacy relating to CITY PII, PHI and/or PCI, CONSULTANT shall immediately, but in no event later than forty-eight (48) hours from suspicion, discovery or notification of the incident or potential breach, notify CITY of such incident or potential breach. CONSULTANT shall, upon CITY's request, investigate such incident or potential breach, inform the CITY of the results of any such investigation, and assist the CITY in maintaining the confidentiality of such information. In addition to the foregoing, CONSULTANT shall provide CITY with any assistance necessary to comply with any state and/or federal laws requiring the provision of notice of any privacy incident or security breach with respect to any CITY PII, PHI and/or PCI to the affected or impacted individuals and/or organizations, in addition to any notification to applicable state and federal agencies. CONSULTANT agrees that it shall reimburse CITY for all expenses, costs, attorneys' fees, and resulting fines, penalties, and damages associated with such incident, breach, investigation and/or notification.

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

27. Binding Agreement. Notwithstanding the provisions of Section 19 above, this Agreement shall bind any and all successors in interest, legal representatives and/or other permitted assignees or

transferees of CONSULTANT in the same manner as if those successors in interest, legal representatives or other permitted assignees or transferees had entered into this Agreement originally.

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

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

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[Signatures on Next Page]

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

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

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

ATTEST: CITY OF MORGAN HILL

City Clerk/Deputy City Clerk

City Manager

Michelle Bigelow
Print Name

Christina J. Turner
Print Name

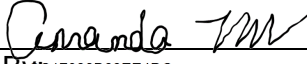
Date:

Date:

APPROVED AS TO FORM:

HANNA-BRUNETTI

City Attorney

DocuSigned by:

By: CC17038B68EE4DC...

Donald A. Larkin
Print Name

Amanda Musy-Verdel,
Chief Executive Officer and Chief
Financial Officer
Print Name and Title of Signer.

Date:

If Corporate: Chairman, President or Vice
President
Date: 6/10/2024

EXHIBIT A SCOPE OF SERVICES

The following are the types of tasks that are included in the CONSULTANT'S scope of services:

1. Review of tract maps and parcel maps for conformance with the Subdivision Map Act. Provide stamp and signature on maps and other documents, as necessary, as the Acting City Surveyor.
2. Review of land surveying aspects of tentative maps for conformance with City standards as part of the City's entitlement process.
3. Review of lot line adjustments, certificates of compliance, vacation or abandonment of public right-of-way and public easements, plat maps, legal descriptions, and closure calculations for technical accuracy.
4. Perform traditional topographic surveys to determine locations and elevations of existing improvements, structures, and topographic features.
5. Develop legal descriptions and plat maps, and other survey-related tasks as needed.

EXHIBIT B SCHEDULE OF COMPENSATION RATES

CONSULTANT'S services will be billed on a time-and-materials basis according to the Standard Hourly Rates shown below for fiscal years 2024, 2025, and 2026. Any changes to the rate schedule shall be reflected in a written amendment between the Parties.

Principal Engineer/Surveyor	\$ 250.00
Associate Engineer/Project Manager	\$ 225.00
Project Engineer	\$ 210.00
Senior Surveyor	\$ 225.00
Design Engineer	\$ 170.00
Surveyor	\$ 170.00
Junior Civil Engineer/Draftsperson	\$ 140.00
Technician	\$ 140.00
Inspector	\$ 135.00
Clerical	\$ 100.00
Witness – Per Deposition Appearance	Minimum 4-hour increments
Witness – Per Court Appearance	Minimum 4-hour increments

FIELD

Survey Crew	\$ 310.00
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MISCELLANEOUS EXPENSE SCHEDULE

Transportation	\$.70 per mile
Reprographics, prints and materials	Cost + 20%
In-House – 24"X36" Prints	\$ 5.00 per print
Copies– 8"X11"	\$.50 per page
Outside Consultant Services	Cost + 15%
Filing and Permit Fees	Cost + 15%
Outside Delivery Service	Cost + 15%
Equipment Rentals	Cost + 15%
Special Fees, Permits or Insurance	Cost + 15%

This hourly rate schedule is effective through June 2026

The rates and fees for all services performed subsequent to that date shall be adjusted to reflect increased operating, overhead and inflationary costs.

EXHIBIT C
SCHEDULE OF PERFORMANCE

CONSULTANT'S services will be on an as needed, on-call basis.

EXHIBIT D

Third Party Data Use Agreement

1. CONSULTANT agrees that it shall not use any information provided by CITY for any purpose other than for work performed pursuant to this Agreement without the prior express written consent of CITY. CONSULTANT also hereby acknowledges that the data delivered by CITY is for use by CONSULTANT only, and is not to be released to any other party by any means whatsoever, including the Internet, without prior written consent of CITY. CONSULTANT shall provide written notice to CITY of any subcontractor with whom Geographic Information System data (GIS DATA) is shared for purposes of performing work under this Agreement.
2. All data and files are intended for the use within the ordinary course of users' business and may not be sold, placed on the internet or otherwise provided to other parties. All data shall comply with all statutes such as California State Law, Government Code section 7928.205 which prohibits any state or local agency from posting the home address or telephone number of any "elected or appointed official," residing spouse, or child on the internet, and Revenue and Taxation Code sections 408, 408.1, 408.3, and 409 permitting the County Assessor to collect fees for certain information.
3. CITY, as rightful owners, shall retain all rights, title, interest, and copyright of the data. Any products using the GIS DATA must give credit to CITY as the source of the information. Any and all derivative products of the GIS DATA are owned by CITY and may not be used for any purpose other than performing work pursuant to this Agreement without prior written permission of CITY. All derivative products and resulting data shall be provided to CITY Project Manager and CITY GIS Manager at the completion of the work.
4. CONSULTANT and CITY understand and agree that the information provided pursuant to this Agreement is the product of professional services paid for by CITY and shall remain property of CITY. CONSULTANT may retain copies, including copies stored on magnetic media, only for information and reference, in connection with CONSULTANT'S use for work performed for CITY.
5. All of the above terms and conditions apply to any subcontractor retained by CONSULTANT.
6. In the event of a conflict between the terms and provisions of this Third Party Data Use Agreement and the terms and provisions of the CONSULTANT AGREEMENT, the terms of the CONSULTANT AGREEMENT shall govern and control.

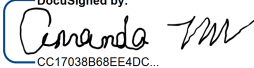
Certificate Of Completion

Envelope Id: AB88A0B8212C49EC8512D6AE2C6E0E2F	Status: Completed
Subject: Complete with DocuSign: Hanna - Brunetti	
Source Envelope:	
Document Pages: 15	Signatures: 1
Certificate Pages: 5	Initials: 0
AutoNav: Enabled	
Envelopeld Stamping: Enabled	Envelope Originator:
Time Zone: (UTC-08:00) Pacific Time (US & Canada)	City Clerk's Office
	17575 Peak Ave
	Morgan Hill, CA 95037
	cityclerk@morganhill.ca.gov
	IP Address: 35.131.77.142

Record Tracking

Status: Original	Holder: City Clerk's Office	Location: DocuSign
6/10/2024 8:37:46 AM	cityclerk@morganhill.ca.gov	
Security Appliance Status: Connected	Pool: StateLocal	
Storage Appliance Status: Connected	Pool: City of Morgan Hill	Location: DocuSign

Signer Events

Signature	Timestamp
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Signature Adoption: Drawn on Device	
Using IP Address: 71.9.48.60	

Electronic Record and Signature Disclosure:
Accepted: 6/10/2024 8:44:01 AM
ID: 8db51239-3885-45de-bf39-b26a095757c8

In Person Signer Events

Editor Delivery Events

Agent Delivery Events

Intermediary Delivery Events

Certified Delivery Events

Carbon Copy Events

Maria Angeles	COPIED	Sent: 6/10/2024 8:44:49 AM
maria.angeles@morganhill.ca.gov		Viewed: 6/10/2024 9:58:12 AM

Senior Civil Engineer
Security Level: Email, Account Authentication
(None)

Electronic Record and Signature Disclosure:
Accepted: 9/29/2023 9:18:56 AM
ID: 85a7bb16-5cdd-4f6f-81a2-0e5e8830f210

Angel Echavarria	COPIED	Sent: 6/10/2024 8:44:50 AM
angel.echavarria@morganhill.ca.gov		Viewed: 6/10/2024 8:48:12 AM

Security Level: Email, Account Authentication
(None)

Electronic Record and Signature Disclosure:
Accepted: 5/24/2024 10:56:44 AM
ID: bdcf4ca3-452e-40ae-a03c-88df7eef4f85

Carbon Copy Events	Status	Timestamp
Amanda Musy Verdel amanda@hannabrunetti.com Security Level: Email, Account Authentication (None)	COPIED	Sent: 6/10/2024 8:44:50 AM
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Witness Events	Signature	Timestamp
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Notary Events	Signature	Timestamp
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Envelope Summary Events	Status	Timestamps
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Certified Delivered	Security Checked	6/10/2024 8:44:01 AM
Signing Complete	Security Checked	6/10/2024 8:44:48 AM
Completed	Security Checked	6/10/2024 8:44:50 AM

Payment Events	Status	Timestamps
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Electronic Record and Signature Disclosure
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ELECTRONIC RECORD AND SIGNATURE DISCLOSURE

From time to time, City of Morgan Hill (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through the DocuSign system. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to this Electronic Record and Signature Disclosure (ERSD), please confirm your agreement by selecting the check-box next to 'I agree to use electronic records and signatures' before clicking 'CONTINUE' within the DocuSign system.

Getting paper copies

At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. You will have the ability to download and print documents we send to you through the DocuSign system during and immediately after the signing session and, if you elect to create a DocuSign account, you may access the documents for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a \$0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

Withdrawing your consent

If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

Consequences of changing your mind

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. Further, you will no longer be able to use the DocuSign system to receive required notices and consents electronically from us or to sign electronically documents from us.

All notices and disclosures will be sent to you electronically

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through the DocuSign system all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

How to contact City of Morgan Hill:

You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:

To contact us by email send messages to: michelle.bigelow@morganhill.ca.gov

To advise City of Morgan Hill of your new email address

To let us know of a change in your email address where we should send notices and disclosures electronically to you, you must send an email message to us at michelle.bigelow@morganhill.ca.gov and in the body of such request you must state: your previous email address, your new email address. We do not require any other information from you to change your email address.

If you created a DocuSign account, you may update it with your new email address through your account preferences.

To request paper copies from City of Morgan Hill

To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an email to michelle.bigelow@morganhill.ca.gov and in the body of such request you must state your email address, full name, mailing address, and telephone number. We will bill you for any fees at that time, if any.

To withdraw your consent with City of Morgan Hill

To inform us that you no longer wish to receive future notices and disclosures in electronic format you may:

- i. decline to sign a document from within your signing session, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;
- ii. send us an email to michelle.bigelow@morganhill.ca.gov and in the body of such request you must state your email, full name, mailing address, and telephone number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

Required hardware and software

The minimum system requirements for using the DocuSign system may change over time. The current system requirements are found here: <https://support.docusign.com/guides/signer-guide-signing-system-requirements>.

Acknowledging your access and consent to receive and sign documents electronically

To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please confirm that you have read this ERSD, and (i) that you are able to print on paper or electronically save this ERSD for your future reference and access; or (ii) that you are able to email this ERSD to an email address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format as described herein, then select the check-box next to ‘I agree to use electronic records and signatures’ before clicking ‘CONTINUE’ within the DocuSign system.

By selecting the check-box next to ‘I agree to use electronic records and signatures’, you confirm that:

- You can access and read this Electronic Record and Signature Disclosure; and
- You can print on paper this Electronic Record and Signature Disclosure, or save or send this Electronic Record and Disclosure to a location where you can print it, for future reference and access; and
- Until or unless you notify City of Morgan Hill as described above, you consent to receive exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you by City of Morgan Hill during the course of your relationship with City of Morgan Hill.

CONSULTANT AGREEMENT FOR DESIGN PROFESSIONALS RUGGERI-JENSEN-AZAR

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

1. **City Authority.** This Agreement is entered into pursuant to the action of the Morgan Hill City Council taken on _____, _____, 20____.
2. **Term of Agreement.** This Agreement shall cover services rendered from July 1, 2024 until June 30, 2027 at which time CONSULTANT'S services shall be completed ("Initial Term"). The City Manager is authorized to extend the term of this Agreement for a maximum of two additional one-year extensions ("Extended Term"). Any such extension shall be in writing and signed by both Parties to this Agreement.
3. **Scope of Service.** The services to be performed by CONSULTANT shall be On-Call Map Review and City Surveyor Services for the Engineering Division as further described in **Exhibit A**.
4. **Compensation.** CONSULTANT shall be compensated as follows:
 - 4.1. **Amount.** \$39,000. Total compensation to CONSULTANT under this Agreement during its Initial Term set forth in Section 2 above shall not exceed Thirty Nine Thousand dollars, and shall be billed based on the rate and basis set forth in **Exhibit B**. The City Manager shall have the authority to increase the maximum compensation allowed to be paid to CONSULTANT during the Extended Term period, so long as City Council has appropriated sufficient funds therefor, the Parties mutually agree to such amount in a writing signed by both Parties to this Agreement, and provided further that in no event shall such maximum compensation allowed for the extended term exceed the amount set forth in Section 4.1.1 below.
 - 4.1.1. **Additional Compensation.** The City Manager shall have the authority to approve additional compensation in an amount not to exceed \$29,000 during the Extended Term, for a combined total maximum compensation amount of \$68,000.
 - 4.2. **Billing.** CONSULTANT shall provide CITY with an invoice containing the dated, detailed, and itemized descriptions of all services performed and expenses incurred (if such expenses are reimbursable pursuant to Exhibit B) by CONSULTANT on a monthly basis unless otherwise specified in Exhibit B. All invoices shall be sent to the CITY addressed to the department head or project manager identified below in Section 13 Notices. Any rate charged shall be prorated where services are interrupted or not provided for any rate period (for example, any monthly rate charge should be prorated when services were interrupted or provided for only part of the month). For services billed on an hourly rate, the minimum unit of billed time shall not exceed one tenth of one hour. CITY shall pay for services and expenses (if so provided in Exhibit B) up to the limit of compensation set forth above, that in the CITY'S judgment were necessary and reasonable. Services for work performed and expenses incurred in excess of the total compensation set forth in paragraph 4.1 above shall be at no cost to CITY.

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

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

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

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

7.1. **Insurance Types and Amounts.**

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

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

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

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

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

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

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

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

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

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

7.2.2. Workers Compensation.

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

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

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

Certificate Holder address:

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

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

9. **Compliance with Law.**

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

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

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

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

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

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

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

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

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

Address of CONSULTANT is as follows:

RUGGERI-JENSEN-AZAR
8055 Camino Arroyo
Gilroy, CA 95020

Address of CITY is as follows:

Maria Angeles	with a copy to:
Senior Civil Engineer	City Clerk
City of Morgan Hill	City of Morgan Hill
17575 Peak Avenue	17575 Peak Avenue
Morgan Hill, CA 95037	Morgan Hill, CA 95037

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

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

16. **Maintenance of Records.**

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

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

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

17. **Familiarity with Work.** By executing this Agreement, CONSULTANT represents that: (1) it has investigated the work to be performed; (2) it has investigated the site of the work and is aware of all conditions there; and (3) it understands the difficulties and restrictions of the work under this Agreement. Should CONSULTANT discover any conditions materially differing from those inherent in the work or

as represented by CITY, it shall immediately inform CITY and shall not proceed, except at CONSULTANT'S risk, until written instructions are received from CITY.

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

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

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

21. **Defense and Indemnification**.

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

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

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

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

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

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

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

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

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

25. **Notice of Security and/or Privacy Incident.** If CONSULTANT, or its subconsultant, suspect, discover or are notified of a data security incident or potential breach of security and/or privacy relating to CITY PII, PHI and/or PCI, CONSULTANT shall immediately, but in no event later than forty-eight (48) hours from suspicion, discovery or notification of the incident or potential breach, notify CITY of such incident or potential breach. CONSULTANT shall, upon CITY's request, investigate such incident or potential breach, inform the CITY of the results of any such investigation, and assist the CITY in maintaining the confidentiality of such information. In addition to the foregoing, CONSULTANT shall provide CITY with any assistance necessary to comply with any state and/or federal laws requiring the provision of notice of any privacy incident or security breach with respect to any CITY PII, PHI and/or PCI to the affected or impacted individuals and/or organizations, in addition to any notification to applicable state and federal agencies. CONSULTANT agrees that it shall reimburse CITY for all expenses, costs, attorneys' fees, and resulting fines, penalties, and damages associated with such incident, breach, investigation and/or notification.

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

27. **Binding Agreement.** Notwithstanding the provisions of Section 19 above, this Agreement shall bind any and all successors in interest, legal representatives and/or other permitted assignees or

transferees of CONSULTANT in the same manner as if those successors in interest, legal representatives or other permitted assignees or transferees had entered into this Agreement originally.

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

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

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[Signatures on Next Page]

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

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

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

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

ATTEST: CITY OF MORGAN HILL

City Clerk/Deputy City Clerk

Michelle Bigelow
Print Name

Date: _____

APPROVED AS TO FORM:

City Attorney

Donald A. Larkin
Print Name

Date: _____

City Manager

Christina J. Turner
Print Name

Date: _____

RUGGERI-JENSEN-AZAR

DocuSigned by:

Arminta Jensen

By 13073BFB14F0...

Arminta Jensen, Executive Vice
President and the Chief Financial
Officer

Print Name and Title of Signer.

If Corporate: Chairman, President or Vice
President

Date: 6/14/2024

EXHIBIT A SCOPE OF SERVICES

The following are the types of tasks that are included in the CONSULTANT'S scope of services:

1. Review of tract maps and parcel maps for conformance with the Subdivision Map Act. Provide stamp and signature on maps and other documents, as necessary, as the Acting City Surveyor.
2. Review of land surveying aspects of tentative maps for conformance with City standards as part of the City's entitlement process.
3. Review of lot line adjustments, certificates of compliance, vacation or abandonment of public right-of-way and public easements, plat maps, legal descriptions, and closure calculations for technical accuracy.
4. Perform traditional topographic surveys to determine locations and elevations of existing improvements, structures, and topographic features.
5. Develop legal descriptions and plat maps, and other survey-related tasks as needed.

EXHIBIT B SCHEDULE OF COMPENSATION RATES

CONSULTANT'S services will be billed on a time-and-materials basis according to the Standard Hourly Rates shown below. Any changes to the rate schedule shall be reflected in a written amendment between the Parties.

<u>Classification</u>	<u>Rate Effective</u> 7-1-2024 thru 6/30/2025	<u>Rate Effective</u> 7-1-2025 thru 6/30/2026	<u>Rate Effective</u> 7-1-2026 thru 6/30/2027
Senior Project Manager	\$279.00	\$293	\$308
Project Manager	264.00	277	291
Senior: Engineer, Surveyor, Planner	251.00	264	277
Associate: Engineer, Surveyor, Planner	234.00	246	258
Engineer, Surveyor, Planner	217.00	228	239
Assistant: Engineer, Surveyor, Planner	188.00	197	207
Senior Designer/Technician	184.00	193	203
Technician	163.00	171	180
Assistant Technician	141.00	148	155
Project Coordinator	125.00	131	138
Administrative Assistant	107.00	112	118
Clerical	81.00	85	89
Field Survey Manager	232.00	244	256
1-Person Survey Crew	214.00	225	236
2-Person Survey Crew	328.00	344	361
3-Person Survey Crew	395.00	415	436
Principal	295.00	310	326
Deposition/Court Appearance	rates are available upon request	rates are available upon request	rates are available upon request

EXPENSE SCHEDULE

Bond Copy (24"x36")	\$1.50 each
Color/mylar plot (small, medium).....	\$10.00 each
Color/mylar plot (large)	\$50.00 each
Xerox copy.....	\$0.15 each
Color xerox copy (8½ x 11 or 11 x 17).....	\$0.50 each
Client-Requested Overtime.....	Hourly Rate plus 25%

All other expenses, including:	Actual Cost plus 15%
Delivery Service	Travel & Expenses
Outside Reproduction	Filing or Permit Fees
Mileage - Auto	Conference Call Expenses
Outside Consultants	

EXHIBIT C
SCHEDULE OF PERFORMANCE

CONSULTANT'S services will be on an as needed, on-call basis.

EXHIBIT D

Third Party Data Use Agreement

1. CONSULTANT agrees that it shall not use any information provided by CITY for any purpose other than for work performed pursuant to this Agreement without the prior express written consent of CITY. CONSULTANT also hereby acknowledges that the data delivered by CITY is for use by CONSULTANT only, and is not to be released to any other party by any means whatsoever, including the Internet, without prior written consent of CITY. CONSULTANT shall provide written notice to CITY of any subcontractor with whom Geographic Information System data (GIS DATA) is shared for purposes of performing work under this Agreement.
2. All data and files are intended for the use within the ordinary course of users' business and may not be sold, placed on the internet or otherwise provided to other parties. All data shall comply with all statutes such as California State Law, Government Code section 7928.205 which prohibits any state or local agency from posting the home address or telephone number of any "elected or appointed official," residing spouse, or child on the internet, and Revenue and Taxation Code sections 408, 408.1, 408.3, and 409 permitting the County Assessor to collect fees for certain information.
3. CITY, as rightful owners, shall retain all rights, title, interest, and copyright of the data. Any products using the GIS DATA must give credit to CITY as the source of the information. Any and all derivative products of the GIS DATA are owned by CITY and may not be used for any purpose other than performing work pursuant to this Agreement without prior written permission of CITY. All derivative products and resulting data shall be provided to CITY Project Manager and CITY GIS Manager at the completion of the work.
4. CONSULTANT and CITY understand and agree that the information provided pursuant to this Agreement is the product of professional services paid for by CITY and shall remain property of CITY. CONSULTANT may retain copies, including copies stored on magnetic media, only for information and reference, in connection with CONSULTANT'S use for work performed for CITY.
5. All of the above terms and conditions apply to any subcontractor retained by CONSULTANT.
6. In the event of a conflict between the terms and provisions of this Third Party Data Use Agreement and the terms and provisions of the CONSULTANT AGREEMENT, the terms of the CONSULTANT AGREEMENT shall govern and control.

Carbon Copy Events	Status	Timestamp
Arminta Jensen ajensen@rja-gps.com Exec. V. P. Security Level: Email, Account Authentication (None)	COPIED	Sent: 6/14/2024 9:49:39 AM
Electronic Record and Signature Disclosure: Accepted: 6/14/2024 9:47:50 AM ID: a9451b99-05b6-48e6-9c83-9b7a3da505c7		

Witness Events	Signature	Timestamp
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Notary Events	Signature	Timestamp
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Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	6/10/2024 8:45:27 AM
Certified Delivered	Security Checked	6/14/2024 9:47:50 AM
Signing Complete	Security Checked	6/14/2024 9:49:37 AM
Completed	Security Checked	6/14/2024 9:49:39 AM

Payment Events	Status	Timestamps
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Electronic Record and Signature Disclosure
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ELECTRONIC RECORD AND SIGNATURE DISCLOSURE

From time to time, City of Morgan Hill (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through the DocuSign system. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to this Electronic Record and Signature Disclosure (ERSD), please confirm your agreement by selecting the check-box next to 'I agree to use electronic records and signatures' before clicking 'CONTINUE' within the DocuSign system.

Getting paper copies

At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. You will have the ability to download and print documents we send to you through the DocuSign system during and immediately after the signing session and, if you elect to create a DocuSign account, you may access the documents for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a \$0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

Withdrawing your consent

If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

Consequences of changing your mind

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. Further, you will no longer be able to use the DocuSign system to receive required notices and consents electronically from us or to sign electronically documents from us.

All notices and disclosures will be sent to you electronically

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through the DocuSign system all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

How to contact City of Morgan Hill:

You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:

To contact us by email send messages to: michelle.bigelow@morganhill.ca.gov

To advise City of Morgan Hill of your new email address

To let us know of a change in your email address where we should send notices and disclosures electronically to you, you must send an email message to us at michelle.bigelow@morganhill.ca.gov and in the body of such request you must state: your previous email address, your new email address. We do not require any other information from you to change your email address.

If you created a DocuSign account, you may update it with your new email address through your account preferences.

To request paper copies from City of Morgan Hill

To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an email to michelle.bigelow@morganhill.ca.gov and in the body of such request you must state your email address, full name, mailing address, and telephone number. We will bill you for any fees at that time, if any.

To withdraw your consent with City of Morgan Hill

To inform us that you no longer wish to receive future notices and disclosures in electronic format you may:

- i. decline to sign a document from within your signing session, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;
- ii. send us an email to michelle.bigelow@morganhill.ca.gov and in the body of such request you must state your email, full name, mailing address, and telephone number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

Required hardware and software

The minimum system requirements for using the DocuSign system may change over time. The current system requirements are found here: <https://support.docusign.com/guides/signer-guide-signing-system-requirements>.

Acknowledging your access and consent to receive and sign documents electronically

To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please confirm that you have read this ERSD, and (i) that you are able to print on paper or electronically save this ERSD for your future reference and access; or (ii) that you are able to email this ERSD to an email address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format as described herein, then select the check-box next to ‘I agree to use electronic records and signatures’ before clicking ‘CONTINUE’ within the DocuSign system.

By selecting the check-box next to ‘I agree to use electronic records and signatures’, you confirm that:

- You can access and read this Electronic Record and Signature Disclosure; and
- You can print on paper this Electronic Record and Signature Disclosure, or save or send this Electronic Record and Disclosure to a location where you can print it, for future reference and access; and
- Until or unless you notify City of Morgan Hill as described above, you consent to receive exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you by City of Morgan Hill during the course of your relationship with City of Morgan Hill.

CONSULTANT AGREEMENT FOR DESIGN PROFESSIONALS MNS ENGINEERS, INC.

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

1. **City Authority.** This Agreement is entered into pursuant to the action of the Morgan Hill City Council taken on _____, _____, 20____.
2. **Term of Agreement.** This Agreement shall cover services rendered from July 1, 2024 until June 30, 2027 ("Initial Term") at which time CONSULTANT'S services shall be completed. The City Manager is authorized to extend the term of this Agreement for a maximum of two additional one-year extensions ("Extended Term"). Any such extension shall be in writing and signed by both Parties to this Agreement.
3. **Scope of Service.** The services to be performed by CONSULTANT shall be On-Call Map Review and City Surveyor Services for the Engineering Division as further described in **Exhibit A**.
4. **Compensation.** CONSULTANT shall be compensated as follows:
 - 4.1. **Amount.** \$39,000. Total compensation to CONSULTANT under this Agreement during its initial term set forth in Section 2 above shall not exceed Thirty Nine Thousand dollars, and shall be billed based on the rate and basis set forth in **Exhibit B**. The City Manager shall have the authority to increase the maximum compensation allowed to be paid to CONSULTANT during that Extended Term period, so long as City Council has appropriated sufficient funds therefor, the Parties mutually agree to such amount in a writing signed by both Parties to this Agreement, and provided further that in no event shall such maximum compensation allowed for the extended term exceed the amount set forth in Section 4.1.1 below.
 - 4.1.1. **Additional Compensation.** The City Manager shall have the authority to approve additional compensation in an amount not to exceed \$29,000 during the Extended Term, for a combined total maximum compensation amount of \$68,000.
 - 4.2. **Billing.** CONSULTANT shall provide CITY with an invoice containing the dated, detailed, and itemized descriptions of all services performed and expenses incurred (if such expenses are reimbursable pursuant to Exhibit B) by CONSULTANT on a monthly basis unless otherwise specified in Exhibit B. All invoices shall be sent to the CITY addressed to the department head or project manager identified below in Section 13 Notices. Any rate charged shall be prorated where services are interrupted or not provided for any rate period (for example, any monthly rate charge should be prorated when services were interrupted or provided for only part of the month). For services billed on an hourly rate, the minimum unit of billed time shall not exceed one tenth of one hour. CITY shall pay for services and expenses (if so provided in Exhibit B) up to the limit of compensation set forth above, that in the CITY'S judgment were necessary and reasonable. Services for work performed and expenses incurred in excess of the total compensation set forth in paragraph 4.1 above shall be at no cost to CITY.

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

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

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

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

7.1. **Insurance Types and Amounts.**

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

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

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

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

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

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

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

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

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

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

7.2.2. Workers Compensation.

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

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

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

Certificate Holder address:

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

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

9. **Compliance with Law.**

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

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

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

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

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

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

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

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

10. **Independent Contractor.** CONSULTANT is an independent contractor and not an agent or employee of CITY.

11. **Confidentiality.** All data, documents, or other information received by CONSULTANT from CITY or prepared in connection with CONSULTANT'S services under this Agreement are deemed confidential and shall not be disclosed to any third party by CONSULTANT without prior written consent by CITY. Confidential shall not include information or materials that: (1) were, on the effective date of this Agreement, generally known to the public; (2) become generally known to the public after the effective date of this Agreement other than as a result of the act or omission of CONSULTANT; (3) were rightfully known to CONSULTANT prior to receipt from CITY; (4) are or were disclosed by the CITY to a third party generally without restriction on disclosure; or (5) are requested by any court or government agency pursuant to written court order, subpoena, regulation, or process of law.

12. **Conflict of Interest and Reporting.** CONSULTANT shall at all times avoid conflict of interest or appearance of conflict of interest in performance of this Agreement.

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

Address of CONSULTANT is as follows:

MNS ENGINEERS, INC.
2025 Gateway Place, Suite 328
San Jose, CA 95110

Address of CITY is as follows:

Maria Angeles	with a copy to:
Senior Civil Engineer	City Clerk
City of Morgan Hill	City of Morgan Hill
17575 Peak Avenue	17575 Peak Avenue
Morgan Hill, CA 95037	Morgan Hill, CA 95037

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

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

16. **Maintenance of Records.**

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

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

16.3. **Ownership of Work Product.** Except for CONSULTANT's pre-existing concepts, ideas, materials, data and standard details, all documents or other information developed or received by CONSULTANT for work performed under this Agreement shall be the property of CITY. CONSULTANT shall provide CITY with copies of these items upon demand or upon termination of this Agreement. Any reuse or modification by CITY of CONSULTANT's work for any project other than the project for which CONSULTANT

prepared, without CONSULTANT's prior written consent shall be at the sole risk of CITY and CITY agrees to indemnify and hold harmless CONSULTANT from all costs, losses, and expenses, including legal fees, incurred as a result of any such use or decision by CITY.

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

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

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

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

21. **Defense and Indemnification.**

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

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

- 21.3. Exceptions. CONSULTANT is not required to indemnify INDEMNITEES against liability for bodily injury, property damage or personal injury, or any other loss, damage or expense arising from the sole negligence, active negligence, or willful misconduct of the CITY.
- 21.4. Not limited by insurance. The indemnity, defense and hold harmless provisions of this Agreement apply to all CLAIMS alleged against an INDEMNITEE, regardless of whether any insurance policies are applicable. Policy limits do not act as a limitation upon the amount of indemnification or defense to be provided by CONSULTANT.
- 21.5. Right to Offset. CITY shall have the right to offset against any compensation due CONSULTANT under this Agreement any amount due CITY from CONSULTANT as a result of CONSULTANT'S failure to pay CITY promptly any indemnification arising under this Section (21) and any amount due CITY from CONSULTANT arising from CONSULTANT'S failure either to (i) pay taxes on amounts received pursuant to this Agreement or (ii) comply with applicable workers' compensation laws.
- 21.6. Interpretation. This Section shall constitute an agreement or contract of indemnity, incorporating the interpretations under California Civil Code Section 2778. It is expressly understood and agreed that the obligation of the CONSULTANT to indemnify the INDEMNITEE shall be as broad and inclusive as permitted by the laws of the State of California and shall survive termination of this Agreement.

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

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

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

25. **Notice of Security and/or Privacy Incident.** If CONSULTANT, or its subconsultant, suspect, discover or are notified of a data security incident or potential breach of security and/or privacy relating to CITY PII, PHI and/or PCI, CONSULTANT shall immediately, but in no event later than forty-eight (48) hours from suspicion, discovery or notification of the incident or potential breach, notify CITY of such incident or potential breach. CONSULTANT shall, upon CITY's request, investigate such incident or potential breach, inform the CITY of the results of any such investigation, and assist the CITY in maintaining the confidentiality of such information. In addition to the foregoing, CONSULTANT shall provide CITY with any assistance necessary to comply with any state and/or federal laws requiring the provision of notice of any privacy incident or security breach with respect to any CITY PII, PHI and/or PCI to the affected or impacted individuals and/or organizations, in addition to any notification to applicable state and federal agencies. CONSULTANT agrees that it shall reimburse CITY for all

expenses, costs, attorneys' fees, and resulting fines, penalties, and damages associated with such incident, breach, investigation and/or notification.

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

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

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

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

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[Signatures on Next Page]

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

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

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

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

ATTEST:

CITY OF MORGAN HILL

City Clerk/Deputy City Clerk

City Manager

Michelle Bigelow

Christina J. Turner

Print Name

Print Name

Date: _____

Date: _____

APPROVED AS TO FORM:

MNS ENGINEERS, INC.

DocuSigned by:

Jeff Edwards

By: 17C8137DB1641C...

City Attorney

Donald A. Larkin

Jeff Edwards, Vice President

Print Name

Print Name and Title of Signer.

If Corporate: Chairman, President or Vice
President

Date: _____

Date: 6/10/2024

DocuSigned by:

Wes McClendon

By: 18CF0D59D8D4C0...

Wes McClendon, Chief Financial
Officer

Print Name and Title of Signer.

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

Date: 6/10/2024

EXHIBIT A SCOPE OF SERVICES

The following are the types of tasks that are included in the CONSULTANT'S scope of services:

1. Review of tract maps and parcel maps for conformance with the Subdivision Map Act. Provide stamp and signature on maps and other documents, as necessary, as the Acting City Surveyor.
2. Review of land surveying aspects of tentative maps for conformance with City standards as part of the City's entitlement process.
3. Review of lot line adjustments, certificates of compliance, vacation or abandonment of public right-of-way and public easements, plat maps, legal descriptions, and closure calculations for technical accuracy.
4. Perform traditional topographic surveys to determine locations and elevations of existing improvements, structures, and topographic features.
5. Develop legal descriptions and plat maps, and other survey-related tasks as needed.

EXHIBIT B SCHEDULE OF COMPENSATION RATES

CONSULTANT'S services will be billed on a time-and-materials basis according to the Standard Hourly Rates shown below for calendar year 2024. The standard fee rates provided for each classification are subject to 5% annual escalation or the most recent US Bureau of Labor Statistics Consumer Price Index, whichever is higher, for each calendar year.

PROJECT/PROGRAM MANAGEMENT

Principal-In-Charge.....	\$340
Senior Project/Program Manager.....	325
Project/Program Manager.....	275
Assistant Project/Program Manager.....	255
Senior Project Coordinator.....	195
Project Coordinator.....	165

ENGINEERING

Principal Engineer.....	\$305
Lead Engineer.....	270
Supervising Engineer.....	255
Senior Project Engineer.....	235
Project Engineer.....	210
Associate Engineer.....	190
Assistant Engineer.....	175

SURVEYING

Principal Surveyor.....	\$280
Lead Surveyor.....	270
Supervising Surveyor.....	230
Senior Project Surveyor.....	210
Project Surveyor.....	185
Associate Project Surveyor.....	175
Assistant Project Surveyor.....	160
Party Chief (PW).....	190
Chainperson (PW).....	160
One-Person Survey Crew (PW).....	225

TECHNICAL SUPPORT

CADD Manager.....	\$210
Supervising Technician.....	180
Senior Technician.....	170
Engineering Technician.....	130

CONSTRUCTION MANAGEMENT

Principal Construction Manager.....	\$335
Senior Construction Manager.....	290
Senior Resident Engineer.....	280
Resident Engineer.....	270
Structure Representative.....	260
Construction Manager.....	230
Assistant Resident Engineer.....	215
Sr. Construction Inspector (PW).....	198
Construction Inspector (PW).....	188
Office Administrator.....	135

PLANNING

Planning Director.....	\$235
City Planner/Planning Manager.....	220
Principal Planner.....	205
Senior Planner.....	190
Associate Planner.....	160
Assistant Planner.....	135
Planning Technician.....	115

ADMINISTRATIVE SUPPORT

Senior Management Analyst.....	\$195
Management Analyst.....	165
IT Technician.....	150
Graphics/Visualization Specialist.....	160
Administrative Assistant.....	105

GOVERNMENT SERVICES

City Engineer.....	\$265
Deputy City Engineer.....	235
Assistant City Engineer.....	225
Plan Check Engineer.....	185
Permit Engineer.....	175
City Inspector.....	175
Senior City Inspector (PW).....	198
City Inspector (PW).....	188
Principal Stormwater Specialist.....	190
Senior Stormwater Specialist.....	180
Stormwater Specialist.....	170
Stormwater Technician.....	150
Building Official.....	250
Senior Building Inspector.....	200
Building Inspector.....	175
Senior Grant Writer.....	190
Grant Writer.....	180
Associate Grant Writer.....	160
Assistant Grant Writer.....	145

DIRECT EXPENSES

Use of outside consultants as well as copies, blueprints, survey stakes, monuments, computer plots, telephone, travel (out of area) and all similar charges directly connected with the work will be charged at cost plus fifteen percent (15%). Mileage will be charged at the current federal mileage reimbursement rate.

PREVAILING WAGE RATES

Rates shown with Prevailing Wage "(PW)" annotation are used for field work on projects subject to federal or state prevailing wage law and are subject to increases per DIR.

ANNUAL ESCALATION

Standard fee rates provided for each classification are subject to 5% annual escalation or the most recent US Bureau of Labor Statistics Consumer Price Index, whichever is higher.

OVERTIME

Overtime for non-exempt employees will be charged at 1.5 x hourly rate; overtime for exempt employees and other classifications will be charged at 1 x hourly rate.

EXHIBIT C
SCHEDULE OF PERFORMANCE

CONSULTANT'S services will be on an as needed, on-call basis.

EXHIBIT D
Third Party Data Use Agreement

1. CONSULTANT agrees that it shall not use any information provided by CITY for any purpose other than for work performed pursuant to this Agreement without the prior express written consent of CITY. CONSULTANT also hereby acknowledges that the data delivered by CITY is for use by CONSULTANT only, and is not to be released to any other party by any means whatsoever, including the Internet, without prior written consent of CITY. CONSULTANT shall provide written notice to CITY of any subcontractor with whom Geographic Information System data (GIS DATA) is shared for purposes of performing work under this Agreement.
2. All data and files are intended for the use within the ordinary course of users' business and may not be sold, placed on the internet or otherwise provided to other parties. All data shall comply with all statutes such as California State Law, Government Code section 7928.205 which prohibits any state or local agency from posting the home address or telephone number of any "elected or appointed official," residing spouse, or child on the internet, and Revenue and Taxation Code sections 408, 408.1, 408.3, and 409 permitting the County Assessor to collect fees for certain information.
3. CITY, as rightful owners, shall retain all rights, title, interest, and copyright of the data. Any products using the GIS DATA must give credit to CITY as the source of the information. Any and all derivative products of the GIS DATA are owned by CITY and may not be used for any purpose other than performing work pursuant to this Agreement without prior written permission of CITY. All derivative products and resulting data shall be provided to CITY Project Manager and CITY GIS Manager at the completion of the work.
4. CONSULTANT and CITY understand and agree that the information provided pursuant to this Agreement is the product of professional services paid for by CITY and shall remain property of CITY. CONSULTANT may retain copies, including copies stored on magnetic media, only for information and reference, in connection with CONSULTANT'S use for work performed for CITY.
5. All of the above terms and conditions apply to any subcontractor retained by CONSULTANT.
6. In the event of a conflict between the terms and provisions of this Third Party Data Use Agreement and the terms and provisions of the CONSULTANT AGREEMENT, the terms of the CONSULTANT AGREEMENT shall govern and control.

Certificate Of Completion

Envelope Id: 0E155DF4DA1C4EC9881A3579D4303198

Status: Completed

Subject: Complete with DocuSign: MNS ENGINEERS - City Consultant Agreement for Design Professionals

Source Envelope:

Document Pages: 15

Signatures: 2

Envelope Originator:

Certificate Pages: 5

Initials: 0

City Clerk's Office

AutoNav: Enabled

17575 Peak Ave

Envelopeld Stamping: Enabled

Morgan Hill, CA 95037

Time Zone: (UTC-08:00) Pacific Time (US & Canada)

cityclerk@morganhill.ca.gov

IP Address: 35.131.77.142

Record Tracking

Status: Original

Holder: City Clerk's Office

Location: DocuSign

6/10/2024 10:56:01 AM

cityclerk@morganhill.ca.gov

Security Appliance Status: Connected

Pool: StateLocal

Storage Appliance Status: Connected

Pool: City of Morgan Hill

Location: DocuSign

Signer Events

Signer: Jeff Edwards

Signature

Timestamp

jedwards@mnsengineers.com

DocuSigned by:

Jeff Edwards

717C8137DB1641C...

Sent: 6/10/2024 10:58:31 AM

Vice President

Viewed: 6/10/2024 11:00:59 AM

Security Level: Email, Account Authentication (None)

Signed: 6/10/2024 11:01:08 AM

Signature Adoption: Pre-selected Style

Using IP Address: 98.45.248.29

Electronic Record and Signature Disclosure:

Accepted: 6/10/2024 11:00:59 AM

ID: eb3ad57c-da4b-4d7a-90f9-10efe9dd83c3

Signer: Wes McClendon

Signature

Timestamp

wmcclendon@mnsengineers.com

DocuSigned by:

Wes McClendon

6D8CF0D59D8D4C0...

Sent: 6/10/2024 11:01:09 AM

Security Level: Email, Account Authentication (None)

Viewed: 6/10/2024 11:04:28 AM

Signed: 6/10/2024 11:04:40 AM

Signature Adoption: Pre-selected Style

Using IP Address: 209.234.137.242

Electronic Record and Signature Disclosure:

Accepted: 6/10/2024 11:04:28 AM

ID: dddc1f09-4db7-4ee5-adff-e96d51e34dbb

In Person Signer Events

Editor Delivery Events

Agent Delivery Events

Intermediary Delivery Events

Certified Delivery Events

Carbon Copy Events

Signer: Maria Angeles

Signature

Timestamp

maria.angeles@morganhill.ca.gov

COPIED

Sent: 6/10/2024 11:04:41 AM

Senior Civil Engineer

Viewed: 6/10/2024 11:42:15 AM

Security Level: Email, Account Authentication (None)

Electronic Record and Signature Disclosure:

Carbon Copy Events	Status	Timestamp
Accepted: 9/29/2023 9:18:56 AM ID: 85a7bb16-5cdd-4f6f-81a2-0e5e8830f210 Angel Echavarria angel.echavarria@morganhill.ca.gov Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Accepted: 5/24/2024 10:56:44 AM ID: bdcf4ca3-452e-40ae-a03c-88df7eef4f85	COPIED	Sent: 6/10/2024 11:04:42 AM Viewed: 6/10/2024 11:05:43 AM
Jeff Edwards jedwards@mnsengineers.com Vice President Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Accepted: 6/10/2024 11:00:59 AM ID: eb3ad57c-da4b-4d7a-90f9-10efe9dd83c3	COPIED	Sent: 6/10/2024 11:04:43 AM
Wes McClendon wmccclendon@mnsengineers.com Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Accepted: 6/10/2024 11:04:28 AM ID: dddc1f09-4db7-4ee5-adff-e96d51e34dbb	COPIED	Sent: 6/10/2024 11:04:43 AM
Witness Events	Signature	Timestamp
Notary Events	Signature	Timestamp
Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	6/10/2024 10:58:31 AM
Certified Delivered	Security Checked	6/10/2024 11:04:28 AM
Signing Complete	Security Checked	6/10/2024 11:04:40 AM
Completed	Security Checked	6/10/2024 11:04:43 AM
Payment Events	Status	Timestamps
Electronic Record and Signature Disclosure		

ELECTRONIC RECORD AND SIGNATURE DISCLOSURE

From time to time, City of Morgan Hill (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through the DocuSign system. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to this Electronic Record and Signature Disclosure (ERSD), please confirm your agreement by selecting the check-box next to 'I agree to use electronic records and signatures' before clicking 'CONTINUE' within the DocuSign system.

Getting paper copies

At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. You will have the ability to download and print documents we send to you through the DocuSign system during and immediately after the signing session and, if you elect to create a DocuSign account, you may access the documents for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a \$0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

Withdrawing your consent

If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

Consequences of changing your mind

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. Further, you will no longer be able to use the DocuSign system to receive required notices and consents electronically from us or to sign electronically documents from us.

All notices and disclosures will be sent to you electronically

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through the DocuSign system all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

How to contact City of Morgan Hill:

You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:

To contact us by email send messages to: michelle.bigelow@morganhill.ca.gov

To advise City of Morgan Hill of your new email address

To let us know of a change in your email address where we should send notices and disclosures electronically to you, you must send an email message to us at michelle.bigelow@morganhill.ca.gov and in the body of such request you must state: your previous email address, your new email address. We do not require any other information from you to change your email address.

If you created a DocuSign account, you may update it with your new email address through your account preferences.

To request paper copies from City of Morgan Hill

To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an email to michelle.bigelow@morganhill.ca.gov and in the body of such request you must state your email address, full name, mailing address, and telephone number. We will bill you for any fees at that time, if any.

To withdraw your consent with City of Morgan Hill

To inform us that you no longer wish to receive future notices and disclosures in electronic format you may:

- i. decline to sign a document from within your signing session, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;
- ii. send us an email to michelle.bigelow@morganhill.ca.gov and in the body of such request you must state your email, full name, mailing address, and telephone number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

Required hardware and software

The minimum system requirements for using the DocuSign system may change over time. The current system requirements are found here: <https://support.docusign.com/guides/signer-guide-signing-system-requirements>.

Acknowledging your access and consent to receive and sign documents electronically

To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please confirm that you have read this ERSD, and (i) that you are able to print on paper or electronically save this ERSD for your future reference and access; or (ii) that you are able to email this ERSD to an email address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format as described herein, then select the check-box next to ‘I agree to use electronic records and signatures’ before clicking ‘CONTINUE’ within the DocuSign system.

By selecting the check-box next to ‘I agree to use electronic records and signatures’, you confirm that:

- You can access and read this Electronic Record and Signature Disclosure; and
- You can print on paper this Electronic Record and Signature Disclosure, or save or send this Electronic Record and Disclosure to a location where you can print it, for future reference and access; and
- Until or unless you notify City of Morgan Hill as described above, you consent to receive exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you by City of Morgan Hill during the course of your relationship with City of Morgan Hill.



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, June 5, 2024 6:00 PM

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

CALL TO ORDER

Mayor Turner called the City Council meeting to order at 6:00 p.m.

ROLL CALL ATTENDANCE

City Clerk Michelle Bigelow called the roll.

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

DECLARATION OF POSTING AGENDA

City Clerk Michelle Bigelow declared the posting of the agenda.

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

PROCLAMATIONS

Proclaiming the month of June as LGBTQ+ Pride Month

CITY COUNCIL REPORTS

Mayor Turner congratulated staff for the Economic Mobility Symposium that was held on Thursday, May 30, 2024. He said that it was a great event with lots of good information and wonderful speakers. He thanked Frank Leal for hosting the event at the Granada Theatre. He mentioned that he is part of the Cities Association board and the Legislative Action Council. On Thursday, June 13, 2024, the Cities Association is hosting the Annual Membership Dinner. He recognized the Rotary and Kiwanis Club for hanging the senior banners throughout Downtown, celebrating the Morgan Hill Unified School District's seniors from Live Oak, Central, and Sobrato High Schools. He volunteered at the Mushroom Festival and said that it was a tremendous success. Valley Water will be doing a presentation at the Community and Cultural Center regarding Anderson Dam on June 6, 2024 at 6:00 p.m.

CITY MANAGER'S REPORT

City Manager Christina Turner thanked the Mayor for discussing the Economic Mobility Symposium. There were over 150 attendees and 10 panelists. She shared that we showed a video that we will be making available to the public. This video was made possible by a grant that we received. It highlights diverse local residents, discussing crucial connections between affordable housing and a thriving community. She announced that the Aquatics Center opens on Saturday, June 8, 2024 for the summer season. She also spoke about the Cities Association of Santa Clara County mental health awareness initiative that aims to bring to light issues like anxiety, depression, and loneliness within the community. Today they delivered signs to each city to place at city facilities and downtown areas, featuring the "988" mental health crisis hotline and a QR code link to online resources. This aligns with Council Member Spring's request to address loneliness in our Community. The visible presence of these signs in common community areas will serve as a constant reminder that support is available, encouraging people to seek assistance. By providing immediate access to mental health resources, the campaign fosters a sense of connection and community support. Additionally, the Cities Association is working on the development of a social media toolkit for community outreach to further extend the campaign's reach, engaging residents through various online platforms and to help normalize conversations around mental health and loneliness, reducing stigma and encouraging individuals to connect with others, share their experiences, and access support services.

CITY ATTORNEY'S REPORT

None

OTHER REPORTS

Council Member Librers spoke about spending 14 days in China at an international conference. They discussed topics such as economic trade, economic development in both countries, and friendship cities. They had an environmental day and she planted a tree in the mountains and tagged Morgan Hill on it. They discussed EV research and flying cars. They are looking for students 12 - 21 for student exchange, as well as adult cultural exchange for adults ages 21 - 40. She said that there was over 30 nations worldwide represented at these conferences. There were only 3 states involved besides California. She was chosen to represent the America's and gave a 30 minute speech about Silicon Valley, California and Morgan Hill.

Council Member Martinez Beltran attended the Gavilan College graduation. She also attended the Mushroom Festival which seemed like a great success. She attended the kick off of digital equity labs working with lower income Spanish speakers who are working to become computer-literate. She attended the pride flag raising, and shared that there will be a pride celebration at Chachos on July 13, 2024. She attended Coyote Creek day, keeping Coyote Creek clean. She also mentioned that she just came back from a Thousand Trails ribbon cutting, adding several cabins. She spoke about a presentation from Kathy Napoli from the Historical Society on Native Americans in her

kids class.

PUBLIC COMMENT

Public comment opened at 6:17 p.m.

Brian Sullivan was called to speak.

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

ADOPTION OF AGENDA

MOTION:

Adopting the agenda as posted.

RESULT:	Passed
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

CONSENT CALENDAR

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

Public comment opened at 6:22 p.m.

Joe Baranowski was called to speak on item 5.

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

MOTION:

Approving consent calendar items 1, 2 and 4 through 6.

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

ABSTAIN:	None
ABSENT:	None

1. APPROVE A CONSULTANT AGREEMENT WITH INNOVATIVE CLAIM SOLUTIONS, INC. FOR THIRD PARTY CLAIMS ADMINISTRATION FOR WORKERS' COMPENSATION

Recommendation:

Approve a five-year agreement with Innovative Claim Solutions, Inc. to provide third party claims administration for workers' compensation in an amount not to exceed \$193,662.

2. APPROVE COUNTYWIDE AB 939 AND HOUSEHOLD HAZARDOUS WASTE COLLECTION AGREEMENTS

Recommendation:

Authorize the City Manager to Execute the Countywide AB 939 and Household Hazardous Waste Collection Agreements.

4. APPROVE SECOND AMENDMENT TO THE FISCAL YEAR (FY) 2023/24 COUNTYWIDE SOLID WASTE SERVICES FOOD RECOVERY PROGRAM AND THE NEW FY 2024/25 CONTRACT WITH JOINT VENTURE SILICON VALLEY

Recommendation:

1. Approve the second amendment to the FY 2023/24 Joint Venture Silicon Valley consultant agreement to extend the effective date of services from July 4, 2023, until June 30, 2025;
2. Approve a new consultant agreement with Joint Venture Silicon Valley for FY 2024/25 Edible Food Recovery Program services in the amount of \$636,563; and
3. Authorize the City Manager to execute and administer the second amendment to the 2023/24 consultant agreement and the new 2024/25 consultant agreement with Joint Venture Silicon Valley.

5. APPROVE THE MAY 15, 2024 CITY COUNCIL MEETING MINUTES AND THE MAY 22, 2024 BUDGET WORKSHOP MINUTES

Recommendation:

Approve minutes.

6. AWARD CONTRACTS FOR EMERGENCY ON-CALL SPILL RESPONSE CLEANUP SERVICES

Recommendation:

1. Award service agreements to GrayMar Environmental Services, Inc. ("GrayMar"), HCI Environmental & Engineering Service ("HCI"), and Clean Harbors Environmental Services, Inc. ("Clean Harbors") for emergency on-call spill response cleanup services for up to \$100,000 each; and
2. Authorize the City Manager to execute and administer the Agreements.

ITEM PULLED FOR DISCUSSION

3. APPROVE MEMORANDUM OF UNDERSTANDING FOR PARTICIPATION IN THE COUNTYWIDE FOOD RECOVERY PROGRAM

Recommendation:

Authorize the City Manager to enter into a Memorandum of Understanding that will allow the City to participate in the Countywide Food Recovery Program for SB 1383 compliance, and also to administer and oversee the program in the City's capacity as Countywide Solid Waste Services Administrator and Contracting Agent.

Tanya Carothers answered questions.

Public comment opened at 6:43 p.m. There being no requests to speak, public comment closed.

MOTION:

Approving the recommended action.

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

PUBLIC HEARINGS

7. ADOPT RESOLUTION ORDERING ANNUAL ASSESSMENTS AND RELATED ACTIONS FOR CITY OF MORGAN HILL LANDSCAPE ASSESSMENT

DISTRICT NUMBER 1

Recommendation:

1. Open and close the Public Hearing; and
2. Adopt resolution confirming Fiscal Year (FY) 2024-25 annual assessments and ordering the levy of assessments for the District.

Keri Russell provided the report.

The public hearing opened at 6:47 p.m. 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, Mayor Pro Tem Librers
NAYS:	None
ABSTAIN:	None
ABSENT:	None

OTHER BUSINESS

8. **DISCUSS WHETHER TO CHANGE THE CITY TREASURER POSITION FROM ELECTIVE TO APPOINTIVE, AND IF THE COUNCIL WISHES TO PROCEED, ADOPT A RESOLUTION SUBMITTING THE QUESTION TO THE VOTERS**

Recommendation:

1. Provide direction to staff regarding changing the City Treasurer position from elective to appointive; and
2. If approved, adopt resolution that would submit to the voters a ballot measure to change the City Treasurer position from elected to appointed.

City Clerk Michelle Bigelow provided a presentation and report.

Public comment opened at 7:05 p.m. There being no requests to speak, public comment closed.

SUBSTITUTE MOTION:

Direct staff to bring forward in the Spring of 2026, a measure changing the

Treasurer from elected to appointed for the 2026 election.

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

MOTION:

Direct staff to bring back term limit measure on the June 19, 2024 City Council Meeting to add Treasurer.

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

FUTURE COUNCIL INITIATED AGENDA ITEMS

Council Member Martinez Beltran would like to look at rv tourism.

Mayor Pro Tem Librers would like to explore an ordinance that prohibits tents on City sidewalks and within so many feet of City property.

CLOSED SESSION

City Attorney Larkin announced the closed session item.

Conference with Legal Counsel – Existing Litigation (§ 54956.9)

City of Morgan Hill v. Rocke and Glenda Garcia et al. (Santa Clara County Case No. 21CV385524)

OPPORTUNITY FOR PUBLIC COMMENT

Public comment opened at 7:24 p.m. There being no requests to speak, public comment closed.

ADJOURN TO CLOSED SESSION

The meeting adjourned to closed session at 7:24 p.m.

ADJOURNMENT

There being no further business, Mayor Turner adjourned the meeting at 7:55 p.m.

Minutes Prepared by:

Michelle Bigelow, City Clerk

CITY COUNCIL STAFF REPORT

MEETING DATE: June 19, 2024

PREPARED BY:

Cynthia Iwanaga, Management Analyst

APPROVED BY: City Manager

AWARD ON-CALL DOOR AND GATE REPAIR MAINTENANCE SERVICE AGREEMENT WITH WEST COAST DOORS AND GATES FOR A TOTAL NOT TO EXCEED AMOUNT OF \$200,000

RECOMMENDATION(S)

1. Award a two-year maintenance service agreement to West Coast Doors and Gates for a not to exceed amount of \$200,000 for on-call door and gate repair services with three one-year extensions, subject to budget appropriation; and
2. Authorize the City Manager to execute and administer the Agreement.

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Enhancing Public Safety

2024-2025 Strategic Priorities

Fiscal Sustainability

REPORT NARRATIVE:

The purpose of this report is to provide the City Council with an opportunity to consider awarding an agreement to West Coast Doors and Gates for on-call door and gate repair services in the amount of \$200,000.

The City has contracted for door and gate repair services for many years on an on-call, as-needed basis as the City does not have the staffing resources to perform the work internally. As the City's current on-call door and gate repair maintenance service agreement expires on June 30, 2024, the Request for Proposals (RFP) was issued on April 22, 2024. All contractors responding to the RFP were required to possess a current and valid California Contractor State Licensing Board (CSLB) license in the classification required by law to perform the work: CSLB C-61/D-28 (Doors, Gates & Activating Devices) and/or C-28 (Lock and Security Equipment).

In soliciting proposals for this project, the City notified contractors on the City's bidders' list with the CSLB C-61/D-28 and C-28 classifications. The RFP was also advertised in

the Morgan Hill Times on April 19, 2024. The bids were posted on the City of Morgan Hill website, Public Purchase online bid service, County of Santa Clara Builders Exchange, Bay Area Builders Exchange, and San Francisco Builders Exchange.

On May 20, 2024, three proposals were received in response to the RFP from McKendry Door Sales, Inc., Nor-Cal Overhead, Inc., and West Coast Doors and Gates. An evaluation committee of two Maintenance Services staff evaluated and scored the three proposals. The proposals were first evaluated based on narrative responses to questions regarding previous experience, work quality, client relations, and the local office's staff qualifications. Proposals that received a minimum 40 of 50 possible points then had their cost proposals reviewed to determine which proposals offered the best overall value to the City. Based on the RFP's scoring criteria, below are the scores for the responses to the narrative questions (Attachment 1). West Coast Doors and Gates scored the highest with 41 points.

Contractor	Narrative Score
West Coast Doors and Gates	41.0 points
Nor-Cal Overhead, Inc.	40.0 points
McKendry Door Sales, Inc.	37.5 points

Since West Coast Doors and Gates, and Nor-Cal Overhead both scored the minimum 40 points, their cost proposals were reviewed to determine which proposal offered the best overall value to the City (Attachment 2). Although their hourly rates were similar, Nor-Cal Overhead had additional service fees, and a minimum 2-hour charge for each repair job. Due to these additional factors, the evaluation committee determined that West Coast Doors and Gates offered the best overall value to the City.

Staff recommends the award of the on-call door and gate repair maintenance service agreement to West Coast Doors and Gates for a total not-to-exceed amount of \$200,000 for two years (Attachment 3). Repairs would be performed on an as-needed basis upon pre-approval by City Maintenance staff. The City's actual repair costs will be contingent upon the circumstances and frequency of repair needs. The new agreement will have a two-year term with authorization for the City Manager to execute three consecutive one-year extensions with the annual price increases not to exceed 5% of the prior year's annual pricing. If approved, the initial two-year term will be from July 1, 2024 to June 30, 2026.

COMMUNITY ENGAGEMENT:

On-call door and gate repair is a routine, and standard service provided at City facilities. Staff will post signage informing the public of any door and gate repairs that affect the use of City facilities. If the door and gate repairs will occur over several days, a general notice will be posted on the City's website and on Nextdoor Morgan Hill informing residents of any disruptions to services at City facilities.

ALTERNATIVE ACTIONS:

An alternative action is to not approve this agreement, and to direct staff to issue another Request for Proposals (RFP) and extend the current agreement with West Coast Doors and Gates for six months. It is not anticipated that issuing a new RFP would result in better value to the City, so this alternative is not recommended.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The City has not taken prior action on this agreement. Since the current on-call doors and gates repair agreement is expiring on June 30, 2024, this RFP process was conducted.

FISCAL AND RESOURCE IMPACT:

The cost of door and gate repairs are budgeted in the building maintenance budgets for individual City facilities and parks. The \$200,000 not-to-exceed amount in this agreement is recommended to ensure the City has a sufficient allocation to obtain needed repairs in a timely manner in order to limit any disruption to services or public safety issues.

CEQA (California Environmental Quality Act):

Categorical Exemption

The activities described in this Staff Report are categorically exempt under CEQA, specifically pursuant to Section 15301 of the CEQA Guidelines (Existing Facilities), as the subject work involves the repair, maintenance or minor alteration of existing City facilities involving negligible or no expansion of use of those facilities.

Attachment #1 - City of Morgan Hill - CSD2024-019

On-Call Door & Gate Repair Contractor RFP Evaluation Committee Scoring

May 2024

Possible Points	McKendry	Nor-Cal	West Coast	Selection Criteria	COMMENTS - Justification for each Selection Criteria's point score
20	15.5	15.5	15	Section 1: Previous Experience in providing a superior level of service on like-sized public or private projects (Up to 20 points)	
				1. How many years has your company been in business under its present business name? 2. Describe your previous experience providing door and gate repair services at like-sized public agencies and/or private companies 3. Describe management personnel's experience with accounts of similar size and scope, company structure, and staff assigned to the resulting agreement. 4. State any and all instances of being disqualified, removed, or otherwise prevented from completing the terms of any previous contracts over the past five (5) years. Give names, street addresses and phone number and explain the circumstances.	McKendry: Very experienced and thorough in detailing their work experience. Almost 20 years of experience. Nor-Cal: Worked with cities and counties. 20 years of experience. West Coast: Good experience, stated that Owner deals directly with all customers and clients. 28 years of experience.
15	11	13.5	14	Section 2: Assessment of Work Quality, Performance and Working Relationships with Current and Recent Clients (Up to 15 points)	
				1. List three (3) like-sized customers that you have provided on-call door and gate repair services to within the last three (3) years. Provide the following information for each contact: a. Customer Name b. Customer Contact Person's Name c. Phone Number d. Email Address e. Number of years your firm has provided electrical on-call services to Customer. f. Names of facilities/locations where services have been provided.	McKendry: Generally good references. Noted that vendor's techs live in Sacramento and getting personnel out in an emergency can be a challenge. Billing is not always timely. Nor-Cal: Good references, in one instance did not respond to emergency in a timely manner. West Coast: Excellent references with nothing negative to say.
15	11	11	12	Section 3: Qualifications of Staff to be assigned to provide on-call door and gate repair services at City facilities (Up to 15 points)	
				1. For the local office to serve this contract, list the following: A. Total number of staff assigned to the City of Morgan Hill B. Names and qualifications of key staff including years in the industry and with your firm. C. Number of new hires in the last six months.	McKendry: Did not demonstrate that local staff are assigned, which could impact response time. Nor-Cal: Did not demonstrate that local staff are assigned. Proposal noted response time for routine maintenance was one day and emergency was 4 hours instead of 4 hours and 2 hours per scope of work. West Coast: Demonstrated ability to provide responsive staff for routine and emergency work.
50	37.5	40	41	TOTAL POINTS AWARDED	

Attachment #2

City of Morgan Hill CSD2024-019, May 2024

On-Call Door and Gate Repairs RFP: Pricing Comparison

	Nor-Cal Overhead	West Coast Doors & Gates
Hourly Shop Rate Door & Gate Repair (M-F: 8am to 5 pm)	\$ 235.00	\$ 245.00
Contractor's Additional Costs or Min. Hours	Service Call Fee plus 2-hour minimum. \$135 SCF(M-F: 8 a.m.-5 p.m.) + (\$235 x2) = \$605	none
Hourly Overtime Rate Door & Gate Repair Services (M-F: 5 pm to 8 am)	\$270 (M-F: 5 p.m.-10 p.m.) \$390 (M-F: 10 p.m.-5 a.m.)	\$ 495.00
Contractor's Additional Costs or Min. Hours	Service Call Fees plus minimum 2 hours \$195 SCF (M-F: 5 p.m.-10 p.m.) + (\$270 x 2) = Total \$735 \$235 SCF (M-F: 10 p.m. to 5 a.m.) + (\$390 X 2)= Total \$1,015	none
Hourly Saturday, Sunday and Holiday Rate-Door & Gate Repair Services	\$270 (Sat. 8 am-5 pm) \$390 (Sat. 5 p.m.-10 p.m.) \$470 (Sat. 10 p.m.-5 am) \$390 (Sun. 8 am-5 pm) \$390 (Sun 5 p.m.-10 p.m.) \$470 (Sunday 10 p.m.-5 am)	\$ 495.00
Contractor's Additional Costs or Min. Hours	Service Fees plus minimum 2 hours \$195 SCF (Sat 8am-5 p.m) + (\$270 X 2)= Total \$735 \$235 SCF (Sat 5 pm-10 pm) + (\$390 X 2) Total \$1,015 \$390 SCF (Sat 10 pm-5 am) + (\$470 X 2)= Total \$1,330 \$235 SCF (Sun 8 am-5 pm) + (\$390 X 2) = Total \$1,015 \$275 SCF (Sun 5 pm-10 pm) + (\$390 X 2) = Total \$1,055 \$390 SCF (Sun 10 pm-5 am) +(\$470 X 2) = Total \$1,330	none
Equipment Rate Schedule	\$625-\$975	Included in hourly rate
Contractor's Comments on Equipment Schedule	Forklifts, 19' scissor lift, 26' scissor lift	Not specified

MAINTENANCE SERVICE AGREEMENT West Coast Doors and Gates

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

1. **City Authority.** This Agreement is entered into pursuant to the action of the Morgan Hill City Council taken on _____, _____, 20____.
2. **Term of Agreement.** This Agreement shall cover services rendered from the Effective Date of this Agreement until June 30, 2026 at which time SERVICE PROVIDER'S services shall be completed. The City Manager is authorized to extend the term of this Agreement for a maximum of three one-year extensions. Any such extension shall be in writing and signed by both Parties to this Agreement.
3. **Scope of Service.** The services to be performed by SERVICE PROVIDER shall be on-call door and gate maintenance and repair services as further described in **Exhibit A.**
4. **Compensation.** SERVICE PROVIDER shall be compensated as follows:
 - 4.1. **Amount.** \$200,000.00. Total compensation to SERVICE PROVIDER under this Agreement during its initial term set forth in Section 2 above shall not exceed Two Hundred Thousand dollars and shall be billed based on the rate and basis set forth in **Exhibit B.** If the City Manager extends the term of this Agreement pursuant to the provisions of Section 2 above, the City Manager shall have the authority to increase the maximum compensation allowed to be paid to SERVICE PROVIDER during that extended term period, so long as City Council has appropriated sufficient funds therefor, the Parties mutually agree to such amount in a writing signed by both Parties to this Agreement and provided further that in no event shall such maximum compensation allowed for each subsequent extended one-year term exceed 105% of the maximum compensation allowed to be paid to SERVICE PROVIDER for one year of service during the immediately preceding prior year of service.
 - 4.2. **Billing.** SERVICE PROVIDER shall provide CITY with an invoice containing the dated, detailed, and itemized descriptions of all services performed and expenses incurred (if such expenses are reimbursable pursuant to Exhibit B) by SERVICE PROVIDER on a monthly basis unless otherwise specified in Exhibit B. All invoices shall be sent to the CITY addressed to the department head or project manager identified below in Section 14 Notices. Payment will be made to SERVICE PROVIDER within thirty (30) days of receipt of invoice by CITY. Any rate charged shall be prorated where services are interrupted or not provided for any rate period (for example, any monthly rate charge should be prorated when services were interrupted or provided for only part of the month). For services billed on an hourly rate, the minimum unit of billed time shall not exceed one tenth of one hour. CITY shall pay for services and expenses (if so provided in Exhibit B) up to the limit of compensation set forth above, that in the CITY'S judgment were necessary and reasonable. Services for work performed and expenses incurred in excess of the total compensation set forth in paragraph 4.1 above shall be at no cost to CITY.

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

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

5.2. **Temporary Suspension of Services.** CITY'S need for services may be suspended due to unforeseeable or unavoidable circumstances beyond its control. Such circumstances include, but are not limited to, earthquake, fire, explosion, flood, or other natural catastrophe; governmental legislation, condemnation, acts, orders, or regulation; war or acts of terrorism; strikes or labor difficulties; and quarantine, epidemic, or pandemic. CITY shall provide a 5-days' written notice or less under urgent circumstances to temporarily suspend services at specific CITY facilities. CITY reserves the right to request which CITY facilities are to be serviced or not serviced due to unforeseeable or unavoidable circumstances; and the level of service at each CITY facility. Upon suspension, SERVICE PROVIDER shall submit to CITY an itemized statement of services performed for which compensation has not been paid up to the date of the suspension. No further payments will be made for services provided after the date of the suspension. CITY shall provide 5 days' written notice when the circumstances for the suspension of specific facilities' services are removed for SERVICE PROVIDER to commence providing services.

6. **Performance of Work.** SERVICE PROVIDER represents that it is qualified by virtue of experience, training, education, and expertise to accomplish these services. Services shall be performed by SERVICE PROVIDER in accordance with professional practices in a manner consistent with a level of care, competence and skill exercised by qualified members of SERVICE PROVIDER'S profession. By delivery of completed work, SERVICE PROVIDER certifies that the work conforms to the requirements of this Agreement and all applicable federal, state, and local laws. SERVICE PROVIDER is liable for any property damage caused by SERVICE PROVIDER or its Subcontractors during performance of the services and shall notify the CITY of damage within 24 hours of the occurrence. SERVICE PROVIDER must promptly repair or replace any real or personal property damage, and must promptly restore the property to its original or intended condition. CITY may repair or replace the real or personal property damage if SERVICE PROVIDER fails to do so, and the cost of the repairs or replacement may be deducted or offset from any compensation due to SERVICE PROVIDER.

6.1. **Schedule.** SERVICE PROVIDER shall perform all work and services under this Agreement in conformance with the time schedule set forth on **Exhibit C**, "Schedule of Performance," attached hereto and incorporated herein by this reference. The City Manager is authorized on behalf of CITY to modify the timeframes set forth on the Schedule of Performance within the term of this Agreement.

6.2. **Storage of Service Provider's Equipment.** If SERVICE PROVIDER desires to leave or store any of SERVICE PROVIDER'S equipment at a CITY site while SERVICE PROVIDER is performing work or service pursuant to this Agreement, SERVICE PROVIDER will first obtain the consent of the City Manager, or his/her delegate, to do so, and any such storage shall occur only in the manner and location allowed by such CITY official and entirely at SERVICE PROVIDER'S sole risk.

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

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

8.1. **Insurance Types and Amounts.**

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

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

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

- 8.1.6. Sexual Abuse/Molestation Liability (SML): If the performance of SERVICE PROVIDER'S work or service under this Agreement involves contact with minors, SERVICE PROVIDER shall procure and maintain Sexual Abuse and Molestation insurance in the minimum amount of: (i) two hundred thousand dollars (\$200,000.00) each claim, or (ii) the maximum amount of such insurance available to SERVICE PROVIDER under SERVICE PROVIDER'S combined insurance policies (including any excess or "umbrella" policies), whichever is greater.
- 8.2. **Endorsements**. SERVICE PROVIDER shall provide proof of the following endorsements, listed for each policy for which endorsements are required, as outlined below:
- 8.2.1. General Liability and pollution liability (when pollution liability applies).
- 8.2.1.1. "Additionally Insured" - The City of Morgan Hill, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers are named as additional insureds on a form at least as broad as ISO Form CG 20 10 for ongoing operations.
- 8.2.1.2. "Waiver of Rights of Subrogation" - The insurer waives the right of subrogation against the City of Morgan Hill and CITY'S elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers; and
- 8.2.1.3. "Primary and Non-Contributing" - Insurance shall be endorsed to be primary and non-contributory and will not seek contribution from the City's insurance or self-insurance and shall be at least as broad as ISO Form CG 20 01.
- 8.2.2. Workers Compensation.
- If the performance of SERVICE PROVIDER'S work or service under this Agreement involves access to or activity on any property or premises owned or occupied by the CITY, including, but not limited to, SERVICE PROVIDER'S presence during site visits and meetings, then insurer waives the right of subrogation against the City of Morgan Hill and the CITY'S elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers.
- 8.3. **Qualification of Insurers**. All insurance required pursuant to this Agreement must be issued by a company licensed and admitted, or otherwise legally authorized to carry out insurance business in the State of California, and each insurer must have a current A.M. Best's financial strength rating of "A" or better and a financial size rating of "VII" or better.
- 8.4. **Certificates**. SERVICE PROVIDER shall furnish CITY with copies of all certificates as outlined herein, whether new or modified, promptly upon receipt. In the event of a claim or legal action, SERVICE PROVIDER shall promptly furnish CITY of Morgan Hill with copies of all policies outlined herein. No policy subject to SERVICE PROVIDER'S agreement with CITY shall be canceled or materially changed except after thirty (30) days' notice by the insurer to CITY. A "material change" is a change that results in non-compliance with any insurance requirements in this section 8. Certificates, including

renewal certificates, may be mailed electronically to riskmgmt@morganhill.ca.gov or delivered to the Certificate Holder address provided herein.

Certificate Holder address:

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

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

10. **Compliance with Law.**

- 10.1. SERVICE PROVIDER and its officers, employees, agents, and subcontractors shall comply with all applicable laws, ordinances, administrative regulations, and permitting requirements in carrying out their obligations under this Agreement. SERVICE PROVIDER and its officers, employees, agents, and subcontractors covenant there shall be no discrimination based upon any basis prohibited by State or Federal law, including but not limited to, race, color, creed, religion, gender, marital status, age, sexual orientation, national origin, mental disability, physical disability, medical condition, or ancestry, in any activity pursuant to this Agreement.
- 10.2. Without limiting the provisions of Section 10.1 above, each worker performing work under this Agreement shall be paid at a rate not less than the prevailing wage as defined in Sections 1771 and 1774 of the Labor Code. The prevailing wage rates are available online at <http://www.dir.ca.gov/dlsr>. SERVICE PROVIDER shall post a copy of the applicable prevailing rates at the Worksite. Pursuant to Labor Code Section 1775, SERVICE PROVIDER and any Subcontractor shall forfeit to CITY as a penalty up to two hundred dollars (\$200.00) for each calendar day, or portion thereof, for each worker paid less than the applicable prevailing wage rate. SERVICE PROVIDER shall also pay each worker the difference between the applicable prevailing wage rate and the amount actually paid to that worker.
- 10.3. DIR Registration. CITY will not accept a Bid Proposal from or enter into a contract with a SERVICE PROVIDER, without first receiving proof to the satisfaction of CITY that SERVICE PROVIDER and its subcontractors are registered with the California Department of Industrial Relations to perform public work under Labor Code Section 1725.5, subject to limited legal exceptions. Under Labor Code section 1771.4, this Agreement is subject to compliance monitoring and enforcement by the California Department of Industrial Relations.
- 10.4. Compliance with Wage and Hour Laws: SERVICE PROVIDER, and any subcontractor it employs to complete work under this Agreement, shall comply with all applicable federal, state, and local wage and hour laws. Applicable laws may include, but are not limited to, the Federal Fair Labor Standards Act and the California Labor Code.

Final Judgments, Decisions, and Orders: For purposes of this Section, a “final judgment, decision, or order” refers to one for which all appeals have been exhausted or the time to appeal has expired. Relevant investigatory government agencies include: the federal

Department of Labor, the California Division of Labor Standards Enforcement, or any other governmental entity or division tasked with the investigation and enforcement of wage and hour laws.

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

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

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

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

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

11. **Independent Contractor.** SERVICE PROVIDER is an independent contractor and not an agent or employee of CITY.

12. **Confidentiality.** All data, documents, or other information received by SERVICE PROVIDER from CITY or prepared in connection with SERVICE PROVIDER'S services under this Agreement are

deemed confidential and shall not be disclosed to any third party by SERVICE PROVIDER without prior written consent by CITY.

13. **Conflict of Interest and Reporting.** SERVICE PROVIDER shall at all times avoid conflict of interest or appearance of conflict of interest in performance of this Agreement.

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

Address of SERVICE PROVIDER is as follows:

West Coast Doors and Gates
305 Vineyard Town Center #360
Morgan Hill, CA 95037
Attn: John Komar

Address of CITY is as follows:

Keri Russell, Maint. Mgr.	with a copy to:
City of Morgan Hill	City Clerk
17575 Peak Avenue	City of Morgan Hill
Morgan Hill, CA 95037	17575 Peak Avenue
	Morgan Hill, CA 95037

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

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

17. **Maintenance of Records.**

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

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

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

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

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

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

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

22. **Defense and Indemnification.**

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

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

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

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

22.5. **Interpretation.** This Section shall constitute an agreement or contract of indemnity, incorporating the interpretations under California Civil Code Section 2778. It is expressly

understood and agreed that the obligation of SERVICE PROVIDER to indemnify the INDEMNITEE shall be as broad and inclusive as permitted by the laws of the State of California and shall survive termination of this Agreement.

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

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

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

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

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

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

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Signatures are on the following page.

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

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

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

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

ATTEST:

CITY OF MORGAN HILL

City Clerk/Deputy City Clerk

City Manager

Michelle Bigelow
Print Name

Christina J. Turner
Print Name

Date: _____

Date: _____

APPROVED AS TO FORM:

WEST COAST DOORS AND GATES

City Attorney

JOHN KOMAR
By:

Donald A. Larkin
Print Name

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

Date: _____

Date: 06.03.2024

By:

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

Date: _____

743815
Contractor's License Number(s) (if applicable)

1000031459
Contractor's DIR Registration Number(s) (if applicable)

Expiration Date(s) 12/31/2025

Expiration Date(s) 06/30/2024

EXHIBIT A SCOPE OF SERVICES

The Contractor will provide full-service, on-call door and gate repair services and administer the duties and responsibilities set forth below in compliance with all applicable laws, regulations, policies and procedures.

Services to be performed include the furnishing of all labor, materials, tools, equipment, supplies, services, tasks and incidental and customary work necessary to competently perform on-call door and gate repair work at various City facilities and per Work Hours (see Attachment A).

The work will include the provision of a total maintenance and repair program consisting of a variety of tasks including, but not limited to, installing, replacing, and testing door and gate components and other related issues as they arise and are necessary to insure safe, well maintained doors and gates for City employees and the public. The exact scope and number of projects and tasks are unknown at the time of contract execution.

The Contractor shall leave work areas free of all dirt, litter, lubricants, or other materials utilized to perform door and gate maintenance.

The Contractor shall erect barricades, warning signs, and any other devices to prevent unauthorized access by the public or unauthorized City staff to work areas.

The Contractor shall respond to all requests for repairs within four (4) hours. Emergency repairs as required, 24 hours per day, 365 days per year, including holidays shall have a two (2) hour response time. All costs for labor and materials for these calls shall be included in proposals submitted to Maintenance staff.

Contractor will be responsible for providing labor, supervision, materials, equipment, transportation, service and the shop facilities necessary to perform high quality work. Contractor will also be responsible for discarding all used materials.

2-1 SCOPE OF SERVICE The Contractor shall provide full-service on-call door and gate repair services to City Facilities as outlined in this document. Contractor shall retain professional personnel who have successfully and competently provided municipal facility door and gate repair services on projects of similar scope and complexity. It shall be the Contractor's responsibility to effectively repair and maintain, to the satisfaction of the City representative, all aspects of door and gate systems in City defined facilities with minimal downtime. All maintenance and repairs shall be provided in accordance with the highest standards of the industry, skill, workmanship, applicable trade practices, shall meet warranties and be in conformance to all applicable laws, codes and regulations. The successful Contractor's door and gate repairs shall, at a minimum, include but not be limited to the specifications outlined herein.

2-2 SERVICES TO BE PROVIDED It is the Proposer's responsibility to provide an appropriate level of staffing and provide appropriate tools and vehicles necessary to support all facility door and gate maintenance and repair functions during hours of operation and for response after normal working hours. Proposer shall maintain the appropriate license and will

comply with all other license, insurance and permit requirements of the City, State and Federal governments, as well as all other requirements of the law.

2-3 TERM OF SERVICE The term of the contract will be from July 1, 2024 through June 30, 2026. The City, at its option, may renew this contract for up to three, one year periods, beginning on July 1, 2026. This option will be exercised only if the contractor has demonstrated superior performance in provision of On-Call Door and Gate Repair Services to the City.

Pricing entries in the Bid Proposal apply to the period of July 1, 2024 to June 30, 2026. If the contract is renewed, it will be reviewed each subsequent year beginning on July 1, 2026 per the terms of the City's Maintenance Service Agreement.

2-4 WORK HOURS Scheduled maintenance and repairs shall typically occur during normal business hours. Facility business hours are:

- Aquatics Center is open weekdays from 5:00 a.m. to 8:00 p. m., Saturdays from 7:00 a.m. to 12:00 p.m. (summer season to 6:30 p.m.), and Sundays 11:30 a.m. to 6:30 p.m. (summer season only).
- Centennial Recreation Center is an active facility on Weekdays from 5:00 a.m. to 9:30 p.m., Saturdays and Sundays from 6:30 a.m. to 5:00 p.m.
- City Hall is open Monday-Friday 8:00 a.m. – 5 p.m.
- Chambers Building is open Monday-Friday 8:00 a.m. – 5 p.m.
- The Community and Cultural Center is open Monday-Friday 8:00 a.m. – 5 p.m.
- The Police Department is open Monday-Friday 8 a.m. – 5:30 p.m.
- The Public Works Corporation Yard is open Monday-Thursday 6:30 a.m. – 4:00 p.m. and Fridays from 6:30 a.m. -3:00 p.m.
- El Toro Fire Station is open 24 hours
- Dunne Hill Fire Station is open 24 hours

2-5 SERVICE AVAILABILITY The contractor shall have trouble-call service available on a twenty-four hours a day, seven days a week basis with a response time not to exceed the following:

EMERGENCIES.....two-hour response time
NON-EMERGENCIES..... four-hour response time

Time to respond shall start when the City calls the problem into Contractor's designated emergency phone number. Additionally, the contractor shall provide the ability to respond immediately to situations involving the health and safety of employees and/or the public and the comfort and operational capability of any public meeting space. Routine repairs, service requests or other non-urgent tasks shall be completed within one (1) working day from the date of request by City Representative.

2-6 TROUBLE-CALL/REPAIR SERVICE Should the City request the contractor to make unscheduled, emergency door replacement or repairs, the City shall be responsible for labor and travel costs associated therewith. These costs, as listed in the proposal, will be a critical part of the bid evaluation in determining the lowest responsive and responsible contractor. Rates shall be firm for the term of the contract. The City reserves the right to contract with others for trouble calls and repairs.

2-7 BILLABLE WORK The Contractor shall not bill for unnecessary repairs, for repairs that were not completed satisfactorily, for repairs that did not fix an identified problem, or for facility visits that are made by staff unqualified to complete needed repairs.

2-8 LICENSING, STAFFING, WORKMANSHIP AND QUALITY LEVEL The Contractor shall provide a staffing level to perform on-call door and gate repair services at designated City facilities in a thorough and professional manner, so that the City is provided with reliable and high quality maintenance at all times. The Contractor shall possess and maintain a C-61/D-28 Doors, Gates and Activating Devices Contractor license and/or C-28 Lock and Security Equipment license issued by the State of California Contractors Licensing Board through the term of the contract. All personnel performing work under this Contract shall possess and maintain a state journeyman certification and be directly employed and supervised by the Contractor. Any assigned apprentice shall work directly under the supervision of a qualified journeyman. The Contractor shall provide management and technical supervision through competent supervisors as required. The Contractor shall be responsible for the skills, methods and actions of all employees, subcontractors and for all work done.

2-9 MAINTENANCE AND REPAIR LOCATIONS See Attachment A

2-10 TOOLS AND EQUIPMENT The Contractor shall furnish and maintain all equipment necessary for properly servicing and maintaining doors and gates in City buildings. The City of Morgan Hill reserves the right to inspect equipment to be used to perform services under this contract. Any equipment determined to be in poor condition must be replaced immediately, at the contractor's expense. Failure to provide suitable equipment for carrying out all requirements of this contract may be grounds for termination.

2-11 PARTS AND MATERIALS The Contractor shall furnish all parts and materials necessary for properly maintaining and repairing doors and gates in City buildings. Mark-up on parts and materials may not exceed 10% of Contractor's cost. Invoices must identify the work performed, cost of labor, parts/materials used, parts/materials cost, and parts/materials mark-up cost.

2-12 INSPECTIONS AND REMEDIES So as to ensure consistent quality of the work being performed, the City Representative will perform periodic inspections of doors and gates to ensure compliance with the contract specifications. Inspections may be made by the City at any time to confirm that work performed meets specifications. If corrective work is required, the City will provide a written list of items and the Contractor shall correct deficiencies as directed. If deficiencies are not corrected in a timely manner, the City may perform the work using others and deduct the cost from the Contractor's payment.

2-13 DAMAGES The Contractor will be responsible for all damages to the facility or contents caused by Contractor, their staff or subcontractors during the performance of their duties.

2-14 SAFETY & SECURITY The Contractor and staff shall follow all established safety procedures and shall take special care not to endanger the public in any way. The Contractor is responsible for the security of all doors at the conclusion of work in each room. All exterior doors should remain locked at all times. Interior doors that are found open or unlocked shall be left in the same position/condition in which they were found.

2-15 FINGERPRINTING (Live Scan State of California Criminal Records Check): All Contractor staff who will be working on City facilities must pass a State of California Department of

Justice (DOJ) Criminal Records and FBI Background Check at the contractor's expense. The background checks can be performed at a Live Scan State of California Criminal Records Check locations or at the City of Morgan Hill Police Department. If the Contractor chooses to complete the background check at the Morgan Hill Police Department, the fingerprinting appointments can be scheduled by calling 408-776-7300 or via online at <https://calendly.com/mhpdrecords/30min>. The Morgan Hill Police Department is located at 16200 Vineyard Boulevard, Morgan Hill. The total fee is currently \$69.00 per person (\$20.00 for PD appointment and \$32 for DOJ check and \$17 for FBI check) payable at the time of the appointment. The Contractor is responsible for providing the City of Morgan Hill with updated records check information for their employees.

2-16 EMERGENCY SITUATIONS For medical or public safety emergencies occurring at the Facilities call 9-1-1. For all building maintenance emergencies (water leaks, etc.) contact the Maintenance Manager or designated staff to report the issue immediately (24 hours/day).

Please see next page for Attachment A - City of Morgan Hill Municipal Facilities Locations

**ATTACHMENT A
To EXHIBIT A**

**CITY OF MORGAN HILL
MUNICIPAL FACILITIES LOCATIONS**

DOORS AND GATES TO BE MAINTAINED AT THESE LOCATIONS		
BUILDING/FACILITY	ADDRESS	SQUARE FOOTAGE
Aquatics Center (office area)	16200 Condit Road	5,294
Centennial Recreation Center	171 West Edmundson Avenue	25,135
City Hall	17575 Peak Avenue	13,900
Community and Cultural Center and Playhouse	17000 Monterey Road	20,500; 5,000
Community Garden	Railroad Avenue	
Council Chamber Building	17555 Peak Avenue	12,104
Police Department	16200 Vineyard Boulevard	43,286
Public Works Corporation Yard	100 Edes Court	4,583
Dunne Hill Fire Station	2100 East Dunne Avenue	
El Toro Fire Station	18300 Old Monterey Road	
All other parks and City-owned properties		

EXHIBIT B
SCHEDULE OF COMPENSATION RATES

Base Bid Item #	Item	Hourly Rate	Comments
1.	Shop Rate for Door and Gate Repair Services (Monday through Friday 8:00 a.m. to 5:00 p.m.)	\$ 245.00	
2.	Overtime Rate for Door and Gate Repair Services- (Monday through Friday 5:00 p.m. to 8:00 a.m.)	\$ 495.00	
3.	Saturday, Sunday and Holidays Rate for Door and Gate Repair Services	\$ 495.00	
4.	Equipment Rate Schedule Describe Equipment & Hourly or Flat Rate	\$ N/A	included in hourly rate
5.	Mark-Up on Parts and Materials May Not Exceed 10% of Contractor's Costs	10% Mark-Up	City contract limits mark-up on parts and materials to a maximum of 10% of Contractor's Costs

EXHIBIT C
SCHEDULE OF PERFORMANCE

The Contractor shall respond to non-emergency requests for repairs within four (4) hours. After hours repair calls will be responded to within four (4) hours of opening for regular business hours of the next business day.

The Contractor shall respond to all emergency requests for repairs within two (2) hours.

CITY COUNCIL STAFF REPORT

MEETING DATE: June 19, 2024

PREPARED BY:

Chris Ghione, Public Services Director

APPROVED BY: City Manager

APPROVE THE REAL PROPERTY AGREEMENT WITH FATTORIA PUBLIC MARKET, INC. TO LEASE AND OPTION FOR SALE OF CITY OWNED AGRICULTURAL PROPERTY FOR AGRI-TOURISM DEVELOPMENT

RECOMMENDATION(S)

1. Authorize the City Manager to execute an option to lease with future option of sale of City-owned Agricultural Property to Fattoria Public Market; and
2. Authorize the City Manager to execute future lease and sale agreements as outlined in the option agreement.

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Protecting the Environment and Preserving Open Space and Agricultural Land

2024-2025 Strategic Priorities

Fiscal Sustainability

Economic Development and Tourism

Healthy Community

REPORT NARRATIVE:

In July 2015, the City Council authorized the purchase of 25.8 acres for a future baseball/softball field facility (Ball Field Property). The property is located south of the intersection of Condit Road and Tennant Avenue, adjacent to Highway 101. The property is within the unincorporated County. The purchase was made to “land bank” the property until a time when the City would have funding to develop the property. At the time of purchase of the property, it was believed that future annexation would bring the properties within the City limits, but it was also understood that if the properties were not annexed that they could be developed by the City in the County.

In 2016, the property was part of the annexation request made to the Santa Clara County Local Area Formation Commission (LAFCO). The annexation was denied by LAFCO. Several entities, including the County of Santa Clara and the Santa Clara Valley Open Space Authority have noted preferences for continued use of the site for

agriculture. In February 2019, the City Council directed City staff to look at the opportunity to find an alternate, more suitable recreation site that could allow the existing site to continue to be used for agriculture. This alternative site was identified in 2021 and the City Council approved purchase of 19.58 acres located on Monterey Road just south of Butterfield Boulevard.

With the acquisition of the new site, the former Ball Field Property was transferred to the City's Agricultural and Open Space Preservation Fund. An agricultural easement will be necessary to permanently preserve the former Ball Field Property for agriculture.

In 2022, the City has received interest from multiple parties that expressed a desire to use the City owned property for more active agricultural purposes. In June 2023, the City released a full Request for Proposals with the purpose to explore interest from private agricultural business operators for use of the City property for a mid- to long-term lease or property use arrangement. The guiding criteria for the property use was noted as:

- General agricultural use that continues to use the property productively.
- Use supports agri-tourism and economic development for the region and the City of Morgan Hill.
- Opportunity to develop a portion of the site with agri-voltaics.
- Generation of lease revenue for the City of Morgan Hill.
- Safe use of the site from a traffic and public safety perspective.
- Use is allowed under existing Santa Clara County Zoning.

On November 15, 2023, the City Council selected Terra Amico's proposal (Attachment 2) for development of the site. Since that time the owners of Terra Amico have changed the project name and formal business entity to Fattoria Public Market, Inc (FPM). The City staff have worked to develop an agreement for a lease with option to purchase in association with the development of the site by FPM. The proposed agreement is included in Attachment 1. The significant agreement points include:

Option to Lease – FPM option to lease for the due diligence and planning period of 5 years.

Term

- 5 Year Option for FPM to start lease - This allows time for planning to progress through the County development process.
- Option notification is required by June 15 of the year prior for the lease to commence on January 1 of the following year.
- 10-Year Lease Term – Upon FPM execution of lease agreement (following notification of option to lease).
- Option of Lease Extension of two additional 5 Year Terms if capital investment and goals are met:
 - Investment of \$250,000 capital dollars will provide FPM with the option to

extend lease term by 5 years.

- Investment of \$500,000 of capital dollars will provide FPM with the option to extend lease term by an additional 5 years.
- Capital Investment must be for improvements identified in agreement.
- Capital Investments are considered improvements on the property (not equipment or vehicles) that have a life expectancy of over 10 years.

Usage

- FPM shall have the right to use the property for the purposes outlined in the agreement.
- FPM shall have the right to continue basic farming use of the property.
- Other uses shall require written permission by the City.

Option to Purchase

- FPM shall have the right to purchase the property for the fair market appraised value of the property if it has made \$500,000 in investment towards the project.
 - Prior to the sale, the City will place an agricultural easement on the property permanently limiting the use of the property to agriculture.
- Note: Placement of the easement will reduce the fair market value and purchase price for the property.

City Standard Terms

- Included are City standard terms to protect the City and ensure performance by FPM, including terms on insurance, indemnity, risk management, and legal protection for the City.

COMMUNITY ENGAGEMENT:

Inform

The notice informing interested parties of the RFP was placed on the City's website. City staff also provided the RFP directly to those expressing interest in agri-tourism in the area through past communications and processes.

ALTERNATIVE ACTIONS:

The City Council could choose not to move forward with the lease and option to purchase with Fattoria Public Market, Inc. and provide alternate direction to the City staff.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

July 15, 2015 – The City Council authorized the purchase of the Ball Field Site.

February 6, 2019 – The City Council provided direction on development of the Ball Field

Site.

August 4, 2021 - The City Council approved the purchase of new park land and the transfer of the existing Ball Field site to the Agriculture and Open Space Fund.

November 15, 2023 - The City Council directed staff to enter into negotiations with Terra Amico for an agri-tourism related lease.

FISCAL AND RESOURCE IMPACT:

Revenue of \$13,000 per year will be received upon execution of the option to lease of the City-owned property, with potential increased revenue of 10% of net profits from the site being possible after development of the site. Revenues would be placed into the Agricultural and Open Space Preservation Fund. Should the option to purchase be executed in the future, millions of dollars would be expected to be paid into the Fund.

CEQA (California Environmental Quality Act):

Categorical Exemption

The option to lease is exempt under CEQA exemption Class 1 Existing Facilities as the lease itself does not require any change in use. Future development of the site requires additional environmental review.

City of Morgan Hill Request for Proposals Agricultural Farming Businesses to Lease City- Owned Agricultural Land

August 11, 2023



Agricultural Institute of Marin – The Center for Food & Agriculture (for illustrative purposes only) | Multistudio + April Philips Design Works

About Our Team

Fattoria Public Market will be a year-round indoor Farmers Market and Regional Food Hub, allowing farmers, ranchers and other local food producers to have a permanent location to distribute their goods directly to consumers and institutional buyers. By selling directly in a controlled and shared environment, agricultural producers thrive and as consumers, we connect with our local food producers to create secure, healthy food systems. As an added benefit, we preserve the rich agricultural history of Santa Clara County for future generations.

Organization Information

Organization Name

Fattoria Public Market

Contact

Joe Raineri

Phone

408-209-7667

Email

joe@fattoriapublicmarket.com

Organization Details

Terra Amico Corporation and its subsidiaries have been in business for more than 15 years, currently operating as a California C Corporation. The corporation has never been involved in litigation and is currently managed by Joe Raineri as CEO, Lisa Raineri as COO, and Trevor Raineri as Program and Marketing Director. Presently Terra Amico Corporation has a crew of 15 people. If the City of Morgan Hill awards this contract to our proposal, we plan to form a new entity, most likely a California C Corporation. As a new entity, **Fattoria Public Market** will be led by Joe and Lisa Raineri as Principals and the appointed Board of Directors, and will fill positions as appropriate based on stage and funding.

Collaboration Team Members

- Joe Raineri, Terra Amico Corporation, CEO
- Lisa Raineri, Terra Amico Corporation, COO
- Lauren Maass, Multistudio, Principal-in-Charge
- Teresa Jan, Multistudio, Director of Climate Positive Design
- Graham Smith, Multistudio, Planning
- Amanda Harper, Multistudio, Brand Experience
- Patricia Algara, BASE Landscape Architecture, Principal-in-Charge
- Dan Rubins, Fehr and Peers, Traffic Engineering Consultant
- Nahum Goldberg, NG Associates, Food Services Consultant
- Josiah Cain, Sherwood Design Engineers, Civil Engineering
- Brian Turner, CMTA, MEP Engineering
- City of Morgan Hill
- County of Santa Clara
- Julie Morris, Santa Clara County Ag Liaison
- TBD, Structural Engineering and Acoustic Consultant

Advisory Board

- Richard Furtado, Founder and Partner, South Bay Construction
- Debbie Furtado, Designer, Owner of Horse Thief Vineyards, Partner in South Bay Construction.
- Steve Borkenhagen, Founding Partner and Former Market Manager, San Pedro Square Market
- Zack Andrade, Founder and President, Spinaca Farms
- Tim Herlihy, Founder and President, Creative Manufacturing Solutions
- Jen and Sam Thorp, Founders, Owners, Farmers, Spade and Plow Organics
- Jess Brown, Executive Director, Santa Clara County Farm Bureau

1. Description of Development Proposal

This proposal is for the development of a **Public Market and Regional Food Hub** on the 25.6 acres of property at the intersection of Hwy 101 and Tennant Avenue. The working name is **Fattoria Public Market**, referring to “farm”.

Fattoria Public Market will be a year-round indoor farmer's market and food hub, purposely designed to allow local agricultural producers the opportunity to sell their goods directly to both institutional and individual consumers at their peak of freshness. The marketplace will alleviate the burden that farmers, ranchers and other agricultural producers face when struggling to sell their goods at pop-up roadside stands and weekly parking lot farmers markets. By selling directly to consumers in a predictable environment, farmers can increase their income, economically thrive and allow the South County's agricultural history to continue into the future.

Regional food hubs have been identified by the USDA as a feasible model to advance local agriculture and agricultural start up endeavors. **Fattoria Public Market** will also include a food hub that provides cold and dry storage, production facilities, packing and distribution, and cooperative marketing services. These collaborative services will make it easier for farmers to gain entry into new and additional markets with high barriers to entry for them individually.

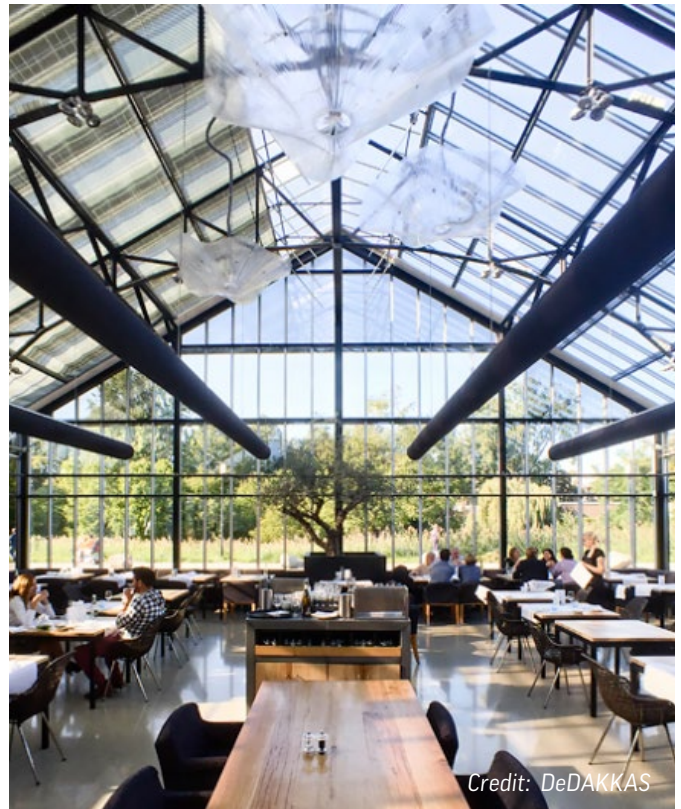
Fattoria Public Market will also be a gathering place for the community and will serve as an enhanced tourist destination within Morgan Hill. The Market will include an event facility for local public and private events, farm education programs to teach the public about the rich agricultural history of Santa Clara County, an operating farm and gardens on site, demonstration gardens, a plant nursery, winery and beer gardens, a Greenhouse Tasting Room serving local food within hours of harvest, and a food truck venue.

Fattoria Public Market will serve as a year-round destination for foodies of all ages to come together in a one of a kind space designed to unite the agricultural producers of our region with the local consumers that they serve. Its presence will support local agriculture, agritourism, and the arts while connecting South Santa Clara, San Benito, and Monterey County producers to the Bay Area markets.

Why here in South Santa Clara County/ Morgan Hill?

Increased agricultural infrastructure in our community means:

- Improved efficiency and sustainability of the local food system and increased food availability.
- Increased access to healthy foods, especially fresh produce (fruits and vegetables), in underserved communities;
- Increased support for the continued viability of agriculture;
- Increased focus on agritourism, creation of new jobs locally and development of new economic opportunities
- Opportunity for partnership with Silicon Valley Clean Energy for Agrivoltaics demonstration and usage
- Preservation of valuable farmlands
- Revenue Generation for Morgan Hill



Credit: DeDAKKAS

What is a Food Hub?

The USDA defines a food hub as a “business or organization that actively manages the aggregation, distribution, and marketing of course-identified food products primarily from local and regional producers to strengthen their ability to satisfy wholesale, retail, and institutional demand.” Agricultural infrastructure commonly is defined to encompass aggregation, packing, processing, storage, marketing and distribution capacity and facilities, including “food hubs.” The Food Hub is an extension of the core retail component of the **Fattoria Public Market**, extending the reach from individual retail consumers to industrial buyers.

What problems can it solve?

The challenge for Small-Medium Sized Agricultural Producers:

Limited Distribution and Marketing Capacity – Producers often don't have the available capital or access to facilities to store, process, and distribute their products. Furthermore, due to limited staff or lack of experience, they are not always able to devote the attention necessary to develop successful business relationships with key wholesale buyers or have the resources to develop an effective marketing strategy by themselves.

The challenge for Institutional Buyers:

Logistics – Wholesale buyers often find it too costly to purchase products directly from numerous farms and prefer to reduce transaction costs by buying product from distributors.

Consequently, regional food hubs have emerged as an effective way to overcome these infrastructural and market barriers. For those smaller and mid-sized producers who wish to scale up their operations or diversify their market channels, food hubs offer a combination of production, distribution, and marketing services that allows them to gain entry into new and additional markets that would be difficult or impossible to access on their own. For larger producers, food hubs can provide the product-differentiation strategies and marketing services to ensure the best possible price in the market place. Moreover, for wholesalers, distributors, retailers, and food service buyers who would like to purchase larger volumes of locally and regionally grown products, food hubs lower the procurement costs by providing a single point of purchase for consistent and reliable supplies of source-identified products from local and regional producers.

Regional food hubs are key mechanisms for creating large, consistent, reliable supplies of mostly locally or regionally produced foods. At the core of food hubs is a business management team that actively coordinates supply chain logistics. Food hubs work on the supply side with producers in areas such as sustainable production practices, production planning, season extension, packaging, branding, certification, and food safety—all of which is done to enable these producers to access wholesale customers, such as buyers for food service institutions and retail stores. Simultaneously, food hubs also work on the demand side by coordinating efforts with other distributors, processors, wholesale buyers, and even consumers to ensure they can meet the growing market demand for source-identified, sustainably produced, locally or regionally grown products.



Regional food hubs are increasing market access for local and regional producers. Institutional food buyers face difficulty finding small and medium sized local producers who can provide a consistent supply of product. **These hubs complement and add considerable value to the current food distribution system.**

Regional food hubs are having significant economic, social, and environmental impacts within their communities. In addition to core operational facilities, the **Fattoria Public Market** food hub can provide training and assistance in areas such as sustainable production, season extension, post-harvest handling, branding, certification and food safety.

Public markets increase agritourism opportunities for all members of the community including hotels, restaurants, wineries, and travel and leisure activities. Agritourism is becoming increasingly popular in large and small communities across the country – and for good reason. Today's travelers have become bored with mundane and predictable tourist trap activities; instead, today's travelers crave adventurous, immersive, and valuable experiences. Agri-tourism provides the unique opportunity of mutual benefit between both the community's visitors and the local farms and businesses that help establish these location's character and history. Through agri-tourism, cities and farms are able to teach the rich history of local agriculture through operations and leave a lasting impression upon curious visitors wanting to truly experience and connect with their food, drink, flora, and fauna.

Fattoria Public Market will be designed and constructed as a model for regenerative agriculture, architecture and building construction. The development seeks to demonstrate opportunities for zero waste local food infrastructure and regenerative agriculture that operates without the use of fossil fuels by utilizing both bio-based practices and technological solutions to limit our extraction of natural resources such as energy and water. Energy efficiency will be achieved through bio-climatic architecture and design, rooftop solar, agrivoltaics, and wind energy; On-site water management including permeable surfaces, bioswales and rainwater harvesting will be deployed for recharging the aquifer and reducing water use. Water efficiency including waterless urinals, composting toilets, low flow fixtures, drips, drip irrigation, and greywater treatment will be implemented. Composting, waste management stations, and biodigester will be incorporated to turn compost and manure into nutrients, and back in the soil as a demonstration of regenerative farming. The diverse crops, pollinator gardens, farm animals, and bee farming altogether provide a rich biodiverse habitat for sustainable farming, education, and agricultural tourism.

Our Vision for Fattoria Public Market

The following programming elements for the **Fattoria Public Market** create a synergy that is not only engaging and invites participation, but also educational and demonstrates sustainable living. The spaces, both interior and exterior, support adjacency of activities and encourages gathering of community agricultural and hospitality businesses.

- Main Building houses both the **Indoor Public Market** and the **Regional Food Hub**. The Indoor Public Market would allow the community to have access to local, year-round agricultural products on a consistent basis. The space would accommodate year-round producers that meet the requirements of County Health Regulations (e.g. fish mongers, butchers). The Regional Food Hub encompassing cold storage, dry storage, co-packing and collaborative services including packing, distribution and marketing. It also includes commercial kitchen for food processing and catering/food truck use.
- **Outdoor Canopy** for seasonal producers. These spaces would allow seasonal agricultural producers an opportunity to market their products efficiently without the burden of attending parking lot farmers markets and pop-up roadside stands.
- Post and beam **Indoor Event Facility** and **Outdoor Event Facility** available for use by individuals, corporate and government entities, and large-scale public events, workshops, retreat and celebration.
- **Farm to Fork Demonstration and Tasting Venue** – Farm to Fork- serving seasonal dishes featuring locally grown food that is prepared and served by local chefs within hours of being harvested.
- **Outdoor Piazza** will be centrally flanked by the Main Building, Outdoor Canopy, Indoor Event Facility, and Farm to Fork Tasting Venue. The design intent is for all indoor programming to easily expand into the Piazza to accommodate outdoor gathering and seating. The Piazza will host outdoor performances and varying gathering sizes while highlighting views of the farm.
- **Wine and Beer Garden** – allowing local winemakers and brewers to collaborate on tastings and events.
- **Co-op Farm** onsite including livestock, composting, demonstration farms, bee sanctuary, fungi lab, and gardens, and plant nursery. 3rd Party container vertical farming may also be incorporated on-site. Landscape berm might be provided along the highway to provide noise buffer.

2. Estimated Timeline of Development and Operations

Design, Documentation, and Entitlements: 1-1/2 to 2 Years

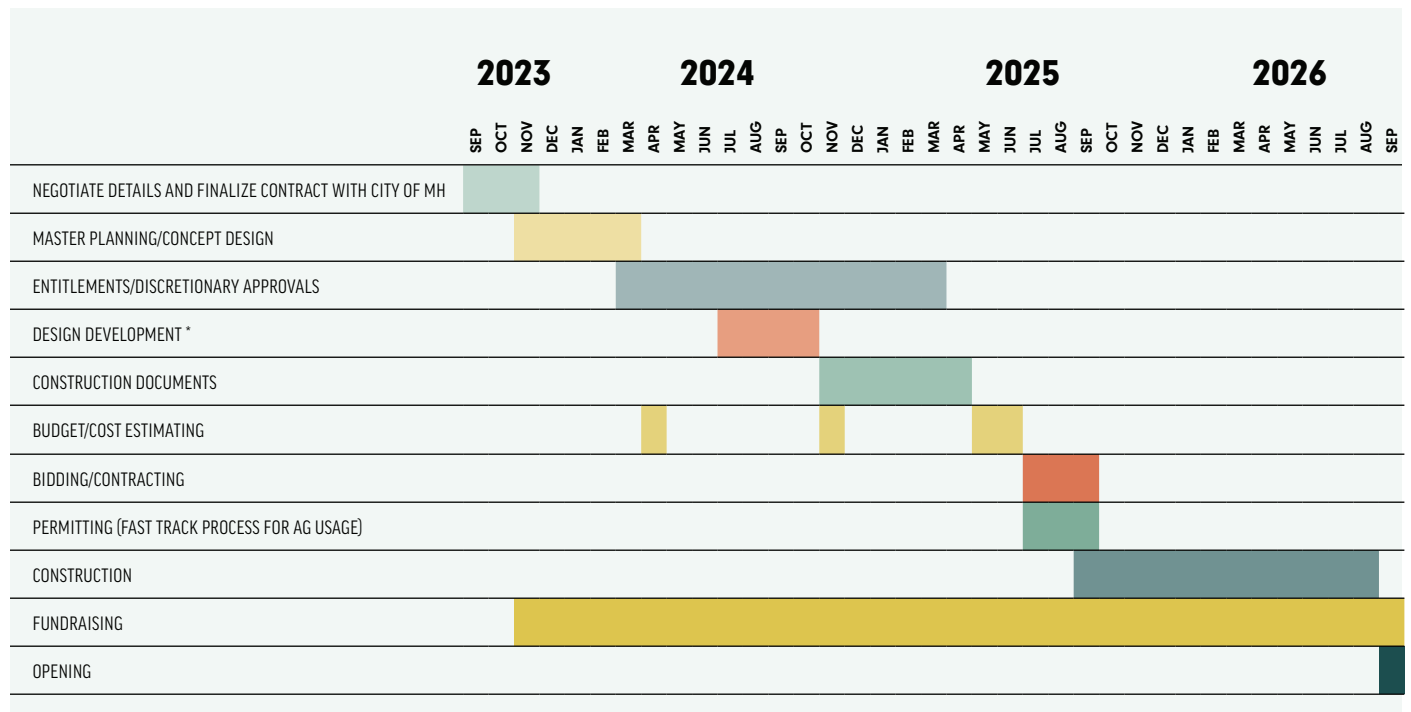
The master planning/ conceptual design phases through permitting may follow the timelines below and will include approvals from different Authorities Having Jurisdiction (AHJ's). As the proposed property is not within Morgan Hill city limits and considered part of County of Santa Clara, reviews and approvals will bridge between city and county agencies. The following list is assumed but not limited to:

- Local Fire Department
- County Health Department
- City and County zoning, planning and building review agencies
- Wet and Dry Utility Companies
- Public Right-Of-Way and Traffic Engineer AHJ

See the forthcoming section on County Zoning and Permitting for additional information.

*It is assumed that planning approval may run concurrently with design development and construction document phases. If planning approval is required prior to drawing documentation, this may add an additional 6 months to the process.

Construction Administration: 1 Year



3. Anticipated Use Levels, Target Markets, and Preliminary Vehicle Access Planning

Target Markets

- Consumers – Individual consumer, including local residents and tourists, wanting to purchase fresh, local agricultural products, learn about agricultural practices or eat and drink at an inspiring venue.
- Institutional Buyers – Industrial buyers including schools, hospitals and restaurants looking to purchase a wide array of fresh local agricultural products at wholesale pricing.

Day to Day Operations

The major uses of the property are proposed as follows:

- Year-Round Indoor Farmers Market
- Food Hub for local farmers, ranchers, and other food producers
- Event “Barn” with indoor and outdoor event spaces
- Nursery for vegetable starter plants and other native and drought tolerant species
- Wine and Beer Garden for local winemakers and brewers
- Operating farm surrounding the improvements including demonstration gardens.
- Educational programming with local public and private school districts focused on climate smart agriculture and regenerative farming in practice
- Special Events such as cooking demonstrations, cooking classes, gardening classes, seasonal pumpkin patch, “Live” Christmas tree farm, school field trips, and food truck experiences.
- Annual Community Harvest Festival highlighting the grape harvest and the South County Wine Trail. This family friendly festival can help fill the void from other Morgan Hill festivals that have been recently suspended.

Site Access and Circulation Reviews

Fehr & Peers will assist the development team by providing multimodal site access and circulation recommendations early in the process to minimize site design changes later in the environmental review process. We will participate in two site plan review cycles. With each review cycle we will help the development team refine the multimodal access and circulation of the project and assist on any traffic-related planning approval. We will focus on the following:

- Pedestrian access and circulation including street-oriented entrances, pathways to transit, driveway treatments, and pathways to parking.
- Bicycle access and circulation including routes to bike parking.
- Vehicle access and circulation including street and driveway locations and permitted driveway turn movements.
- Emergency and service vehicle access.
- On-street and off-street loading areas for transportation network companies, taxis, shuttles, trucks, and waste management/garbage truck access.
- Location of car-share parking (if any).



Credit: Xiafu Farmers' Market

4. Detailed Description of Understanding of County Zoning and Permitting

The County policies have identified this area for agricultural and resources preservation designating the site as appropriate for “Agricultural Medium Scale” land uses, designation within the “Scenic Roads Combining District,” and zoned “Agriculture Preservation.” To implement the land use and policies desired by the county, the proposed development plan aligns with the land use intent, zoning purpose, use regulations, and development standards for the A-20ac-sr zoning category of Santa Clara County. The intent is to create a mixed-use, sustainable, agriculture-based destination to demonstrate best practices through the creation of a Public Market and Food Hub.

A use permit will be required for the Event Structure and the Farm to Fork Tasting Venue to ensure that use of these elements can be supported by the site and to account for their environmental impacts. The Event Structure will be used for a variety of activities from educational to entertainment programming for people visiting the site and bringing people to the site. The Farm to Fork Tasting Venue will engage people in the preparation of local, site food resources through a test kitchen and on-site food offerings. Application will be made to the Santa Clara County Planning Commission for approval of the use permits as part of the entitlement process prior to development of the site.

All components described in this proposal are permitted under current zoning but may be subject to use permits and architectural site approval. Preliminary meetings have been held with key stakeholders in Santa Clara County who support this proposal and are supportive of its development on this parcel.

Permitted Uses:

- Food Hubs for local farmers and ranchers
- Operating Farm on site
- Demonstration Gardens
- Seed Starting and Plant Nursery
- Year-Round Indoor Farmers Market allowing farmers to sell directly to consumers
- Educational Programs and Field trips for educating children and adults about the history of agriculture in the area as well as the future of farming
- Beer Garden and Wine Garden for local brewers and vintners to sell direct to consumers.
- Greenhouse Tasting Room



Credit: Getty Salad Garden

5. Incorporation of Solar Agriculture Component (Agrivoltaics)

One of the guiding principles of **Fattoria Public Market** is to educate the community, farmers and our policy makers about farming practices that are climate smart.

Agrivoltaics is a new form of solar energy for agricultural systems that can be demonstrated on-site. We have had discussions with Tony Eulo at Silicon Valley Clean Energy and indicated a willingness to work with SVCE on an area dedicated to demonstration of an agrivoltaics system as part of the Climate Smart Agriculture program at **Fattoria Public Market**.

Some of the benefits of Agrivoltaics include:

- Farmers benefit from utilizing farmland to grow crops as well as produce energy
- Agrivoltaics protect certain plants and soils from the harmful effects of direct sun exposure all day, making them yield more, and by keeping the soil cooler they require less water.



6. Lease Payment and/or Desired Financial Agreement with the City



Credit: Restaurante Shiro Peralada

It is our understanding that the City of Morgan Hill will continue with the existing organic farm lease on a month to month basis with existing tenant until such time as we have secured all necessary approvals and permits from Santa Clara County and commence construction.

At the start of construction and development **Fattoria Public Market**, lease payments would be made to the City of Morgan Hill at the rate of \$13,000 per year. (Based on \$500/acre per ag land value.)

Fattoria Public Market opens to the public and is operating at a net profit, the City of Morgan Hill will be paid an additional 10% of net revenue from operations. (e.g. Net Revenue in 2026 is \$500,000, the City of Morgan Hill would receive an additional \$50,000)

Lessee to have an exclusive option to purchase the property anytime during the lease term at the unimproved Agricultural Land Value at the time option is exercised.

Lease term to be 15 years.



Credit: Chef Josh Sutcliff at Profound Microfarm

7. References and Past Work

Terra Amico Corporation

Terra Amico is more than just a furniture company – it's a family. Founded in 2010 by certified green builder Joe, and his wife Lisa, Terra Amico revolves around the idea of long term sustainability. It aims to create unique, stylish, and functional furniture for all spaces and needs.

Terra Amico is now one of the largest custom wood and steel furniture/fixture/millwork manufacturers in the state of California. The company has artfully handcrafted custom furnishings for thousands of clients. From homes, to restaurants, to offices, hotels and retail stores, Terra Amico furniture is present at many locations across the country and even the world.

We are a team of almost 30 people, who are passionate about what we do, and thankful for the opportunity to do what we love. In addition to fabricating unique statement pieces of furniture, we are proud to be teaching the art of woodworking to the next generation. All of our children have worked with us, as well as most of their friends. We are fortunate to be able to see our passion for creating and fabricating handed down as the torch is passed to the next generation.



San Pedro Square Market

Tom McEnery, Steve Borkenhagen

Food hall with a mix of boutique food eateries and beer, wine and cocktails. Terra Amico was the primary designer/builder of furniture, fixtures, and millwork. Salvaged and repurposed historic elements from project site.

San Jose, California

Reference

Steve Borkenhagen, Partner and Market Manager
stephen.borkenhagen@gmail.com | 408.813.5984

Relevant Program Elements

Food Hall; Public Market; Eateries; Bars



State Street Market

Bon Appetit, Los Altos Community Investments

Designed and fabricated furniture, millwork, fixtures, planters, and displays.



Los Altos, California

Reference

Robert Hindman, Managing Director Los Altos Community Investments

robert@losaltoscommunityinvestments.com | 408.841.6366

Relevant Program Elements

Food Hall

Google, Inc., eBay, Paypal, Pinterest, Amazon One Workplace, Pivot Interiors, InsideSource

Designed and fabricated furniture, millwork, fixtures, displays, office furnishings, barn doors, and various creative projects including “adult” playgrounds, dog parks and RV themed workspaces.



Nationwide

Reference

Mark Bulman, Account Executive, One Workplace

mbulman@oneworkplace.com | 408.667.4586

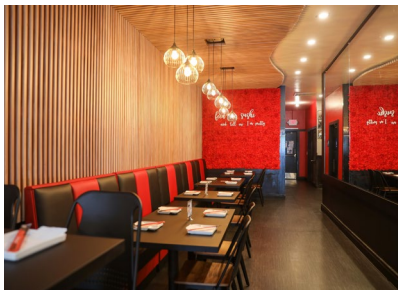
Relevant Program Elements

Creatively Enhanced Workspace; Corporate Cafes; Collaborative Work Areas

Bay Area Bars and Restaurants

Orchard City Kitchen, Paper Plane, Luna Mexican Kitchen, Sushi Confidential, Palmerinos

Designed and fabricated furniture, millwork, fixtures, displays, lighting



Northern California

Reference

Randy Musterer, Founder and CEO, Sushi Confidential

sushirandy@gmail.com | 408.761.7341

Relevant Program Elements

Restaurants; Bars

Multistudio

Multistudio has been in business for 49 years, evolving from an architecture firm to a multidisciplinary practice that also includes brand experience, city design, education design, and interiors. Our team consists of members of different backgrounds, disciplines, and practice areas to help insure that the spaces we design connect with the people they are intended for. Our process is highly collaborative and investigative. We immerse ourselves in specifics of the site and seek to uncover the unique challenges and opportunities as we aspire to establish a strong source of pride and identity for the city of Morgan Hill. We enter into this opportunity with the intention of creating an experience that improves the community's relationship to their local food system, stokes urban vitality and promotes people's health, happiness, and well-being.

The depth of our expertise in the hospitality sector helps us conceive spaces, such as the one proposed, that all visitors find welcoming, easy to navigate, and memorable. We aim to develop a compelling brand idea that can be expressed holistically over a connected system of interrelated touchpoints. These touchpoints may include physical environments, graphics and interiors, amenities and activities, digital platforms, entertainment and educational programs. Ultimately we are charged with orchestrating and enhancing a dynamic and cohesive experience that resonates with audiences and reinforces the regenerative food hub mission.

Master Plan of The Center for Food and Agriculture Marin Institute of Agriculture

A zero-waste farmers market and educational space dedicated to healthier food culture. The Center will foster deeper connections between our community and their favorite farmers' market, and advance the collective efforts for better food, a cleaner climate, and economic justice for a part of the renewed food system.



Marin, California

6,820 sqft (4.7 acre site)

Reference

Andy Naja-Riese, CEO, Agricultural Institute of Marin

andy@agriculturalinstitute.org | 415.472.6100

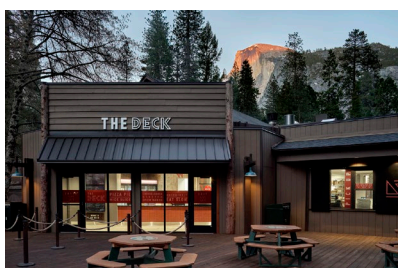
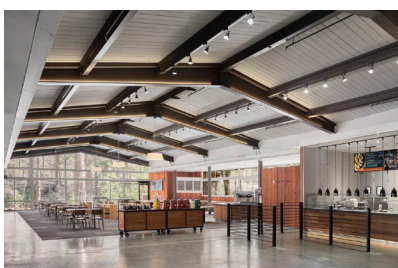
Relevant Program Elements

Visitor Center; Demo Kitchen; Workshop Meeting Rooms; PV Canopy; Plaza; Education Farm Garden; Greenhouse; Climate Garden; Learning Yurt; Farmer's Market; Restroom Stations; Cold Storage

Yosemite Valley

Aramark

Working with Aramark, we redesigned the concession spaces to maximize the enjoyment of nature; improve circulation to move visitors from entry to eating more efficiently; and celebrate the history of the park and unique story of each destination.



Yosemite National Park

18,000 sqft (Degnan's); 22,000 sqft (Base Camp); 17,800 sqft (Curry Village)

Reference

Bob Concienne, Vice President of Operations, Aramark

Concienne-Bob@aramark.com | 720.255.9548

Relevant Program Elements

Eateries

The American Royal

American Royal

The new complex is envisioned as an innovative hub for agricultural education and events that combines diverse programs, including 5,000-seat and 3,500-seat arenas, an outdoor arena, exposition barns, a museum, an exhibition hall, and outdoor festival space to host a range of industry events, rodeos, and horse shows, as well as an education and welcome center for food and agricultural education.



Kansas City, Kansas

1,000,000 sqft

Reference

Peter Lacy, President, Lacy & Company

lacy@kcnet.com | 816.531.7000

Relevant Program Elements

Auditorium, Barns, Educational Exhibits, Kids Programming, Bar, Cafe, Outdoor Plaza with Event Space, Festival Grounds

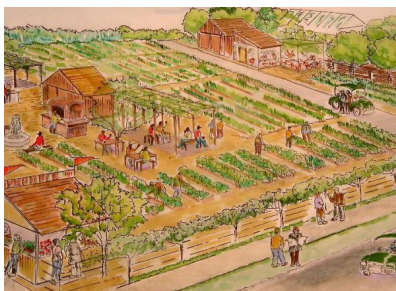
BASE Landscape Architecture

BASE Landscape Architecture is an optimistic and insatiably curious team with a portfolio that spans multiple sectors and typologies, including education and play, parks and gardens, residential, and public spaces. BASE is a Woman & Minority-Owned Business Enterprise (WMBE) and a Local Business Enterprise (LBE) in San Francisco, with another office in beautiful Portland, Oregon.

Treasure Island Job Corps Farm

Treasure Island Job Corps

The one acre Treasure Island Community Farm was designed with a strong focus on educational and highly productive agricultural programs. Patricia Algara, along with Willow Rosenthal of City Sliker Farms, and Architecture for Humanity consulted with the Job Corps center to develop a farm plan that included the farm site design and a planting plan of specific crops that had been researched and tested as the best producing crops for this area. The plan also included methods to integrate green construction of the planting beds and various structures (chicken coop, greenhouse, farm stand, etc.) that the students could perform themselves



Treasure Island, California

1 acre site

Reference

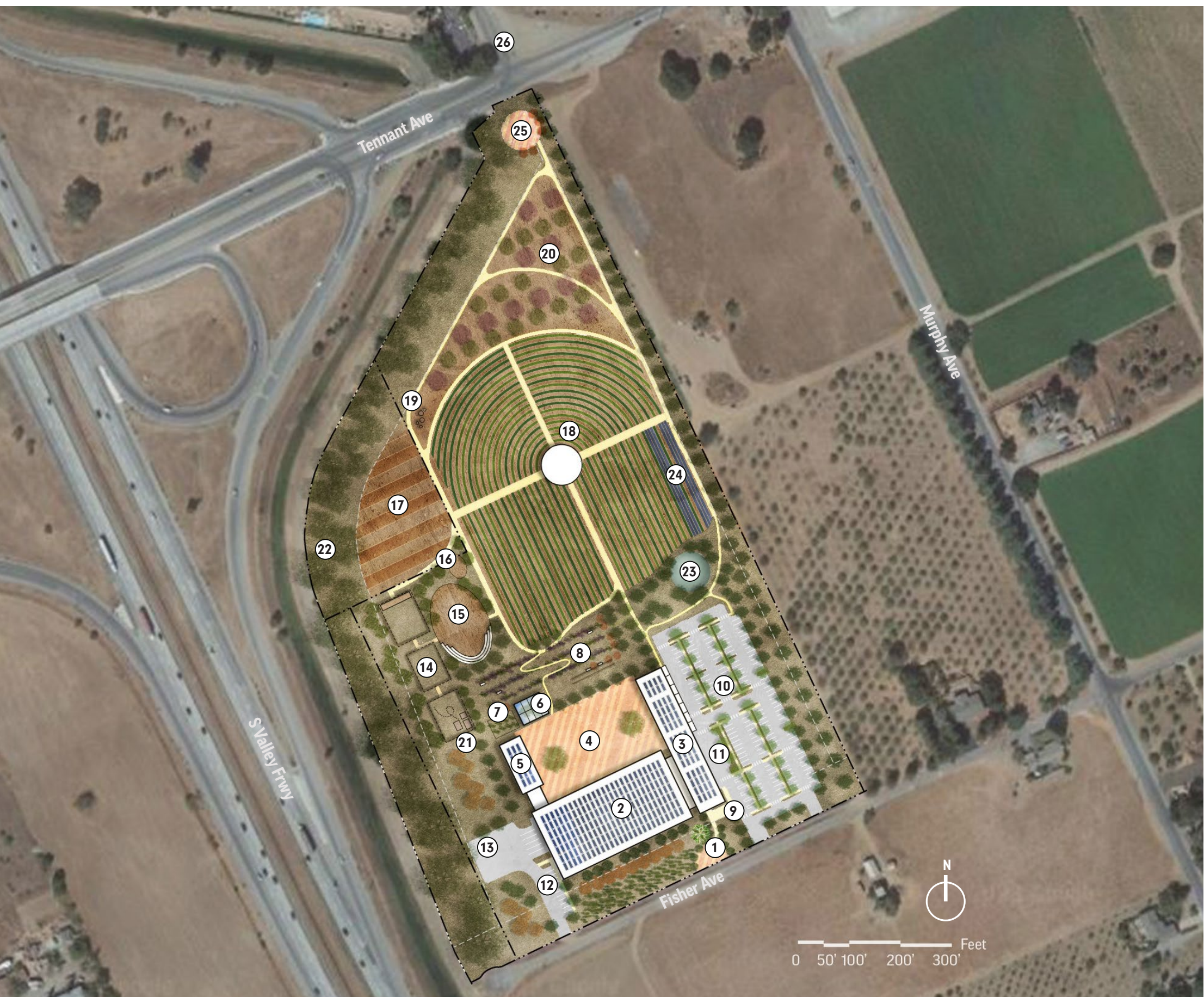
Corey Block, Farm Coordinator, Treasure Island Job Corps

coreyblock@gmail.com | 415.217.7999

Relevant Program Elements

Farm, Gardens, Greenhouse, Farm Stand

8. Conceptual Site Plan



- ① Pedestrian Entry Plaza with Wind Turbine Tree
- ② Indoor Public Market & Regional Food Hub
- ③ Outdoor Canopy
- ④ Piazza
- ⑤ Event Facility
- ⑥ Farm to Fork Tasting Venue
- ⑦ Nursery
- ⑧ Wine & Beer Garden
- ⑨ Bike Parking
- ⑩ Guest Parking
- ⑪ Rideshare Pick up / Drop off Point
- ⑫ Support Parking & Delivery
- ⑬ Waste Management
- ⑭ Domestic Animals: goats, chicken, & cows
- ⑮ Climate Educational Garden
- ⑯ Soil Lab + Biodigester
- ⑰ Compost
- ⑱ Co-op Farm
- ⑲ Fungi Lab
- ⑳ Fruit Trees Garden
- ㉑ Pollinator Shelters & Garden
- ㉒ Acoustic Orchard Berm
- ㉓ Cistern
- ㉔ Agrivoltaics
- ㉕ Pedestrian Gateway
- ㉖ Potential MoGo Stop

1. Pedestrian Entry Plaza with Wind Turbine Tree



Credit: New World Wind

2. Indoor Public Market & Regional Food Hub



Credit: Östermalms Food Hall

3. Outdoor Canopy



Credit: Harbour Market Vodice

4. Piazza



Credit: Puerto Pratal's Farmers Market

5. Event Facility



Credit: The Barn at Botley Hill by Haley Bray Photography

6. Farm to Fork
Tasting Venue

8. Wine & Beer
Garden

14. Domestic
Animals: goats,
chicken, and, cows

15. Climate
Educational Garden

16. Soil Lab +
Biodigester



Credit: DeDAKKAS



Credit: Kony V Design Atlanta Beer Garden



Credit: Goat Feeding / Freepik.com



Credit: Agricultural Institute of Marin – The Center for Food & Agriculture (for illustrative purposes only) | Multistudio + April Philips Design Works



Credit: BASE Landscape Architecture

17. Compost

18. Co-op Farm

19. Fungi Lab

21. Pollinator Shelters & Garden

24. Agrivoltaics



Credit: Hirzel Farms



Credit: reNature. agroforestry



Credit: BASE Landscape Architecture



Credit: BASE Landscape Architecture



Credit: Jacks Solar Farm by Werner Slocum NREL

REAL PROPERTY AGREEMENT

This Option to Lease and Lease with Option to Purchase ("Agreement") is entered into and becomes effective on _____ 2024 ("Effective Date"), by and between the City of Morgan Hill, a California municipal corporation ("CITY") and Fattoria Public Market, Inc., a California corporation ("LESSEE"). LESSEE and CITY are sometimes referred to herein individually as a "Party", and collectively as the "Parties."

RECITALS

- A. The CITY currently owns approximately 25.8 acres of property at the southeast corner of the intersection of Highway 101 and Tennant Avenue ("Property"), identified by assessor parcel numbers 817-14-004, 817-14-005, and 817-14-009, located in the unincorporated area of Santa Clara County adjacent to the CITY boundary. The Property is owned for the purpose of agricultural preservation. The Property is currently being used for agricultural purposes: the planting, growing, harvesting, and selling of crops.
- B. The CITY desires to find a tenant for the land that provides an agricultural benefit to the CITY for which the use is aligned with the County of Santa Clara's zoning, with the ultimate goal of transferring the Property to a third party for agricultural purposes and preservation.
- C. In June 2023, the CITY released a Request for Proposals seeking a private agricultural farming business to lease the CITY-owned agricultural land.
- D. Terra Amico, Inc. submitted a proposal for the development of a Public Market and Regional Food Hub ("Public Market") on the CITY-owned agricultural land. Fattoria Public Market, Inc. has been formed for the purpose of implementing the proposal.
- E. The Parties desire to work jointly to explore the potential use of the Property.
- F. The Parties desire to enter into an agreement by which prospective LESSEE shall have an option for a prescribed period to lease the premises.
- G. Prospective LESSEE additionally desires to acquire the exclusive right to purchase the Property under the specific terms in this Agreement.

In consideration of the matters described above and of the mutual benefits and obligations set forth in this Agreement, the Parties agree as follows:

OPTION TO LEASE

SECTION ONE.

CREATION OF OPTION

LESSEE is granted an option to lease Property owned by CITY on the terms as provided in this Agreement. This option shall be valid for five years from the Effective Date for the due diligence and planning period and must be exercised on or before the date of expiration of option, or it shall expire.

CITY may terminate this option if prospective LESSEE is not diligently pursuing entitlements for a period of 12 months or more from Santa Clara County.

SECTION TWO.

EXERCISE OF OPTION

- A. LESSEE may exercise this option to lease the Property at any time during the term of the option by giving written notice no later than June 15 of the year prior to starting the lease on January 1 to CITY of its intention to exercise the option. Notice shall be given to:

Chris Ghione, Public Services Director
17555 Peak Ave.
Morgan Hill, CA 95037

- B. CITY will prepare and deliver a written lease agreement containing terms as provided in this agreement ("Lease") and shall receive the first year's payment of rent under the Lease from LESSEE, on delivery of the executed Lease.

SECTION THREE.

FORM OF LEASE

Any Lease agreement subsequently executed by the Parties shall be drafted to comply with all local and state requirements for leases. The Lease shall be in substantially the same form as the lease form attached to this Agreement as Exhibit C.

SECTION FOUR.

AGRICULTURAL PRESERVATION

Preserving the Property for agricultural purposes is the primary goal of the CITY in entering into the Agreement. CITY reserves the right to place an agricultural easement on the Property at any time during the length of this Agreement.

SECTION FIVE.

OPTION TO PURCHASE

- A. Prospective LESSEE shall have the option during the term of the Lease to purchase the Property and the buildings and facilities located on the Property at a price based on the appraised fair market value of the Property. As described in the Lease, certain conditions precedent must be met prior to exercising the option to purchase.
- B. Prospective LESSEE must give written notice to CITY of its intention to exercise the option granted in this Section Five as described in the Lease.

- C. The fair market value of the Property shall be determined by an independent appraisal by a qualified individual or firm to be agreed to by the Parties as more specifically described in the Lease.

SECTION SIX.

STANDARD TERMS

- A. **Jurisdiction; Governing Law.** This Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of California. Jurisdiction over any disputes arising out of this Agreement shall be vested in the courts of the County of Santa Clara, State of California. Venue of any action brought in connection with the Agreement shall lie in Santa Clara County Superior Court.
- B. **Time is of the Essence.** Time is of the essence in each and all of the provisions of this Agreement.
- C. **Waiver.** The waiver by either party of a breach or event of default by the other party of any agreement herein shall not be deemed to be a waiver by that party of any covenant of the Agreement. Such waiver by either party shall not constitute a waiver of any future breach by the other party of the same or other covenants of this Agreement.
- D. **Severability** It is agreed that if any covenant, condition, or provision contained herein is held to be invalid by any court of competent jurisdiction, such invalidity shall not affect the validity of any other covenant, condition or provision herein contained.
- E. **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties hereto with respect to the subject matter hereof, and any representation or statements heretofore or contemporaneously made with respect to such subject matter, whether oral or written, are merged herein. Except as otherwise expressly provided in this Agreement, this Agreement may be altered or amended only by written instrument executed by both Parties hereto.
- F. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.
- G. **Signatures.** The individuals executing this Agreement represent and warrant that they have the legal capacity and authority to do so on behalf of their respective entities.
- H. **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.

- I. Amendments. Amendments to this Agreement may be made by mutual written agreement between the Parties.

The Parties have executed this Agreement on the day and year shown below 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: _____

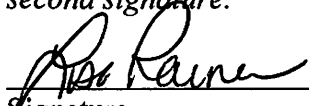
FATTORIA PUBLIC MARKET, INC.


Signature

Joe Raineri CEO
Name/Title [print]

Date: 6/4/24

Corporate entities must provide a second signature:


Signature

Lisa Raineri, Secretary
Name/Title [print]

Date: 6/4/24

Exhibit A

Capital Investments

Main Building houses both the **Indoor Public Market** and the **Regional Food Hub**. The Indoor Public Market would allow the community to have access to local, year-round agricultural products on a consistent basis. The space would accommodate year-round producers that meet the requirements of County Health Regulations (e.g. fish mongers, butchers). The Regional Food Hub encompassing cold storage, dry storage, co-packing and collaborative services including packing, distribution and marketing. It also includes commercial kitchen for food processing and catering/food truck use.

Outdoor Canopy for seasonal producers. These spaces would allow seasonal agricultural producers an opportunity to market their products efficiently without the burden of attending parking lot farmers markets and pop-up roadside stands.

Post and beam **Indoor Event Facility** and **Outdoor Event Facility** available for use by individuals, corporate and government entities, and large-scale public events, workshops, retreat and celebration.

Farm to Fork Demonstration and Tasting Venue – Farm to Fork- serving seasonal dishes featuring locally grown food that is prepared and served by local chefs within hours of being harvested.

Outdoor Piazza will be centrally flanked by the Main Building, Outdoor Canopy, Indoor Event Facility, and Farm to Fork Tasting Venue. The design intent is for all indoor programming to easily expand into the Piazza to accommodate outdoor gathering and seating. The Piazza will host outdoor performances and varying gathering sizes while highlighting views of the farm.

Wine and Beer Garden – allowing local winemakers and brewers to collaborate on tastings and events.

Co-op Farm onsite including livestock, composting, demonstration farms, bee sanctuary, fungi lab, and gardens, and plant nursery. 3rd Party container vertical farming may also be incorporated on-site. Landscape berm might be provided along the highway to provide noise buffer.

The Property shall be developed in general conformance to the Site Plan attached to the proposal, subject to the County's approval.

Site access and circulation is described in the Proposal, and is subject to review by the City and approval by the County.

Exhibit B
Proposed Uses

The major uses of the property are proposed as follows:

- Food Hub for local farmers, ranchers, and other food producers
- Event “Barn” with indoor and outdoor event spaces
- Nursery for vegetable starter plants and other native and drought tolerant species
- Wine and Beer Garden for local winemakers and brewers
- Operating farm surrounding the improvements including demonstration gardens.
- Educational programming with local public and private school districts focused on climate smart agriculture and regenerative farming in practice.
- Special Events such as cooking demonstrations, cooking classes, gardening classes, seasonal pumpkin patch, “Live” Christmas tree farm, school field trips, and food truck experiences.
- Annual Community Harvest Festival highlighting the grape harvest and the South County Wine Trail.
- Seed Starting and Plant Nursery
- Educational Programs and Field trips for educating children and adults about the history of agriculture in the area as well as the future of farming.
- Work with SVCE on an area dedicated to demonstration of an agrivoltaics system as part of the Climate Smart Agriculture program as described in the Lease.
- The continuation of basic farming.

EXHIBIT C

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PROVISIONS OF LEASE

1. **Parties and Premises.**
 - 1.1. The parties to this LEASE as described herein are the City of Morgan Hill, a California municipal corporation (“CITY”) and Fattoria Public Market, Inc., a California corporation (“LESSEE”). LESSEE and CITY are sometimes referred to herein individually as a "Party", and collectively as the "Parties."
 - 1.2. The premises to be leased are owned by the CITY consisting of approximately 25.8 acres of property at the southeast corner of the intersection of Highway 101 and Tennant Avenue (“PREMISES”), identified by assessor parcel numbers 817-14-004, 817-14-005, and 817-14-009, located in the unincorporated area of Santa Clara County adjacent to the CITY boundary. It is the intent to lease the entire PREMISES.

2. **Term.** The term of the lease (“LEASE”) shall be for ten years effective as of the Commencement Date, with the option to extend for two additional five-year periods as described below (“Lease Term”).
 - 2.1. The Commencement Date shall be January 1 in the year the LEASE begins.
 - 2.2. Option of LEASE Extension of two additional 5 Year Terms if Capital Investment and Goals are met as described in Section 9.
 - 2.3. Either Party may terminate the LEASE for cause in the event of an uncured default as set forth in Section 8 of this LEASE by providing written notice of termination to the other Party.

3. **Rent.**
 - 3.1. Base rent. Payment of rent will be due in advance of each year on the first day of the year payable at \$13,000 annually. Rent is considered late if paid more than 10 days after the due date.
 - 3.2. Profit Payments as Additional Rent. Once Fattoria Public Market opens to the public and is operating at a net profit of any amount, LESSEE shall pay to CITY an additional 10% of net profit from all income generated at the PREMISES (“Profit Payment”).
 - 3.2.1 After operations are open to the public, LESSEE shall submit financial statements to CITY as described herein:
 - 3.2.2 Net profits shall be determined by subtracting all reasonable, actual, and necessary expenses incurred and paid for the management and operation of the Public Market (“REASONABLE EXPENSES”) from the GROSS RECEIPTS generated (“NET PROFIT”), as described below.

- 3.2.3 Reasonable Expenses ("REASONABLE EXPENSES") are defined as follows:
 - 3.2.3.1 Expenses must have a direct nexus to operations and maintenance of the PREMISES or be directly related to the direct administration of operations and maintenance to be considered paid for the management and operation of the Public Market.
 - 3.2.3.2 Marketing and promotion of the Public Market shall all be considered REASONABLE EXPENSES.
 - 3.2.3.3 Capital acquisition of equipment or property over \$10,000 shall not be a REASONABLE EXPENSE unless approved in writing by the CITY prior to purchase. CITY shall consider whether the capital acquisition of equipment or property is an expense that is reasonably necessary for the operation of the Public Market when approving or disapproving the expense.
 - 3.2.3.4 The CAPITAL INVESTMENTS outlined in Section 9 shall not be included in REASONABLE EXPENSES.
 - 3.2.3.5 Loan repayment shall not be considered as a REASONABLE EXPENSE unless approved in advance by the CITY.
 - 3.2.3.6 Rent paid to the City as outlined in the shall be considered a REASONABLE EXPENSE.
- 3.2.4 GROSS RECEIPTS Defined: For the purposes of this section and this LEASE, the term "GROSS RECEIPTS" shall mean:
 - 3.2.4.1 The total amount of money LESSEE received for the use of the PREMISES to operate the Public Market;
 - 3.2.4.2 The total amount of money LESSEE received for sale of any goods, services (whether or not these services are performed as a part of or in connection with the sale of goods), and
 - 3.2.4.3 The total amount of money LESSEE received for advertising in connection with the Public Market and this LEASE.
- 3.2.5 GROSS RECEIPTS shall not include:
 - 3.2.5.1 Any sales taxes, use taxes, or excise taxes required by law to be included in or added to the purchase price and collected from the consumer or purchaser and paid by LESSEE.
 - 3.2.5.2 California Redemption Value (CRV).
 - 3.2.5.3 Refunds from, or the value of, merchandise, supplies, or equipment returned to shippers, suppliers, or manufacturers;
 - 3.2.5.4 Receipts from the sale (at cost) of uniforms, clothing, or supplies to LESSEE'S employees where such uniforms, clothing, or supplies are required to be worn or used by its employees.
 - 3.2.5.5 Receipts from any sale in which the subject of such sale, or some part thereof, is thereafter returned by the purchaser to and accepted by LESSEE, to the extent of any refund actually granted or adjustment actually made, either in the form of cash or credit.
 - 3.2.5.6 The amount of any cash or quantity discounts received from sellers, suppliers, or manufacturers.
- 3.2.6 Biannual Reports:

- 3.2.6.1 LESSEE shall transmit a Statement of Revenue and Expense in the form of a Profit and Loss Statement (Exhibit “X”), for every six-month period during the Term. Along with the Statement of Revenue and Expense, LESSEE must pay the PROFIT PAYMENT to the CITY.
- 3.2.6.2 LESSEE shall maintain and submit to the CITY monthly statistical information and reports semiannually (July-December and January- June) on the following:
 - 3.2.6.2.1 Number of Daily Visitors to the site
 - 3.2.6.2.2 GROSS RECEIPTS and net profits, expenses, and revenues.
 - 3.2.6.2.3 LESSEE shall provide statistics for all hosted major events, including estimated attendance, estimated percentage of overnight stays, average travel distance to reach the facility. MAJOR EVENTS are defined as those events where it is anticipated that there will be more than 500 attendees.
- 3.3 Taxes and Utilities.
 - 3.3.1 Taxes. As provided in Section 15 herein, and pursuant to California Revenue and Tax Code Section 107.6, lessee is responsible to pay all property taxes for the PREMISES, as well as pay all property taxes assessed against improvements it places on the PREMISES.
 - 3.3.2 Utilities. The lessee shall pay the cost of water, sewer, gas, electricity, and other public or private services as applicable to the PREMISES.

4 Usage.

- 4.1 LESSEE shall have the right to use the PREMISES for the development of a Public Market and Regional Food Hub (“Public Market”) and for the purposes outlined in its proposal and as further described in Exhibit B, including the right to continue basic farming use of the PREMISES:
 - 4.1.1 Fattoria Public Market will be a year-round indoor farmer’s market and food hub, purposely designed to allow local agricultural producers the opportunity to sell their goods directly to both institutional and individual consumers at their peak of freshness.
 - 4.1.2 Fattoria Public Market will also include a regional food hub that provides cold and dry storage, production facilities, packing and distribution, and cooperative marketing services to advance local agriculture and agricultural start up endeavors.
 - 4.1.3 Fattoria Public Market will also be a gathering place for the community and will serve as an enhanced tourist destination within Morgan Hill. The Market will include an event facility for local public and private events, farm education programs to teach the public about the rich agricultural history of Santa Clara County, an operating farm and gardens on site, demonstration gardens, a plant nursery, winery and beer

gardens, a Greenhouse Tasting Room serving local food within hours of harvest, and a food truck venue.

- 4.2 Any other uses shall require written permission from the CITY.
- 4.3 LESSEE shall work in good faith with the CITY and Silicon Valley Clean Energy towards the goal of the installation of agrivoltaics (Solar over agriculture) on the site. The CITY desires to maximize the possible use of 2.5 acres that do not have structures as potential agrivoltaics opportunity locations.
- 4.4 LESSEE shall conduct its business in a lawful manner and shall not use or permit the use of the PREMISES in any manner that will tend to create waste or a nuisance.
- 4.5 LESSEE shall comply, at its sole cost and expense, with any and all laws, ordinances, rules, regulations, or orders of any federal, state, or local government which may apply to the operation of the Public Market and Regional Food Hub.
- 4.6 LESSEE shall conduct farming of the PREMISES in full compliance with all local, state, and federal rules regarding the use of fertilizers and pesticides.
- 4.7 PREMISES are leased to lessee on an “as is” basis. Prior to entering into this LEASE, LESSEE has made a thorough and independent examination of the PREMISES and all matters relating to LESSEE's decision to enter into this LEASE. LESSEE is thoroughly familiar with all aspects of the PREMISES, including its historical use for agricultural purposes, and is satisfied that they are in any acceptable condition and meet LESSEE's needs. LESSEE hereby accepts the PREMISES in its condition existing as of the Commencement Date or the date that LESSEE takes possession of the PREMISES, whichever is earlier. CITY shall have no obligation for construction work or improvements on the PREMISES, and CITY's contribution to the construction and improvements consists only of delivery of possession of the PREMISES to LESSEE in their as-is condition and with all existing faults, if any.

5 Maintenance and Alterations.

- 5.1 LESSEE shall take good care of the PREMISES and keep the PREMISES in good working order and in a clean, safe and sanitary condition according to the best practices of the industry.
- 5.2 It is intended that LESSEE shall make significant improvements to the PREMISES as described in its proposal, as further outlined in Exhibit A, at its own cost and expense (“CAPITAL INVESTMENTS”), and LESSEE may make other improvements, installations, alterations, or additions to the PREMISES subject to CITY approval (collectively referred to as “Alterations”).
- 5.3 Any Alterations shall not be made without CITY’s prior written consent.
 - 5.3.1 Along with any request for consent, and prior to submittal to the County for permitting, LESSEE will deliver to CITY schematic plans for the development of the demised PREMISES and names and addresses of all prospective contractors for the Alterations.
 - 5.3.2 CITY shall review the “schematic plans” within 60 days after their submission. LESSEE shall address all concerns raised by CITY prior to submittal to the County.
 - 5.3.3 Prior to submittal to the County, LESSEE shall submit to CITY “working drawings” that are intended to be submitted to the County for permitting,

- for development of the demised PREMISES. CITY will review the working drawings within 60 days after their submission. LESSEE shall address all concerns raised by CITY prior to submittal to the County.
- 5.3.4 LESSEE will submit working drawings to County of Santa Clara for plan check and pay such fees as may be required by the County and diligently pursue any needed permits for construction.
- 5.3.5 LESSEE will cause all approved Alterations to be constructed (i) in a good and workmanlike manner, (ii) in compliance with all Applicable Laws (State of California, County of Santa Clara, and City of Morgan Hill laws), and (iii) in accordance with the Rules and Regulations and with any design guidelines established by CITY.
- 5.4 LESSEE shall pay the cost and expense of all Alterations. Prior to commencing any Alterations, LESSEE shall deliver the following to CITY in form reasonably satisfactory to CITY: (i) builder's insurance ("Builder's Risk") in an amount at least equal to the replacement value of the Alterations, and (ii) evidence that LESSEE and each of LESSEE's contractors have in force commercial general liability insurance insuring against construction related risks in at least the form, amounts and coverages required of LESSEE under Section 6. The insurance policies described in clauses (ii) and must name CITY as additional insureds.
- 5.4.1 CITY may inspect construction of the Alterations. Immediately upon completion of any Alterations, LESSEE will furnish CITY with contractor affidavits and full and final lien waivers and receipted bills covering all labor and materials expended and used in connection with the Alterations.
- 5.4.2 All Alterations LESSEE makes or causes to be made to the PREMISES become the property of the CITY upon installation and inspection by the CITY, excluding movable trade fixtures, equipment, and furniture. Title to all improvements placed on the PREMISES by either Party shall vest in CITY upon completion and acceptance by the CITY.
- 5.5 LESSEE will keep the PREMISES free from any mechanics', material providers', or other liens arising out of any work performed, materials furnished or obligations incurred by or for LESSEE. In the event that LESSEE shall not, within ten (10) days following the imposition of any such lien, cause the lien to be released of record by payment or posting of a proper bond, CITY shall have, in addition to all other remedies provided herein and by law, the right but not the obligation to cause any such lien to be released by such means as it shall deem proper, including payment of the claim giving rise to such lien. All such sums paid by CITY and all expenses incurred by it in connection therewith (including, without limitation, reasonable counsel fees) shall be payable to CITY by LESSEE upon demand. CITY shall have the right at all times to post and keep posted on the PREMISES any notices permitted or required by law or that CITY shall deem proper for the protection of CITY, the PREMISES, from mechanics' and material providers' liens.

6 Insurance Types and Amounts; Indemnity

- 6.1 Insurance. LESSEE shall procure and provide proof of the insurance coverage required by this section in the form of certificates and endorsements. The required insurance must cover the activities of LESSEE, including liability for damage or

injury to the property or person (including death) of any LESSEE, contractor of lessee, sublessee, or invitee of LESSEE or any other person entering upon or using the PREMISES, or any structure thereon, or any part thereof, and arising from LESSEE's use and occupancy thereof, and must remain in full force and effect at all times during the period covered by this LEASE. 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. LESSEE further understands that CITY reserves the right to modify the insurance requirements set forth herein, with thirty (30) days' notice provided to LESSEE, at any time as deemed necessary to protect the interests of CITY. The procurement of the required insurance will not be construed to limit LESSEE's liability under this LEASE or to fulfill LESSEE's indemnification obligations under this LEASE. LESSEE shall, at lessee's sole cost and expense, obtain and keep in effect during the Term:

- 6.1.1 Commercial General Liability (CGL). LESSEE shall maintain CGL 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 LESSEE under LESSEE's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.
 - 6.1.1.1 CGL policy may not exclude explosion, collapse, underground excavation hazard, or removal of lateral support.
 - 6.1.1.2 CGL policy must include contractor's protected coverage, blanket contractual, and completed operations.
- 6.1.2 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.
- 6.1.3 Automobile Liability. LESSEE shall maintain Automobile Liability covering all owned, non-owned and hired automobiles (if LESSEE does not own automobiles, then LESSEE 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 LESSEE under LESSEE's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.
- 6.1.4 Workers' Compensation Insurance and Employer's Liability. LESSEE shall maintain Workers Compensation coverage, as required by law, in the minimum amount of: (i) one million dollars (\$1,000,000.00) for any one accident or occurrence, or (ii) the maximum amount of such insurance available to LESSEE under LESSEE's combined insurance policies

- (including any excess or “umbrella” policies), whichever is greater. If LESSEE is self-insured, LESSEE shall provide its Certificate of Permission to Self-Insure, duly authorized by the Department of Industrial Relations.
- 6.1.5 Pollution (Environmental) Liability: If the performance of LESSEE’s work or service under this LEASE involves hazardous materials, contaminated soil disposal, and/or a risk of accidental release of fuel oil, chemicals or other toxic gases or hazardous materials, LESSEE shall procure and maintain Pollution Liability covering LESSEE'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 LEASE. 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 LESSEE under LESSEE’s combined insurance policies (including any excess or “umbrella” policies), whichever is greater.
- 6.1.6 Professional Liability: If the performance of LESSEE’s work or service under this LEASE involves professional and/or technical services (examples include, but are not limited to, architects, engineers, land surveyors, legal services, and appraisers), LESSEE 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 LESSEE under LESSEE’s combined insurance policies (including any excess or “umbrella” policies), whichever is greater. Further, if LESSEE maintains a claims-made policy, LESSEE shall provide written evidence of such insurance to CITY for at least five (5) years after the completion of work performed under this LEASE.
- 6.1.6.1 If the Lessee will utilize the services of a Professional Consultant to perform work associated with the improvements, then Lessee may opt to have the professional liability coverages provided by Lessee’s Professional Consultant, provided that a written contract is executed between Lessee and the Professional Consultant whereby the written contract specifically requires the Professional Consultant to fulfill the City insurance requirements as outlined in this Agreement. Verification of the written contract must be provided to City upon request.
- 6.1.7 Property insurance against all risks of loss to any tenant improvements or betterments, at full replacement cost with no coinsurance penalty provision.
- 6.2 Endorsements. LESSEE shall provide proof of the following endorsements, listed for each policy for which endorsements are required, as outlined below:
- 6.2.1 General Liability, Automobile, and Pollution Liability.

- 6.2.1.1 “Additionally Insured” endorsements naming the City of Morgan Hill, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers as additional insureds; and
 - 6.2.1.2 “Primary and Non-Contributing” endorsements stating that the policy is primary non-contributing.
 - 6.2.2 For all Policies except Builder’s Risk and Professional Liability.
 - 6.2.2.1 “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 the CITY’s elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers.
 - 6.2.3 General Liability:
 - 6.2.3.1 “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.
- 6.3 Qualification of Insurers. All insurance required pursuant to this LEASE 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.
- 6.4 Certificates. LESSEE shall furnish CITY with copies of all certificates as outlined herein, whether new or modified, promptly upon receipt. In the event of a claim or legal action, LESSEE shall promptly furnish CITY of Morgan Hill with copies of all policies outlined herein. No policy subject to this LEASE shall be canceled or materially changed except after thirty (30) days’ notice by the insurer to CITY. Certificates, including renewal certificates, may be mailed electronically to riskmgmt@morganhill.ca.gov or delivered to the Certificate Holder address as follows:
 - City of Morgan Hill
 - Attn: Risk Management
 - 17575 Peak Avenue
 - Morgan Hill, CA 95037
- 6.5 Indemnity. LESSEE shall indemnify, protect, defend and save and hold CITY, and its respective trustees, directors, officers, agents and employees, harmless, from and against any and all losses, costs, liabilities, claims, damages and expenses, including, without limitation, reasonable attorneys’ fees and costs and reasonable investigation costs, incurred in connection with or arising from: (a) any default by LESSEE in the observance or performance of any of the terms, covenants or conditions of this LEASE on LESSEE’ s part to be observed or performed, or (b) the use or occupancy or manner of use or occupancy of the PREMISES by LESSEE or any person or entity claiming through or under LESSEE, or (c) the condition of the PREMISES or any occurrence on the PREMISES from any cause whatsoever, except to the extent caused by the gross negligence or willful misconduct of CITY,

or (d) any acts, omissions or negligence of LESSEE or of the contractors, agents, servants, employees, visitors, customers, or licensees of LESSEE, in, on or about the PREMISES. LESSEE' s obligations under this Section 6 shall survive the termination of the LEASE.

7. **Damage or Destruction.**

7.1 Definition. The term “casualty”, for purposes of this LEASE, includes (but is not limited to) the following acts or events:

7.1.1 Extreme events of nature including but not limited to fire, flood, bad weather, earthquake, and other similar occurrences;

7.1.2 Any act of war, terrorism, or bio- terrorism, where “bio- terrorism” shall mean the release (or threatened release) of an airborne agent or other contaminant that is or could adversely affect the Building or its occupants.

7.2 This section applies only to property in which title has vested in the CITY. Specifically excluded is any property which LESSEE is constructing pursuant to this LEASE prior to acceptance by and transfer of title to the CITY.

7.3 If the PREMISES or any portion thereof are damaged by fire or other Casualty, CITY shall forthwith repair the same (except for Alterations installed by or on behalf of LESSEE for which title has not yet passed to CITY) provided that such repairs can be made within one hundred eighty (180) days after the date of such damage under the laws and regulations of the federal, state and local governmental authorities having jurisdiction thereof and are covered by the proceeds of any insurance maintained by CITY. In such event, this LEASE shall remain in full force and effect except that LESSEE shall be entitled to a proportionate reduction of Base Rent and Additional Rent while such repairs are being made as provided below.

7.3.1 Within thirty (30) days after the date of such damage, CITY shall notify LESSEE whether or not such repairs are covered by any insurance maintained by CITY and whether such repairs can be made within one hundred eighty (180) days after the date of such damage. CITY's determination thereof shall be binding on LESSEE.

7.3.2 If such repairs cannot be made within one hundred eighty (180) days from the date of such damage or such damage is not so covered by insurance, CITY shall have the option within thirty (30) days after the date of such damage to notify LESSEE of its election to terminate this LEASE as of a date specified in such notice, which date shall not be less than thirty (30) nor more than sixty (60) days after notice is given. If CITY notifies LESSEE that or such damage is not so covered by insurance, CITY shall either: (a) notify LESSEE of CITY' s intention to repair such damage, in which event this LEASE shall continue in full force and effect, CITY shall diligently prosecute such repairs to completion, and the Base Rent and Additional Rent shall be reduced as provided herein; or (b) notify LESSEE of CITY's election to terminate this LEASE as of a date specified in such notice, which date shall be not less than thirty (30) nor more than sixty (60) days after notice is given. If such notice to terminate is given by CITY, this LEASE shall terminate on the date specified in such notice.

- 7.3.3 In case of termination, the Base Rent and Additional Rent shall be reduced by a proportionate amount based upon the extent to which such damage interfered with the business carried on by LESSEE in the PREMISES, and LESSEE shall pay such reduced Base Rent and Additional Rent up to the date of termination. CITY agrees to refund to LESSEE any Base Rent and Additional Rent previously paid for any period of time subsequent to such date of termination.
- 7.3.4 The repairs to be made hereunder by CITY shall not include, and CITY shall not be required to repair, any damage by fire or other cause to the property of LESSEE or any damage caused by the negligence of LESSEE, its contractors, agents, licensees or employees or any repairs or replacements of any paneling, decorations, railings, floor coverings, or any Alterations, additions, fixtures, or improvements installed on the PREMISES by or at the expense of LESSEE.
- 7.3.5 If CITY elects or is required hereunder to repair, reconstructor restore the PREMISES after any damage or destruction thereto, LESSEE shall, at its own expense, as soon as reasonably practicable, replace or fully repair, reconstruct or restore all Alterations installed by LESSEE and all other of LESSEE's improvements, fixtures, and property. LESSEE hereby waives the provisions of any statute or law that may be in effect at the time of the occurrence of any such damage or destruction, under which a lease is automatically terminated, or a LESSEE is given the right to terminate a lease upon such an occurrence.
- 7.4 LESSEE shall have no interest in or claim to any portion of the proceeds of any insurance or self-insurance maintained by CITY. Except as otherwise provided herein, CITY shall have no interest in or claim to any portion of the proceeds of any insurance maintained by LESSEE under Section 6.
- 7.5 LESSEE agrees at all times after any damage to or destruction of the improvements on the PREMISES, or any portion thereof, to continue the operation of its business therein to the extent practicable. If CITY is required or elects to make any repairs, reconstruction or restoration of any damage or destruction to the PREMISES under any of the provisions of this Section 7, LESSEE shall not be entitled to any damages by reason of any inconvenience or loss sustained by LESSEE as a result thereof. During the period commencing with the date of any such damage or destruction that CITY is required or elects hereunder to repair, reconstruct or restore, and ending with the completion of such repairs, reconstruction or restoration the Base Rent and Additional Rent shall be proportionately reduced based upon the extent to which such damage and the making of such repairs by CITY shall interfere with the business carried on by LESSEE in the PREMISES. The full amount of Base Rent and Additional Rent shall again become payable immediately upon the completion of such work of repair, reconstruction, or restoration. Except as expressly hereinabove provided, there shall be no reduction, change or abatement of any rental or other charge payable by LESSEE to CITY hereunder, or in the method of computing, accounting for or paying the same.

8. [Default and remedies.](#)

- 8.1 Default by Lessee. LESSEE shall commit an event of default in the event that:
- 8.1.1 LESSEE shall fail to remit any payment due to CITY under Section 3 of this LEASE within ten (10) business days after receipt by LESSEE of the CITY's written demand,
 - 8.1.2 LESSEE or any of its officers, employees, agents, invitees, subtenants or licensees violates any other term, covenant or condition of this LEASE and such violation continues beyond thirty (30) days after CITY has provided written notice thereof to LESSEE, or if the nature of the cure of such term, covenant or condition reasonably requires more than thirty (30) days to remedy, if LESSEE does not commence the cure of such term, covenant or condition within such thirty (30) day period and diligently pursue such cure to completion thereafter,
 - 8.1.3 LESSEE ceases to use the PREMISES or to operate its services as set forth in Exhibit B beyond thirty (30) days after CITY has given written notice to resume operation, or
 - 8.1.4 If a trustee or receiver is appointed to take possession of substantially all of LESSEE's assets located in the PREMISES or of LESSEE's interest in this LEASE, where possession is not restored to LESSEE within thirty (30) days.
- 8.2 Remedy. On the occurrence of any such event of default, CITY may elect to terminate this LEASE (which termination shall be evidenced by a written notice of termination from CITY to LESSEE) and resume possession of the PREMISES, thereafter using the same for its own purposes without having to account to LESSEE therefor. Any partial payment of any payment due to CITY under this LEASE from LESSEE and accepted by CITY shall not render ineffective any notice given by CITY to the LESSEE pursuant to the terms of this LEASE or California Code of Civil Procedure Section 1161, *et seq.*, or any successor statute thereto.
- 8.3 Default by City. CITY shall not be in default unless CITY fails to perform its obligations under this LEASE within a reasonable time, but in no event later than thirty (30) days after written notice by LESSEE to CITY specifying wherein CITY has failed to perform such obligations. If the nature of CITY'S obligation is such that more than thirty (30) days are required for performance, then CITY shall not be in default if CITY commences performance within such thirty (30) day period and thereafter diligently prosecutes the same to completion. LESSEE'S obligation to provide written notice to CITY of a default by CITY is limited to those instances where knowledge of CITY'S default is within the actual knowledge of LESSEE.
- 8.4 Remedies: If CITY fails to cure a prospective default within the time periods outlined above, LESSEE shall have the option to cure the default or to terminate this LEASE, in addition to any other remedies at law not inconsistent herewith. Should LESSEE elect to cure the default, all reasonable costs associated with such cure, including reasonable attorneys' fees incurred and awarded as a result of any legal action or proceeding brought to enforce or interpret this LEASE (if any), shall be reimbursed by CITY to LESSEE within thirty (30) days of receipt of LESSEE'S invoice for said costs which shall be accompanied by invoice and receipts to document LESSEE'S cost to cure said default, and by any Court Order awarding

reasonable attorney's fees incurred to cure said default. However, upon CITY'S failure to so reimburse LESSEE within thirty (30) days of receipt of LESSEE'S invoice for said costs, at LESSEE'S option, said costs shall be deducted from rent due hereunder. If CITY'S default hereunder prevents LESSEE'S use of the PREMISES, there shall be an abatement of rental payments for the period of such non-use.

9. **Capital Investments.**

- 9.1 Capital investments are described in detail in the LESSEE's proposal and in Exhibit A to the Real Property Agreement ("CAPITAL INVESTMENTS").
- 9.2 Investment of \$250,000 Capital Dollars will provide the Parties with the option to extend Lease Term by 5 years.
- 9.3 Investment of \$500,000 cumulative Capital Dollars will provide the Parties with the option to extend Lease Term by an additional 5 years.
- 9.4 CAPITAL INVESTMENTS must be for improvements identified in proposal (Exhibit A to the Real Property Agreement)
- 9.5 CAPITAL INVESTMENTS are considered improvements on the PREMISES (not equipment or vehicles) that have a life expectancy of over 10 years.
- 9.6 CAPITAL INVESTMENTS shall include at least 75% hard cost investment in improvements to the PREMISES.
- 9.7 Soft costs such as permitting, engineering, and design costs may be counted up as up to 25% of the investment.
- 9.8 Hard and soft costs must be documented through detailed receipts, clearly documenting labor, materials, and any other related costs and expenses.
- 9.9 Operational expenses, maintenance expenses, and repairs to the PREMISES shall not be included as investment.

10. **Option to Purchase**

- 10.1 Option. LESSEE is granted an exclusive option to purchase the PREMISES on the terms and conditions of this Section 10 ("Option Agreement").
- 10.2 Consideration. Consideration for the option is the commitment by the LESSEE to develop the PREMISES with the Capital Improvements as described in Section 9 above and use the PREMISES as described in Exhibits A and B to the Real Property Agreement.
- 10.3 Option Term. The option may be exercised at any time during the term of the LEASE, and any extended term, as described above in Section 2 ("Option Term"), provided the requirements described in Section 9 above are met.
 - 10.3.1 LESSEE may not exercise the option during any holdover period.
 - 10.3.2 LESSEE may not be in default of the LEASE.
 - 10.3.3 The purchase option terminates on the termination of the LEASE for any reason.
- 10.4 Exercise. LESSEE may exercise this option to purchase the PREMISES at any time during the Option Term by giving written notice to CITY of its intention to exercise the option. The exercise must be exercised without condition or qualification. Notice shall be given to:

Chris Ghione, Public Services Director
17555 Peak Ave.
Morgan Hill, CA 95037

- 10.5 Purchase Price. The purchase price shall be for the fair market appraised value of the PREMISES as described herein:
 - 10.5.1 Fair Market Value shall be based on the unimproved agricultural land value at the time option is exercised.
 - 10.5.2 Value of improvements constructed on site by LESSEE described in Section 9 above at the PREMISES shall be excluded from the calculation of Fair Market Value.
 - 10.5.3 No portion of the rent payments shall be counted towards the purchase price.
 - 10.5.4 No rent refunds are due LESSEE if option is to exercised.
- 10.6 Selection of appraiser. The appraiser shall be selected by the mutual agreement of the Parties.
 - 10.6.1 The appraiser selected to prepare the appraisal of the PREMISES shall be MAI certified.
 - 10.6.2 The LESSEE (Buyer) shall pay for the appraisal.
 - 10.6.3 If the Parties are unable to mutually agree upon an appraiser, each will cause an independent appraisal to be prepared by a MAI certified appraiser at the expense of the LESSEE. The average of the two appraisals shall constitute the purchase price.
- 10.7 Agricultural Easement. CITY reserves the right to place an agricultural easement on the PREMISES at any time during the length of this Option Agreement. The Parties acknowledge that the process of granting an easement is approximately twelve months and accept this time frame as part of the purchase process. The intent of the easement is to preserve the PREMISES' agricultural nature, but not preclude the right to develop improvements listed in Exhibit A and to operate facilities in a manner consistent with the proposal as described in Exhibit B.
- 10.8 Real Estate Purchase and Sale Agreement. The CITY shall cause a Real Estate Purchase and Sale Agreement ("Purchase Agreement") be prepared and transmitted to Buyer upon receipt of notice to exercise the option.
- 10.9 Representations and Warranties. CITY warrants that CITY is the owner of the PREMISES and has marketable and insurable fee simple title to the PREMISES clear of restrictions, leases, liens, and other encumbrances, except as permitted in the Purchase Agreement. If this option is exercised by LESSEE, CITY will convey title to the PREMISES by grant deed. During the Option Term and until the PREMISES is conveyed to LESSEE, if this option is exercised, CITY will not encumber the PREMISES in any way nor grant any property or contract right relating to the PREMISES without the prior written consent of LESSEE.
- 10.10 Quitclaim Deed. Because an option potentially clouds title to property, if this Option Agreement is terminated, LESSEE agrees, if requested by CITY, to execute, acknowledge, and deliver a quitclaim deed to CITY within ten (10) days after termination and to execute, acknowledge, and deliver any other documents required by any title company to remove the cloud of this option from the PREMISES.

- 10.11 Assignment or Transfer. LESSEE may not assign or transfer this option described in this LEASE and the rights under it without CITY's prior written consent.
 - 10.12 Litigation Costs. If any legal action or any other proceeding, including arbitration or action for declaratory relief, is brought for the enforcement of this Option Agreement or because of an alleged dispute, breach, default, or misrepresentation in connection with this Option Agreement, the prevailing party shall be entitled to recover reasonable attorney fees and other costs, in addition to any other relief to which the party may be entitled. "Prevailing party" shall include without limitation:
 - 10.12.1 A party who dismisses an action in exchange for sums allegedly due;
 - 10.12.2 The party who receives performance from the other party of an alleged breach of covenant or a desired remedy where that is substantially equal to the relief sought in an action; or
 - 10.12.3 The party determined to be the prevailing party by a court of law.
 - 10.13 Time of Essence. Time is of the essence for this Option Agreement. If the option is not exercised in the manner provided in this Section 10 before the expiration of the Option Term, LESSEE shall have no interest in the PREMISES and the option may not be revived by any subsequent payment or further action by LESSEE.
 - 10.14 Survival. The terms of this Option Agreement shall survive the close of escrow of the PREMISES unless there is a contradiction between the Real Estate Purchase and Sale Agreement and this Option Agreement, in which event the Real Estate Purchase and Sale Agreement shall control.
11. **Assignment and Subleasing.** The operations of the Project at the PREMISES anticipates that LESSEE will sublease certain portions of the PREMISES to third parties.
- 11.1 Subleasing. Any subleasing of the PREMISES in excess of fifty percent of the PREMISES or in excess of six months requires CITY's prior written consent, which shall not be unreasonably withheld.
 - 11.2 Assignment. Except as described in Section 11.1, LESSEE is prohibited from assigning, transferring, mortgaging or otherwise transferring or encumbering all or any part of the LEASE without CITY's prior written consent, which shall not be unreasonably withheld.
12. **Nondiscrimination.** LESSEE covenants by and for itself, its heirs, executors, administrators, and assigns, and all persons claiming under or through them, and this LEASE is made and accepted upon and subject to the following conditions: that there shall be no discrimination against or segregation of, any person or group of persons on any basis prohibited by State or Federal law, including but not limited to on the basis of race, color, creed, religion, gender, sexual orientation, marital status, national origin, or ancestry, in the leasing, subleasing, transferring, use, occupancy, or enjoyment of the portion of the PREMISES herein leased nor shall the LESSEE, or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, invitees, LESSEE's, subtenants, or vendees in the portion of the PREMISES herein leased.

13. **Hazardous Materials.**

13.1 LESSEE shall not keep or maintain any Hazardous Substance on or in the PREMISES without CITY's prior written approval. LESSEE shall promptly give notice to CITY of any Hazardous Substance dispersal or spill, or Hazardous Substance claim, of which it is aware. LESSEE shall defend, with counsel acceptable to CITY, indemnify and hold CITY harmless from any and all claims, costs, damages, penalties, or liabilities arising out of the LESSEE's use or release of any Hazardous Substance at, in, or on the PREMISES dated from the time the LESSEE occupied the PREMISES.

13.2 The term "Hazardous Substance" as used in this LEASE shall mean any products, substances, chemical, material, or waste whose presence, nature, quantity, and/or intensity of existence, use, manufacture, disposal, transportation, spill, release, or effect, either by itself or in combination with other materials expected to be on the PREMISES, is either (a) potentially injurious to the public health, safety, or welfare, the environment, or the PREMISES, (b) regulated or monitored by any governmental authority, or (c) a basis for liability of CITY to any governmental agency or third-party under any applicable statute or common law theory. Hazardous Substance shall include, but not be limited to, hydrocarbons, MTBE, petroleum, gasoline, crude oil, or any products, by-products, or fractions thereof.

14. **Termination.**

14.1 At the end of the term or upon the earlier termination of this LEASE, LESSEE shall deliver to CITY possession of the PREMISES and all of the fixtures and equipment of CITY in their original condition in all respects, reasonable use and wear excepted. LESSEE agrees to reimburse CITY for the cost of any alterations, replacement, repairs or cleaning required to restore the same to such condition; provided, however, in the event LESSEE has caused any alterations, additions or improvements to be made to the PREMISES, including but not limited to the Capital Improvements described in Section 9 (which such alterations or improvements shall be made at LESSEE's cost and only with the prior express written approval of CITY in each instance), CITY may elect, with respect to each such alteration, addition or improvement, to accept it as it was at the time it was made or constructed, reasonable use and wear excepted, or to require the same to be restored to its original condition at LESSEE's expense.

14.2 Holding Over. If LESSEE continues to occupy the PREMISES after the term of this LEASE has expired or terminated in any manner and CITY has not objected thereto, such holding over shall be deemed a month-to-month agreement to use the PREMISES at the monthly rent (determined by prorating the annual rent to a monthly basis) applicable to the last month of the Lease Term terminable on thirty (30) days' notice given by either Party (the "Hold-Over Agreement"). All other terms and conditions as provided in this LEASE shall remain in full force and effect.

14.3 Notwithstanding the foregoing, nothing contained in this LEASE shall give LESSEE any right to occupy the PREMISES at any time after expiration of the term of this LEASE or its earlier termination.

- 14.4 Waiver Of Relocation Assistance. LESSEE acknowledges and agrees that upon such expiration or termination, it shall not be entitled to any relocation assistance or payment pursuant to the provisions of Title 1, Division 7, Chapter 16, of the Government Code of the State of California (Section 7260 *et seq.*) or pursuant to any other laws or regulations with respect to any relocation of its business or activities upon the expiration of the term of this LEASE or upon its earlier termination or upon the termination of any holdover tenancy pursuant to this Section 14.
- 14.5 If LESSEE shall continue to occupy the PREMISES after the term of this LEASE has expired or terminated in any manner and CITY has objected thereto, then CITY shall be entitled to reenter the PREMISES and enforce any other right available to it under the laws of California or the provisions of this LEASE.
15. **Taxes.**
- 15.1 Personal Property Taxes. LESSEE shall pay prior to delinquency all taxes assessed against and levied upon any Alterations made by it, as well as any of its trade fixtures, furnishings, equipment, and all other personal property of LESSEE located in the PREMISES or elsewhere.
- 15.2 Possessory Interest Tax.
- 15.2.1 Definition. " Possessory Interest Taxes" means a tax imposed by County of Santa Clara upon private uses of public property which constitute "possessory interests," pursuant to California Constitution Article XIII, Section 1 and California. Revenue and Tax Code Sections 104, 107, and 201. A " possessory interest" includes, inter alia, the " possession of, claim to, or right to the possession of land or improvements that is independent, durable, and exclusive of rights held by others in property, except when coupled with ownership of the land or improvements in the same person." (California Revenue and Tax Code Section 107(a)).
- 15.2.2 Payment. LESSEE shall be solely responsible for payment of any Possessory Interest Tax obligation with respect to the PREMISES.
- 15.2.3 Challenges. LESSEE shall be entitled to challenge the assessment of Possessory Interest Tax with respect to the PREMISES at LESSEE' s sole cost and expense.
16. **Notices.**
- 16.1 All notices between the Parties shall be in writing and
- 16.1.1 Sent by United States Certified Mail, return receipt requested, in which case notice shall be deemed delivered three (3) business days after deposit, postage prepaid in the United States mail, or
- 16.1.2 Sent by a nationally recognized overnight courier, in which case notice shall be deemed delivered one (1) business day after deposit with that courier, or
- 16.1.3 Be hand delivered.
- 16.2 Notice shall be addressed to:
- City: City Manager

City of Morgan Hill
17575 Peak Avenue
Morgan Hill, CA 95037

Lessee: Name
 Address
 City, State, Zip code

16.3 These addresses may be changed by written notice to the other Party, provided that no notice of a change of address shall be effective until actual receipt of that notice.

17. **Condemnation.**

17.1 Condemnation Resulting in Termination. If the whole or any substantial part of the PREMISES should be taken or condemned for any public use under any regulation, or by right of eminent domain, or by private purchase in lieu thereof, and the taking would prevent or materially interfere with the Permitted Use of the PREMISES, either Party shall have the right to terminate this LEASE at its option. In such event, the Rent shall be abated during the unexpired portion of this LEASE, effective when the physical taking of said PREMISES shall have occurred.

17.2 Condemnation Not Resulting in Termination. If a portion of the Project of which the PREMISES are a part should be taken or condemned for any public use under any Regulation, or by right of eminent domain, or by private purchase in lieu thereof, and the taking prevents or materially interferes with the Permitted Use of the PREMISES, and this LEASE is not terminated as provided in Section 17.1 above, the Rent payable hereunder during the unexpired portion of this LEASE shall be reduced, beginning on the date when the physical taking shall have occurred, to such amount as may be fair and reasonable under all of the circumstances, but only after giving CITY credit for all sums received or to be received by LESSEE by the condemning authority. Notwithstanding anything to the contrary contained in this section, if the temporary use or occupancy of any part of the PREMISES shall be taken or appropriated under power of eminent domain during the Term, this LEASE shall be and remain unaffected by such taking or appropriation and LESSEE shall continue to pay in full all Rent payable hereunder by LESSEE during the Term; in the event of any such temporary appropriation or taking, LESSEE shall be entitled to receive that portion of any award which represents compensation for the use of or occupancy of the PREMISES during the unexpired Term.

17.3 Award. CITY shall be entitled to (and LESSEE shall assign to CITY) any and all payment, income, rent, award or any interest therein whatsoever which may be paid or made in connection with such taking or conveyance and LESSEE shall have no claim against CITY or otherwise for any sums paid by virtue of such proceedings, whether or not attributable to the value of any unexpired portion of this LEASE, except as expressly provided in this LEASE. Notwithstanding the foregoing, any compensation specifically and separately awarded LESSEE for LESSEE's personal property and moving costs, shall be and remain the property of LESSEE.

- 17.4 Waiver of CCP Section 1265.130. Each Party waives the provisions of California Civil Code Procedure Section 1265.130 allowing either Party to petition the Superior Court to terminate this LEASE as a result of a partial taking.
18. **Governing Law.** This LEASE shall be governed by, construed, and enforced in accordance with the laws of the State of California. Venue of any action brought in connection with the LEASE shall lie in Santa Clara County Superior Court.
17. **Waiver.** The waiver by either Party of a breach or event of default by the other Party of any agreement herein shall not be deemed to be a waiver by that Party of any covenant of the LEASE. Such waiver by either Party shall not constitute a waiver of any future breach by the other Party of the same or other covenants of this LEASE.
18. **Severability.** It is agreed that if any covenant, condition, or provision contained herein is held to be invalid by any court of competent jurisdiction, such invalidity shall not affect the validity of any other covenant, condition or provision herein contained.
19. **Entire Agreement.** This LEASE, including the exhibits and addenda, represents the entire agreement between LESSEE and CITY with respect to the subject matter of this LEASE and shall supersede all prior negotiations, representations or agreements, either written or oral, between LESSEE and CITY as of the effective date of this LEASE, which is the date that LESSEE signs this LEASE.
20. **Amendment.** This LEASE may be amended or modified only by an instrument in writing signed by LESSEE and CITY.
21. **Time is of the Essence.** Time is of the essence in each and all of the provisions of this LEASE.
22. **Binding Effect.** Subject to any provision hereof restricting assignment or subletting by LESSEE, this LEASE shall bind the Parties, their personal representatives, successors, and assigns.
23. **Authority.** Any individual executing this LEASE on behalf of LESSEE or CITY represents and warrants hereby that he or she has the requisite authority to enter into this LEASE on behalf of such Party and bind the Party to the terms and conditions of this LEASE.
24. **Interpretation of Conflicting Provisions.** In the event of any conflict or inconsistency between the provisions of this LEASE and the provisions of any addendum or exhibit attached hereto, the provisions of this LEASE shall prevail and control.
25. **Proposal.** LESSEE'S proposal is incorporated herein. In the event of any inconsistency between the terms of the proposal and this LEASE, the LEASE shall govern.

25. **Successors and Assigns.** This LEASE and the rights, privileges, duties, and obligations of LESSEE and CITY under this LEASE, to the extent assignable or delegable, shall be binding upon and inure to the benefit of the Parties and their respective successor, permitted assigns, and heirs.
26. **Third-Party Rights.** Nothing in this LEASE, express or implied, is intended to confer on any person, other than the Parties to this LEASE and their respective successors and assigns, any rights or remedies under or by reason of this LEASE.
27. **Headings.** The headings in this LEASE are for convenience only and shall not be used to interpret the terms of this LEASE.
28. **Construction of Lease.** LESSEE and CITY agree that each Party has fully participated in the review and revision of this LEASE and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this LEASE or any amendment to this LEASE.
29. **Incorporation of Recitals.** The Parties understand and agree that the preamble and recitals above are hereby incorporated into this LEASE.
30. **Recordation of Lease.** Pursuant to Government Code Section 37933, this LEASE or a memorandum thereof shall be recorded in the Santa Clara County Recorder's Office.
31. **Counterparts.** This LEASE may be executed in one or more counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same instrument.

CITY COUNCIL STAFF REPORT

MEETING DATE: June 19, 2024

PREPARED BY:

Christina Turner, City Manager

APPROVED BY: City Manager

CONSIDER UPDATES TO COUNCIL POLICY 97-01 REGARDING RULES FOR CONDUCT OF COUNCIL MEETINGS, PLACEMENT OF ITEMS ON THE AGENDA, AND MATTERS TO BE RECONSIDERED

RECOMMENDATION(S)

Consider updates to City Council Policy CP 97-01 related to not taking a position on matters outside of the Morgan Hill City Council's subject matter jurisdiction.

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Enhancing Public Safety

Supporting our Youth, Seniors, and Entire Community

Fostering a Positive Organizational Culture

Preserving and Cultivating Public Trust

REPORT NARRATIVE:

Section 4.2 of City Council Policy 97-01 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.

On [February 21, 2024](#), Council Member Borgioli added a Future Agenda Item requesting City Council not entertain any positions on foreign or international events or subject matter concerning affairs outside the Morgan Hill purview. On [April 24, 2024](#), the City Council voted in favor of a formal discussion on the topic.

If the City Council wants to move forward with this policy modification, staff recommends the Council consider language be added to City Council Policy 97-01, Section 4 - Agenda Contents (Attachment 1) that specifies Council shall not act or take a position on matters outside the Morgan Hill City Council's subject matter jurisdiction, including foreign or international events. Potential language is as follows:

Council shall not act or take a position on:

Matters outside of the Morgan Hill City Council's subject matter jurisdiction, including foreign or international events. Appropriate subject matter jurisdiction includes agenda items directly related to Morgan Hill business, as well as County/regional items having a

direct impact on the City (i.e. countywide emergency services or transportation).

COMMUNITY ENGAGEMENT:

This report serves as notice to the Community of the potential change in Council policy.

ALTERNATIVE ACTIONS:

City Council could decide to make additional, different, or no changes to City Council Policy 97-01.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On February 21, 2024, Council Member Borgioli requested this item be added to a future Council agenda. On April 24, 2024, the City Council voted in favor of a formal discussion on the topic.

FISCAL AND RESOURCE IMPACT:

Updating City Council Policy 97-01 does not have a fiscal or resource impact.

CEQA (California Environmental Quality Act):

Not a Project.

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

CITY 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, August 23, 2023, [June 19, 2024](#)

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 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 Council shall not act or take a position on: Matters outside of the Morgan Hill City Council's subject matter jurisdiction, including foreign or international events. Appropriate subject matter jurisdiction includes agenda items directly related to Morgan Hill business, as well as County/regional items having a direct impact on the City (i.e. countywide emergency services or transportation).

4.34.4 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.

4.44.5 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.

4.54.6 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.

4.64.7 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.

4.74.8 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.

4.84.9 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.

4.94.10 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.

4.104.11 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.

4.114.12 Public Hearings: These are matters that are duly noticed and published in a newspaper of general circulation and where required by law, written notice is given to the affected residents who have the opportunity to speak in favor or against a matter or ask questions about the matter.

4.124.13 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.

4.134.14 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; 5:00-6:00 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 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 Rosenberg's Rules of Order (available at <https://www.cacities.org/UploadedFiles/LeagueInternet/77/77d4ee2b-c0bc-4ec2-881b-42ccdbbe73c9.pdf>) as a guide for the conduct of meetings. The 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:

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.

- 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:

MARK TURNER, MAYOR

CITY COUNCIL STAFF REPORT

MEETING DATE: June 19, 2024

PREPARED BY:

Monica Delgado, Budget Manager

APPROVED BY: City Manager

ADOPT THE FISCAL YEAR (FY) 2024-25 AND 2025-26 OPERATING BUDGET, FY 2024-25 THROUGH 2029-30 CAPITAL IMPROVEMENT PROGRAM BUDGET, ADOPT FY 2024-25 APPROPRIATIONS LIMIT, APPROVE FY 2024-25 COMMUNITY FUNDING RECOMMENDATIONS, ADOPT FY 2023-24 BUDGET AMENDMENT, AND ADOPT THE REVISED SALARY SCHEDULES FOR AMERICAN FEDERATION OF STATE, COUNTY, AND MUNICIPAL EMPLOYEES; MANAGEMENT, PROFESSIONAL, AND CONFIDENTIAL EMPLOYEES EFFECTIVE JUNE 23, 2024; AND ELECTED OFFICIALS AND COUNCIL APPOINTED POSITIONS EFFECTIVE DECEMBER 2024

RECOMMENDATION(S)

1. Open/Close Public Hearing; and
2. Adopt resolution to:
 - a. Adopt the FY 2024-25 and 2025-26 Operating Budget; and
 - b. Adopt the FY 2024-25 through 2029-30 Capital Improvement Program Budget; and
 - c. Adopt the 2024-25 Appropriations Limit and Appropriations Limit Adjustment Factors; and
3. Approve the FY 2024-25 Community Funding recommendations; and
4. Adopt resolution to amend FY 2023-24 Budget; and
5. Adopt the revised salary schedules for American Federation of State, County, and Municipal Employees; Management, Professional, and Confidential Employees effective June 23, 2024; and Elected Officials and Council Appointed Positions effective December 2024.

COUNCIL PRIORITIES, GOALS & STRATEGIES

City Council Ongoing Priorities

Enhancing Public Safety

Protecting the Environment and Preserving Open Space and Agricultural Land

Maintaining and Enhancing Infrastructure

Supporting our Youth, Seniors, and Entire Community

Fostering a Positive Organizational Culture

Preserving and Cultivating Public Trust

Preserving our Community History

Enhancing Diversity and Inclusiveness
Advocating for Local, Regional, and State Legislative Initiatives

2024-2025 Strategic Priorities

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

Guiding Documents

Bikeways, Trails, and Recreation Master Plan
Climate Action Plan
Communications, Outreach, and Engagement Plan
Economic Blueprint
Fire Services Standards of Coverage
GIS Strategic Plan
Morgan Hill 2035 General Plan
Public Safety Master Plan
Storm Drain Master Plan
Vision Zero
Water System Master Plan
Wastewater System Master Plan

REPORT NARRATIVE:

The purpose of this Public Hearing is for the City Council and City staff to receive public comment, discuss, and adopt the two-year Budget for FY 2024-25 and 2025-26 (Attachment 1).

The total recommended budget for FY 2024-25 and 2025-26 is approximately \$207.9 million and \$254.4 million, respectively. Excluding the City's FY 2024-25 and 2025-26 Capital Improvement Program (CIP) Budget, the total Operating Budget for FY 2024-25 and 2025-26 is approximately \$147.2 and \$145.9 million, respectively. The total six-year CIP Budget is approximately \$271.2 million. These amounts incorporate changes since the Budget Workshop on May 22, 2024, as outlined below.

Changes to the Recommended Budget

- Community Funding - General Fund - Added \$18,331 for Community Funding in FY 2024-25, less \$20,000 each year, which was moved to Park Operations for Villa Mira Monte.
- Park Operations - Villa Mira Monte - General Fund - Added \$35,000/year for ongoing maintenance.
- California Highway Patrol (CHP) Cannabis Tax Grant - General Fund - Added \$344,230 in grant funding from CHP's Cannabis Tax Fund Grant Program for Morgan Hill Police Department to reduce and mitigate the impact of impaired

driving in our Community.

- Environmental Programs - Added \$153,500 in revenue and \$110,108 in expenditures to the General Fund to provide part-time staffing support to the City of Gilroy, Environmental Programs.
- Equipment for Fire/Building Inspector - Development Services Fund - Added \$42,700 for the purchase of necessary equipment, including a vehicle, should we move forward with the hiring of the Fire/Building Inspector.
- Interfund loan - \$1.5 million increase in interfund loan from Fund 348, Library Impact, to Fund 315, Public Safety Impact. This change accurately reflects the borrowing need for the Fire Station. The repayment schedule is already included in the CIP Budget and has no impact on the proposed CIP budget.

Community Funding

Annually, the City Council considers funding requests from local non-profit organizations that host community-wide events. In November 2021, City Council adopted Council Policy CP-21-02 (Attachment 2), to establish a process for community organizations to request funding to support fee waivers, event sponsorship, and other funding requests from the City Council. On February 16, 2024, staff provided Community Funding Request Applications to organizations that have previously received fee waivers for facility use, event support, or program support from the City of Morgan Hill. The applications were provided via email to these contacts. The application and information about the process were also posted on the City's website, in the weekly 411, and on the City's Facebook page. Applications were due on March 15, 2024, at 5:00 pm. Included in the recommended budget is \$218,331 for Community Funding. This is in addition to the \$35,000 funding for the Villa Mira Monte that has been programmed in Park Operations per City Council direction. The exact dollar figures for each Organization are included in Attachment 3.

Personnel

In 2017, Council adopted the Employee Compensation Guiding Principles to guide employee compensation matters, to ensure the City provides its employees competitive, equitable, and financially sustainable compensation. The seven guiding principles are: (1) recruitment and retention; (2) fiscal sustainability; (3) compensation structure; (4) market-based compensation; (5) internal equity; (6) transparency and accountability; and (7) legal compliance. There are several personnel related actions in the Recommended Budget as presented in the accompanying salary schedules, including adjustments addressing certain classifications to keep the City competitive, addressing retention, recruitment, and compaction issues that have been impacting the City, as well as the addition of 7.0 full-time equivalent positions in FY 2024-25 and 2.0 full-time equivalent positions in FY 2025-26 (Attachments 4 and 5).

Elected Officials and Council Appointed Positions Salary Schedules

Under the California Public Employees' Retirement System (CalPERS) regulations, the City Council is required to adopt salary schedules for all identified employee positions, including Mayor, City Council, Treasurer, City Manager, and City Attorney. Attached are the Elected Officials and Council Appointed Positions Salary Schedules which include a

salary adjustment for the Mayor and City Council members that the City Council approved on December 6, 2023, as well as an adjustment to the elected City Treasurer's salary at the same percentage as the Mayor and City Council members (Attachment 6).

FY 2023-24 Budget Amendments

The Development Services Fund (Fund 206) manages the City's Planning, Building, and Land Development Engineering Services. With expenditures projected to exceed revenue for the foreseeable future without a fee update, Fund 206 requires a \$1.0 million in interfund loan from the General Fund in the current fiscal year. Staff anticipates presenting a fee study analysis to the City Council following budget adoption (Attachment 10).

Budget Analysis

The Council requested staff return with the impact to the City's budget of scenarios of varying levels of revenue and economic development assumptions. These will be addressed during the presentation at the public hearing.

COMMUNITY ENGAGEMENT:

Involve

- May 3, 2024 Recommended Budget Released to the Community and City Council
- May 10, 2024 City Booth at Open Streets
- May 15, 2024 Recommended Budget Presented to the City Council
- May 22, 2024 Budget Workshop
- June 13, 2024 Recommended Budget Presented to the Economic Development Committee of the Chamber of Commerce
- The public notice for tonight's Budget Public Hearing/Adoption was published in the Morgan Hill Times on Friday, June 7, 2024.

ALTERNATIVE ACTIONS:

Not Applicable

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The Parks & Recreation Commission recommended approval of the CIP on April 16, 2024.

The Planning Commission found the proposed CIP consistent with the General Plan on May 14, 2024.

The Recommended Budget was introduced to the City Council and the Community on May 15, 2024.

A Budget Workshop was held on May 22, 2024.

FISCAL AND RESOURCE IMPACT:

The total recommended budget for FY 2024-25 and 2025-26 is approximately \$207.9 million and \$254.4 million, respectively. The total six-year CIP Budget is approximately \$271.2 million.

CEQA (California Environmental Quality Act):

Adopting the budget is not a project as it is an organizational or administrative activity of government that will not result in direct or indirect physical changes in the environment.

Recommended FY 2024-25 and 2025-26 Operating and FY 2024-25 through 2029-30 Capital Improvement Program Budgets

Flippingbook Version (click the image)



Morgan Hill, California
morganhill.ca.gov/budget



Morgan Hill, California
morganhill.ca.gov/budget

CITY OF MORGAN HILL

CITY COUNCIL POLICIES AND PROCEDURES

CP-21-02**SUBJECT: CITY COUNCIL FUNDING REQUESTS****EFFECTIVE DATE: NOVEMBER 3, 2021****REVISED DATE: NA****ORIGINATING DEPARTMENT: COMMUNITY SERVICES DEPARTMENT**

Purpose

The purpose of this policy is to establish a process for community organizations to request funding to support fee waivers, event sponsorship, and other funding requests from the City Council. The policy is intended to allow the City Council to fully evaluate all funding requests at one time along with budget appropriation.

Policy

1. Applicant Criteria
 - a. The organization requesting funding must be a nonprofit.
 - b. The program, event, or activity provides a direct benefit to the Morgan Hill community.
 - c. Programs in alignment with the City Council's Goals and Priorities shall be given priority. City Council priorities are established by the City Council in January of each year.
 - d. Each organization must submit an inclusivity statement describing how the organization and/or the proposed activity is inclusive of the entire community.
 - e. Existing programs and events may be given priority.
2. Application Availability and Deadline
 - a. Applications for the next Fiscal Year (July-June) will be available on the City's website annually in February.
 - b. Completed applications will be due annually in March.
3. Review and Approval Process
 - a. Applications will be reviewed by the City staff.
 - b. Funding applications and details will be included annually in the Budget Development or Mid-Cycle Budget Review process.
 - c. The City Manager will make recommendations on funding to the City Council based on established Council priorities and funding constraints.
 - d. The City Council shall award and include final funding within the Budget.
4. Reporting Requirements

- a. Within thirty days following the conclusion of the funded activity, the organization must submit a report to the City reporting out pertinent information related to the activity. For ongoing activities, an annual report must be submitted by July 30 for the prior fiscal year.
 - b. The report shall include a record of the use of City funds and statistics and information that provides details on the activity's impact to the community.
5. Late Requests
 - a. Requests received after the deadline shall not be accepted by City staff.
6. Council Member Initiated Event and Fee Waiver Requests
 - a. A member of the City Council may request a fee waiver or funding be provided for an event by applying with the above application process by the March deadline.
 - b. All Council Member initiated requests occurring after the March deadline must be provided to the City Manager 90 days in advance of the event to allow sufficient time to bring to City Council for approval.
 - c. The City Staff shall prepare a report for the City Council for approval of any Council Member initiated requests.

This policy shall remain in effect until modified by the City Council.

APPROVED:

DocuSigned by:

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RICH CONSTANTINE, MAYOR

Recommended Allocations – June 5, 2024

Fund Recently Funded Events at Past Levels with Increases for City Rental Costs and increased Public Safety Costs – \$218,331 This option lists out funding recommendations for Community Funding recipients and events that have received funding in the recent past. Due to budget limitations, this does not include new events. For the Twinkle Light request, funding was not included as it is recommended the Morgan Hill Downtown Association work with the new PBID to fund for this year and into the future. Additionally, events are being recommended for increases to costs they have received funding for in the past in many cases it means just increases associated with increased costs at the Community and Cultural Center. Events that are recommended for CCC facility costs only are noted with an asterisk.

Organization Name	Event/Program	FY23-24 Allocation	FY 24-25 Request	Option 2 - Recent Past	Type of Funding Requested
Boys and Girls Club	Fall Festival	\$0	\$6,000	\$0	Event Support
Cal North - CYSA	Cal North Junior Cup & Association Cup 2025	\$0	\$9,000	\$0	Event Support
CARAS	Nueva Esperanza DDLM	\$1,923	\$3,100	\$3,100	Event Support \$1,177 City Facility Fees \$1,923
CARAS	Nueva Esperanza Posada	\$4,800	\$5,000	\$5,000	Event Support \$3,400 City Facility Fees \$1,600
Chabad Jewish Center	Morgan Hill Chanukah Celebration	\$2,500	\$5,000	\$2,500	Event Support
Healthier Kids Foundation	VisionFirst, HearingFirst, DentalFirst Programs	\$26,000	\$42,000	\$26,000	Program Support
Indian Association of South Santa Clara County	Circle of Giving - Share the Care Drive	\$2,000	\$5,000	\$2,000	Event Support
Indian Association of South Santa Clara County	IASC ongoing community activities and events	\$2,500	\$5,000	\$2,500	Event Support
Independence Day Celebration	Freedom Fest	\$45,000	\$70,000	\$70,000	Event Support
Kiwanis Morgan Hill	Holiday Lights Parade	\$14,500	\$27,500	\$27,500	Event Support
LATI	Resource Fair	\$3,060	\$3,480	\$3,480*	City Facility Fees
LATI	SCFBC Night of Hope	\$0	\$3,320	\$3,320*	City Facility Fees
MH Blues and Music Festival	Morgan Hill Blues and Music Festival	\$0	\$80,000	\$0	Event Support
Morgan Hill Community Foundation	Philanthropy Night	\$0	\$4,528	\$4,528*	City Facility Fees
Morgan Hill Community Foundation	Morgan Hill Open Studios	\$1,250	\$2,500	\$1,250	Event Support
Morgan Hill Community Foundation	Santa Clara Valley Wine Auction	\$0	\$6,500	\$0	Event Support
Morgan Hill Downtown Association	Holiday Tree	\$6,360	\$6,800	\$6,800	Event Support
Morgan Hill Downtown Association	Safe Trick or Treat	\$13,500	\$14,000	\$14,000	Event Support
Morgan Hill Downtown Association	Twinkle Lights	\$11,400	\$24,000	\$0	Program Support
Morgan Hill Downtown Association	Holiday Selfie Display	\$0	\$1,880	\$0	Event Support
Morgan Hill Historical Society	Founders Dinner	\$1,600	\$8,000	\$2,624*	Event Support \$5,376 City Facility Fees \$2,624
Morgan Hill Historical Society	Remembering Veterans	\$477.50	\$1,104	\$504*	Event Support \$600 City Facility Fees \$504
Morgan Hill Mushroom Mardi Gras	Mushroom Festival	\$0	\$15,000	\$8,025*	City Facility Fees
Morgan Hill Chamber	Friday Night Music Series	\$25,000	\$28,000	\$25,000*	City Facility Fees
Poppy Jasper International Film Festival	Poppy Jasper International Film Festival	\$3,700	\$5,000	\$3,700	Event Support \$3,500 City Facility Fees \$1,500
Sentinel Soccer Club	Fiestas Patrias	\$3,500	\$4,000	\$3,500	Event Support
South Valley Civic Theater	Theater Season 2024-2025	\$12,500	\$3,000	\$3,000	Program Support
			\$388,712	\$218,331	

CITY OF MORGAN HILL AFSCME LOCAL 101 MONTHLY SALARY FOR REGULAR EMPLOYEES BY CLASSIFICATION

Effective 07/01/2024

Monthly figures are rounded to the nearest \$1.00

Position	A Monthly	A Hourly	B Monthly	B Hourly	C Monthly	C Hourly	D Monthly	D Hourly	E Monthly	E Hourly	F Monthly	F Hourly
Accountant I	8,204	47.33	8,614	49.70	9,045	52.18	9,497	54.79	9,972	57.53	10,471	60.41
Accounting Asst. I	5,718	32.99	6,003	34.64	6,304	36.37	6,619	38.19	6,950	40.09	7,297	42.10
Accounting Asst. II	5,982	34.51	6,281	36.24	6,596	38.05	6,925	39.95	7,272	41.95	7,635	44.05
Accounting Technician	7,388	42.62	7,757	44.75	8,145	46.99	8,552	49.34	8,980	51.81	9,429	54.40
Assistant Planner	8,204	47.33	8,614	49.70	9,045	52.18	9,497	54.79	9,972	57.53	10,471	60.41
Assistant Engineer	9,114	52.58	9,570	55.21	10,048	57.97	10,551	60.87	11,078	63.91	11,632	67.11
Associate Planner	8,831	50.95	9,273	53.50	9,737	56.17	10,224	58.98	10,735	61.93	11,271	65.03
Associate Engineer	10,588	61.08	11,117	64.14	11,673	67.34	12,257	70.71	12,869	74.25	13,513	77.96
Business Assistant	6,287	36.27	6,602	38.09	6,932	39.99	7,278	41.99	7,642	44.09	8,024	46.29
Building Inspector II	9,159	52.84	9,617	55.48	10,098	58.26	10,603	61.17	11,133	64.23	11,689	67.44
Building Inspector Supervisor	10,774	62.16	11,313	65.27	11,879	68.53	12,472	71.96	13,096	75.55	13,751	79.33
Code Compliance Officer	8,296	47.86	8,710	50.25	9,146	52.76	9,603	55.40	10,083	58.17	10,587	61.08
Communication and Engagement Coordinator	8,413	48.53	8,833	50.96	9,275	53.51	9,739	56.19	10,226	58.99	10,737	61.94
Community Services Coordinator	6,904	39.83	7,249	41.82	7,611	43.91	7,992	46.11	8,391	48.41	8,811	50.83
Council Services Assistant	6,247	36.04	6,559	37.84	6,887	39.73	7,231	41.72	7,593	43.80	7,972	45.99
Custodian	4,181	24.12	4,390	25.32	4,609	26.59	4,840	27.92	5,082	29.32	5,336	30.78
Deputy City Clerk	7,246	41.80	7,608	43.89	7,988	46.09	8,388	48.39	8,807	50.81	9,247	53.35
Development Services Technician	7,246	41.80	7,608	43.89	7,988	46.09	8,388	48.39	8,807	50.81	9,247	53.35
Electrician	8,630	49.79	9,062	52.28	9,515	54.89	9,991	57.64	10,490	60.52	11,015	63.55
Engineering Technician I	6,406	36.96	6,726	38.80	7,062	40.74	7,416	42.78	7,786	44.92	8,176	47.17
Engineering Technician II	7,083	40.86	7,437	42.90	7,809	45.05	8,199	47.30	8,609	49.67	9,039	52.15
Environmental Programs Coordinator	8,204	47.33	8,614	49.70	9,045	52.18	9,497	54.79	9,972	57.53	10,471	60.41
Environmental Services Technician	6,406	36.96	6,726	38.80	7,062	40.74	7,416	42.78	7,786	44.92	8,176	47.17
Exec. Asst. to the Chief of Police	6,822	39.36	7,163	41.33	7,522	43.39	7,898	45.56	8,292	47.84	8,707	50.23
Facilities Maintenance Specialist	6,904	39.83	7,249	41.82	7,611	43.91	7,992	46.11	8,391	48.41	8,811	50.83
Fire/Building Inspector	9,159	52.84	9,617	55.48	10,098	58.26	10,603	61.17	11,133	64.23	11,689	67.44
Housing Program Coordinator	8,831	50.95	9,273	53.50	9,737	56.17	10,224	58.98	10,735	61.93	11,271	65.03
Information Services Technician	8,204	47.33	8,614	49.70	9,045	52.18	9,497	54.79	9,972	57.53	10,471	60.41
Junior Engineer	8,204	47.33	8,614	49.70	9,045	52.18	9,497	54.79	9,972	57.53	10,471	60.41
Maintenance Worker I	5,677	32.75	5,961	34.39	6,259	36.11	6,572	37.92	6,901	39.81	7,246	41.80
Maintenance Worker II	6,264	36.14	6,577	37.95	6,906	39.84	7,251	41.83	7,614	43.93	7,995	46.12
Maintenance Worker III	6,890	39.75	7,235	41.74	7,596	43.83	7,976	46.02	8,375	48.32	8,794	50.73
Maintenance Supervisor	9,098	52.49	9,553	55.11	10,031	57.87	10,532	60.76	11,059	63.80	11,612	66.99
Management Analyst	8,413	48.53	8,833	50.96	9,275	53.51	9,739	56.19	10,226	58.99	10,737	61.94
Multimedia Coordinator	6,287	36.27	6,602	38.09	6,932	39.99	7,278	41.99	7,642	44.09	8,024	46.29
Municipal Services Assistant	5,982	34.51	6,281	36.24	6,596	38.05	6,925	39.95	7,272	41.95	7,635	44.05
Office Assistant I	4,315	24.89	4,531	26.14	4,757	27.45	4,995	28.82	5,245	30.26	5,507	31.77
Office Assistant II	5,424	31.29	5,695	32.86	5,980	34.50	6,279	36.22	6,593	38.04	6,923	39.94
Plan Check Engineer	10,774	62.16	11,313	65.27	11,879	68.53	12,472	71.96	13,096	75.55	13,751	79.33
Plans Examiner	9,159	52.84	9,617	55.48	10,098	58.26	10,603	61.17	11,133	64.23	11,689	67.44
Police Analyst	9,277	53.52	9,741	56.20	10,228	59.01	10,740	61.96	11,277	65.06	11,840	68.31
Public Works Inspection Supervisor	10,774	62.16	11,313	65.27	11,879	68.53	12,472	71.96	13,096	75.55	13,751	79.33
Public Works Inspector	8,630	49.79	9,062	52.28	9,515	54.89	9,991	57.64	10,490	60.52	11,015	63.55

Recreation Services Coordinator	6,904	39.83	7,249	41.82	7,611	43.91	7,992	46.11	8,391	48.41	8,811	50.83
Senior Accountant	9,024	52.06	9,476	54.67	9,949	57.40	10,447	60.27	10,969	63.28	11,518	66.45
Senior Information Services Technician	8,820	50.88	9,261	53.43	9,724	56.10	10,210	58.90	10,721	61.85	11,257	64.94
Senior Maintenance Worker	7,595	43.81	7,974	46.01	8,373	48.31	8,792	50.72	9,231	53.26	9,693	55.92
Senior Public Works Inspector	9,277	53.52	9,741	56.20	10,228	59.01	10,740	61.96	11,277	65.06	11,840	68.31
Senior Recreation Services Coordinator	7,250	41.82	7,612	43.92	7,993	46.11	8,392	48.42	8,812	50.84	9,253	53.38
Senior Utility Worker	7,595	43.81	7,974	46.01	8,373	48.31	8,792	50.72	9,231	53.26	9,693	55.92
Support Services Supervisor	8,184	47.22	8,594	49.58	9,023	52.06	9,474	54.66	9,948	57.39	10,446	60.26
Unhoused Specialist	6,904	39.83	7,249	41.82	7,611	43.91	7,992	46.11	8,391	48.41	8,811	50.83
Utility Worker I	5,677	32.75	5,961	34.39	6,259	36.11	6,572	37.92	6,901	39.81	7,246	41.80
Utility Worker II	6,264	36.14	6,577	37.95	6,906	39.84	7,251	41.83	7,614	43.93	7,995	46.12
Utility Worker III	6,890	39.75	7,235	41.74	7,596	43.83	7,976	46.02	8,375	48.32	8,794	50.73
Utility Supervisor	9,248	53.35	9,710	56.02	10,196	58.82	10,705	61.76	11,241	64.85	11,803	68.09
Utilities Technology Specialist	7,626	44.00	8,007	46.20	8,408	48.51	8,828	50.93	9,270	53.48	9,733	56.15
Water Quality Specialist	7,626	44.00	8,007	46.20	8,408	48.51	8,828	50.93	9,270	53.48	9,733	56.15

CITY OF MORGAN HILL AFSCME LOCAL 101 MONTHLY SALARY FOR REGULAR EMPLOYEES BY CLASSIFICATION

Effective 12/22/2024 (5% increase)

Monthly figures are rounded to the nearest \$1.00

Position	A Monthly	A Hourly	B Monthly	B Hourly	C Monthly	C Hourly	D Monthly	D Hourly	E Monthly	E Hourly	F Monthly	F Hourly
Accountant I	8,614	49.70	9,045	52.18	9,497	54.79	9,972	57.53	10,471	60.41	10,994	63.43
Accounting Asst. I	6,003	34.64	6,304	36.37	6,619	38.19	6,950	40.09	7,297	42.10	7,662	44.20
Accounting Asst. II	6,281	36.24	6,596	38.05	6,925	39.95	7,272	41.95	7,635	44.05	8,017	46.25
Accounting Technician	7,757	44.75	8,145	46.99	8,552	49.34	8,980	51.81	9,429	54.40	9,900	57.12
Assistant Planner	8,614	49.70	9,045	52.18	9,497	54.79	9,972	57.53	10,471	60.41	10,994	63.43
Assistant Engineer	9,570	55.21	10,048	57.97	10,551	60.87	11,078	63.91	11,632	67.11	12,214	70.46
Associate Planner	9,273	53.50	9,737	56.17	10,224	58.98	10,735	61.93	11,271	65.03	11,835	68.28
Associate Engineer	11,117	64.14	11,673	67.34	12,257	70.71	12,869	74.25	13,513	77.96	14,188	81.86
Business Assistant	6,602	38.09	6,932	39.99	7,278	41.99	7,642	44.09	8,024	46.29	8,426	48.61
Building Inspector II	9,617	55.48	10,098	58.26	10,603	61.17	11,133	64.23	11,689	67.44	12,274	70.81
Building Inspector Supervisor	11,313	65.27	11,879	68.53	12,472	71.96	13,096	75.55	13,751	79.33	14,438	83.30
Code Compliance Officer	8,710	50.25	9,146	52.76	9,603	55.40	10,083	58.17	10,587	61.08	11,117	64.14
Communication and Engagement Coordinator	8,833	50.96	9,275	53.51	9,739	56.19	10,226	58.99	10,737	61.94	11,274	65.04
Community Services Coordinator	7,249	41.82	7,611	43.91	7,992	46.11	8,391	48.41	8,811	50.83	9,252	53.37
Council Services Assistant	6,559	37.84	6,887	39.73	7,231	41.72	7,593	43.80	7,972	45.99	8,371	48.29
Custodian	4,390	25.32	4,609	26.59	4,840	27.92	5,082	29.32	5,336	30.78	5,602	32.32
Deputy City Clerk	7,608	43.89	7,988	46.09	8,388	48.39	8,807	50.81	9,247	53.35	9,710	56.02
Development Services Technician	7,608	43.89	7,988	46.09	8,388	48.39	8,807	50.81	9,247	53.35	9,710	56.02
Electrician	9,062	52.28	9,515	54.89	9,991	57.64	10,490	60.52	11,015	63.55	11,565	66.72
Engineering Technician I	6,726	38.80	7,062	40.74	7,416	42.78	7,786	44.92	8,176	47.17	8,584	49.53
Engineering Technician II	7,437	42.90	7,809	45.05	8,199	47.30	8,609	49.67	9,039	52.15	9,491	54.76
Environmental Programs Coordinator	8,614	49.70	9,045	52.18	9,497	54.79	9,972	57.53	10,471	60.41	10,994	63.43
Environmental Services Technician	6,726	38.80	7,062	40.74	7,416	42.78	7,786	44.92	8,176	47.17	8,584	49.53
Exec. Asst. to the Chief of Police	7,163	41.33	7,521	43.39	7,898	45.56	8,292	47.84	8,707	50.23	9,142	52.74
Facilities Maintenance Specialist	7,249	41.82	7,611	43.91	7,992	46.11	8,391	48.41	8,811	50.83	9,252	53.37

Fire/Building Inspector	9,617	55.48	10,098	58.26	10,603	61.17	11,133	64.23	11,689	67.44	12,274	70.81
Housing Program Coordinator	9,273	53.50	9,737	56.17	10,224	58.98	10,735	61.93	11,271	65.03	11,835	68.28
Information Services Technician	8,614	49.70	9,045	52.18	9,497	54.79	9,972	57.53	10,471	60.41	10,994	63.43
Junior Engineer	8,614	49.70	9,045	52.18	9,497	54.79	9,972	57.53	10,471	60.41	10,994	63.43
Maintenance Worker I	5,961	34.39	6,259	36.11	6,572	37.92	6,901	39.81	7,246	41.80	7,608	43.89
Maintenance Worker II	6,577	37.95	6,906	39.84	7,251	41.83	7,614	43.93	7,995	46.12	8,394	48.43
Maintenance Worker III	7,235	41.74	7,596	43.83	7,976	46.02	8,375	48.32	8,794	50.73	9,233	53.27
Maintenance Supervisor	9,553	55.11	10,031	57.87	10,532	60.76	11,059	63.80	11,612	66.99	12,192	70.34
Management Analyst	8,833	50.96	9,275	53.51	9,739	56.19	10,226	58.99	10,737	61.94	11,274	65.04
Multimedia Coordinator	6,602	38.09	6,932	39.99	7,278	41.99	7,642	44.09	8,024	46.29	8,426	48.61
Municipal Services Assistant	6,281	36.24	6,596	38.05	6,925	39.95	7,272	41.95	7,635	44.05	8,017	46.25
Office Assistant I	4,531	26.14	4,757	27.45	4,995	28.82	5,245	30.26	5,507	31.77	5,782	33.36
Office Assistant II	5,695	32.86	5,980	34.50	6,279	36.22	6,593	38.04	6,923	39.94	7,269	41.93
Plan Check Engineer	11,313	65.27	11,879	68.53	12,472	71.96	13,096	75.55	13,751	79.33	14,438	83.30
Plans Examiner	9,617	55.48	10,098	58.26	10,603	61.17	11,133	64.23	11,689	67.44	12,274	70.81
Police Analyst	9,741	56.20	10,228	59.01	10,740	61.96	11,277	65.06	11,840	68.31	12,432	71.73
Public Works Inspection Supervisor	11,313	65.27	11,879	68.53	12,472	71.96	13,096	75.55	13,751	79.33	14,438	83.30
Public Works Inspector	9,062	52.28	9,515	54.89	9,991	57.64	10,490	60.52	11,015	63.55	11,565	66.72
Recreation Services Coordinator	7,249	41.82	7,611	43.91	7,992	46.11	8,391	48.41	8,811	50.83	9,252	53.37
Senior Accountant	9,476	54.67	9,949	57.40	10,447	60.27	10,969	63.28	11,518	66.45	12,094	69.77
Senior Information Services Technician	9,261	53.43	9,724	56.10	10,210	58.90	10,721	61.85	11,257	64.94	11,819	68.19
Senior Maintenance Worker	7,974	46.01	8,373	48.31	8,792	50.72	9,231	53.26	9,693	55.92	10,177	58.72
Senior Public Works Inspector	9,741	56.20	10,228	59.01	10,740	61.96	11,277	65.06	11,840	68.31	12,432	71.73
Senior Recreation Services Coordinator	7,612	43.92	7,993	46.11	8,392	48.42	8,812	50.84	9,253	53.38	9,715	56.05
Senior Utility Worker	7,974	46.01	8,373	48.31	8,792	50.72	9,231	53.26	9,693	55.92	10,177	58.72
Support Services Supervisor	8,594	49.58	9,023	52.06	9,474	54.66	9,948	57.39	10,446	60.26	10,968	63.28
Unhoused Specialist	7,249	41.82	7,611	43.91	7,992	46.11	8,391	48.41	8,811	50.83	9,252	53.37
Utility Worker I	5,961	34.39	6,259	36.11	6,572	37.92	6,901	39.81	7,246	41.80	7,608	43.89
Utility Worker II	6,577	37.95	6,906	39.84	7,251	41.83	7,614	43.93	7,995	46.12	8,394	48.43
Utility Worker III	7,235	41.74	7,596	43.83	7,976	46.02	8,375	48.32	8,794	50.73	9,233	53.27
Utility Supervisor	9,710	56.02	10,196	58.82	10,705	61.76	11,241	64.85	11,803	68.09	12,393	71.50
Utilities Technology Specialist	8,007	46.20	8,408	48.51	8,828	50.93	9,270	53.48	9,733	56.15	10,220	58.96
Water Quality Specialist	8,007	46.20	8,408	48.51	8,828	50.93	9,270	53.48	9,733	56.15	10,220	58.96

Job Classification	Bottom of Range Monthly	Top of Range Monthly
Group 1-A: Executive Management		
Assistant City Manager for Administrative Services	\$18,011	\$23,666
Assistant City Manager for Development Services	\$18,011	\$23,666
Chief of Police	\$18,011	\$23,666
Public Services Director	\$18,011	\$23,666
<i>Community Services Director *</i>	\$15,885	\$20,918
Development Services Director	\$15,885	\$20,918
Economic Development Director	\$15,885	\$20,918
<i>Engineering and Utilities Director *</i>	\$15,885	\$20,918
Finance Director	\$15,885	\$20,918
Housing Director	\$15,885	\$20,918
Human Resources Director	\$15,885	\$20,918
<i>Communications and Engagement Director*</i>	\$13,708	\$18,013
Information Technology Director	\$13,708	\$18,013
Group 1-B: Middle Management		
Police Captain	\$14,678	\$19,285
Assistant City Attorney	\$13,708	\$18,013
<i>Assistant Finance Director*</i>	\$13,708	\$18,013
Building Official	\$13,708	\$18,013
City Clerk/Public Information Officer	\$13,708	\$18,013
Deputy Director for Engineering	\$13,708	\$18,013
Deputy Director for Utilities Services	\$13,708	\$18,013
<i>Housing Manager*</i>	\$13,708	\$18,013
<i>Planning Manager *</i>	\$13,708	\$18,013
<i>Program Administrator*</i>	\$13,708	\$18,013
<i>Assistant to the City Manager *</i>	\$12,844	\$16,848
Building Manager	\$12,118	\$15,895
<i>Economic Development Manager*</i>	\$12,118	\$15,895
Environmental Services Administrator	\$12,118	\$15,895
Maintenance Manager	\$12,118	\$15,895
Principal Planner	\$12,118	\$15,895
Recreation Manager	\$12,118	\$15,895
Senior Civil Engineer	\$12,118	\$15,895
Senior Project Manager	\$12,118	\$15,895
Budget Manager	\$11,206	\$14,738
<i>Communications and Engagement Manager *</i>	\$11,206	\$14,738
<i>Community Services Manager *</i>	\$11,206	\$14,738
Environmental Services Manager	\$11,206	\$14,738
<i>Information Services Manager *</i>	\$11,206	\$14,738
<i>Network Architect</i>	\$11,206	\$14,738
Police Support Services Manager	\$11,206	\$14,738
Public Services Administrative Manager	\$11,206	\$14,738
Supervising Civil Engineer	\$11,206	\$14,738
Utility Systems Manager	\$11,206	\$14,738
<i>Accounting Manager *</i>	\$10,431	\$13,710
<i>Financial and Policy Analyst *</i>	\$10,431	\$13,710
Police Administrative Manager	\$10,431	\$13,710
Senior Planner	\$10,431	\$13,710
<i>Senior Recreation Supervisor*</i>	\$9,921	\$12,660
Community Services Supervisor	\$9,449	\$12,057
<i>Council Services and Records Manager *</i>	\$9,449	\$12,057
<i>Deputy City Attorney</i>	\$9,449	\$12,057
Economic Development Coordinator	\$9,449	\$12,057
Emergency Services Coordinator	\$9,449	\$12,057
GIS / Land Use Data Administrator	\$9,449	\$12,057
Maintenance Services Coordinator	\$9,449	\$12,057
<i>Older Adult Services Supervisor*</i>	\$9,449	\$12,057
<i>Programmer Analyst</i>	\$9,449	\$12,057
Senior Human Resources Analyst	\$9,449	\$12,057
Risk Management Analyst (.50 FTE)	\$4,505	\$5,910
Group 1-C: Confidential Exempt		
Administrative Analyst	\$9,007	\$11,819
Legal Specialist	\$8,104	\$10,663
Group 1-D: Confidential Non-Exempt		
Accounting Technician	\$7,388	\$9,429
Human Resources Technician	\$7,185	\$9,429
<i>Human Resources Assistant *</i>	\$5,627	\$7,361

Job Classification	Bottom of Range Monthly	Top of Range Monthly
Group 1-A: Executive Management		
Assistant City Manager for Administrative Services	\$18,912	\$24,849
Assistant City Manager for Development Services	\$18,912	\$24,849
Chief of Police	\$18,912	\$24,849
Public Services Director	\$18,912	\$24,849
<i>Community Services Director *</i>	\$16,680	\$21,964
Development Services Director	\$16,680	\$21,964
Economic Development Director	\$16,680	\$21,964
<i>Engineering and Utilities Director *</i>	\$16,680	\$21,964
Finance Director	\$16,680	\$21,964
Housing Director	\$16,680	\$21,964
Human Resources Director	\$16,680	\$21,964
<i>Communications and Engagement Director*</i>	\$14,393	\$18,913
Information Technology Director	\$14,393	\$18,913
Group 1-B: Middle Management		
Police Captain	\$15,412	\$20,250
Assistant City Attorney	\$14,393	\$18,913
<i>Assistant Finance Director*</i>	\$14,393	\$18,913
Building Official	\$14,393	\$18,913
City Clerk/Public Information Officer	\$14,393	\$18,913
Deputy Director for Engineering	\$14,393	\$18,913
Deputy Director for Utilities Services	\$14,393	\$18,913
<i>Housing Manager*</i>	\$14,393	\$18,913
<i>Planning Manager *</i>	\$14,393	\$18,913
<i>Program Administrator*</i>	\$14,393	\$18,913
<i>Assistant to the City Manager *</i>	\$13,486	\$17,691
Building Manager	\$12,724	\$16,690
<i>Economic Development Manager*</i>	\$12,724	\$16,690
Environmental Services Administrator	\$12,724	\$16,690
Maintenance Manager	\$12,724	\$16,690
Principal Planner	\$12,724	\$16,690
Recreation Manager	\$12,724	\$16,690
Senior Civil Engineer	\$12,724	\$16,690
Senior Project Manager	\$12,724	\$16,690
Budget Manager	\$11,766	\$15,475
<i>Communications and Engagement Manager *</i>	\$11,766	\$15,475
<i>Community Services Manager *</i>	\$11,766	\$15,475
Environmental Services Manager	\$11,766	\$15,475
<i>Information Services Manager *</i>	\$11,766	\$15,475
<i>Network Architect</i>	\$11,766	\$15,475
Police Support Services Manager	\$11,766	\$15,475
Public Services Administrative Manager	\$11,766	\$15,475
Supervising Civil Engineer	\$11,766	\$15,475
Utility Systems Manager	\$11,766	\$15,475
<i>Accounting Manager *</i>	\$10,952	\$14,395
<i>Financial and Policy Analyst *</i>	\$10,952	\$14,395
Police Administrative Manager	\$10,952	\$14,395
Senior Planner	\$10,952	\$14,395
<i>Senior Recreation Supervisor*</i>	\$10,418	\$13,293
Community Services Supervisor	\$9,921	\$12,660
<i>Council Services and Records Manager *</i>	\$9,921	\$12,660
<i>Deputy City Attorney</i>	\$9,921	\$12,660
Economic Development Coordinator	\$9,921	\$12,660
Emergency Services Coordinator	\$9,921	\$12,660
GIS / Land Use Data Administrator	\$9,921	\$12,660
Maintenance Services Coordinator	\$9,921	\$12,660
<i>Older Adult Services Supervisor*</i>	\$9,921	\$12,660
<i>Programmer Analyst</i>	\$9,921	\$12,660
<i>Public Services Facilities Security Coordinator</i>	\$9,921	\$12,660
Senior Human Resources Analyst	\$9,921	\$12,660
Risk Management Analyst (.50 FTE)	\$4,730	\$6,206
Group 1-C: Confidential Exempt		
Administrative Analyst	\$9,457	\$12,410
Legal Specialist	\$8,509	\$11,196
Group 1-D: Confidential Non-Exempt		
Accounting Technician	\$7,757	\$9,900
Human Resources Technician	\$7,544	\$9,900
<i>Human Resources Assistant *</i>	\$5,908	\$7,729

**CITY OF MORGAN HILL
ELECTED OFFICIALS AND COUNCIL APPOINTED/UNREPRESENTED/EXEMPT EMPLOYEES
SALARY SCHEDULE**

As of: **December 2024**

Job Classification	Bottom of Range Monthly	Top of Range Monthly	Annual Maximum
Elected Officials			
Mayor	-	\$3,397	\$40,764
Council Members	-	\$1,275	\$15,300
City Treasurer	-	\$815	\$9,780
Appointed by the City Council			
City Manager	-	\$26,635	\$319,621
City Attorney	-	\$25,075	\$300,896

Compensation for elected officials per City Ordinance No. 1780 and Council Resolution No. 5235

RESOLUTION NO. 24-07

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MORGAN HILL RECOMMENDING ACCEPTANCE OF THE CITY'S CAPITAL IMPROVEMENT PROGRAM FOR FISCAL YEARS 2024/25 THROUGH 2029/30 AND FINDING THE PROGRAM YEARS 2024/25 AND 2025/26 CONSISTENT WITH THE GENERAL PLAN

WHEREAS, such request was considered by the Planning Commission at their regular meeting on May 15, 2024 at which time the Planning Commission recommended acceptance of the Capital Improvement Program for Fiscal Years 2024/25 through 2029/30 after finding the Program Fiscal Years 2024/25 and 2029/30 consistent with the General Plan;

NOW, THEREFORE, THE MORGAN HILL PLANNING COMMISSION DOES RESOLVE AS FOLLOWS:

SECTION 1: The proposed Fiscal Years 2024/25 and 2025/26 Capital Improvement Program is consistent with the General Plan, in that the infrastructure improvements shown in the Program will support the goals, policies and programs of the General Plan, enabling orderly development of the City.

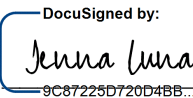
SECTION 2: The proposed Capital Improvement Program is found to be Exempt from the California Environmental Quality Act pursuant to Section 15262 of the CEQA Guidelines.

SECTION 3: The Planning Commission hereby recommends acceptance of the proposed Capital Improvement Program for Fiscal Years 2024/25 through 2029/30.

PASSED AND ADOPTED THIS 15TH DAY OF MAY 2024, AT A REGULAR MEETING OF THE MORGAN HILL PLANNING COMMISSION BY THE FOLLOWING VOTE:

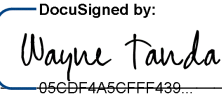
AYES:	COMMISSIONERS:	TANDA, DOWNEY, HABIB, MUELLER, LAKE, WILSON
NOES:	COMMISSIONERS:	NONE
ABSTAIN:	COMMISSIONERS:	NONE
ABSENT:	COMMISSIONERS:	KUMAR

ATTEST:

DocuSigned by:

9C87225D720D4BB...

JENNA LUNA, Deputy City Clerk

APPROVED:

DocuSigned by:

05CDF4A5CFFF439...

WAYNE TANDA, Chair

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL ADOPTING THE FISCAL YEARS 2024-25 and 2025-26 OPERATING BUDGET, FISCAL YEARS 2024-25 THROUGH 2029-30 CAPITAL IMPROVEMENT PROGRAM (CIP) BUDGET, FISCAL YEAR 2024-25 APPROPRIATIONS LIMIT AND APPROPRIATIONS LIMIT ADJUSTMENT FACTORS

WHEREAS, the City of Morgan Hill Budget for the 2024-25 and 2025-26 fiscal years was prepared by City staff and reviewed by the City Manager;

WHEREAS, the City of Morgan Hill Budget for the 2024-25 and 2025-26 fiscal years was distributed to the City Council on May 3, 2024, introduced to the City Council on May 15, 2024, was reviewed at a budget workshop on May 22, 2024 and was further reviewed at a public hearing on June 19, 2024;

WHEREAS, the City of Morgan Hill Budget anticipates total expenditures of \$207,941,839 in FY 2024-25 and \$254,426,358 in FY 2025-26;

WHEREAS, in accordance with the State Revenue and Taxation Code Section 7910, the City of Morgan Hill's 2024-25 fiscal year General Fund appropriations limit is \$158,644,955 as shown on Schedule A;

WHEREAS, in accordance with the State Revenue and Taxation Code Section 7910, the appropriations for the 2024-25 fiscal year, as shown on Schedule B, which are subject to the appropriations limit as set forth in Article XIIIB of the California Constitution, do not exceed the limit as stated above;

WHEREAS, the annual adjustment factors that were selected to calculate the 2024-25 fiscal year limit were: 1) California Per Capita Personal Income adjustment factor of 3.62 percent; and 2) City Population Growth factor of 0.11 percent;

WHEREAS, modifications and amendments to the Adopted 2024-25 and 2025-26 City of Morgan Hill Budget can only be made in accordance with Fiscal Policy 4 in the Adopted Budget document;

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Morgan Hill finds that the Capital Improvement Program is in conformity with the General Plan; and

BE IT FURTHER RESOLVED that the City Council of the City of Morgan Hill does hereby approve and adopt the City of Morgan Hill Fiscal Years 2024-25 and 2025-26 Recommended Operating Budget, Fiscal Years 2024-25 through 2029-30 Recommended Capital Improvement Program Budget, Appropriations Limit for Fiscal Year 2024-25, and Appropriations Limit Adjustment Factors for Fiscal Year 2024-25.

PASSED AND ADOPTED by the City Council of Morgan Hill at a Regular Meeting held on the 19th Day of June, 2024 by the following vote.

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

ATTEST:

APPROVED:

MICHELLE BIGELOW, CITY CLERK

MARK TURNER, MAYOR

• 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. _____ adopted by the City Council at a Regular Meeting held on June 19, 2024.

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

DATE: _____

MICHELLE BIGELOW, City Clerk

SCHEDULE A

**CITY OF MORGAN HILL
SPENDING LIMIT CALCULATION
FISCAL YEAR 2024-25**

APPROPRIATIONS SUBJECT TO LIMIT

Fiscal Year 2024-25 General Fund Revenues	\$56,220,919
Less Non Proceeds of Tax	<u>18,884,114</u>
Total appropriations subject to limits	<u><u>\$37,336,805</u></u>

APPROPRIATIONS LIMIT

Fiscal year 2023-24 appropriations limit	\$152,934,412
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Plus Change Factor:

A. Cost of living adjustment - CPI	1.0362
B. Population Adjustment	1.0011

Total Change Factor	1.0373
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Increase in appropriations limit	<u>\$5,710,543</u>
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FISCAL YEAR 2024-25 APPROPRIATIONS LIMIT	<u><u>\$158,644,955</u></u>
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Remaining appropriations capacity	\$121,308,150
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Available capacity as a percent of appropriations limit	<u><u>76%</u></u>
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NOTES

- A. Cost of living adjustment is based on percentage change in California per capita income.
B. Population adjustment is based on the greater of annual population change for the
City of Morgan Hill or Santa Clara County.

SCHEDULE B

**CITY OF MORGAN HILL
SPENDING LIMIT CALCULATION
FISCAL YEAR 2024-25**

REVENUE SOURCE	PROCEEDS OF TAX	NON PROCEEDS OF TAX	TOTALS
Property Tax	\$ 19,448,520		\$ 19,448,520
Sales Tax	12,352,215		12,352,215
Transient Occupancy Tax	2,678,000		2,678,000
Public Safety Sales Tax	464,254		464,254
Property Transfer Tax	600,000		600,000
Business License / Other Permits	280,750		280,750
Motor Vehicle in Lieu	61,800		61,800
Transfer from Fund 202 Street Fund Gax Tax	851,932		851,932
Use of Money and Property	599,334	1,746,482	2,345,816
Fines and Penalties		84,800	84,800
Other Revenue / Other Agencies		1,184,498	1,184,498
Police and Fire Fees		1,090,881	1,090,881
Franchise Revenue		3,185,872	3,185,872
Current Service Charges General Govt.		9,077,753	9,077,753
Transfers		2,513,828	2,513,828
Total	\$ 37,336,805	\$ 18,884,114	\$ 56,220,919
Percentage of Total	66%	34%	100.00%

FY 2024-25 and 2025-26 Recommended Operating and Capital Improvement Program Budget by Fund

Fund	Fund Name	FY 2024-25	FY 2025-26
		Recommended	Recommended
010	General Fund Total	62,533,138	63,252,902
202	Street Maintenance Total	857,383	857,492
205	Supplemental Law Enforcement Total	101,354	101,380
206	Development Services Total	6,380,448	6,490,340
207	Long Range Planning Total	3,107,508	1,143,355
215	CDBG Total	87	90
225	Asset Seizure Total	821	840
229	Lighting And Landscape District Total	211,120	218,856
230	Community Facilities District Total	23,511	24,377
232	Environmental Programs Total	453,069	469,415
234	Mobile Home Park Rent Total	484	490
235	Senior Housing Trust Total	468	480
236	Housing Total	2,035,046	1,269,798
237	BEGIN - Housing Total	10,461	10,670
240	Employee Assistance Total	20,993	21,010
246	Countywide Solid Waste Administrative Services Total	2,296,144	2,407,568
255	Housing Successor Agency Total	1,319,931	1,375,331
260	Public Art Total	16,306	6,430
301	Park Development Total	2,918,027	1,605,365
302	Park Maintenance Capital Total	650,000	650,000
303	Local Drainage Total	3,600,317	2,131,413
304	Local Drainage-Non AB1600 Total	505,176	265,529
306	Open Space Total	128,157	128,770
308	Street Cip Total	4,303,425	7,457,905
309	Traffic Mitigation Total	1,703,442	3,541,779
315	Public Safety Facilities Impact Total	3,210,494	1,263,175
346	Public Facilities-Non AB1600 Total	825,834	162,289
347	Public Facilities Total	1,444,333	816,477
348	Library Total	2,713,615	215,486
350	Undergrounding Total	263,242	1,050,456
360	Com/Rec Center Impact Total	907,600	3,789,298
375	Quimby Fee Total	6,640,319	2,363,117
420	Civic Center Debt Service Total	291,714	294,598
441	Police Facility Bond Debt Service Total	385,093	389,293
640	Wastewater Operations Total	16,747,374	18,397,095
641	Sewer Capital Expansion Total	5,513,771	47,957,390
642	Sewer Rate Stabilization Total	1,966	2,010
643	Sewer System Replace. Total	10,250,782	22,519,784
650	Water Operations Total	21,175,195	23,400,539
651	Water Capital Expansion Total	4,343,873	6,868,303
652	Water Rate Stabilization Total	1,473	1,500
653	Water System Replacement Total	19,470,413	12,817,944

FY 2024-25 and 2025-26 Recommended Operating and Capital Improvement Program Budget by Fund

Fund	Fund Name	FY 2024-25 Recommended	FY 2025-26 Recommended
730	Information Systems Total	2,877,339	3,022,165
740	Building Maintenance Total	1,427,082	1,270,189
741	Building Future Replacement Total	1,121,700	374,000
745	Capital Project Implementation Total	2,584,516	2,694,253
760	Unemployment Insurance Total	15,000	15,000
770	Workers' Compensation Total	946,245	1,007,970
790	Equipment Replacement Total	1,122,500	387,600
791	Employee Benefits Total	1,000,000	1,000,000
795	General Liability Insurance Total	2,411,618	2,623,909
843	Morgan Hill Bus Ranch 1998 Total	83,000	-
845	Madrone Bus Park Exempt Total	672,380	46,079
846	Madrone Bus Park Taxable Total	89,228	24,925
850	COMH as the Successor Agency of the MHRDA Total	6,227,322	6,219,930
Grand Total		207,941,839	254,426,358

RESOLUTION NO. 24-_____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY
OF MORGAN HILL APPROVING AN AMENDMENT TO
THE CITY'S FISCAL YEAR 2023-2024 BUDGET IN THE
GENERAL FUND (FUND NO. 010), TO APPROPRIATE
\$1,000,000.00, THEREFOR**

WHEREAS, the City of Morgan Hill, a municipal corporation and general law city duly organized and existing under and pursuant to the Constitution and laws of the State of California ("City"), is authorized to enter into contracts and agreements for the benefit of the City; and

WHEREAS, the reasons supporting this Resolution are set forth in detail in that certain City Council Staff Report entitled "Adopt the Fiscal Year (FY) 2024-25 and 2025-26 Operating Budget, FY 2024-25 through 2029-30 Capital Improvement Program Budget, Adopt FY 2024-25 Appropriations Limit, Approve the FY 2024-25 Community Funding Recommendations, Adopt FY 2023-24 Budget Amendment, and Adopt the Revised Salary Schedule for American Federation of State, County, and Municipal Employees; Management, Professional, and Confidential Employees Effective June 23, 2024; and Elected Officials and Council Appointed Positions effective December 2024" submitted for City Council consideration at its meeting of June 19, 2024, submitted to the City Council by the City Manager (the "Staff Report"), the contents of which Staff Report are incorporated herein by this reference; and

WHEREAS, recommended amendments are needed and proposed to the City's previously adopted Annual Budget for Fiscal Year 2023-2024 as set forth on Exhibit A to this Resolution, to appropriate the requisite funds to implement the actions authorized by this Resolution; and

WHEREAS, the consideration by City Council of the adoption of this Resolution has been duly noticed pursuant to applicable laws and has been placed upon the City Council Meeting Agenda on the date set forth in the Staff Report, or to such date that the City Council may have continued or deferred consideration of this Resolution, and on such date the City Council conducted a duly noticed public meeting at which the City Council provided members of the public an opportunity to comment and be heard and considered any and all testimony and other evidence provided in connection with the adoption of this Resolution; and

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

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

Section 1. Recitals. The City Council does hereby find, determine and resolve that all of the foregoing recitals are true and correct.

Section 2. Approval and Authorization. The City Council does further resolve, order and/or direct as follows:

- a. That the City's previously adopted Fiscal Year 2023-2024 Budget, as the same has been amended to date, is hereby further amended in accordance with and as reflected on Exhibit A attached hereto and incorporated herein by this reference; and
- b. That the City Clerk is hereby authorized and directed to forward a copy of this Resolution to the City's Finance Director, who is hereby authorized and directed to take all actions necessary to implement the terms of this Resolution pertaining to the Fiscal Year 2023-2024 Budget of City.

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

PASSED, APPROVED, AND ADOPTED by the City Council of the City of Morgan Hill at its meeting held on this 19th day of June 2024 by the following vote:

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

APPROVED:

ATTEST:

MARK TURNER, Mayor

MICHELLE BIGELOW, City Clerk

∞ CERTIFICATION ∞

I, Michelle Bigelow, City Clerk of the City of Morgan Hill, California, do hereby certify that the foregoing is a true and correct copy of Resolution No. 23-_____ adopted by the City Council at the meeting held on the 19th day of June 2024.

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

DATE: _____

MICHELLE BIGELOW, City Clerk

EXHIBIT A

AGENDA BUDGET SCORECARD

FISCAL YEAR 2023-2024

ADJUSTMENT #

022

FUND:

FUNTION:

DEPARTMENT:

DIVISION:

OBJECT:

010	General Fund
10	General Services
10	Administrative Services
1900	Transfers
49235	TRANSFER OUT-206 (DEV SVCS)

AGENDA DATE:

06/19/24

AGENDA ITEM TITLE:

Interfund Loan

	07/01/23 BEGINNING FUND BALANCE	ESTIMATED REVENUES	AMENDED APPROPRI- ATIONS	06/30/24 PROJECTED ENDING FUND BALANCE
ORIGINAL BUDGET	33,224,036	53,339,827	59,226,628	27,337,235
CUMULATIVE REVISIONS PRIOR TO RECOMMENDED ACTION	-	165,824	503,350	(337,526)
RECOMMENDED ACTION		-	1,000,000	(1,000,000)
RESULT OF RECOMMENDED ACTION	<u>33,224,036</u>	<u>53,505,651</u>	<u>60,729,978</u>	<u>25,999,709</u>